

1972 Bill 81

First Session, 17th Legislature, 21 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 81

The District Courts Amendment Act, 1972

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

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1972

THE DISTRICT COURTS AMENDMENT ACT, 1972

(Assented to _____, 1972)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. *The District Courts Act is hereby amended.*
2. *Section 4, clause (a) is amended by striking out the word "six" and by substituting therefor the word "nine".*
3. *Sections 27 and 28 are struck out.*
4. *Section 30 is amended by adding the following subsections after subsection (2):*
 - (3) No action shall be declared a nullity or be required to be recommenced by reason only of having been commenced in the wrong judicial district.
 - (4) Where an action has been commenced in the wrong judicial district, a judge having jurisdiction in the judicial district where the action has been commenced or in the judicial district where the action ought to have been commenced pursuant to subsection (1) shall, on the application of either party, order that the action be transferred to, carried on and tried in the proper judicial district and shall make such order regarding costs as he considers just.
5. *Section 35 is amended by adding after subsection (1) the following subsection:*
 - (1.1) Where an action is commenced in the Supreme Court and
 - (a) at the time of its commencement the action could have been brought in the district court, or
 - (b) the action could not, at the time of its commencement, have been brought in the district court but subsequently is brought within the competence of the district court,

Explanatory Notes

1. This Bill amends chapter 111 of the Revised Statutes of Alberta 1970.

2. The number of judges in the Northern Alberta District is increased to nine.

3. These sections are no longer necessary. Sections 27 and 28 read:

27. Where in a proceeding before a district court a defence or counterclaim of the defendant involves a matter beyond the jurisdiction of the court, the defence or counterclaim does not affect the competence or the duty of the court to dispose of the whole matter in controversy so far as it relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon the counterclaim.

28. (1) Where it appears at any time before or during the trial that the claim of the plaintiff is in excess of the jurisdiction of the court, the plaintiff may, in his discretion before or during the trial, by writing signed by him, and filed upon such terms as to costs and otherwise as the judge deems proper, abandon so much of his claim as is in excess of the jurisdiction of the court.

(2) In such a case the plaintiff forfeits the excess and is not entitled to recover it in any other action.

4. Transfer of actions commenced in wrong judicial district.

5. Transfer of an action from Supreme Court to a district court by agreement of the parties.

the parties to the action may, by a memorandum in writing signed by all the parties to the action or their solicitors and filed with the clerk of the Supreme Court where the action was commenced, cause the action to be transferred to the district court named in the memorandum.

6. Section 43 is amended

- (a) by renumbering the section as subsection (1), and*
- (b) by adding the following subsection:*

(2) The jurisdiction of the Local Judges of the Supreme Court under subsection (1) extends to the exercise of all powers and authorities and performance of all acts and transaction of all business that may be exercised, performed or transacted by the Supreme Court or a judge thereof under the *Divorce Act (Canada)*.

7. This Act comes into force on a date to be fixed by Proclamation.

6. Divorce jurisdiction given to Local Judges.