

DISTRICT COURT (PROCEDURE) AMENDMENT ACT, 1984, No. 170

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 170, 1984.

An Act to amend the District Court Act, 1973, for the purposes of establishing a District Court Rule Committee, conferring powers on that Committee to make rules of procedure and practice in relation to the District Court of New South Wales and making further provision with respect to the criminal and special jurisdiction of that Court, and for other purposes. [Assented to, 14th December, 1984.]

District Court (Procedure) Amendment 1984

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "District Court (Procedure) Amendment Act, 1984".

Commencement.

2. (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Schedules 2–6, and section 5 in its application to those Schedules, shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Schedule 7, and section 5 in its application to that Schedule, shall commence on the day appointed and notified under section 2 (2) of the Local Courts Act, 1982, except that if on the date of assent to this Act that day has already passed Schedule 7, and section 5 in its application to that Schedule, shall commence on that date of assent.

Principal Act.

3. The District Court Act, 1973, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO PARTS I AND II OF THE PRINCIPAL ACT.

District Court (Procedure) Amendment 1984

SCHEDULE 2.—FURTHER AMENDMENTS TO PARTS I AND II OF THE PRINCIPAL ACT.

SCHEDULE 3.—AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

SCHEDULE 4.—AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

SCHEDULE 5.—AMENDMENTS TO PART VI OF THE PRINCIPAL ACT.

SCHEDULE 6.—AMENDMENTS TO PART VII OF THE PRINCIPAL ACT.

SCHEDULE 7.—AMENDMENTS TO THE PRINCIPAL ACT CONSEQUENT ON THE LOCAL COURTS ACT, 1982.

SCHEDULE 8.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 9.—SAVINGS AND TRANSITIONAL PROVISIONS.

Amendment of Act No. 9, 1973.

5. The Principal Act is amended in the manner set forth in Schedules 1–8.

Savings and transitional provisions.

6. Schedule 9 has effect.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO PARTS I AND II OF THE PRINCIPAL ACT.

(1) Section 4 (1), definition of “Rule Committee”—

After the definition of “registry”, insert:—

“Rule Committee” means the District Court Rule Committee established under section 18A;

District Court (Procedure) Amendment 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO PARTS I AND II OF THE PRINCIPAL
ACT—*continued.*

(2) Part II, Division 3—

After Division 2, insert:—

DIVISION 3.—*Rule Committee.*

Establishment of the Rule Committee.

18A. There shall be a District Court Rule Committee.

Composition of the Rule Committee.

18B. (1) The Rule Committee shall be composed of no fewer than 9 and no more than 10 members.

(2) Of the members of the Rule Committee—

- (a) one shall be the Chief Judge;
- (b) six shall be Judges other than the Chief Judge;
- (c) one shall be a practising barrister; and
- (d) one shall be a practising solicitor.

(3) If the Minister thinks it appropriate to do so, the Minister may, by instrument in writing, appoint as a member of the Rule Committee a person who, in the Minister's opinion, is suitably qualified to hold that position.

(4) A member of the Rule Committee referred to in subsection (2) (b), (c) or (d) shall be appointed by the Chief Judge by instrument in writing.

(5) Subject to this section, a member of the Rule Committee referred to in subsection (2) (b), (c) or (d) shall hold office for such period as may be specified in the member's instrument of appointment and, if otherwise qualified, is eligible for re-appointment or, as the case may be, for further re-appointment.

*District Court (Procedure) Amendment 1984*SCHEDULE 1—*continued.*AMENDMENTS TO PARTS I AND II OF THE PRINCIPAL
ACT—*continued.*

(6) A member of the Rule Committee referred to in subsection (3) shall hold office as such only during the pleasure of the Minister.

(7) A member of the Rule Committee referred to in subsection (2) ceases to hold office as such—

- (a) when the member ceases to hold the qualification by virtue of which the member was appointed; or
- (b) in the case of a member referred to in subsection (2) (b), (c) or (d), if the member resigns as such by writing under the member's hand addressed to the Chief Judge.

(8) In the event of the office of any member of the Rule Committee becoming vacant, a suitably qualified person—

- (a) in the case of a member referred to in subsection (2) (b), (c) or (d), shall; and
- (b) in the case of a member referred to in subsection (3), may, subject to this section, be appointed to fill the vacancy.

Chairman and deputy chairman of the Rule Committee.

18c. (1) The Chief Judge shall be the chairman of the Rule Committee and one of the other members of that Committee shall, in and by the relevant instrument of appointment as such a member or by another instrument executed by the Chief Judge, be appointed as deputy chairman of that Committee.

(2) The chairman and deputy chairman of the Rule Committee may be referred to as the chairperson and deputy chairperson respectively of that Committee and, where appropriate, as the chairwoman and deputy chairwoman respectively of that Committee.

District Court (Procedure) Amendment 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO PARTS I AND II OF THE PRINCIPAL
ACT—*continued.*

Meetings of the Rule Committee.

18D. (1) The procedure for calling meetings of the Rule Committee and for the conduct of business at those meetings shall, subject to any procedure that is prescribed by or under this Act, be as determined by the Rule Committee.

(2) Five members of the Rule Committee shall form a quorum and any duly convened meeting of the Rule Committee at which a quorum is present is competent to transact any business of the Rule Committee and shall have and may exercise all the powers, authorities, duties and functions of the Rule Committee.

(3) The chairman of the Rule Committee or, in the absence of the chairman, the deputy chairman of that Committee shall preside at a meeting of that Committee.

(4) In the absence from a meeting of the Rule Committee of both the chairman and the deputy chairman another member of the Rule Committee elected by the members present shall preside at the meeting.

(5) The person presiding at a meeting of the Rule Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(6) A decision supported by a majority of the votes cast at a meeting of the Rule Committee at which a quorum is present shall be the decision of that Committee.

(7) The Chief Judge shall call the first meeting of the Rule Committee in such manner as the Chief Judge thinks fit and, subject to any decision of that Committee under subsection (1), may call other meetings of that Committee as and when the Chief Judge thinks necessary.

*District Court (Procedure) Amendment 1984*SCHEDULE 1—*continued.*AMENDMENTS TO PARTS I AND II OF THE PRINCIPAL
ACT—*continued.***Secretary to the Rule Committee.**

18E. (1) Subject to and in accordance with the Public Service Act, 1979, a person shall be appointed to hold office as the Secretary to the Rule Committee.

(2) The appointment of a person under subsection (1) is subject to the prior approval of the Chief Judge.

(3) A person may hold office under subsection (1) in conjunction with some other office or position in the Public Service.

(4) The Secretary to the Rule Committee has and may exercise and discharge such powers, authorities, duties and functions as may be specified in the civil procedure rules or the criminal procedure rules or as the Rule Committee may determine.

SCHEDULE 2.

(Sec. 5.)

FURTHER AMENDMENTS TO PARTS I AND II OF THE PRINCIPAL ACT.

(1) (a) Section 4 (1), definition of "admitted set-off"—

Omit "statement of claim", insert instead "document".

(b) Section 4 (1), definitions of "civil procedure rules", "civil proceedings"—

After the definition of "Chief Judge", insert:—

"civil procedure rules" means rules of Court made and in force under Part III;

"civil proceedings" means proceedings in the Court in its civil jurisdiction;

District Court (Procedure) Amendment 1984

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO PARTS I AND II OF THE PRINCIPAL ACT—
continued.

