



# Administration of Justice Act 1956

## 1956 CHAPTER 46

### PART III

#### COUNTY COURTS

##### *Appointment, etc., of judges and officers*

#### **21 Appointments of county court judges to be made by Her Majesty**

- (1) Appointments of persons to be judges of county courts shall be made by Her Majesty.
- (2) Any such appointment shall be of a person recommended to Her Majesty by the Lord Chancellor:

Provided that when the judge of a Duchy of Lancaster district ceases to be the judge thereof, whether by reason of his vacating office or by reason of any alteration in the distribution of the districts among the judges made under subsection (4) of section four of the principal Act, the appointment of his successor shall, unless made under the said subsection (4), be of a person recommended to Her Majesty by the Chancellor of that Duchy and not by the Lord Chancellor.

- (3) Accordingly—
  - (a) in subsection (1) of section four of the principal Act for the words " Lord Chancellor " in the first place where those words occur there shall be substituted the words " Her Majesty ";
  - (b) proviso (a) to that subsection shall cease to have effect; and
  - (c) in section five of the principal Act for the words " Before appointing any person to be a judge " there shall be substituted the words " Before recommending any person to Her Majesty for appointment as a judge ".
- (4) Every judge of county courts appointed after the commencement of this Act shall take in the presence of the Lord Chancellor the oath of allegiance and judicial oath; and the Promissory Oaths Act, 1868, shall have effect as if the officers named in the Second Part of the Schedule to that Act included judges so appointed.

## **22 Temporary appointments of persons to act as judges**

- (1) If it appears to the Lord Chancellor, on representations made to him by the judge for any district, that it is expedient so to do in order to avoid delays in the administration of justice in that district, the Lord Chancellor may appoint a person to act for the judge in the despatch of business at any sitting of the court for that district, whether an ordinary sitting appointed under section thirty-five of the principal Act or an additional court.
- (2) Any person appointed under this section shall, at the sitting for which he is appointed (including any adjournment thereof), have all the powers and privileges and may perform any of the duties of the judge he is appointed to act for, whether or not the judge is present, and on the day of the sitting or any adjournment thereof may exercise out of court any powers so exercisable by the judge.
- (3) Where the judge is present, he may divide the judge's duties as he thinks fit between himself and the person appointed to act for him.
- (4) Where the hearing of any proceedings duly commenced before a person appointed under this section is adjourned, or judgment is reserved therein, he shall have power at any subsequent sitting of the court to resume the hearing and determine the proceedings, or to deliver as the judgment of the court the judgment which he has reserved, as the case may be, as if his appointment had extended to the subsequent sitting.
- (5) No person shall be qualified to be appointed under this section unless he has previously held the office of judge or is a barrister-at-law of at least seven years' standing.
- (6) The Lord Chancellor may, with the approval of the Treasury, allow a person appointed under this section such remuneration as he thinks fit.
- (7) Subsection (1) of section fifteen of the principal Act, in so far as it provides that during the period for which a deputy judge is appointed he shall perform all the duties of the judge for whom he is appointed to act, shall have effect subject to subsection (2) of this section, and subsection (2) of section thirty-six of the principal Act, (which requires the registrar to adjourn the court where the judge is not present at a sitting) shall not apply where a person appointed to act for the judge is present at the sitting.

## **23 Amendment as to appointment of deputy judge**

An appointment of a deputy judge under subsection (1) of section eleven of the principal Act may be made by the Lord Chancellor, instead of by the judge for whom the deputy is to act, in any case where the judge so requests as well as in the case where the judge is unable to make the appointment.

## **24 Persons capable of acting for registrar**

- (1) The registrar for any district shall be capable of acting in any other district for the registrar for that other district, and section thirty of the principal Act (which prohibits an officer of a county court from acting as a solicitor in that court) shall not apply to a person acting as registrar of a court by virtue of this subsection:

Provided that a person shall not by virtue of this subsection act as registrar in relation to any proceedings in which he is, either by himself or his partner, directly or indirectly engaged as solicitor or agent for any party.

