

# BILL

No. 60 of 1919.

An Act respecting the Supreme Court and the Administration of Justice.

(Assented to , 1919.)

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

## SHORT TITLE.

1. This Act may be cited as "*The Judicature Act.*" C.O., c. 21, s. 2.

## INTERPRETATION.

2. In this Act and in the Rules of Court, unless the context otherwise requires,—

(a) The expression "Rules of Court" includes the rules in force by virtue of this Act as well as any other rules to be made under the authority of this Act, and also includes forms;

(b) The expression "cause" includes any action, suit or other original proceeding between a plaintiff and a defendant;

(c) The expression "action" includes suit, and means a civil proceeding commenced in such manner as may be prescribed by rules of court;

(d) The expression "matter" includes every proceeding in the court not in a cause;

(e) The expression "plaintiff" includes every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, petition, motion, summons, or otherwise;

(f) The expression "petitioner" includes every person making any application to the court either by petition, motion or summons otherwise than as against any defendant;

(g) The expression "defendant" includes every person served with any process, or served with notice of or entitled to attend any proceedings;

(h) The expression "party" includes every person served with notice of or attending any proceeding, although not named on the record;

- (i) The expression "judgment" includes decree;
- (j) The expression "order" includes rule;
- (k) The expression "oath" includes solemn affirmation and statutory declaration;
- (l) The expression "court" or "Supreme Court" means "The Supreme Court of Alberta";
- (m) The expression "Appellate Division" means the Appellate Division of the said court;
- (n) The expression "Trial Division" means the Trial Division of the said court;
- (o) The expression "judge" means a judge of the said court, and includes a Chief Justice;
- (p) The expression "verdict" includes the finding of a jury and the decision of a judge. 1907, c. 3, s. 2.

#### CONSTITUTION OF COURT.

3. There shall continue to be in and for the province a superior court of civil and criminal jurisdiction known as "The Supreme Court of Alberta." 1907, c. 3, s. 3.

4. The court shall have and use as occasion may require such seal as is authorized to be used by the Lieutenant Governor in Council; and any seal so authorized may afterwards be changed by the Lieutenant Governor in Council. 1907, c. 3, s. 4.

5. The court shall continue to consist of two branches or divisions which shall be designated respectively "The Appellate Division of the Supreme Court of Alberta" and "The Trial Division of the Supreme Court of Alberta." 1907, c. 3, s. 5; 1913 (1st Session), c. 9, s. 38.

6. The Appellate Division shall continue to be presided over by the Chief Justice of the court, who shall continue to be styled the Chief Justice of Alberta, and shall consist of the said Chief Justice and four other judges of the court to be assigned to it by His Excellency the Governor General in Council and to be called Justices of Appeal and three judges shall constitute a quorum. 1913, c. 9, s. 38.

7. The Trial Division shall consist of a Chief Justice, who shall be styled the Chief Justice of the Trial Division, of the Supreme Court of Alberta, and five other judges who shall be called and be Justices of the Supreme Court of Alberta.

8. The Chief Justices and Justices of the Court, whether of the Appellate or of the Trial Division, shall reside at or in the neighborhood of the City of Edmonton or the City of Calgary, and shall have, use, exercise and enjoy all the

powers, rights, incidents, privileges and immunities of a judge of a Superior Court of Record, and all other powers, rights, incidents, privileges and immunities as amply and as fully to all intents and purposes as the same were on and prior to the fifteenth day of July, one thousand eight hundred and seventy, had used, exercised and enjoyed by any of the judges of any of Her late Majesty's Superior Courts of Law or Equity, or by the judges of Her late Majesty's Court of Exchequer as a Court of Revenue, or by the judges of the Court of Probate in England as well as by the judges of any of Her late Majesty's courts created by Commissions of Assize, of Oyer and Terminer and of Gaol Delivery, or any of such commissions, or of any other Superior Court or Court of Record in England. 1908, c. 20, ss. 18 and 32; 1913 (1st Session), c. 9, s. 38 (1); 1913 (2nd Session), c. 2, s. 11 (1).

**9.** The Chief Justice of the Court shall have rank and precedence over all other judges of any court in the province.

(2) The Chief Justice of the Trial Division shall have rank and precedence next after the Chief Justice of the Court.

(3) The other judges of the court shall have rank and precedence over the judges of any other court in the province and among themselves according to seniority of appointment. 1907, c. 3, s. 6.

**10.** Every judge, whether of the Appellate Division or of the Trial Division, shall be a judge of the Supreme Court and shall be *ex officio* a judge of the division of which he is not a member and, except where it is otherwise expressly provided, all the judges of the Supreme Court shall have in all respects equal jurisdiction, power and authority. 1913 (1st Session), c. 9, s. 38 (2).

