

12 GEO. V. No. 22, 1921. *Magistrates Courts Act.*

that period, and to that extent this Act shall have retrospective operation, to the intent that the Principal Act as amended by this Act shall apply to all incomes for the first period commencing and ending as aforesaid, and for every subsequent annual period, and to the assessment levy payment and recovery of tax thereon.

15. In all copies of the Principal Act, as amended by this Act, hereafter printed by the Government Printer, the sections, subsections, and numbered or lettered paragraphs thereof shall be renumbered or relettered so as to be in consecutive numerical or alphabetical order throughout, and all specific references to any section, subsection, or paragraph by its number or letter in any enactment therein contained shall be amended by the substitution of the proper number or letter of the reprinted Act. Reprinting Act.

## INFANT LIFE PROTECTION.

*See CHILDREN.*

## INSCRIBED STOCK.

*See LOANS.*

## JUDGES' RETIREMENT.

*See SUPREME COURT.*

## JUSTICES.

### An Act to Amend the Laws relating to the Jurisdiction of Magistrates and Justices of the Peace in Civil Matters.

12 Geo. V.  
No. 22.  
THE  
MAGIS-  
TRATES  
COURTS ACT  
OF 1921.

[ASSENTED TO 11TH NOVEMBER, 1921.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. (1.) This Act may be cited as "*The Magistrates Courts Act of 1921.*" Short title and commencement of Act.

(2.) Save as hereinafter mentioned, this Act shall come into operation on a day to be fixed by the Governor in Council by proclamation published in the *Gazette*.

Interpre-  
tation.

2. In this Act, unless the context otherwise indicates, the following terms have the meanings set against them respectively, that is to say:—

Action.

“Action” includes an action and proceedings in replevin or interpleader and garnishee proceedings;

District.

“District”—A petty sessions district constituted under \**“The Justices Act of 1886”*;

Justice.

“Justice”—A justice of the peace;

Magistrates  
Court.

“Magistrates Court” or “Court”—A Court of Petty Sessions sitting in a district for the hearing or determination of matters under this Act at the place appointed for the holding of such Courts, and constituted as provided by this Act;

Prescribed.

“Prescribed”—Prescribed by this Act;

Registrar.

“Registrar”—The officer acting as registrar of the Court in question;

Rules of  
Court.

“Rules of Court”—Rules of Court made under this Act, and for the time being in force;

This Act.

“This Act”—This Act and all Rules of Court and Orders in Council made thereunder.

Repeal of  
certain  
enactments.

3. (1.) †*“The Small Debts Acts, 1867 to 1894”* (hereinafter called “the repealed Acts”) are repealed: Provided that—

- (i.) Such repeal shall not affect or invalidate any acts or things done or proceedings taken under the authority of the repealed Acts or any of them;
- (ii.) All proceedings in a Small Debts Court instituted before the commencement of this Act shall be carried on, as far as practicable, according to this Act, and, subject to this Act, according to the repealed Acts, which shall for that purpose be deemed to continue in force notwithstanding such repeal;

\* 50 Vic. No. 17, *supra*, page 1132.

† 31 Vic. No. 29 and amending Acts, *supra*, pages 1200 *et seq.*

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- (iii.) All Small Debts Courts established at the commencement of this Act shall be deemed to have been established as and shall be Magistrates Courts for the purposes of this Act; and all officers duly appointed for the purposes of such Courts and in office at the commencement of this Act shall be deemed to have been appointed under this Act;
- (iv.) The limits of the petty sessions districts existing at the commencement of this Act shall continue until changed by due authority.

(2.) Until superseded by Rules of Court under this Act—

- (a) In all actions heretofore within the jurisdiction of the Small Debts Courts, the rules of practice and procedure, scale of fees, costs, and allowances prescribed by or in pursuance of the repealed Acts shall be the prescribed rules of practice and procedure, scale of fees, costs, and allowances for the purposes of this Act; and
- (b) In all actions and matters not heretofore within the jurisdiction of Small Debts Courts, the rules of practice and procedure, scale of fees, costs, and allowances prescribed by or in pursuance of the District Courts Acts of 1891 and 1897 shall, notwithstanding the repeal of those Acts, be the prescribed rules of practice and procedure, scale of fees, costs, and allowances for the purposes of this Act; and
- (c) In any case not provided for herein or by Rules of Court under this Act and to which the provisions of paragraphs (a) and (b) hereof do not apply, the Rules of Court and rules of practice in the Supreme Court shall be adopted and applied.