- (c) Section 4 (1), definitions of “criminal procedure rules”,
“criminal proceedings”—

After the definition of “corporation”, insert:—

“criminal procedure rules” means rules of Court made and
in force under Part IV;

“criminal proceedings” means proceedings in the Court in
its criminal jurisdiction;

- (d) Section 4 (1), definition of “personal injuries”—

Omit the definition.

- (e) Section 4 (1), definition of “proceedings”—

Omit the definition, insert instead:—

“proceedings”—

- (a) where occurring in a provision of Part III and
in subsections (3) and (5), means civil pro-
ceedings;
- (b) where occurring in a provision of Part IV,
means criminal proceedings; and
- (c) where occurring in any other provision of this
Act, shall be construed according to the con-
text in which the expression occurs;

- (f) Section 4 (1), definition of “rules”—

Omit the definition.

- (g) Section 4 (1), definition of “statement of claim”—

Omit the definition.

*District Court (Procedure) Amendment 1984*SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO PARTS I AND II OF THE PRINCIPAL ACT—
continued.

(h) Section 4 (1), definition of “the Court”—

Omit the definition, insert instead:—

“the Court” or “the District Court” means the District Court of New South Wales, and includes all registries and offices of the Court, whether they are within the precincts of the Court or not;

(i) Section 4 (1), definition of “the registrar”—

Omit the definition, insert instead:—

“the registrar”, in relation to any proceedings, means the registrar for the proper place in relation to the proceedings, and, where any other registrar is authorised by or under this Act to exercise or discharge any power, authority, duty or function of the registrar for that place, includes that other registrar when exercising or discharging that power, authority, duty or function;

(j) Section 4 (1), definition of “the rules”—

After the definition of “the registrar”, insert:—

“the rules” means—

- (a) where occurring in Part III and Division 2 of Part VI, the civil procedure rules; and
- (b) where occurring in Part IV, the criminal procedure rules;

(k) Section 4 (2) (a)—

Omit “section 58, 60 or 61”, insert instead “any provision of the civil procedure rules prescribed for the purposes of this paragraph”.

District Court (Procedure) Amendment 1984

SCHEDULE 2—*continued.*FURTHER AMENDMENTS TO PARTS I AND II OF THE PRINCIPAL ACT—
continued.

(l) Section 4 (2) (b)—

Omit "section 58, 60 or 61", insert instead "any provision of the civil procedure rules so prescribed".

(m) Section 4 (3)—

Omit "statement of claim or other".

(n) Section 4 (7)–(9)—

After section 4 (6), insert:—

(7) Where a provision of this Act refers to the amount claimed in an action or cross-claim or to the amount for which an action is authorised by this Act to be brought and the action or cross-claim is for the detention of goods, the reference to that amount shall be construed as a reference to an amount equivalent to the value of the goods together with any damages claimed for the detention of the goods.

(8) A reference in this Act to a Court of Quarter Sessions includes a reference to a court which, before 1st July, 1973, was a Court of Sessions of the Peace, General Sessions of the Peace, General Sessions, General Quarter Sessions, General or Quarter Sessions, or General and Quarter Sessions.

(9) A reference in this Act to criminal jurisdiction includes a reference to jurisdiction to hear an appeal from any conviction, finding of guilt, sentence or other decision relating to the commission or alleged commission of an offence against the law in force in New South Wales.

(2) (a) Section 5 (2), definition of "distance"—

Before "rules", insert "civil procedure".

District Court (Procedure) Amendment 1984

SCHEDULE 2—*continued.*

FURTHER AMENDMENTS TO PARTS I AND II OF THE PRINCIPAL ACT—
continued.

- (b) Section 5 (2), definition of “principal registry”—
Before “rules”, insert “civil procedure”.
 - (3) Section 6—
After “Act or the”, insert “civil or criminal procedure”.
 - (4) (a) Section 7—
Before “rules”, insert “civil procedure”.
 - (b) Section 7 (b)—
Omit “and special”.
 - (5) (a) Section 9 (2)—
Omit “and special” where firstly occurring.
 - (b) Section 9 (2) (b)—
Omit “and special jurisdiction, its criminal jurisdiction or its special”.
 - (6) (a) Section 11 (1)—
Before “proceedings” where firstly occurring, insert “civil and criminal”.
 - (b) Section 11 (2)—
Before “rules”, insert “civil or criminal procedure”.
 - (c) Section 11 (2)—
Before “proceedings”, insert “civil and criminal”.
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District Court (Procedure) Amendment 1984

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

(1) Sections 20, 21—

Omit the sections, insert instead:—

Powers, etc., of registrar.

20. The registrar for a proclaimed place shall have and may exercise and discharge such powers, authorities, duties and functions as may be prescribed by the rules.

(2) Section 24—

Omit the section.

(3) Section 26 (3)—

After section 26 (2), insert:—

(3) A person who is dismissed or suspended from office under subsection (2) by the Chief Judge may not be re-appointed or have the suspension from office terminated by a bailiff.

(4) Section 27—

Omit the section, insert instead:—

Functions and duties of bailiffs and assistant bailiffs.

27. (1) A bailiff and an assistant bailiff for a proclaimed place shall have and may exercise and discharge such powers, authorities, duties and functions as may be prescribed by the rules.

(2) Without limiting subsection (1), it is the duty of an assistant bailiff for a proclaimed place to assist the bailiff for that place in accordance with the directions of that bailiff.

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(3) Subject to the rules, a bailiff and an assistant bailiff shall exercise and discharge their respective powers, authorities, duties and functions in accordance with such orders or directions as may be given by a Judge.

(4) A bailiff who undertakes, or is required to undertake, the execution or service of any warrant, writ or other document relating to any proceedings is responsible to any party to those proceedings for all acts and defaults of himself or herself and of any bailiff or assistant bailiff assisting him or her in the same manner as the sheriff is responsible for the acts and defaults of the sheriff and the sheriff's officers.

(5) Section 29—

Omit the section.

(6) Section 30—

(a) After "bailiff" where lastly occurring, insert "in accordance with this Act".

(b) Omit "\$500", insert instead "\$1,000".

(7) (a) Section 32 (2)—

Omit the subsection.

(b) Section 32 (3)—

Omit the subsection, insert instead:—

(3) Whenever the Chief Judge is of the opinion that it is not expedient or not practicable for the Court to sit at a particular proclaimed place during a specified period, the Chief Judge may, by order in writing, direct that during that period

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

all proceedings (other than proceedings before a registrar or some other officer of the Court) the proper place in relation to which is that proclaimed place shall be continued by the Court sitting at some other place specified in the order and, while a direction under this subsection remains in force, the proceedings to which it relates shall, if continued, be dealt with accordingly.

(c) Section 32 (4)—

Omit “(2),”.

(d) Section 32 (5)—

Omit the subsection, insert instead:—

(5) Where a direction having effect during a particular year is given under subsection (2A) in relation to a particular proclaimed place, a previous direction under subsection (3) having effect, during that year, in respect of proceedings the proper place in relation to which is that proclaimed place, shall cease to have effect.

(e) Section 32 (6), (7)—

Omit the subsections.

(8) (a) Section 33 (1), (2)—

After “Part” wherever occurring, insert “and the rules”.

(b) Section 33 (3)—

Omit the subsection.

(9) Sections 35–38—

Omit the sections.

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(10) Section 39—

Omit “, 35, 36 or 37”, insert instead “or under the rules”.

(11) Section 40—

Omit the section, insert instead:—

Change of venue.