- (2) Subsection (2) of section twenty-five of the principal Act (which authorises the Lord Chancellor to direct that particular powers and duties of a registrar shall be exercised and performed by the assistant registrar) shall cease to have effect; but an assistant registrar shall be capable, and be deemed always to have been capable, of discharging any of the functions of the registrar, and in so doing shall have the same powers and be subject to the same liabilities as if he were the registrar.
- (3) The registrar for any district where there is an assistant registrar, or where the registrar for some other district is acting for him under subsection (1) of this section, may divide the registrar's duties as he thinks fit between himself and the assistant registrar or the registrar acting for him, as the case may be.

## **25 Status and pensions of assistant registrars**

- (1) Employment as an assistant registrar shall cease to be included in the expression " court service " as defined in section twenty-nine of the principal Act (which relates to the status as civil servants and pensions of persons in court service), and accordingly in section twenty-one of the principal Act (which relates to the pensions of registrars) there shall cease to have effect so much of the proviso to subsection (1) as relates to a whole-time registrar who, having immediately before his appointment as such been an assistant registrar, desires to remain subject to the provisions of the said section twenty-nine.
- (2) The said section twenty-one, section fourteen of the Superannuation Act, 1935, and the Administration of Justice (Pensions) Act, 1950, shall apply in relation to whole-time assistant registrars, as well as to whole-time registrars, and shall have effect as if service as a whole-time assistant registrar were service as a whole-time registrar, and references to a whole-time registrar, to a person's appointment as such, and to the date on which a person became such a registrar, were to be construed accordingly.
- (3) The following provisions of the principal Act, that is to say—
  - (a) section seventeen (which enables the Lord Chancellor to give a direction that a registrar shall be a whole-time registrar); and
  - (b) subsection (2) of section eighteen (which provides that before giving such a direction the Lord Chancellor shall take steps to satisfy himself as to the registrar's health); and
  - (c) subsection (2) of section nineteen (which relates to the retirement through age of registrars);shall apply to an assistant registrar as they apply to a registrar, and for the purposes of this section the expression " whole-time assistant registrar " means an assistant registrar in whose case a direction has been given by the Lord Chancellor under the said section seventeen.
- (4) Nothing in this Act shall affect the operation of the proviso to subsection (1) of section twenty-one of the principal Act in relation to a person appointed whole-time registrar before the date of the coming into force of this section; and, notwithstanding anything in subsection (2) of this section, service as an assistant registrar before that date shall not be taken into account for the purposes of the said section twenty-one or of the Administration of Justice (Pensions) Act, 1950, but in the case of a person who at that date is serving as an assistant registrar his period of service shall for those purposes be reckoned as from that date.

*Other provisions as to county courts*

**26 Transfer to county court of money recovered in High Court by infants and others**

Section one hundred and sixty-four of the principal Act (which provides for the transfer to a county court in certain cases of money recovered in the High Court by infants or persons of unsound mind or by widows of persons killed), except subsection (4) thereof, shall apply in relation to any cause or matter in the High Court as it applies in relation to a cause or matter in the Queen's Bench Division.

**27 Penalty for non-attendance on judgment summons**

- (1) Section eighty-one of the principal Act (which provides a pecuniary penalty for neglect of a witness summons) shall not apply to a debtor summoned to attend by a judgment summons.
- (2) If a debtor summoned to attend a county court by a judgment summons fails to attend on the day and at the time fixed for any hearing thereof, the judge may adjourn or further adjourn the summons to a specified time on a specified day and order the debtor to attend at that time on that day.
- (3) If—
  - (a) a debtor, having been ordered under subsection (2) of this section to attend at a specified time on a specified day, fails to do so ; or
  - (b) a debtor who attends for the hearing of a judgment summons refuses to be sworn or to give evidence,

the judge may make an order committing him to prison for a period not exceeding fourteen days in respect of the failure or refusal:

Provided that a debtor shall not be committed to prison under this subsection for having failed to attend as required by an order under the said subsection (2) unless there was paid to him at the time of the service of the judgment summons, or paid or tendered to him at the time of the service of the order under the said subsection (2), such sum in respect of his expenses as may be prescribed for the purposes of this section.