(3.) Where by any other Act any jurisdiction, power, or authority is conferred or any duty is imposed on a Small Debts Court or on any registrar or other officer of a Small Debts Court, or any reference is made to such Court, registrar, or officer, such Act shall be read and construed as if in lieu thereof the Magistrates Court or registrar or other officer of the Magistrates Court were respectively referred to therein.

Procedure where Rules silent.

References to Small Debts Court in other Acts.

Amendment  
of 31 Vic.  
No. 16, s. 74.

(4.) In the first paragraph of section seventy-four of the \**“Distress Replevin and Ejectment Act of 1867,”* the words “thirty pounds” are repealed and the words “one hundred pounds” are inserted in lieu thereof.

Jurisdiction  
of  
Magistrates  
Courts.

4. (1.) Subject to this Act—

- (a) Every personal action in which the amount claimed is not more than two hundred pounds, whether on a balance of account or after an admitted set-off or otherwise; and
- (b) Every action brought to recover a sum of not more than two hundred pounds, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of the distributive share under an intestacy or of a legacy under a will; and
- (c) Every action in which a person has an equitable claim or demand against another person in respect of which the only relief sought is the recovery of a sum of money or of damages, whether liquidated or unliquidated, and the amount claimed is not more than two hundred pounds; and
- (d) Every action of replevin in any case relating to distress for rent between landlord and tenant, in which the rent for or in respect of which the distress is or might have been made is not more than one hundred pounds,

may be commenced in a Magistrates Court; and all Courts of Petty Sessions now established or that may hereafter be established, sitting as such Magistrates Courts, shall within their respective districts have power and authority to hear and determine in a summary way all such actions.

Abandon-  
ment of  
excess, &c.

(2.) The Court shall have jurisdiction in a personal action if the original claim is reduced to two hundred pounds or less, by payment, abandonment of excess, or otherwise, or by deducting any sum for which the plaintiff gives the defendant credit upon the plaint being entered.

Splitting  
debt by  
giving bills,  
&c.

(3.) If a defendant has given two or more bills of exchange, promissory notes, bonds, or other securities, for a debt or sum originally exceeding two hundred

\* 31 Vic. No. 16. *supra*, page 1699.

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pounds, the plaintiff may sue separately upon each of the securities not exceeding two hundred pounds as forming a distinct cause of action.

(4.) Except as by this Act provided, a Magistrate<sup>s</sup> Title to land, &c. Court shall not have jurisdiction to try any case in which the title to land, or the validity of a devise, bequest, or limitation under a will or settlement, is in question.

If the title to land incidentally comes in question in an action, the Court shall have power to decide the claim which it is the immediate object of the action to enforce, but the judgment of the Court shall not be evidence of title between the parties or their privies in another action in that Court or in any proceedings in another Court.

(5.) Any person under the age of twenty-one years Infants. to whom any wages or any other sum whatsoever, whether liquidated or unliquidated, not exceeding the amount in respect of which the Court has jurisdiction, is due may sue for and recover such sum in the Court in the same manner as if he were of full age.

(6.) Executors and administrators may sue and are Executors, &c. liable to be sued in the Court.

A judgment obtained by a plaintiff but not satisfied previous to his death and also all causes of action shall survive to his personal representative, who may sue out execution in his own name in the same way that the plaintiff himself, if living, might have done.

(7.) Corporations and joint-stock companies which Corporations. have an office or place of business at which they carry on business in Queensland shall be amenable to the jurisdiction of Magistrates Courts whether they are constituted under the laws of Queensland or not.

(8.) In an action in which a plaintiff seeks to enforce Plaint when equitable claim. an equitable claim under this Act, the plaintiff or so much of it as relates to the equitable claim shall express that the plaintiff is suing upon equitable grounds.

(9.) When an action is brought which the Court has When Court has no jurisdiction, case to be struck out. not jurisdiction to try, the Court shall order the action to be struck out, and shall have power to award costs to the same extent and recoverable in the same manner as if the Court had had jurisdiction and the plaintiff had been nonsuited.

Courts to be  
courts of  
record.