40. Where it appears to the Court—

- (a) that a fair or unprejudiced trial of an issue arising or likely to arise in or in connection with any proceedings cannot otherwise be had; or
- (b) any circumstances prescribed for the purposes of this section have arisen or are likely to arise in or in connection with particular proceedings,

the Court may, subject to and in accordance with the rules, make an order changing the venue of the proceedings.

(12) Section 42—

Omit the section.

(13) (a) Section 43 (2)—

Omit “A person”, insert instead “Subject to and in accordance with the rules, a person”.

(b) Section 43 (6)—

Omit the subsection.

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(14) (a) Section 44 (1) (a)—

Omit “or” where lastly occurring.

(b) Section 44 (1) (aa)—

After section 44 (1) (a), insert:—

- (aa) any action to recover goods that have been detained, or to recover the assessed value of such goods, where the value of the goods together with the amount of any consequential damages claimed for the detention of the goods does not exceed \$100,000; or

(c) Section 44 (2), (3)—

Omit the subsections, insert instead:—

(2) Where the amount claimed in an action includes interest (being interest which the Court could, under section 83A (1), order to be included in the amount for which it could give judgment), that interest shall be disregarded for the purposes of—

- (a) determining whether the maximum amount for which the action is authorised by this Act to be brought has been exceeded or not; and
- (b) determining whether or not the Court has jurisdiction to hear and dispose of the action.

(3) Where—

- (a) an amendment to subsection (1) which is enacted after, or was enacted before the commencement of Schedule 3 to the District Court (Procedure) Amendment Act, 1984, has or had the effect of increasing the amount specified in paragraph (a) or (aa) of that subsection; and

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

- (b) an action in which an amount of money is claimed is pending at the time when the amendment has effect or, as the case may be, an action in which an amount of money is claimed was pending at the time when the amendment had effect and has not been finally determined,

the Court may, on the application of the claimant, make an order altering the amount specified in the claim to an amount not exceeding that specified in paragraph (a) or (aa) of that subsection, as in force immediately after the amendment has or had effect.

(15) Section 45—

Omit the section.

(16) (a) Section 47 (1)—

Omit “section 21, 58, 60 or 61 or by any rules made under section 161 (1) (f)”, insert instead “any of the rules prescribed for the purposes of this subsection”.

(b) Section 47 (1) (b), (c)—

Omit “statement of claim in” wherever occurring, insert instead “document which commenced”.

(17) Section 48 (1)—

Omit “\$20”, insert instead “\$1,000”.

(18) Section 50—

Omit “statement of claim”, insert instead “document”.

(19) Part III, Division 3, Subdivision 1—

Omit the Subdivision.

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(20) Section 53—

Omit the section, insert instead:—

Manner of commencement of actions.

53. An action and proceedings ancillary to an action shall be commenced in the manner prescribed by the rules.

(21) Sections 54, 55—

Omit the sections.

(22) Section 56—

Omit the section, insert instead:—

Right to defend action.

56. A person against whom an action has been commenced may defend the action and any proceedings ancillary to the action as prescribed by the rules.

(23) Part III, Division 3, Subdivisions 4, 5—

Omit the Subdivisions.

(24) (a) Section 65 (1)—

Omit the subsection, insert instead:—

(1) Where the attendance of a person at the hearing of an action is required by a subpoena issued under section 64—

(a) for the purpose of giving evidence at the hearing; or

*District Court (Procedure) Amendment 1984*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(b) for the production at the hearing of a document or thing, and the person defaults in attending the hearing as required by the subpoena, the Court may, on the application of a party or of its own motion—

(c) issue, or make an order for the issue of, a warrant to a bailiff, or to such other person as the Court may appoint, directing the defaulting person to be arrested and brought before the Court or a registrar and, where appropriate, to be kept in custody as required by subsection (3); or

(d) order the defaulting person to appear before the Court to show cause as to why such a warrant should not be issued against that person,

and in either case order the defaulting person to pay any costs attributable to the default.

(b) Section 65 (9)—

After section 65 (8), insert:—

(9) This section applies in relation to a subpoena issued under this Act to the exclusion of sections 13 and 14 of the Evidence Act, 1898.

(25) Section 68 (2)—

(a) Omit “The Court may, subject to and in accordance with the rules, order, on terms, that—”, insert instead “Without limiting the generality of subsection (1), the rules may make provision for or with respect to empowering the Court to order that—”.

(b) From paragraph (h), omit “statement of claim lodged”, insert instead “action commenced”.

(c) Omit “and may make such further order as may be prescribed in the event of any failure by a person to comply with its order”, insert instead “and empowering the Court to make

*District Court (Procedure) Amendment 1984*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

such further order as may be prescribed in the event of the failure of a person to comply with an order of the Court made under rules made under this subsection”.

(26) Section 69—

Omit the section.

(27) Section 69A—

Before section 70, insert:—

Power of Court to appoint expert witness.

69A. (1) Where it appears to the Court that expert evidence should be heard in relation to a matter that is in issue in an action for trial without a jury, the Court may, on the application of a party to the action or of its own motion, make an order appointing a person who is, in its opinion, competent to give that evidence to be an expert witness at the hearing of the action.

(1A) An order under subsection (1) shall be of no force and effect unless it is consented to by all the parties to the action or approved by the Attorney General.

(2) An order under subsection (1) shall not be made unless the person proposed to be appointed consents to the appointment.

(3) Where the Court makes an order under subsection (1) in relation to a particular matter, it may, by that order or a subsequent order—

- (a) direct that the parties to the action shall not call persons as expert witnesses to give evidence in relation to that matter;
or
- (b) where those parties have already called such persons to give evidence in relation to that matter, direct that those parties shall not recall those persons or call further persons as expert witnesses to give such evidence.

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(4) The Court has full power to determine by whom, to whom and to what extent the costs incurred in relation to the appointment of an expert witness under subsection (1) are to be paid and to order those costs to be taxed or otherwise ascertained.

(28) Sections 71–75—

Omit the sections.

(29) Section 78 (1)—

Omit “\$100”, insert instead “\$5,000”.

(30) Section 80A—

Omit the section.

(31) Section 82—

Omit the section.

(32) Section 83—

Omit the section, insert instead:—

Judgment in an action relating to the detention of goods.

83. (1) In an action relating to the detention of goods, the Court may, if it finds for the plaintiff, give judgment—

(a) for delivery of the goods to the plaintiff;

(b) for delivery of the goods to the plaintiff, but giving the defendant the option of retaining the goods and paying the plaintiff the value of the goods, as assessed by the Court; or

(c) for payment to the plaintiff of the value of the goods, as so assessed,

together with, in any of the cases mentioned in paragraphs (a), (b) and (c), any consequential damages.

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(2) Subject to the rules, relief under subsection (1) (a) is at the discretion of the Court but the plaintiff may choose between the other forms of relief prescribed by subsection (1).

(3) Where in an action relating to the detention of goods judgment is given as referred to in subsection (1) (b), the Court, in its discretion, may, on the application of the plaintiff, subsequently make an order for the delivery of the goods to the plaintiff without giving the defendant the option of retaining the goods and paying their assessed value.

(4) The rules may make provision with respect to the manner in which a judgment given as referred to in subsection (1) may be satisfied.

(33) Section 83AA—

Omit the section.

(34) Part III, Division 3, Subdivision 10—

Omit the Subdivision.

(35) Section 84 (1), definition of “judgment debt”—

From paragraph (b), omit “under section 120”, insert instead “as provided by the rules”.

(36) Section 84A (1)—

(a) Omit “87 (1),”.

(b) Omit “a period of 12 years”, insert instead “the prescribed period”.

(37) Section 86—

Omit the section.