- (4) The judge may at any time revoke an order committing a person to prison under this section and, if he is already in custody, order his discharge.
- (5) Where, under section one hundred and forty-three of the principal Act, an order for the committal of a person under this section has been sent to another court for execution, the judge of that other court shall have the same power of revoking the order and ordering the debtor's discharge as the judge of the court by which the order was made.
- (6) In this section " judgment summons " means a summons issued on the application of a person entitled to enforce a judgment or order under section five of the Debtors Act, 1869, requiring a person, or where two or more persons are liable under the judgment or order, requiring any one or more of them, to appear and be examined on oath as to his or their means.

**28 Miscellaneous amendments as to executions**

- (1) For subsection (2) of section one hundred and seventeen of the principal Act (which relates to execution where there has been an order for payment by instalments

and a default in payment of an instalment) there shall be substituted the following subsections—

“(2) County court rules may prescribe the cases in which execution is to issue if there is any such default and limit the amounts for which and the times at which execution may issue.

(3) Except so far as may be otherwise provided by county court rules made for the purposes aforesaid, execution or successive executions may issue if there is any such default for the whole of the said sum of money and costs then remaining unpaid or for such part thereof as the court may order either at the time of the original order or at any subsequent time:

Provided that, except so far as may be otherwise provided by such rules, no execution shall issue unless at the time when it issues the whole or some part of an instalment which has already become due remains unpaid.”

(2) Section one hundred and eighteen of the principal Act (which provides for an execution to be superseded on payment of the sum of money and costs adjudged and fees for execution of the warrant as inserted in or endorsed on the warrant) shall be amended as follows:—

(a) the amount required by subsection (1) to be inserted in or endorsed on the warrant of execution shall be the total amount to be levied, inclusive of the fee for issuing the warrant but exclusive of the fees for its execution;

(b) the amount required to be paid or tendered for the execution to be superseded under subsection (2) shall be the amount so inserted or endorsed, or such part thereof as the person entitled thereto agrees to accept in full satisfaction, together with the amount stated by the officer of the court to whom the payment or tender is made to be the amount of the fees for the execution of the warrant.

(3) Brokers and appraisers appointed under section one hundred and twenty-seven of the principal Act for the purpose of selling or valuing any goods, chattels or effects seized in execution under process of the court need not be sworn, and accordingly in section one hundred and twenty-eight of the principal Act (under which the judge may authorise a bailiff to act as a broker or appraiser) for the words " sworn brokers or appraisers " in subsection (2) there shall be substituted the words " brokers or appraisers appointed under the last foregoing section ".

(4) The duration of any warrant of possession issued by a county court to enforce a judgment or order for the recovery of land or for the delivery of possession of land shall, notwithstanding anything in subsection (4) of section five of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, be such as may be fixed by or in accordance with county court rules.

## **29 Increase of penalties for assaulting officers, rescuing goods seized and contempt of court**

(1) The fine which may be imposed under any of the following provisions of the principal Act, that is to say,—

(a) section thirty-one (which deals with assaults on officers of a county court);

(b) section one hundred and twenty-four (which deals with rescuing goods seized in execution under process of a county court);

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(c) section one hundred and thirty-nine (which deals with insulting behaviour in a county court and similar contempts);

shall be a fine not exceeding twenty pounds, instead of a fine not exceeding five pounds.

(2) A county court judge instead of imposing a fine on an offender under any of the sections mentioned in subsection (1) of this section may make an order committing the offender for a specified period not exceeding one month to any prison to which he has power to commit:

Provided that the judge may at any time revoke an order committing a person to prison under this section and, if he is already in custody, order his discharge.

(3) On summary conviction of an offence under section thirty-one or section one hundred and twenty-four of the principal Act, a person shall be liable either to the fine mentioned in subsection (1) of this section or to imprisonment for a term not exceeding one month.