**11.** Every judge of the court previous to entering upon the duties of his office shall take the following oath, to be administered by the Lieutenant Governor, the Chief Justice of the Court, or any other judge thereof:

"I, . . . . ., solemnly and sincerely promise and swear that I will duly and faithfully, and to the best of my skill and knowledge, exercise the powers and trusts reposed in me as . . . . . of the Supreme Court. So help me God."

**12.** Where a judge resigns his office and any case which has been fully heard by such judge, either alone or jointly with another judge or other judges, stands for judgment, he may give judgment therein as if he were still a judge of the court; and any such judgment shall be of the same force and validity as if he were still such judge, provided that such judgment of the judge be delivered within six weeks after his resignation. 1907, c. 3, s. 7.

## JURISDICTION.

**13.** The court shall have generally all the jurisdiction, powers, and authority which prior to its organization were by any law, order or regulation vested in or capable of being exercised by the Supreme Court of the North-West Territories within the province; and where in any Statute, Act or Ordinance or in any order or regulation made thereunder reference is made to the Supreme Court of the North-West Territories, or to any court which may after the passing of such Statute, Act or Ordinance be constituted, exercising within the province the jurisdiction, powers and authority at the date of the passing of such Statute, Act or Ordinance exercised therein by the Supreme Court of the North-West Territories, or to any judge thereof, such reference shall, after the coming into force of this Act, be taken to mean and to refer to the court by this Act established and to a judge of such court respectively. 1907, c. 3, s. 22.

**14.** The court shall within the province and for the administration of the laws for the time being in force within the province, in addition to any other jurisdiction, rights, powers, incidents, privileges and authorities which immediately prior to its organization were vested in or capable of being exercised within the province by the Supreme Court of the North-West Territories, possess the jurisdiction which on the fifteenth day of July, one thousand eight hundred and seventy, was vested in—

1. The High Court of Chancery, as a Common Law Court, as well as a Court of Equity, including the jurisdiction of the Master of the Rolls, as a judge or master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a Common Law Court;

2. The Court of Queen's Bench;

3. The Court of Common Pleas at Westminster;

4. The Court of Exchequer as a Court of Revenue, as well as a Common Law Court;

5. The Court of Probate;

6. The court created by Commissioners of Assize and Oyer and Terminer and of Gaol Delivery, or any of such commissions, and any other Superior Court of Record in England.

(2) The jurisdiction aforesaid shall include the jurisdiction which at any time prior to the organization of the court was vested in or capable of being exercised by all or any one or more of the judges of the said courts, respectively, sitting in court or chambers, or elsewhere, when acting as judges or a judge in pursuance of any statute,

law or custom; and all powers given to any such court, or to any judges or judge, by any statute; and also all ministerial powers, duties and authorities, incident to any and every part of the jurisdiction so conferred. 1907, c. 3, s. 9.

**15.** For the purpose of removing doubts and ambiguity but not so as to restrict the generality of the next preceding section, it is declared and enacted that the court shall have the like jurisdiction and powers as by the laws of England were, on the fifteenth day of July in the year one thousand eight hundred and seventy, possessed and exercised by the Court of Chancery in England in respect of the matters hereinafter enumerated or referred to, that is to say:

- (a) Fraud, mistake and accident;
- (b) In all matters relating to trusts, executors and administrators, co-partnerships and accounts, mortgages and awards, or to infants, idiots or lunatics and their estates;
- (c) The staying of waste;
- (d) The compelling of the specific performance of agreements and contracts;
- (e) The compelling of the discovery of concealed papers or evidence, or such as may be wrongfully withheld from the party claiming the benefit of the same;
- (f) The preventing of multiplicity of actions;
- (g) The decreeing of the issue of letters patent from the Crown to rightful claimants;
- (h) The decreeing of the repeal and of the making void of letters patent issued erroneously, or by mistake, or improvidently, or through fraud;
- (i) The administration of justice in all cases in which there exists no adequate remedy at law;
- (j) The granting of injunctions to stay waste in a proper case, notwithstanding that the party in possession claims by an adverse legal title. 1907, c. 3, s. 10.

**16.** The rules of decision in the said matters in the last preceding section mentioned shall, except where otherwise provided, be the same as governed the Court of Chancery in England in like cases on the fifteenth day of July, one thousand eight hundred and seventy. 1907, c. 3, s. 11.

**17.** The court shall have power to relieve against a forfeiture for breach of a covenant or condition in any lease to insure against loss or damage by fire, where no loss or damage by fire has happened, and the breach has in the opinion of the court been committed through accident or

mistake, or otherwise without fraud or gross negligence, and there is an insurance on foot at the time of the application to the court in conformity with the covenant to insure, upon such terms as to the court may seem fit. 1907, c. 3, s. 12.

**18.** The court where relief is granted shall direct a record of such relief having been granted to be made by endorsement on the lease or otherwise. 1907, c. 3, s. 13.