*District Court (Procedure) Amendment 1984*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(38) Part III, Division 4, Subdivision 2—

Omit the Subdivision.

(39) Section 90, definition of “presiding registrar”—

Omit the definition, insert instead:—

“presiding registrar” means a registrar or an assistant registrar before whom a person is required to attend, or attends, for examination pursuant to a summons issued under section 91 (1) or by arrangement as referred to in section 92 (4).

(40) Section 90A—

After section 90, insert:—

Power of Chief Judge to give certain directions for the purposes of this Subdivision.

90A. For the purposes of this Subdivision, the Chief Judge may, from time to time, give a direction in writing to the effect that assistant registrars at the places specified in the direction are assistant registrars before whom persons may be directed to attend for examination under this Subdivision in answer to or consequent on the issue of examination summonses.

(41) (a) Section 91 (1A)—

After section 91 (1), insert:—

(1A) Before issuing an examination summons under subsection (1), the registrar shall, for the purposes of subsection (2) (a), determine the place, being either a proclaimed place or a place specified in a direction in force under section 90A, that, in the opinion of the registrar, is the most easily accessible to the person to whom the summons is to be directed.

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(b) Section 91 (2) (a)—

Omit the paragraph, insert instead:—

- (a) shall summon the person to whom it is directed to attend before the registrar or an assistant registrar at the place determined under subsection (1A) and specified in the summons;

(c) Section 91 (2) (b)—

Omit “the presiding registrar”, insert instead “the registrar or an assistant registrar at the place so determined”.

(d) Section 91 (2) (c)—

Omit “the presiding registrar”, insert instead “the registrar or assistant registrar”.

(e) Section 91 (5)—

Omit “a registrar”, insert instead “the presiding registrar”.

(42) (a) Section 92 (1)—

Omit “subsection (7) (b) (ii)”, insert instead “subsection (7A) (d)”.

(b) Section 92 (5) (d)—

Omit “section 27 (2)”, insert instead “the rules”.

*District Court (Procedure) Amendment 1984*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(c) Section 92 (7)—

Omit the subsection, insert instead:—

(7) Where—

(a) the person in respect of whom the issue of a warrant is authorised under subsection (2) (a)—

- (i) by arrangement, attends before the presiding registrar, as referred to in subsection (4); or
- (ii) is brought under the warrant before the registrar for the proclaimed place referred to in subsection (5) (d); and

(b) the judgment creditor attends before that presiding registrar or registrar,

the judgment creditor may orally examine that person before that presiding registrar or registrar as to the matters referred to in section 91 (3) or, where the judgement creditor has so requested in accordance with the rules, that presiding registrar or registrar may, in accordance with the rules, orally examine that person as to those matters.

(d) Section 92 (7A)—

After section 92 (7), insert:—

(7A) Where—

(a) the person in respect of whom the issue of a warrant is authorised under subsection (2) (a)—

- (i) by arrangement, attends before the presiding registrar, as referred to in subsection (4); or
- (ii) is brought under the warrant before the registrar for the proclaimed place referred to in subsection (5) (d); and

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

- (b) the judgment creditor does not attend before that presiding registrar or registrar,

that presiding registrar or registrar may—

 - (c) in accordance with the rules, orally examine that person as to the matters referred to in section 91 (3);
 - (d) if the judgment creditor has so requested, order that the examination be conducted before the registrar for another proclaimed place on a date and at a time specified in the order; or
 - (e) strike out the examination.
- (e) Section 92 (8)—
 - Omit “(7) (b) (ii)”, insert instead “(7A) (d)”.
- (f) Section 92 (9)—
 - Omit the subsection, insert instead:—
 - (9) Subsection (7) does not authorise both the judgment creditor and the presiding registrar or registrar referred to in that subsection to examine a person at the same examination as to the matters referred to in section 91 (3).
- (43) Section 93—
 - Omit the section.
- (44) Section 94—
 - (a) Omit “or is brought before a registrar”, insert instead “the presiding registrar, or, as the case may be, is brought before a registrar,”.
 - (b) After “the Court may, if that”, insert “presiding registrar or”.

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(45) Sections 94A, 95, 96—

Omit the sections.

(46) Section 98 (1)—

Omit “under section 88”, insert instead “in accordance with the rules providing for a judgment debt to be paid by instalments”.

(47) Section 108 (1)—

Omit “section 27 (2)”, insert instead “the rules”.

(48) (a) Section 109 (1)—

Omit “section 27 (2)”, insert instead “the rules”.

(b) Section 109 (10)—

Omit “\$500”, insert instead “\$1,000”.

(49) Section 110 (1)—

Omit “section 27 (2)”, insert instead “the rules”.

(50) (a) Section 113 (1A)—

After section 113 (1), insert:—

(1A) As a condition of authorising the issue of a writ under subsection (1), the Court may require the judgment creditor to provide such security as the Court considers appropriate.

(b) Section 113 (2)—

Omit the subsection, insert instead:—

*District Court (Procedure) Amendment 1984*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

- (2) A writ against the person of a judgment debtor shall—
- (a) be under the hand of the registrar by whom it is issued;
 - (b) name or otherwise describe the judgment debtor whose arrest is required by the writ;
 - (c) order a bailiff, determined in accordance with the rules, to arrest the judgment debtor (but only if the judgment debtor is in New South Wales) and, except where paragraph (d) applies, to bring the judgment debtor before the Court for examination;
 - (d) where it is not practicable to bring the judgment debtor before the Court on the day of arrest, order the bailiff to deliver the judgment debtor to the governor of the prison to whom the writ is directed and order that governor to keep the judgment debtor in custody until the judgment debtor is brought before the Court as required by subsection (2A); and
 - (e) continue in force until the judgment debtor is discharged in accordance with law or, if the judgment debtor is not arrested, until the writ expires in accordance with the rules,

and may lawfully be executed on a Sunday.

(c) Section 113 (2A)–(2C)—

After section 113 (2), insert:—

(2A) Where a judgment debtor is arrested pursuant to a writ issued under this section, the bailiff, or the governor of the prison, who has custody of the judgment debtor shall, as soon as practicable after the arrest, cause the judgment debtor to be brought before the Court at the most convenient proclaimed place, and the Court shall thereupon examine the judgment debtor.

*District Court (Procedure) Amendment 1984*SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(2B) If after examining a judgment debtor under subsection (2A) the Court is of the opinion that the judgment debtor should be kept in custody until discharged in accordance with law, it shall—

- (a) order the judgment debtor to be delivered to such prison as may be specified in the order; and
- (b) order the governor of that prison to keep the judgment debtor in custody until the judgment debtor is discharged in accordance with law,

but if the Court is not of that opinion it shall forthwith order that the judgment debtor be discharged from custody under the writ.

(2C) An order under subsection (2B) discharging a judgment debtor from custody may be on terms.

(51) Section 114 (5)—

After "(4)", insert "or section 113 (2B)".

(52) (a) Section 115 (1) (a)—

After "any court;", insert "or".

(b) Section 115 (2), (3)—

Omit the subsections, insert instead:—

(2) An application under subsection (1) shall be in accordance with, and be disposed of as provided by, the rules.

(53) Sections 117, 117A—

Omit the sections.

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(54) Part III, Division 6—

Omit the Division.

(55) Section 131 (3)—

Omit “156 (3)”, insert instead “156 (1)”.

(56) Sections 135, 136—

Omit the sections.

(57) Part III, Division 8, Subdivision 4—

After Subdivision 3 of Division 8, insert:—

Subdivision 4.—Special civil jurisdiction.