5. (1.) Each Magistrates Court shall be a court of record, and the judgment thereof may be set up as a defence in any action brought in any court of law in Queensland.

(2.) The entry of the judgment on the cause list of a Magistrates Court shall be deemed to be a record of such judgment.

In what  
Court  
actions to  
be brought.

6. The districts and Courts respectively in which proceedings may be brought and heard and determined shall be as prescribed by Rules of Court.

Court, how  
constituted.

7. (1.) All actions within the jurisdiction of the Court and commenced therein shall be heard and determined by a police magistrate sitting alone.

(2.) Any justice or justices may nevertheless hold a sitting of the Court without a police magistrate—

- (i.) At any place where a sitting of the Court has been appointed and there is no police magistrate for that place or it is not convenient for a police magistrate to visit that place ; or
- (ii.) In substitution for a police magistrate usually presiding in the Court, in case of his absence on the day appointed for the sitting or when from any cause he is unable to attend such sitting, and if no other police magistrate is present on such day :

but, subject to this Act and except in cases where the parties have agreed as prescribed, such justice or justices shall have jurisdiction only to hear and determine an action in the Court for the recovery of any debt demand or damage (whether liquidated or unliquidated) or arising in a dispute or difference between partners, or in replevin or in interpleader, to an amount involved not exceeding as follows :—

- (a) Where one justice, being a clerk of petty sessions or acting clerk of petty sessions, holds a sitting of the Court, thirty pounds ;
- (b) Where one justice, not being a clerk of petty sessions or acting clerk of petty sessions, holds a sitting of the Court, ten pounds ;
- (c) Where two or more justices hold a sitting of the Court, one hundred pounds.

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Where two or more justices so sit they shall act together without a chairman and a majority of their number may make any determination within their jurisdiction, and if they are equally divided in opinion the action shall be set down for rehearing at a subsequent sitting of the Court to be agreed on by the parties or as the registrar appoints.

(3.) The Attorney-General may direct two or more Magistrates Courts to sit concurrently in the same place for the more speedy disposal of business. Several Courts may sit in same place.

8. The clerk of petty sessions, or such other officer as may from time to time be directed by the Court, shall discharge the duties of registrar of the Court. Officers of court.

The Court shall from time to time appoint a bailiff or bailiffs for the service and execution of the process, judgments, and orders authorised by this Act.

Such bailiff or bailiffs shall receive to their own use the prescribed fees.

9. Subject to the Rules of Court and the orders of the Court for the orderly transaction of business, a party to an action or a barrister or solicitor retained by or on behalf of any party, or any person allowed by special leave of the Court, may appear to address the Court and examine and cross-examine the witnesses. But a person not being a barrister or solicitor of the Supreme Court shall not be entitled to receive or recover or receive, directly or indirectly, a sum of money or other remuneration for appearing or acting on behalf of another person in the Court. Appearance to be in person or by barrister, or solicitor, or other person allowed by the Court.

10. (1.) Subject to this Act, the rules of evidence observed in the Supreme Court shall be applicable to and be observed in the trial of all questions of fact in the Court: Rules of evidence.

Provided that all actions in which the sum sued for is under ten pounds shall be heard and determined according to equity and good conscience.

(2.) In any legal proceedings whatsoever the books of the Court and any entries therein, or copies of the said books or entries, under the seal of the Court and purporting to be signed and certified by the registrar, shall, upon production and on proof of the identity of the parties Evidence.

concerned, be evidence of the contents of the books or of the judgments or other entries, and of the proceedings referred to in them, and of the regularity of the proceedings.

All process of the Court purporting to be sealed shall be received in evidence without further proof thereof.

Judgments  
to be final.

**11. (1.)** Subject to this Act, all judgments and orders made by the Court shall be final and conclusive.

Except as provided by this Act, or by or pursuant to any other Act now in force or hereafter to be passed a judgment given by a Court, or an action brought before it or depending therein, shall not be removed by appeal, motion, writ of error or certiorari, or otherwise into another Court.

New trial.

(2.) Subject to this Act, any party dissatisfied with any decision of the Court may, at any time within seven clear days from such decision, apply to the Court for a new trial.

The Court hearing the application may grant the same upon such terms as to costs or otherwise as it thinks fit, or, in its discretion, may refuse the same with or without reasonable costs.