**19.** The preceding two sections shall be applicable in the case of leases for a term of years absolute, or determinable on a life or lives or otherwise, and also in the case of a lease for the life of the lessee or the life or lives of any other person or persons. 1907, c. 3, s. 14.

**20.** The court shall have jurisdiction to grant and shall grant relief from the consequences of nonpayment of principal or interest by a mortgagor or purchaser in any case in which the mortgagor or purchaser, his heirs or assigns, shall pay all the arrears due under the mortgage or agreement for sale with lawful costs and charges in that behalf at any time before any judgment in the premises is recovered or within such time as by the practice of the court relief therein could be obtained. 1914, c. 2, s. 10.

**21.** The court shall have jurisdiction to grant alimony to any wife who would be entitled to alimony by the law of England, or to any wife who would be entitled by the law of England to a divorce and to alimony as incident thereto, or to any wife whose husband lives separate from her without any sufficient cause and under circumstances which would entitle her, by the law of England, to a decree for restitution of conjugal rights; and alimony when granted shall continue until further order of the court.

(2) In any action for alimony the court shall have power to grant interim alimony and disbursements and may, whenever such a course appears to it to be proper, and either before or after judgment, grant an injunction for such time and upon such terms as may be just to prevent any apprehended disposition of his property, either real or personal or both, by the defendant therein. 1907, c. 3, s. 16.

**22.** An order or judgment for alimony may be registered in any land titles office and the registration shall, so long as the order or judgment registered remains in force, bind the estate and interest of every description which the defendant has in any lands in the land titles district where

the registration is made, and operate thereon in the same manner, and with the same effect, as the registration of a charge by the defendant of a life annuity on his lands. 1907, c. 3, s. 17.

23. The court shall have jurisdiction to entertain an action for criminal conversation. The law applicable to such actions shall be as the same was in England prior to the abolition of such action in England; and the practice shall be the same as in other actions in the court, so far as it is applicable. 1907, c. 3, s. 18.

24. The court shall have jurisdiction to try the validity of last wills and testaments, whether the same respect real or personal estate, and whether probate of the will has been granted or not, and to pronounce such wills and testaments to be void for fraud and undue influence or otherwise, in the same manner and to the same extent as the court has jurisdiction to try the validity of deeds and other instruments. 1907, c. 3, s. 21.

25. The court shall have the same jurisdiction as the Court of Chancery had in England on the fifteenth day of July of the year one thousand eight hundred and seventy in regard to leases and sales of settled estates, and in regard to enabling infants with the approbation of the court to make binding settlements of their real and personal estate on marriage; and in regard to questions submitted for the opinion of the court in the form of special cases on the part of such persons as may by themselves, their committees or guardians, or otherwise, concur therein. 1907, c. 3, s. 20.

26. In every case in which the court has authority to order the execution of a deed, conveyance, transfer or assignment of any property, real or personal, the court may by order vest such real or personal estate in such person or persons, and in such manner, and for such estates, as would be done by any such deed, conveyance, assignment or transfer if executed; and thereupon the order shall have the same effect as if the legal or other estate or interest in the property had been actually conveyed, by deed or otherwise, for the same estate or interest, to the person in whom the same is so ordered to be vested, or in the case of a *chose in action*, as if such *chose in action* had been actually assigned to such last mentioned person. 1907, c. 3, s. 19.

27. The jurisdiction of the court shall be exercised so far as regards procedure and practice in the manner provided by this Act or by the rules and orders of the court made pursuant to this Act. 1907, c. 3, s. 23.

## APPELLATE DIVISION.

28. The terms "Court *en banc*" or "Court sitting *en banc*" and "Appellate Division" wherever used in any Act or Ordinance, or in any rules made thereunder, shall be deemed to be interchangeable and to have the same meaning. 1913 (1st Session), c. 9, s. 38 (2).

29. The Appellate Division shall have all the jurisdiction and powers possessed by the Supreme Court of the North-West Territories *en banc* immediately prior to the court's organization and shall have jurisdiction and power subject to the provisions of the rules of court to hear and determine all applications for new trials, all questions or issues of law, all questions or points in civil or criminal cases reserved for the opinion of the court, all appeals or motions in the nature of appeals respecting any judgment, order or decision of any judge of the Supreme Court or respecting any judgment, order or decision of any judge of a court of inferior jurisdiction where an appeal is given by any other Act, and all other petitions, motions, matters or things whatsoever which might lawfully be brought before any Divisional Court of the High Court of Justice or the Court of Appeal in England. 1907, c. 3, s. 32.

30. Subject to the provisions of the next following section, on any motion, application or proceeding before the Appellate Division, the judge by or before whom the verdict then in question was rendered, or by whom the judgment, order or decision, then being appealed against or reviewed, was rendered or pronounced at a previous proceeding in the same cause or matter, or by whom the cause or matter then being reheard was determined, shall not sit as one of the judges composing the court *en banc*, unless it shall be determined by any three of the judges that, on account of there being a vacancy in the court, or of a judge being disqualified from sitting through interest in the matter in question or being in ill health, or of other exceptional circumstances, or of it being impossible otherwise to constitute the court, it would be in the interest of justice in a particular instance that the court should be composed of any three judges. 1907, c. 3, s. 33.