Interpretation.

142A. In this Subdivision—

(a) a reference to an instrument is a reference to an Act (other than this Act) enacted before 1st July, 1973, or a rule, by-law, regulation or ordinance, or any other instrument or document whatsoever, of the same or a different kind or nature, made, proclaimed, issued or published before that date; and

(b) a reference to the special civil jurisdiction of the Court is a reference to the jurisdiction conferred on it under section 142B.

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.***Special civil jurisdiction of Court.**

142B. (1) The District Court shall have the same civil jurisdiction as each Court of Quarter Sessions had immediately before 1st July, 1973.

(2) The reference in subsection (1) to civil jurisdiction in relation to a Court of Quarter Sessions is a reference to that part of such a court's jurisdiction that, immediately before 1st July, 1973, was not of a criminal nature.

(3) Subsection (1) is subject to the provisions of any enactment which commenced on or after 1st July, 1973, and which relates to the jurisdiction referred to in that subsection.

References to Courts of Quarter Sessions in relation to the exercise by the District Court of its special jurisdiction.

142C. A reference in any instrument to a Court of Quarter Sessions shall, in relation to that part of the jurisdiction of such a Court which was not of a criminal nature, be construed as a reference to the District Court in its special civil jurisdiction.

Judges exercising special civil jurisdiction.

142D. (1) A Judge exercising the special civil jurisdiction of the District Court has, in relation to proceedings in the Court in that jurisdiction, the same powers, authorities, duties and functions as a Chairman of Quarter Sessions had in relation to corresponding proceedings in a Court of Quarter Sessions before 1st July, 1973.

(2) Except where express provision to the contrary is made by any other Act—

- (a) the trial of all issues arising in the Court in the exercise of its special civil jurisdiction;

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(b) the hearing of any application, or the making of any order, in relation to any such issues; and

(c) all other matters relating to the exercise of that jurisdiction, shall be held before or dealt with by a Judge sitting alone.

(3) A reference in any instrument to a Chairman of Quarter Sessions shall, in relation to a Court of Quarter Sessions in the exercise of that part of its jurisdiction which was not of a criminal nature, be construed as a reference to a Judge exercising the special civil jurisdiction of the District Court.

Powers of registrar in relation to exercise by the Court of its special civil jurisdiction.

142E. (1) The registrar has, in relation to the District Court in its special civil jurisdiction and to proceedings in the District Court in that jurisdiction, such of the powers, authorities, duties and functions that the Clerk of the Peace had in relation to Courts of Quarter Sessions when exercising the corresponding jurisdiction and in relation to similar proceedings in those courts before 1st July, 1973, as are prescribed in the rules.

(2) Subsection (1) is subject to the provisions of any enactment which commenced on or after 1st July, 1973, and which relates to the jurisdiction referred to in that subsection.

Rules in relation to hearing, etc., of proceedings in the Court in its special civil jurisdiction.

142F. Without affecting the generality of any other provision of this Part authorising the making of rules, the rules may make provision for or with respect to—

(a) the procedure to be followed in respect of proceedings under this Subdivision, including the enforcement of any judgment or order of the Court in any such proceedings;

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

- (b) the costs of any such proceedings; and
- (c) any other matter necessary or convenient for giving effect to this Subdivision.

(58) Section 144—

Omit the section.

(59) Part III, Division 9A—

After Division 9, insert:—

DIVISION 9A.—*Costs in proceedings.*

Interpretation.

148A. In this Division, a reference to costs is a reference to costs payable between party and party, including disbursements.

Costs to be in discretion of the Court.

148B. (1) Subject to this Act and the rules and subject to any other Act—

- (a) costs in or in relation to any proceedings shall be in the discretion of the Court;
- (b) the Court has full power to determine by whom, to whom and to what extent costs are to be paid in or in relation to any proceedings; and
- (c) the Court has full power to order costs in or in relation to any proceedings to be taxed or otherwise ascertained.

(2) A taxation of costs may be reviewed by the Court in accordance with the rules.

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

Agreement as to costs.

148c. Where in any proceedings—

- (a) the costs or any part of the costs of a party to the proceedings are required to be paid by another such party;
- (b) those parties agree on the amount of those costs; and
- (c) the agreement is evidenced to the registrar in the manner prescribed by the rules,

the amount of those costs shall, unless the Court otherwise orders, be as so agreed.

Costs to form part of the judgment debt.

148d. Any costs payable by a judgment debtor under this Act shall form part of the judgment debt.

(60) Section 156—

Omit the section, insert instead:—

General power of Court to stay proceedings.

156. (1) At any stage of any proceedings, the Court may, on terms, order that the proceedings be stayed.

(2) Nothing in subsection (1) limits any power conferred on the Court or a Judge by any other provision of this Act or by any other Act or rule of law to stay proceedings.

(61) Sections 157, 158—

Omit the sections.

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(62) Section 160—

Omit the section.

(63) Section 161—

Omit the section, insert instead:—

Civil procedure rules.

161. (1) The Rule Committee may make rules, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed for the purposes of, or in connection with, the exercise by the Court of its civil jurisdiction or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part and Division 3 of Part II or any Act under or by virtue of which rules made under this Part apply, and in particular for or with respect to—

- (a) providing for the procedure (including the method of pleading) and the practice to be followed in the Court in all proceedings in which, or with respect to which, the Court has for the time being civil jurisdiction, and regulating or providing for any matters incidental to, or relating to, any such procedure or practice;
- (b) subject to the provisions of any other Act, regulating and prescribing the procedure and practice to be followed in connection with the transfer of any proceedings to the Court from any other court or from the Court to any inferior court, and, where proceedings are transferred to the Court, the procedure and practice thereafter to be followed in the Court;
and

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(c) subject to the provisions of any other Act, regulating and prescribing the procedure and practice to be followed in connection with the institution of any appeal to the Court, including—

(i) the time within which, and the manner in which, the appeal is to be instituted; and

(ii) the procedure and practice thereafter to be followed in the Court.

(2) Without limiting the generality of subsection (1), rules may be made under that subsection for or with respect to—

(a) prescribing the powers, authorities, duties and functions of registrars, assistant registrars, bailiffs, assistant bailiffs and other officers of the Court and the records to be kept by them in relation to or for the purposes of any proceedings;

(b) enabling any specified registrar, in such circumstances as may be prescribed, to exercise the powers and authorities, and to discharge the duties and functions, of another specified registrar;

(c) providing for the sittings of the Court and the regulation of business at those sittings;

(d) prescribing and providing for the places at which particular proceedings may be heard, commenced or otherwise dealt with and prescribing the circumstances in which, and the conditions subject to which, the venue of proceedings or specified parts of proceedings may be changed;

(e) providing for the vacations and holidays of the Court and for the hearing and disposal of proceedings during any such vacations or holidays;

(f) providing for and regulating the joinder of causes of action and the consolidation of proceedings;