Appeal.

(3.) Subject to this Act, any party who is dissatisfied with the judgment or order of the Court—

- (i.) In an action in which the amount involved is twenty pounds or upwards; or
- (ii.) In an action for the recovery of possession of land of which the value or rent amounts to twenty pounds by the year or upwards;
- (iii.) In any action of replevin in which the amount of rent in respect of which the distress was or might have been made is twenty pounds or upwards;
- (iv.) In proceedings in interpleader in which the amount claimed or the value of the goods in question is twenty pounds or upwards;

may appeal to the Supreme Court as prescribed by Rules of Court: Provided that—

- (a) Where in any of the cases above referred to in this subsection the amount is less than twenty pounds, an appeal shall lie by leave of the Supreme Court or a Judge thereof, who shall not grant such leave to appeal

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unless the Court or Judge is satisfied that some important principle of law or justice is involved;

- (b) An appeal shall not lie from the decision of the Magistrates Court if, before the decision is pronounced, both parties agree, in writing signed by themselves or their solicitors or agents, that the decision of the Court shall be final.

The appellant shall, within the time and in the manner prescribed, give notice of the appeal stating briefly the grounds thereof to the other party or his solicitor, and shall also give security (to be approved by the registrar) for the costs of the appeal, or shall, instead of giving security, deposit in the hands of the registrar fifteen pounds, or such other sum as may be prescribed, to answer the costs of the appeal in the event of the appeal being dismissed. Notice of appeal shall not operate as a stay of execution upon the judgment, but the execution may proceed unless the magistrate or a judge of the Supreme Court otherwise orders.

(4.) The Court may state in the form of a special case for the opinion of the Supreme Court any question of law arising in any case. Special case stated by Court.

(5.) On the hearing of an appeal or special case, the Supreme Court may— Jurisdiction of Supreme Court.

- (a) Draw inferences of fact from facts found by the Magistrates Court, or from admitted facts or facts not disputed;
- (b) Order a new trial on such terms as it thinks just;
- (c) Order judgment to be entered for any party;
- (d) Make any other order, on such terms as it thinks proper, to ensure the determination on the merits of the real questions in controversy between the parties;
- (e) As regards any special case, remit the matter to the Magistrates Court with the opinion of the Supreme Court thereon;
- (f) Make such order with respect to the costs of the appeal or special case as it thinks proper.

Actions  
against  
officers.

**12.** (1.) An action or prosecution shall not be commenced against a person for anything done or omitted to be done in pursuance or in contravention of this Act, unless it is commenced within six months after the act committed or omitted.

(2.) Notice in writing of the action and of the cause of action shall be given to the defendant one month at least before the commencement of the action.

(3.) A plaintiff shall not recover in the action if tender of sufficient amends is made before action brought, or if, after action brought, a sufficient sum of money with costs is paid into court by the defendant.

(4.) If an action is brought against a person for anything done under a warrant or judgment or a certified copy thereof issued or made under this Act, the production of the warrant or judgment or a certified copy thereof under the seal of the Court shall be sufficient proof of the authority of the Court, and such person is hereby indemnified for whatsoever is done by him in obedience thereto.

Court fees.

**13.** (1.) There shall be payable in respect of every proceeding in a Magistrates Court the prescribed fees.

Fees and  
fines to be  
paid to  
Consolidated  
Revenue.

(2.) All fees payable in respect of any proceedings to the registrar, except such part of them as the bailiff is entitled to receive and retain for his own use under this Act, and all fines imposed under this Act and received by the registrar, shall be paid into the Consolidated Revenue Fund.

Fines, how  
to be  
enforced.

Payment of any fine imposed by the Court under the authority of this Act may be enforced upon the order of the Court in like manner as payment of any debt adjudged in the Court.

Power to  
make Rules  
of Court.