31. Although the provisions of the preceding section and of section 6 shall in general be followed and complied with, yet, in exceptional cases and for special reasons, the court may, upon special order of the court, or of any two judges thereof, on and for the purpose of any re-hearing, appeal,



application or motion, be composed of two judges only, of whom one may be the judge by or before whom any verdict then in question was rendered, or by or before whom any order or decision then being appealed from or reviewed was rendered or pronounced, or by whom the cause then being reheard was determined. 1907, c. 3, s. 34.

**32.** In case after a cause or matter in the court has been heard by three or more judges thereof and stands for judgment, one of the judges by whom the said cause or matter was heard is transferred to the Supreme Court of Canada or to any other court of justice, resigns his office, dies or is absent through illness or other cause, then the remaining judges may give judgment as if such judge were still a judge of the court and were present and taking part in such judgment, if unanimous in their decision, or if the judgment of such dead or absent judge, if given, could not affect the result. 1907, c. 3, s. 35.

**33.** Upon the request of the judge or judges for or with whom he is requested to sit or act or upon the request of the Chief Justice of the Court, any judge may sit or act or perform any other official or ministerial act for or on behalf of any judge absent from illness or any other cause or in the place of any other judge whose office has become vacant or as an additional judge of the Appellate Division, and when so sitting or acting shall have all the power and authority that the judge for or on behalf of whom he is sitting or acting would have had if sitting or acting.

#### CONSTITUTIONAL QUESTIONS.

**34.** When in any action or other proceeding the constitutional validity of any enactment of the Parliament of Canada or of the Legislature of the Province or of the North-West Territories is brought in question, the same shall not be held to be invalid unless notice has been given to the Attorney General for Canada or the Attorney General for Alberta, as the case may be.

(2) The Attorney General for Canada and the Attorney General for Alberta shall be entitled as of right to be heard, either in person or by counsel, notwithstanding that the Crown is not a party to the action or proceeding.

#### RULES OF LAW.

**35.** In every civil cause or matter commenced in the Supreme Court, law and equity shall be administered by such court according to the following rules:

1. If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, the court shall give to such plaintiff or petitioner such relief as would be given by the High Court of Justice in England in a suit or proceeding for the same or a like purpose.

2. If any defendant claims to be entitled to any equitable estate or right or to relief upon any equitable ground against any deed, instrument or contract or against any right, title or claim asserted by any plaintiff or petitioner in such cause or matter, the court and every judge thereof shall give to every equitable defence so alleged such and the same effect by way of defence against the claim of such plaintiff or petitioner as the High Court of Justice in England would give if the same or like matters had been relied on by way of defence in any suit or proceeding instituted in that court for the same or like purpose.

3. The court and every judge thereof shall also have power to grant to any defendant, in respect to any equitable estate or right or other matter of equity and also in respect of any legal estate, right or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading; and also all such relief relating to or connected with the original subject of the cause or matter and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to this Act, or any order of the court as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose and every person served with any such notice shall thenceforth be deemed a party to such cause or matter with the same rights in respect of the defence against such claim as if he had been duly sued in the ordinary way by such defendant.

4. The court and every judge thereof shall recognize and take notice of all equitable estates, titles and rights and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the High Court of Justice in England would have recognized and taken notice of the same in any suit or proceeding duly instituted therein.

5. The court in the exercise of its jurisdiction in every cause or matter pending before it shall have power to grant, and shall grant either absolutely or on such reasonable terms and conditions as to it shall seem just all such remedies

whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that as far as possible all matters so in controversy between the said parties respectively may be completely and finally determined and all multiplicity of legal proceedings concerning any such matters avoided. C.O., c. 21, s. 8.

6. The court shall have jurisdiction to entertain an action at the instance of either the Attorney General for the Dominion or the Attorney General of the province for a declaration as to the validity of any statute or any provision in any statute of the Legislature of this province, though no further relief should be prayed or sought; and the action shall be deemed sufficiently constituted if the two officers aforesaid are parties thereto. A judgment in the action shall be appealable like other judgments of the said court. 1907, c. 5, s. 7.

7. Every judge of the court shall have jurisdiction throughout the province, and in all causes, matters and proceedings other than those of the Appellate Division shall have and exercise all the powers, authorities and jurisdiction of the court. 1907, c. 5, s. 7.

8. Subject to appeal as in other cases the court shall have power to relieve against all penalties and forfeitures and in granting such relief to impose such terms as to costs, expenses, damages, compensation and all other matters as the court sees fit. 1907, c. 5, s. 7.

9. No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether any consequential relief is or could be claimed or not. 1907, c. 5, s. 7.