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

- (g) providing for the bringing and disposal of proceedings by or against the executor, administrator or trustee of the estate of any person and providing for the enforcement of judgment in any such proceedings;
- (h) prescribing or providing for the manner in which corporations may participate in proceedings;
- (i) providing for the joinder of parties in proceedings;
- (j) prescribing the cases or circumstances in which security may be required in relation to proceedings, the form of any such security, and the manner in which, and the person to whom, it is to be given;
- (k) providing for pleading in relation to cross-claims (whether in the nature of set-off, cross-action or otherwise);
- (l) empowering the Court to strike out the whole or any part of any proceedings brought by a party on the ground that the proceedings or part of the proceedings are frivolous or vexatious or disclose no cause of action, or on any other ground prescribed in the rules, and to reinstate any proceedings that have been struck out;
- (m) providing for the trial or hearing of proceedings, including the giving of written or oral evidence and the production of documents and other things in evidence at the trial or hearing;
- (n) regulating the means by which particular facts may be proved, and the mode in which evidence may be given (including the administration of oaths to and the taking of evidence of witnesses in or out of New South Wales), in any proceedings or in any application in connection with, or at any stage of, any proceedings;
- (o) empowering the Court—
 - (i) to dispense with the rules of evidence for proving any matter that is not genuinely in dispute in any proceedings and to dispense with such rules of evidence as might cause expense or delay in proceedings if those rules were applied in specified circumstances; and

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

- (ii) to require a party to any proceedings (not being a minor or person of unsound mind) to make admissions with respect to documents or questions of fact, and prescribing the effects of and consequences for failing to comply with a requirement of the kind referred to in subparagraph (ii);
- (p) prescribing matters relating to expert evidence, including the disclosure, by providing copies of reports or otherwise, of the nature of expert evidence to be given, and including the exclusion of expert evidence in the case of non-compliance with the rules relating to expert evidence or with any order for disclosure of the nature of expert evidence;
- (q) providing for and regulating the payment or transfer of money into and out of the Court;
- (r) providing for the manner and form in which, and the times and places at which, judgments, orders or other decisions of the Court may be given;
- (s) empowering Judges to deal with and determine specified kinds of proceedings or specified parts of specified kinds of proceedings while sitting in chambers;
- (t) prescribing the circumstances in which judgments may be set aside;
- (u) providing for judgments by confession, agreement or consent and providing for orders for judgment, default judgments and orders for summary judgment and the circumstances in which such judgments and orders may be given or made;
- (v) prescribing the circumstances in which a party to proceedings may be non-suited;
- (w) enabling the Court to order that the amount of a judgment in favour of a person against another person be set off against an amount payable under another judgment in favour of that other person against the firstmentioned person;

District Court (Procedure) Amendment 1984

SCHEDULE 3—continued.**AMENDMENTS TO PART III OF THE PRINCIPAL ACT—continued.**

- (x) providing for matters relating to proceedings in which a person interpleads, including the staying of proceedings in courts other than the Court and for the barring of claims of persons who do not interplead when required to do so;
- (y) providing for any matters relating to the costs of proceedings;
- (z) empowering the Court to order the solicitor for a party to particular proceedings personally to pay specified costs of the proceedings and to order further that the costs so specified not be recoverable by the solicitor from that party;
- (aa) providing for the taxation of or other means of ascertaining costs payable by one party in proceedings to another, and for any matter relating to that taxation or means of ascertainment;
- (ab) fixing scales or other amounts of witnesses' expenses in proceedings in the Court;
- (ac) prescribing matters relating to claims for, payment of, and entering up of judgment for, interest on money (including debts, damages and the value of goods) recovered or sought to be recovered in proceedings before the Court;
- (ad) prescribing means for, and the procedure and practice to be followed in, the enforcement and execution of judgments and orders of the Court;
- (ae) providing for the manner of payment of a judgment debt and prescribing the practice and procedure to be followed in relation to orders and agreements for varying the manner of payment of any such debt;
- (af) empowering the Court to direct the manner or form of procedure to be followed in any particular proceedings in which the manner or form of procedure for taking any step in the proceedings is not prescribed by or under this Part;
- (ag) providing for the service or giving of notices, documents and other instruments relating to proceedings;

District Court (Procedure) Amendment 1984

SCHEDULE 3—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

- (ah) providing for the amendment of documents filed by a party to any proceedings; and
- (ai) prescribing the times for doing or not doing any act or thing for the purposes of this Act or the rules in or in relation to any proceedings.

(3) In making provision for the taxation of or other means of ascertaining costs payable by one party in proceedings to another, the rules may regulate or modify the application of scales or other amounts of costs fixed by determinations under section 20J (2) of the Legal Practitioners Act, 1898, to any such taxation or ascertaining of costs or provide that, in a particular case or class of case or in particular circumstances, those scales or amounts or specified provisions of those scales or amounts do not apply.

(4) The rules may make provision for or with respect to the bringing of money into the Court by a defendant in any proceedings and, without affecting the generality of the foregoing provisions of this subsection, may make provision for or with respect to—

- (a) prescribing the manner in which money may be so brought into the Court;
- (b) without affecting the generality of paragraph (a), deeming money to be brought into the Court if there is filed a security given by—
 - (i) the Government Insurance Office under the Motor Vehicles (Third Party Insurance) Act, 1942, or where the matter relates to a cause of action which arose before 1st July, 1984, an authorised insurer under that Act;
 - (ii) a licensed insurer under the Workers' Compensation Act, 1926; or
 - (iii) any other person authorised by the Court;

SCHEDULE 3—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

- (c) requiring the Government Insurance Office, insurer or other person who gives a security as referred to in paragraph (b) to pay the amount for which the security was given in the prescribed circumstances and providing that any such amount not so paid may be enforced as a judgment against the Government Insurance Office, insurer or other person; and
 - (d) determining the effect on the cause or causes of action on which the proceedings were brought where the plaintiff accepts the money so brought into the Court.
 - (5) A provision of the rules may—
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - (b) apply differently according to different factors of a specified kind; or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, or may do any combination of those things.
- (64) (a) Section 162 (1)—
After “A rule”, insert “made under this Part”.
- (b) Section 162 (2)—
After “a rule”, insert “made under this Part”.
- (65) Section 163 (a)—
Omit “Act”, insert instead “Part”.
- (66) Section 164—
After “a rule”, insert “under this Part”.
-

District Court (Procedure) Amendment 1984

SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

(1) Part IV, heading—

Omit "AND SPECIAL".

(2) Section 166—

(a) After "shall have the same", insert "criminal".

(b) Omit ", civil and criminal,".

(3) Section 168—

Omit the section, insert instead:—

References to Courts of Quarter Sessions.

168. A reference in any instrument to a Court of Quarter Sessions shall, in relation to the exercise of that Court's criminal jurisdiction, be construed as a reference to the District Court in its criminal jurisdiction.

(4) (a) Section 169 (1)—

Omit "and special".

(b) Section 169 (2), (3)—

Omit the subsections, insert instead:—

(2) Except where express provision to the contrary is made by any other Act—

(a) the trial of all issues arising in the Court in the exercise of its criminal jurisdiction;

(b) the hearing of any application, or the making of any order, in relation to any such issues; and

District Court (Procedure) Amendment 1984

SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

(c) all other matters relating to the exercise of that jurisdiction,

shall be held before or dealt with by a Judge sitting alone.

(3) A reference in any instrument to a Chairman of Quarter Sessions shall, in relation to a Court of Quarter Sessions in its criminal jurisdiction, be construed as a reference to a Judge exercising the criminal jurisdiction of the District Court.

(5) Sections 170, 171—

Omit the sections, insert instead:—

Clerk of the Peace.

170. (1) The Clerk of the Peace has, in relation to the District Court in the exercise of its criminal jurisdiction and to proceedings in that Court in that jurisdiction, the same powers, authorities, duties and functions as the holder of that office had, in relation to Courts of Quarter Sessions in the exercise of the corresponding jurisdiction and in relation to similar proceedings in those Courts, immediately before 1st July, 1973.