### **30 Extension of powers of registrar as to stay or suspension of judgments and orders and stay of execution**

The powers conferred by subsection (2) of section ninety-six and by section one hundred and nineteen of the principal Act to suspend or stay judgments and orders and to stay executions shall, to such extent as may be provided by county court rules, be exercisable by the registrar as well as by the judge, and accordingly for the references in the said subsection (2) and the said section one hundred and nineteen to the judge there shall be substituted references to the court.

### **31 Miscellaneous procedural amendments**

(1) In section sixty-two of the principal Act (which provides for a county court order for the grant or revocation of probate or administration to be certified to a district probate registry, and given effect to there), there shall be substituted in paragraph (a) for the words "transmit to the registrar of such district probate registry as he thinks convenient" the words "transmit to the principal or a district probate registry as he thinks convenient", and the references in paragraph (b) to the district probate registry and the district probate registrar shall respectively include references to the principal probate registry and a registrar of the principal probate registry.

(2) An application to a county court under subsection (2) of section seventeen of the Matrimonial Causes Act, 1950, shall be made in the manner prescribed by county court rules, and shall not be required by that section to be made by petition: and accordingly—

(a) in subsection (2) of that section, for the words "by petition to the court" there shall be substituted the words "to the court by petition or to a county court";

(b) in subsection (3) of that section—

(i) the words "A petition under the last foregoing subsection may be presented to a county court instead of the High Court" shall be omitted;

(ii) for the words "Provided that, where a petition is presented to a county court" there shall be substituted the words "Where an application under the last foregoing subsection is made to a county court";

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- (iii) for the word " therein " at the end of the subsection, there shall be substituted the words " by a petition presented to the High Court " ;  
and
  - (c) in subsection (6) of that section after the word " petition ", wherever occurring, there shall be inserted the words " or other application " and after the word " presented " there shall be inserted the words " or made " .
- (3) Section one hundred and seventy-five of the principal Act (which enables service of any summons or other process by a bailiff to be proved by an endorsement signed by him, and penalises a false endorsement) shall apply to any officer of a county court as it applies to a bailiff.
- (4) In the proviso to subsection (3) of section eighty-nine of the principal Act (which confers power on the judge of a county court to set aside an award on a reference under that section or to revoke the reference or order another reference) for the words " on application made to him at the first court held after the expiration of one week after the entry of the award " there shall be substituted the words " on application made to him within such time as may be prescribed by county court rules " .

### **32 Amendments as to the making of rules and orders**

- (1) Notwithstanding anything in section two hundred and six of the Supreme Court of Judicature (Consolidation) Act, 1925, or in subsection (8) of section ninety-nine of the principal Act, county court rules shall not require the concurrence of the authority empowered to make rules under the first mentioned Act.
- (2) The rule committee under the principal Act shall contain two barristers, two registrars and two solicitors instead of one barrister, one registrar and one solicitor, and accordingly in subsection (5) of the said section ninety-nine for the words " three other persons so appointed, one of whom shall be a barrister, one a registrar and the other a solicitor " there shall be substituted the words " six other persons so appointed two of whom shall be barristers, two of whom shall be registrars and two of whom shall be solicitors " .
- (3) The concurrence of the President of the Board of Trade shall not be required to the exercise by the Lord Chancellor of the power under section one hundred and fifty-seven of the principal Act to make general rules for carrying into effect the objects of Part VII of that Act (which relates to administration orders).
- (4) The power to make fees orders under section one hundred and sixty-seven of the principal Act shall be exercisable in relation to proceedings for the recovery by the Tithe Redemption Commission of a debt due to Her Majesty under section sixteen of the Tithe Act, 1936, as if the provisions applied by subsection (3) of the said section sixteen did not include so much of subsection (8) of section two of the Tithe Act, 1891, as limited the fees payable on proceedings under the last mentioned section to those set forth in the Schedule to the said Act of 1891.

### **33 Interpretation and citation of Part III**

- (1) In this Part of this Act, except in so far as the context otherwise requires, expressions used in the principal Act have the same meanings as in that Act.
- (2) In this Part of this Act the expression "the principal Act" means the County Courts Act, 1934.

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- (3) This Part of this Act and the County Courts Acts, 1934 and 1955 may be cited together as the County Courts Acts, 1934 to 1956.