10. No cause or proceeding at any time pending in the court shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might formerly have been obtained either unconditionally or on any terms or conditions may be relied on by way of defence thereto:

Provided always that nothing herein contained shall disable the court from directing a stay of proceeding in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled formerly to apply to any court to restrain the prosecution thereof, or who may be entitled to enforce by attachment or otherwise any judgment, decree, rule or order, contrary to which all or any part of the proceedings in such cause or matter may be taken, shall be at liberty to apply to the court by motion

in a summary way for a stay of proceeding in such cause or matter either generally or so far as may be necessary for the purposes of justice; and the court shall thereupon make such order as shall be just. 1907, c. 5, s. 7.

11. When in any proceeding in the court the law of any Province of Canada other than Alberta is in question, evidence of such law may be given but in the absence of or in addition to such evidence the judge may take judicial cognizance of such law in the same manner as of any law of Alberta.

36. In the case of lunatics and their property and estates, the jurisdiction of the court shall, subject to the rules of court, include that which in England is conferred upon the Lord High Chancellor by a Commission from the Crown under the Sign Manual. C.O., c. 21, s. 9.

37. The law to be administered as to the matters next hereinafter mentioned shall be as follows:

1. No claim of a *cestui que trust* against his trustee for any property held on an express trust or in respect of any breach of such trust shall be held to be barred by any Statute of Limitations.

2. An estate for life without any impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste unless an intention to confer such right shall expressly appear by the instrument creating such estate.

3. There shall not be any merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

4. A mortgagor, entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or sue or distrain for the recovery of such rents or profits or to prevent or recover damages in respect of any trespass or other wrong relative thereto in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person and in that case he may sue or distrain jointly with such other person.

5. In case of an assignment of a debt or other *chose in action*, if the debtor, trustee or other person liable in respect of such debt or *chose in action* shall have had notice that such assignment is disputed by the assignor or any one

claiming under him, or of any other opposing or conflicting claims to such debt or *chose in action*, he shall be entitled if he think fit to call upon the several persons making claim thereto to interplead concerning the same.

6. Stipulations in contracts as to time or otherwise which would not heretofore have been deemed to be or have become of the essence of such contracts in a court of equity, shall receive in the province the same construction and effect as they would in equity.

7. Part performance of an obligation either before or after a breach thereof when expressly accepted by the creditor in satisfaction or rendered in pursuance of an agreement for that purpose though without any new consideration shall be held to extinguish the obligation.

8. A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court or judge in all cases in which it shall appear to the court or judge to be just or convenient that such order should be made and any such order may be made either unconditionally or upon such terms and conditions as the court or judge shall think just; and if an injunction is asked, either before or at or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the court or judge shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title and whether the estates claimed by both or by either of the parties are legal or equitable.

9. In all cases in which the court has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract or agreement or against the commission or continuance of any wrongful act or for the specific performance of any covenant, contract or agreement, the court if it thinks fit may award damages to the party injured either in addition to or in substitution for such injunction or specific performance and such damages may be ascertained in such manner as the court may direct, or the court may grant such other relief as it may deem just.

10. An order of the court under any statutory or other jurisdiction shall not as against a purchaser whether with or without notice be invalidated on the ground of want of jurisdiction or of want of concurrence, consent, notice or service.

11. Generally in all matters in which there is any conflict or variance between the rules of equity and common law with reference to the same matter the rules of equity shall prevail.

12. Minors may sue for wages in the same way as if of full age. C.O., c. 21, s. 10; 1901, c. 10, s. 1.

13. Any absolute assignment made on or after the passing of this subsection by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal *chose in action*, of which express notice in writing shall have been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim such debt or *chose in action*, shall be effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this subsection had not been enacted), to pass and transfer the legal right of such debt or *chose in action* from the date of such notice and all legal and other remedies for the same and power to give a good discharge for the same without the concurrence of the assignor. 1907, c. 5, s. 7.

14. In addition to the cases in which interest is by law payable, or may by law be allowed, the court may in all cases where in the opinion of the court the payment of a just debt has been improperly withheld, and it seems to the court fair and equitable that the party in default should make compensation by the payment of interest, allow interest for such time and at such rate as the court may think right. 1908, c. 20, s. 1.

#### RULES OF COURT.

38. The Consolidated Rules of the Supreme Court authorized and promulgated by order of the Lieutenant Governor in Council, dated the twelfth day of August, 1914, which came into force on the first day of September, 1914, are declared to have been in full force and effect since the said first day of September, 1914, and as altered and amended since the said date are hereby continued as the rules of practice and procedure of the said court but the Lieutenant Governor in Council may from time to time amend, alter or repeal the same or may make and authorize the promulgation of other rules governing the practice and procedure in the court, the duties of the officers thereof, the costs of the proceedings therein and the fees to be taken by officers of the court, and may from time to time amend, alter or annul any rules theretofore made and make new rules in lieu thereof and may authorize the judges of the court to make and promulgate such rules or to amend, alter and annul any of such rules or make additional or other rules. 1907, c. 3, s. 24; 1918, c. 4, s. 5.