**14.** (1.) The Governor in Council may, by Order in Council published in the *Gazette*, from time to time make any Rules of Court which in his opinion are necessary, desirable, or convenient for carrying this Act into full effect, and, without limiting the generality of the foregoing power, for all or any of the following matters, that is to say:—

(i.) Conferring on the Court or any specified Court—

(a) Jurisdiction to try any action which might be brought in the Supreme Court, where the parties to the action so agree; and regulating the exercise of such consent jurisdiction;

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- (b) The whole or part of the jurisdiction heretofore possessed by District Courts in respect of the recovery of possession of land (with or without rent or mesne profits) by landlords from tenants and other persons :
- (ii.) The sittings of the Courts ; the districts and Courts in which proceedings shall be commenced ; removal of proceedings from one district to another :
- (iii.) Abatement or continuance of action in case of death or insolvency of plaintiff or one of several plaintiffs :
- (iv.) The pleading, practice, and procedure in the Court, including among other things—
- (a) Plaints, summonses, defence, particulars, set-off, counter-claims (whether equitable or otherwise); amendment of defects or errors in proceedings; parties; joinder and severance and amendment of parties; third-party procedure; payment into and out of Court; proceedings by infants; joinder and severance of causes of action; preventing splitting of demands or dividing of causes of action for the purpose of bringing several actions in the Court; proceedings by husband and wife; actions against one or more of several persons jointly liable; interpleader; garnishee proceedings; empowering plaintiff to sue on an account rendered;
- (b) Reference to arbitration with or without consent of parties; enforcing awards therein;
- (c) Evidence, whether oral, by affidavit, on commission, or otherwise, including notes of evidence and of points of law arising and decision thereon; examinations *de bene esse*; summonses for and attendance of witnesses before the Court or in arbitration proceedings or on examinations *de bene esse* or otherwise, and penalties, not exceeding fifty pounds in amount, for failure so to attend when summons duly served and expenses duly tendered; admissions; discovery;

- (d) Trial; nonsuits; adjournment of trial for any cause; proceedings when plaintiff or defendant or both are absent;
- (e) Judgment summonses where the plaintiff seeks only to recover a debt or liquidated amount of money with or without interest;
- (f) Judgment, including judgment where persons jointly liable and judgment by default; execution thereon against land and goods, whether within or without any particular district, including publication of warrants of execution against land or goods in substitution for seizure of such land or goods; giving landlord in such cases priority for rent due as in like cases of execution heretofore issued out of District Courts; examination of judgment debtor; execution against the person of the judgment debtor where the debt was fraudulently contracted, or the judgment debtor conceals goods or is about to leave the State or go into remote parts or removes or is about to remove his goods with intent to evade payment of the judgment debt; execution where persons jointly liable; payment by instalments of sums ordered to be paid; attachment of goods of defendants;
- (g) Proceedings in chambers;
- (h) Service of process, whether by post or otherwise; proof of service; the times when or within which notices, documents, or process shall be served or given or acts shall be done;
- (i) New trials; appeals, including the evidence to be used thereon and the admission of further evidence in exceptional cases; special cases:
- (v.) The mode of keeping the books, entries, and accounts to be kept by registrars and other officers of the Court; regulating the destination, appropriation, and disposal of suitors' moneys in Court unclaimed for six years:

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- (vi.) Fees of court, and the time and mode of payment thereof and by whom the same shall be paid; costs, including the fees to be allowed to barristers and solicitors, whether as between party and party, solicitor and client, or otherwise, and the expenses to be paid to witnesses :
- (vii.) Forms for any proceeding in the Court :
- (viii.) The powers, duties, and authorities of officers of the Court :
- (ix.) Imposing or authorising the Court of its own motion to impose fines or other punishment for contempt of court by any person whomsoever (including officers of the Supreme Court), or for misconduct or neglect by any officer.

(2.) Every Order in Council and Rule of Court purporting to be made in pursuance of this Act shall be laid before both Houses of Parliament within forty days after the making thereof if Parliament is then sitting, or, if Parliament is not then sitting, within forty days after the commencement of the next ensuing session ; and if either House of Parliament, by a resolution passed within one month after such Order or Rule has been so laid before it, resolves that the whole or any part of such Order or Rule ought not to continue in force, the same shall, after the date of such resolution, cease to be of any force, without prejudice nevertheless to the making of any other Order or Rule in its place, or to anything done in pursuance of such Order or Rule before the date of such resolution ; but, subject as aforesaid, every such Order or Rule purporting to be made in pursuance of this Act shall, after the expiration of the period aforesaid, be deemed to have been duly made, and to have been within the powers of this Act.

Orders and  
Rules to be  
laid before  
Parliament.

(3.) This section comes into operation immediately on the passing of this Act.