(2) Subsection (1) is subject to the provisions of any enactment which commenced on or after 1st July, 1973, and which has added to, modified, replaced, abridged or revoked any of the powers, authorities, duties and functions referred to in that subsection.

Criminal procedure rules.

171. (1) The Rule Committee may make rules, not inconsistent with this Act or any other Act, for or with respect to any matter that by this Act is required or permitted to be prescribed for the purposes of, or in connection with, the exercise by the Court of its criminal jurisdiction or that is necessary or convenient to be prescribed for

District Court (Procedure) Amendment 1984

SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

carrying out or giving effect to this Part and Division 3 of Part II or any Act under or by virtue of which rules under this Part apply, and in particular for or with respect to providing for the procedure and practice to be followed in the Court in all proceedings in which, and with respect to which, the Court has for the time being criminal jurisdiction and regulating or providing for any matters incidental to, or relating to, any such procedure or practice.

(2) Without limiting the generality of subsection (1), rules may be made under that subsection for or with respect to—

- (a) prescribing the duties and functions of the Clerk of the Peace and other officers of the Court and the records to be kept by them in relation to or for the purposes of any proceedings;
- (b) conferring on a registrar in particular proceedings power, subject to the rules, to issue on behalf of a defendant or an appellant in those proceedings—
 - (i) a subpoena requiring a person specified in the subpoena to attend and give evidence in the proceedings; or
 - (ii) a subpoena requiring a person specified in the subpoena to attend and produce, for the purpose of evidence, in the proceedings any document or thing that is in the possession or under the control of that person;
- (c) providing for the sittings of the Court and the regulation of business at those sittings;
- (d) prescribing and providing for the places at which particular proceedings may be held and, subject to any enactment or rule of law which confers powers on the Attorney General with respect to the venue or changes of venue of proceedings, providing for the venue of proceedings to be changed and prescribing the circumstances in which, and the conditions subject to which, any such change may be made;

SCHEDULE 4—*continued.*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

- (e) providing for the vacations and holidays of the Court and the hearing and disposal of proceedings during any such vacations or holidays;
- (f) providing for all procedural matters relating to or incidental to the indictment and arraignment of an accused person, including motions to quash indictments;
- (g) providing for all matters relating to the conduct of proceedings, including matters concerning the representation of defendants and appellants in proceedings;
- (h) providing for evidentiary matters in proceedings, including matters relating to the giving of expert evidence;
- (i) prescribing the procedure and practice with respect to the delivery of verdicts, the convicting and sentencing of persons found by the Court guilty of offences and the acquittal of persons found by the Court not guilty of offences;
- (j) prescribing the procedure for proceedings in the Court under sections 437, 437A and 438 of the Crimes Act, 1900; and
- (k) subject to the Costs in Criminal Cases Act, 1967, providing for matters relating to the payment of the costs of or in relation to proceedings and, in particular—
 - (i) empowering the Court to order a solicitor appearing in particular proceedings to disclose the amount of any costs that the solicitor intends to retain out of any sum ordered by the Court to be paid to the solicitor's client; and
 - (ii) empowering the Court to order the solicitor for a party to particular proceedings personally to pay specified costs of the proceedings and to order further that the costs so specified not be recoverable by the solicitor from the party.

District Court (Procedure) Amendment 1984

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

(3) A provision of the rules may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, or may do any combination of those things.

(4) A rule made under subsection (2) (f), (g), (h), (i) or (j) shall not take effect until it has been approved in writing by the Attorney General.

(6) Sections 171A–171D—

After section 171, insert:—

Gazettal and Parliamentary review of criminal procedure rules.

171A. (1) A rule made under this Part shall—

- (a) be published in the Gazette;
- (b) take effect on and from the date of publication or a later date specified in the rule; and
- (c) be laid before each House of Parliament within 14 sitting days of that House after the date of publication.

(2) If either House of Parliament passes a resolution, of which notice has been given within 15 sitting days of that House after a rule made under this Part has been laid before it, disallowing the rule or any part of it, the rule or part thereupon ceases to have effect.

District Court (Procedure) Amendment 1984

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

(3) For the purposes of subsections (1) and (2), sitting days shall be counted, whether or not they occur during the same session.

Judicial notice of criminal procedure rule to be taken.

171B. Judicial notice shall be taken—

- (a) of a rule made or purporting to have been made under this Part and published in the Gazette; and
- (b) of the date of its publication.

Conditions precedent to the making of a rule under this Part to be presumed.

171C. It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule under this Part have been complied with and performed.

Practice and procedure of Supreme Court to be followed unless other provision made.

171D. Subject to this Act and the rules, the procedure and practice of the District Court when exercising its criminal jurisdiction shall, so far as practicable, be the same as the procedure and practice of the Supreme Court when exercising similar jurisdiction.

- (7) Section 172 (2)—
Omit “and special”.

- (8) Section 173—
Omit the section, insert instead:—

Directions as to the sittings of the Court in its criminal jurisdiction.

173. (1) In this section, “year” means any period of 12 months ending on 31st December.

District Court (Procedure) Amendment 1984

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

(2) The Chief Judge shall, in relation to each year, by order in writing, issue a direction or directions specifying the times and the appointed places at which the Court will sit in its criminal jurisdiction during that year.

(3) A direction under subsection (2) may be given in respect of a particular year before the commencement of that year or, in respect of the remaining portion of that year, after the commencement of that year.

(9) Sections 174, 175—

Omit “and special” wherever occurring.

SCHEDULE 5.

(Sec. 5.)

AMENDMENTS TO PART VI OF THE PRINCIPAL ACT.

(1) Section 185 (1)—

Omit “shall—” and paragraphs (a) and (b), insert instead “shall, in so far as it specifies the times and places at which former Courts shall be held, be deemed to be a proclamation under section 31 (2) specifying proclaimed places.”.

(2) Section 193—

Omit the section.

(3) Section 194 (5)—

Omit the subsection.

District Court (Procedure) Amendment 1984

SCHEDULE 6.

(Sec. 5.)

AMENDMENTS TO PART VII OF THE PRINCIPAL ACT.

(1) Section 198—

Omit the section.

(2) Section 200 (2)—

Omit “the rules”, insert instead “the civil or criminal procedure rules”.

(3) Section 203—

After section 202, insert:—

Power to refer allegation, etc., of contempt to Supreme Court.

203. (1) Without prejudice to the powers of the District Court under section 199, where it is alleged, or appears to the District Court on its own view, that a person is guilty of contempt of court, whether committed in the face or hearing of the District Court or not, the District Court may refer the matter to the Supreme Court for determination.

(2) On any matter being referred to the Supreme Court under subsection (1), the Supreme Court shall dispose of the matter in such manner as it considers appropriate.

District Court (Procedure) Amendment 1984

SCHEDULE 7.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT CONSEQUENT ON THE
LOCAL COURTS ACT, 1982.

- (1) Sections 19 (3), 22 (2)—
Omit "clerk of petty sessions" wherever occurring, insert instead "the Clerk of the Local Court".
 - (2) Section 48 (1)—
 - (a) Omit "court of petty sessions", insert instead "Local Court".
 - (b) After "commenced in the", insert "District".
 - (c) After "leave of the", insert "District".
 - (3) Section 153 (1)—
 - (a) Omit "court of petty sessions", insert instead "Local Court".
 - (b) Omit "stipendiary magistrate", insert instead "Magistrate".
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SCHEDULE 8.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

- (1) Section 3—
Omit the section.
- (2) Section 4 (1), definition of "minor"—
Omit the definition.
- (3) Section 11 (1)—
Omit "Jury Act, 1912", insert instead "Jury Act, 1977".