#### JUDICIAL DISTRICTS.

39. The Judicial Districts as now constituted are continued but the Lieutenant Governor in Council may by

order divide or otherwise alter the boundaries of any judicial district now or hereafter established and may establish new districts and sub-districts within judicial districts and may by any such order or any other order make such provision as he may deem necessary to protect the interests affected thereby. C.O., c. 21, s. 7; 1903 (2nd Session), c. 6, s. 2; 1918, c. 4, s. 5.

(2) All sub-districts heretofore established are hereby declared to have been legally and properly established. 1918, c. 4, s. 5.

#### OFFICERS.

**40.** The Lieutenant Governor in Council may appoint a registrar of the court and such other officers, clerks and assistants as the business of the court may from time to time require, and may designate such officers, clerks and assistants by appropriate names, specify their duties and fix their remuneration. 1907, c. 3, s. 27.

**41.** All officers heretofore or hereafter appointed shall hold office during pleasure.

**42.** Any officer of the court shall, for the purpose of any proceedings directed by the court to be taken before him, have full power to administer oaths, to take affidavits, to receive affirmations, and to examine witnesses and parties as the court may direct. 1907, c. 3, s. 28.

#### MASTER IN CHAMBERS.

**43.** The Lieutenant Governor in Council may from time to time appoint a master or masters in chambers.

(2) Subject to the orders of the Lieutenant Governor in Council the master in chambers shall be an officer of the Supreme Court and attached thereto.

(3) The jurisdiction, powers and authority to be exercised by a master in chambers shall be such as may be assigned to him by rules of court.

(4) Subject to rules of court an appeal shall lie from the decision of a master in chambers to a judge in chambers.

(5) The master in chambers may refer any matter pending before him to a judge for decision and the judge may dispose of or refer back the same in whole or in part. 1913, c. 9, s. 37.

#### CLERKS.

**44.** There shall be a Clerk of the Court whose duties shall be:

1. To attend at his office and keep the same open between

the hours of ten in the forenoon and four in the afternoon on all days except Sundays and holidays and except on Saturdays and during vacation when the same shall be closed at one o'clock in the afternoon;

2. On application of any person by himself or his agent—

- (a) To receive all complaints and other papers required to be filed in court;
- (b) To issue all writs of summons, warrants, precepts, writs of execution, and other documents rendered necessary or requisite for the effectual disposition of such matters;
- (c) Tax costs, enter judgments and record all judgments and orders pronounced, given and made;

3. To keep an account of all fines, fees and moneys payable or paid into court, entering all such amounts in proper approved books in which shall be entered regularly under separate headings all the proceedings taken in any suit, all moneys received and paid out and the persons to whom and by whom the same have been paid which books shall be accessible at all times to suitors and the public;

4. To attend all sittings of the judge in chambers unless his attendance is dispensed with by the judge;

5. To do and perform all such other acts and duties as may be necessary for the due administration of civil justice in the province;

6. To do and perform all such other acts and duties as may be, or as may heretofore have been assigned to them or any of them, from time to time, by order in council. 1908, c. 20, s. 1.

(2) Each clerk of the court and sheriff may appoint a deputy at the place at which he resides and keeps his office, who (in the absence of such clerk or sheriff) shall have and exercise all the powers of such clerk or sheriff respectively. 1900, c. 5, s. 1.

45. In the absence of the clerk the judge may appoint a suitable person to perform the duties prescribed in the preceding section. C.O., c. 21, s. 12.

#### PUBLIC ADMINISTRATORS.

46. In each judicial district or for such other portion of the province as may be deemed desirable the Lieutenant Governor in Council may appoint a fit and proper person being an advocate of not less than five years' standing to be a public administrator and official guardian under the name of Public Administrator. C.O., c. 21, s. 14.

Provided that the Lieutenant Governor in Council may appoint a trust company which has obtained the approval



of the Lieutenant Governor in Council under the provisions of *The Trust Companies Ordinance* to be public administrator under the provisions of this section. 1907, c. 5, s. 7.

47. When any person dies whether testate or intestate and his lands, personal estate and effects have not been taken possession of by his executors or next of kin the public administrator in the judicial district where the property or any of the property is situated is hereby empowered and it shall be his duty when the facts are brought to his notice to forthwith take possession of the said lands, personal estate and effects and the same to safely keep, preserve and protect and pending the grant of probate to an executor or the issue of letters of administration as the case may be the public administrator shall have all the powers of an executor or administrator. C.O., c. 21, s. 15.

