



British Law Ascertainment Act 1859

1859 CHAPTER 63 22 and 23 Vict

An Act to afford Facilities for the more certain Ascertainment of the Law administered in one Part of Her Majesty's Dominions when pleaded in the Courts of another Part thereof. [13th August 1859]

Annotations:

Modifications etc. (not altering text)

- C1 Short title given by [Short Titles Act 1896 \(c. 14\)](#)
- C2 Power to extend Act conferred by [Foreign Jurisdiction Act 1890 \(c. 37\)](#), s. 5, [Sch. 1](#)
- C3 Preamble omitted under authority of [Statute Law Revision Act 1892 \(c. 19\)](#)

1 Courts in one part of Her Majesty's dominions may remit a case for the opinion in law of a court in any other part thereof.

If in any action depending in any court within Her Majesty's dominions, it shall be the opinion of such court, that it is necessary or expedient for the proper disposal of such action to ascertain the law applicable to the facts of the case as administered in any other part of Her Majesty's dominions on any point on which the law of such other part of Her Majesty's dominions is different from that in which the court is situate, it shall be competent to the court in which such action may depend to direct a case to be prepared setting forth the facts, as these may be ascertained by verdict of a jury or other mode competent, or may be agreed upon by the parties, or settled by such person or persons as may have been appointed by the court for that purpose in the event of the parties not agreeing; and upon such case being approved of by such court or a judge thereof, they shall settle the questions of law arising out of the same on which they desire to have the opinion of another court, and shall pronounce an order remitting the same, together with the case, to the court in such other part of Her Majesty's dominions, being one of the superior courts thereof, whose opinion is desired upon the law administered by them as applicable to the facts set forth in such case, and desiring them to pronounce their opinion on the questions submitted to them in the terms of the act; and it shall be competent to any of the parties to the action to present a petition to the court whose opinion is to be obtained, praying such last-mentioned court to hear parties or their counsel, and to pronounce their opinion thereon

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in terms of this Act, or to pronounce their opinion without hearing parties or counsel; and the court to which such petition shall be presented shall, if they think fit, appoint an early day for hearing parties or their counsel on such case, and shall thereafter pronounce their opinion upon the questions of law as administered by them which are submitted to them by the court; and in order to their pronouncing such opinion they shall be entitled to take such further procedure thereupon as to them shall seem proper.

Annotations:

Modifications etc. (not altering text)

C4 S. 1 extended by S.I. 1980/701, art. 7, **Sch. para. 3(2)**

2 Opinion to be authenticated and certified copy given.

Upon such opinion being pronounced, a copy thereof, certified by an officer of such court, shall be given to each of the parties to the action by whom the same shall be required, and shall be deemed and held to contain a correct record of such opinion.

3 Opinion to be applied by the court making the remit.

It shall be competent to any of the parties to the action, after having obtained such certified copy of such opinion, to lodge the same with an officer of the court in which the action may be depending, who may have the official charge thereof, together with a notice of motion, setting forth that the party will, on a certain day named in such notice, move the court to apply the opinion contained in such certified copy thereof to the facts set forth in the case herein-before specified, and the said court shall thereupon apply such opinion to such facts, in the same manner as if the same had been pronounced by such court itself upon a case reserved for opinion of the court, or upon special verdict of a jury; or the said last-mentioned court shall, if it think fit, when the said opinion has been obtained before trial, order such opinion to be submitted to the jury with the other facts of the case as evidence, or conclusive evidence as the court may think fit, of the foreign law therein stated, and the said opinion shall be so submitted to the jury.

4 Her Majesty in Council or [^{F1}Supreme Court] on appeal may adopt or reject opinion.

In the event of an appeal to Her Majesty in Council or to [^{F2}the Supreme Court] in any such action, it shall be competent to bring under the review of Her Majesty in Council or of [^{F2}the Supreme Court] the opinion pronounced as aforesaid by any court whose judgments are reviewable by Her Majesty in Council or by [^{F2}the Supreme Court], and Her Majesty in Council or [^{F2}the Supreme Court] may respectively adopt or reject such opinion of any court whose judgments are respectively reviewable by them, as the same shall appear to them to be well founded or not in law.

Annotations:

Amendments (Textual)

F1 Words in s. 4 sidenote substituted (1.10.2009) by **Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 1(a); S.I. 2009/1604, art. 2(d)**

F2 Words in s. 4 substituted (1.10.2009) by **Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), Sch. 9 para. 1(b); S.I. 2009/1604, art. 2(d)**

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5 Interpretation of terms.

In the construction of this Act, the word “action” shall include every judicial proceeding instituted in any court, civil, criminal, or ecclesiastical; and the words “Superior Courts” shall include, in England, the Superior Courts of Law at [^{F3}the Royal Courts of Justice], ^{F4}... the Lords Justices, the Master of the Rolls or any Vice Chancellor, the Judge of the Court of Admiralty, the Judge Ordinary of the Court for Divorce and Matrimonial Causes, and the Judge of the Court of Probate; in Scotland, the High Court of Justiciary, and the Court of Session acting by either of its divisions; in Ireland, the Superior Courts of Law at [^{F5}Belfast], the Master of the Rolls, and the Judge of the Admiralty Court; and in any other part of Her Majesty’s dominions, the Superior Courts of Law or Equity therein.

Annotations:

Amendments (Textual)

- F3** Words substituted by virtue of [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\), s. 224\(1\)](#)
- F4** Words in s. 5 repealed (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15\(1\), 146, 148\(1\), Sch. 4 para. 15, Sch. 18 Pt. 2; S.I. 2006/1014, art. 2, Sch. 11 paras. 11\(c\), 30\(b\)](#)
- F5** Word substituted by virtue of [S.R. & O. 1921/1804 \(Rev. XVI, p. 967: 1921, p. 422\), art. 7\(b\)](#)

Modifications etc. (not altering text)

- C5** Jurisdiction (E.W.) of Judges of Courts of Admiralty and Probate and Court for Divorce and Matrimonial Causes now exercisable by Judges of High Court of Justice: [Supreme Court of Judicature Act 1873 \(c. 66\), s. 16](#) and [Supreme Court of Judicature \(Consolidation\) Act 1925 \(c. 49\), ss. 18, 20-22, 56\(3\)](#)
- C6** Jurisdiction (N.I.) of Master of the Rolls and Judge of Admiralty Court now exercisable by Judge of High Court of Justice in Northern Ireland: [Supreme Court of Judicature Act \(Ireland\) 1877 \(c. 57\), ss. 9, 21, 35, Supreme Court of Judicature \(Ireland\) \(No. 2\) Act 1897 \(c. 66\), s. 6, Government of Ireland Act 1920 \(c. 67\), ss. 38, 40, 41, S.R. & O. 1921/1802 \(Rev. XVI, p. 954: 1921, p. 1332\), art. 7 and Judicature \(Northern Ireland\) Act 1978 \(c. 23\), s. 16](#)
- C7** References to Ireland to be construed as exclusive of Republic of Ireland: [S.R. & O. 1923/405 \(Rev. X, p. 298: 1923, p. 400\), art. 2](#)
- C8** [S. 5](#) extended by [S.I. 1980/701, art. 7, Sch. para. 3\(2\)](#)

Changes to legislation:

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