*District Court (Procedure) Amendment 1984*SCHEDULE 8—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION—*continued.*

(4) Section 19 (2)—

Omit "by the Governor under and subject to the Public Service Act, 1902", insert instead "subject to and in accordance with the Public Service Act, 1979".

(5) Section 22 (1)—

Omit the subsection, insert instead:—

(1) Subject to and in accordance with the Public Service Act, 1979, one or more assistant registrars may be appointed for a proclaimed place.

(6) Section 47 (1) (c)—

Omit "Parliament of the Commonwealth, as subsequently amended", insert instead "Commonwealth".

(7) Section 103 (2) (c)—

Omit "or".

(8) Section 113 (5)—

Omit "Parliament of the Commonwealth, as subsequently amended", insert instead "Commonwealth".

(9) (a) Section 134 (1) (c)—

After ", 1916", insert ", or an order under section 7 of the Family Provision Act, 1982".

(b) Section 134 (2)—

After ", 1916.", insert "or the Family Provision Act, 1982".

(10) Section 151—

Omit "Revenue".

District Court (Procedure) Amendment 1984

SCHEDULE 8—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION—*continued.*

(11) Section 152 (2)—

Omit the subsection, insert instead:—

(2) The provisions of section 14 (3) and (4) of the Public Finance and Audit Act, 1983, apply to an amount placed to the credit of the Special Deposits Account under subsection (1) in the same way as they apply to money paid into that Account pursuant to section 14 (2) of that Act.

(12) Section 153 (2)—

Omit "the imposition of a fine under section 64 or 65", insert instead "the failure of a person to attend proceedings of the Court as required by a subpoena issued under section 64".

(13) Section 200 (3)—

Omit "Revenue".

SCHEDULE 9.

(Sec. 6.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Interpretation.

1. In this Schedule, an expression defined in the Principal Act has the same meaning as it has in that Act.

Rules.

2. (1) After the commencement of Schedules 3 and 4, no power conferred by any Act on the Judges, a majority of the Judges, any number of the Judges or a single Judge to make rules in respect of any particular matter shall be exercised otherwise than by the Rule Committee making rules under and in accordance with Part III of the Principal Act (as in force after that commencement) in the case of a civil matter, or under and in accordance with Part IV of the Principal Act (as so in force) in the case of a criminal matter.

*District Court (Procedure) Amendment 1984*SCHEDULE 9—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(2) Any rules made under any power conferred on the Judges, a majority of the Judges, any number of the Judges or a single Judge by any Act (including the Principal Act) and in force immediately before the commencement of Schedule 3, shall continue in force as if they had been made under Part III of the Principal Act (as in force after that commencement) and may from time to time be amended or revoked by the Rule Committee.

Proclamations under section 172 of the Principal Act to be continued in force.

3. Any proclamation that was in force, or was deemed to be a proclamation, under section 172 (2) of the Principal Act immediately before the commencement of Schedule 4 specifying the places at which the Court may sit in its criminal and special jurisdiction shall, after that commencement, be deemed to be a proclamation under section 172 (2) of the Principal Act (as in force after that commencement) specifying the places at which the Court may sit in its criminal jurisdiction.

Proclamations under section 173 of the Principal Act deemed to be orders made by Chief Judge.

4. Any proclamation that was in force under section 173 of the Principal Act immediately before the commencement of Schedule 4 specifying the places and times at which the Court shall sit in its criminal and special jurisdiction shall, after that commencement, be deemed to be a direction under section 173 of the Principal Act (as in force after that commencement) specifying the places and the appointed times at which the Court shall sit in its criminal jurisdiction..

Resolution of questions as to whether a matter is within the special civil jurisdiction or the criminal jurisdiction of the Court.

5. If after the commencement of Schedules 3 and 4 a question arises as to whether or not any matter is within the special civil jurisdiction of the Court or its criminal jurisdiction, that question shall be determined as provided by rules made under clause 12.

Proceedings pending in the Court in the exercise of its criminal and special jurisdiction.

6. (1) Where any proceedings would, if Schedules 3 and 4 had not commenced, have been continued, heard or disposed of in the Court in its criminal and special jurisdiction, those proceedings shall, after the commencement of those Schedules, be continued, heard or disposed of—

- (a) in the case of criminal proceedings, in the Court in its criminal jurisdiction;
or

District Court (Procedure) Amendment 1984

SCHEDULE 9—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(b) in the case of any other proceedings which were in its criminal and special jurisdiction, in the Court in its special civil jurisdiction.

(2) Nothing in subclause (1) affects the powers of the Supreme Court under section 577 of the Crimes Act, 1900.

Directions as to sittings at proclaimed places.

7. (1) A direction given by the Governor under section 32 (2) of the Principal Act (as in force immediately before the commencement of Schedule 3) shall, unless it has ceased to be in force before that commencement, continue in force as if it were a direction given under section 32 (2A) of the Principal Act.

(2) A direction given by the Chief Judge under section 32 (3) of the Principal Act (as in force immediately before the commencement of Schedule 3) shall, unless it has ceased to be in force before that commencement, continue in force as if it were a direction given under section 32 (3) of the Principal Act (as in force after that commencement) and as if the lastmentioned provision had been in force at the time when the direction was given.

Power of Court to appoint expert witness.

8. Section 69A of the Principal Act (as inserted by Schedule 3) applies to proceedings commenced, but not completed, before the commencement of that Schedule.

Cases in which jury may be summoned.

9. The provisions of section 78 (1) of the Principal Act (as in force before the commencement of Schedule 3) shall, notwithstanding the amendment to that subsection effected by that Schedule, continue to apply to proceedings commenced before that commencement, but only in relation to a party who has complied with the requirements of those provisions before that commencement.

Writ against the person.

10. Section 113 of the Principal Act (as amended by Schedule 3) applies to and in relation to an application made under that section, but not disposed of, before the commencement of that Schedule.

*District Court (Procedure) Amendment 1984*SCHEDULE 9—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.***Judgments, etc., of the Court.**11. (1) **Where—**

- (a) any provision of the Principal Act is repealed or amended by a provision of this Act; and
- (b) before the commencement of the repealing or amending provision, any judgment, ruling, order, direction or decision of the Court had been given or made under the firstmentioned provision but had not been satisfied or discharged or had not otherwise ceased to have effect,

that judgment, ruling, order, direction or decision shall continue to have effect, and the firstmentioned provision shall continue to have effect in relation to that judgment, ruling, order, direction or decision, as if the repealing or amending provision had not been enacted.

(2) **Where—**

- (a) a provision of the Principal Act is repealed or amended by a provision of this Act; and
- (b) before the commencement of the repealing or amending provision, a document had been lodged or filed in the Court, or had been issued by or from the Court, under the firstmentioned provision and had not ceased to have effect,

then, subject to the provisions of this Schedule, that document shall continue to have effect, and the firstmentioned provision shall continue to have effect in relation to that document, as if the repealing or amending provision had not been enacted.

Power to make rules relating to matters of a savings or transitional nature.

12. (1) The Rule Committee may make rules containing provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from the day appointed and notified under section 2 (2) or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person, the rights of that person before the date of that publication; or

District Court (Procedure) Amendment 1984

SCHEDULE 9—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

- (b) to impose liabilities on any person in respect of anything done or omitted to be done before the date of that publication.
- (4) A provision made under subclause (1) shall, if the rules expressly so provide, have effect notwithstanding any of the preceding clauses of this Schedule.
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