48. In the absence of any application for probate of a will or for letters of administration within one month after the decease of any person leaving property, letters of administration to the lands, personal estate and effects of the deceased may be granted to the public administrator;

Provided nevertheless that such letters of administration may in the discretion of the judge be revoked upon the application of any executor applying for letters of probate. C.O., c. 21, s. 16.

49. Each public administrator shall furnish security to the satisfaction of the Lieutenant Governor in Council in the penal sum of \$2,000, conditioned for the due performance of his duties; but shall not otherwise be required to furnish security as administrator unless a judge specially so directs and such security may be furnished by bond or agreement of any guarantee company approved by the Lieutenant Governor in Council.

(2) Any person interested may by leave of the Attorney General institute proceedings in his own name on the security to be furnished by a public administrator as required hereby, without any assignment thereof, and in case a public administrator is directed by a judge to furnish security otherwise, any person interested may by leave of the court or judge institute proceedings thereon without any assignment thereof. C.O., c. 21, s. 17.

50. After the expiry of one month from the death of any person leaving property any person interested in the estate may by written notice require the public administrator (if he has not already done so) to apply for letters of administration and it shall then be the duty of the said public administrator to make such application; provided the person

making such requisition shall make such deposit with the public administrator as a judge may deem sufficient to cover his costs, charges and expenses if the public administrator so desire. C.O., c. 21, s. 18.

**51.** Upon the filing of an affidavit with the clerk or deputy clerk of the judicial district within which a person deceased had his last known place of abode, stating that as far as can be ascertained such person has not left a will or testamentary disposition and that his estate does not exceed in value the sum of two hundred dollars, the public administrator shall, at the expiration of sixty days after the decease of such person or within that time if a judge so orders (unless some other person has applied for the grant to him of letters of administration or letters testamentary and such grant has been made) be the administrator of such estate to all intents and purposes as if letters of administration or letters testamentary had formally issued to him and the formal grant of probate or administration to him shall not be necessary.

(2) In any case in which the public administrator shall be the administrator of an estate under this section he shall, without any order for that purpose, advertise for claims once in a newspaper published weekly or semi-weekly at or near the last place of residence of the deceased, and after the expiration of two months from the said advertisement he shall proceed to distribute the estate having regard only to the claims of which he shall have had notice.

(3) The remuneration of a public administrator acting hereunder shall be fixed by the judge at a lump sum, and shall, subject to encumbrances on the estate, be a first charge thereon.

(4) After such administration the public administrator shall file in the clerk's office an account thereof verified on oath. 1899, c. 5, s. 2.

**52.** During the month of January in each year the public administrator shall furnish to the Lieutenant Governor in Council a statement in detail verified on oath of the emoluments of his office for the preceding year ending the thirty-first day of December. C.O., c. 21, s. 19.

#### INSPECTOR OF LEGAL OFFICES.

**53.** The Lieutenant Governor may from time to time appoint some person being a barrister, solicitor or advocate of at least three years' standing of one of the Provinces of Canada, to be called the Inspector of Legal Offices, to inspect the offices of the registrars, clerks and deputy clerks of any court of law in the province, the sheriffs and deputy

sheriffs, the process issuers, the public administrators, the official assignees, the police magistrates and justices of the peace, the coroners, the registrars under *The Land Titles Act*, and the agents of the Attorney General, in any of the judicial districts of the province, and such other officers connected with the administration of justice as the Lieutenant Governor in Council may, from time to time, direct. 1908, c. 20, s. 3.

**54.** In addition to any other duties assigned to him by any Act or by order of the Lieutenant Governor in Council the following shall be the duties of the inspector:

1. To make a personal inspection of the said offices, and of the books, papers and documents belonging thereto respectively;

2. To see that proper books are provided, that they are in good order and condition, that the proper entries and records are made therein in a proper manner, at proper times, and in a proper form and order, and that the papers and documents are properly classified and preserved;

3. To ascertain that the duties of the officers are duly and efficiently performed;

4. To see that proper costs and charges only are allowed or exacted;

5. To ascertain that the proper security has been given by any officer required by law to give security;

6. To ascertain whether uniformity of practice prevails, or is necessary or desirable, in the several offices heretofore enumerated, or any of them, and to give directions and orders for the introduction and carrying out of such uniformity of practice where he finds the same necessary or desirable;

7. To report upon all matters to the Lieutenant Governor in Council. 1908, c. 20, s. 3.

**55.** The inspector may at any time institute an enquiry into the conduct of any officer in relation to his official duties or acts, and may require such officer, or any other person or persons, to give evidence on oath; and for this purpose the inspector shall have the same power to summon such officers and other persons, and to compel them to produce books and documents, and to give evidence, as any court has in civil cases. 1908, c. 20, s. 3.

(2) The Attorney General may, if he deem proper, appoint any other person to institute and conduct any enquiry into the conduct of any of the above mentioned officers, and such person shall have all the powers conferred upon the Inspector of Legal Offices herein in regard to the conduct of such enquiry. 1911-12, c. 4, s. (2).

56. The said several officers shall, as often as required by the inspector, produce for examination and inspection all books, papers and documents which are required to be kept by them or which may hereafter be required to be kept by them, and shall report to the inspector all such matters relating to any cause or proceeding as the inspector shall require. 1908, c. 20, s. 1 (3).

MISCELLANEOUS.

57. Sheriffs, deputy sheriffs, gaolers, constables and other peace officers shall aid, assist and obey the court and the judges thereof respectively in the exercise of the jurisdiction conferred by this Act. 1907, c. 3, s. 37.

58. Nothing in this Act shall be deemed to be intended to affect the procedure in criminal matters or any other matter which by law is not within the cognizance of the Legislature of the province. 1907, c. 3, s. 38.

REPEAL.

59. *The Judicature Ordinance*, being chapter 21 of the Consolidated Ordinances 1898, and *The Supreme Court Act*, being chapter 3 of the Acts of 1907, and all amendments of the said Ordinance and Act, are hereby repealed.

60. This Act shall come into force upon a day to be named by proclamation of the Lieutenant Governor in Council.

TABLE OF CORRESPONDING SECTIONS  
OF OLD AND NEW ACTS.

Old Act	Sections	New Act	Old Act	Sections	New Act
1		1	34		32
2		2	35		33
3		3	36	unnecessary, omitted	
4		4	37		58
5		5-8	38		59
5 (2)	omitted, covered by Crown Practice Rules		39 } spent		
6		9	40 }		
7		11	J.O.		New Act
8		12	1		1
9		14	2	same as S.C. 23	28
10		15	3	Procedure covered by Rules, omitted	
11		16	4	Repealed in 1907	
12		17	5	omitted, procedure	
13		18	6	same as S.C. 19	27
14		19	7a		40
15		20	8		36
16		21	9		37
17		22	10		38
18		23	11a		45
19		27	12		46
29		26	13	unnecessary	
21		25	14		47
22		13	15		48
23		28	16		49
24		39	17		50
25 }	no longer necessary		18		51
26 }			18a		52
27		41	19		53
28		43	20	covered by 39	
29	omitted, provided for by Rules		21	Repealed 1918	
30	only (3) now neces- sary	29	22	Expired	
31	omitted, included in Rules		22a		39
32		30	23		54
33		31	24		55
			25		56
			26		57
			27		44

New Act	Sections of Old Act	How Affected
1	S.C. & J.O. 1	
2	S.C. 2	(m) and (n) new
3	3	No change
4	4	No change
5	cf. Ont.J.A. 4	
6 S.C. 30 ft.	cf. Ont.J.A. 5	
7	cf. Ont.J.A. 6	
8	S.C. 5	Changed to suit residence added "in the neighborhood of."
9	S.C. 6, Ont. J. A. 7	
10 S.C. 30 ft.	Ont. J.A. 8	No change
11	S.C. 7	No change
12	8	No change
13	22	Only verbal change
14	9	Only verbal change
15	10	No change
16	11	No change
17	12	No change

New Act	Sections of Old Act	How Affected
18	13	No change
19	14	No change
20	15	No change
21	16	Power to grant interim alimony added in ss (2)
22	17	
23	18	
24		This is new, but under the rules of the J.O. the power is assumed and it seems better to have it clear as the point has arisen and doubts exist.
25	S.C. 21	No change
26	20	(a), (b), (c), (d) omitted as matters of practice
27	19	No change
28	23 & J.O.3	
29	31	Only verbal change
30	32	Only verbal change
31	33	Only verbal change
32	34	Only verbal change
33	35	No change
34	Ont. J.A. 14	
35		Old Rule 59 under J.O. omitted from Rules being matter of substantive law
36	J.O. 8	No material change except addi- tion of paragraph 11, which is new, but reasonable and approv- by judges
37	J.O. 9	
38	J.O. 10	
39	{ J.O. 22a S.C. 24	Adapted—no change in effect
40	J.O. 7a as amended in 1918	No change but contrn.
41	S.C. 27	
42		New
43	S.C. 28	
44	J.O. 27	
45	J.O. 11	
45 (2)	J.O. 11a	
46	J.O. 12	
47	J.O. 14	
48	J.O. 15	
49	J.O. 16	
50	J.O. 17	
51	J.O. 18	
52	J.O. 19	
53	J.O. 20	
54	J.O. 23	
55	J.O. 24	Provisions for added duties
56	J.O. 25	
57	J.O. 26	
58	S.C. 37	
59	S.C. 38	
60		New
61		New

No. 60.

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SECOND SESSION  
FOURTH LEGISLATURE  
9 GEORGE V  
1919

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BILL

An Act respecting the Supreme Court  
and the Administration of Justice.

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. BOYLE.

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EDMONTON:  
J. W. JEFFERY, KING'S PRINTER  
A. D. 1919