



Government of Ireland Act 1920

1920 CHAPTER 67

PROVISIONS AS TO COURTS OF LAW AND JUDGES.

38 Establishment of courts

The Supreme Court of Judicature in Ireland shall cease to exist, and there shall be established in Ireland the following courts, that is to say, a court having jurisdiction in Southern Ireland, to be called the Supreme Court of Judicature of Southern Ireland, a court having jurisdiction in Northern Ireland, to be called the Supreme Court of Judicature of Northern Ireland, and a court having appellate jurisdiction throughout the whole of Ireland, to be called the High Court of Appeal for Ireland.

39 Divisions and constitution of Supreme Court of Southern Ireland

- (1) The Supreme Court of Judicature of Southern Ireland shall consist of two divisions, one of which, under the name of His Majesty's High Court of Justice in Southern Ireland, shall, in Southern Ireland, have and exercise all such jurisdiction as is now exercised by His Majesty's High Court of Justice in Ireland and by the judges of that Court (including the land judges), and the other of which, under the name of His Majesty's Court of Appeal in Southern Ireland, shall, in Southern Ireland, have and exercise all such jurisdiction as is now exercised by His Majesty's Court of Appeal in Ireland.
- (2) The High Court of Justice in Southern Ireland and the Court of Appeal in Southern Ireland shall, subject to the provisions of Part III. of the Seventh Schedule to this Act, be constituted in manner provided by Part I. of that Schedule.

40 Divisions and constitution of Supreme Court of Northern Ireland

- (1) The Supreme Court of Judicature of Northern Ireland shall consist of two divisions, one of which under the name of His Majesty's High Court of Justice in Northern Ireland shall, in Northern Ireland, have and exercise all such jurisdiction as is now exercised by His Majesty's High Court of Justice in Ireland and by the judges of that court (including the land judges), and the other of which, under the name of His Majesty's

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Court of Appeal in Northern Ireland shall, in Northern Ireland, have and exercise all such jurisdiction as is now exercised by His Majesty's Court of Appeal in Ireland.

- (2) The High Court of Justice in Northern Ireland and the Court of Appeal in Northern Ireland shall, subject to the provisions of Part III. of the Seventh Schedule to this Act, be constituted in manner provided by Part II. of that Schedule.

41 Application of existing enactments and rules

- (1) Subject to the provisions of this Act and any modifications or adaptations made by Irish Transfer Orders under this Act, all enactments relating to the Supreme Court of Judicature in Ireland and the judges and officers thereof shall apply to the Supreme Court of Judicature in Southern Ireland and to the Supreme Court of Judicature in Northern Ireland respectively, and the judges and officers thereof, as they apply to the Supreme Court of Judicature in Ireland and the judges and officers thereof-, and as if for references to the High -Court of Justice in Ireland there were substituted references to the High Court of Justice in Southern Ireland or the High Court of Justice in Northern Ireland, as the case may be, and as if for references to the Court of Appeal in Ireland there were substituted references to the Court of Appeal in Southern Ireland or the Court of Appeal in Northern Ireland, as the case may be :

Provided that, where but for this provision an appeal under section fifty-one of the Supreme Court of Judicature Act (Ireland), 1877, would lie to a divisional court, whether by way of motion for new trial or otherwise, an appeal shall lie to the Court of Appeal in Southern Ireland or Northern Ireland as the case may be instead of to a divisional court.

- (2) The existing rules of court made under the enactments relating to the Supreme Court of Judicature in Ireland shall be deemed to have been made under those enactments as applied by this Act to the Supreme Court of Judicature in Southern Ireland and the Supreme Court of Judicature in Northern Ireland respectively, and shall have effect accordingly with the necessary modifications in Southern Ireland and Northern Ireland respectively, and any such rules of court may be altered or annulled as if they had been made under those enactments as so applied.
- (3) The Judgments Extension Act, 1868, shall apply to the registration and enforcement in the Supreme Court of Southern Ireland and Northern Ireland respectively of judgments obtained or entered up in the Supreme Courts of Northern Ireland and Southern Ireland respectively, in like manner as it applies to the registration and enforcement in the Supreme Court of Judicature in Ireland, of judgments obtained or entered up in the Supreme Court of Judicature in England.
- (4) A judge of the Supreme Court of Northern Ireland, shall not be named in a commission of assize or other commission, whether general or special, in Southern Ireland, and a judge of the Supreme Court of Southern Ireland shall not be named in a commission of assize or other commission, whether general or special, in Northern Ireland.

42 Constitution and officers of High Court of Appeal for Ireland

- (1) The High Court of Appeal for Ireland shall be constituted of the following ex-officio judges, that is to say, the Lord Chancellor of Ireland, who shall be president of the court, the Lord Chief Justice of Southern Ireland and the Lord Chief Justice of Northern Ireland and of such other judges as may from time to time be nominated as members thereof in manner hereinafter provided.

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- (2) The High Court of Appeal for Ireland, when hearing any appeal, shall consist of three judges sitting together, of whom one shall be the Lord Chancellor of Ireland, another shall be the Lord Chief Justice of Southern Ireland, or a judge of the Supreme Court of Southern Ireland nominated by him to act in his place, and the third shall be the Lord Chief Justice of Northern Ireland, or a judge of the Supreme Court of Northern Ireland nominated by him to act in his place:

Provided that—

- (a) if the Lord Chancellor considers that the case is of such importance that it is advisable that the court should consist of five judges, it shall consist of such three judges as aforesaid, together with an additional judge of the Supreme Court of Southern Ireland, nominated by the Lord Chief Justice of Southern Ireland, and an additional judge of the Supreme Court of Northern Ireland, nominated by the Lord Chief Justice of Northern Ireland ;
 - (b) if the Lord Chancellor is unable to sit, the court shall consist of four judges, namely, the Lord Chief Justice of Southern Ireland, or a judge of the Supreme Court of Southern Ireland nominated by him, the Lord Chief Justice of Northern Ireland, or a judge of the Supreme Court of Northern Ireland nominated by him, a judge of the Supreme Court of Southern Ireland nominated by the Lord Chief Justice of Southern Ireland, and a judge of the Supreme Court of Northern Ireland nominated by the Lord Chief Justice of Northern Ireland.
- (3) The High Court of Appeal for Ireland when hearing an appeal from the Supreme Court of Southern Ireland shall sit in Southern Ireland, and when hearing an appeal from the Supreme Court of Northern Ireland shall sit in Northern Ireland; and if the Lord Chancellor is not sitting, the Lord Chief Justice of the court within whose jurisdiction the High Court of Appeal is sitting, shall, if he sits as a judge of that court, preside; subject as aforesaid, judges of the Supreme Court of Southern Ireland and of Northern Ireland holding corresponding offices shall, when sitting as judges of the High Court of Appeal for Ireland, rank according to the priority of their respective appointments.
- (4) No judge shall sit as a judge of the High Court of Appeal for Ireland on the hearing of an appeal from any judgment or order made in a cause or matter heard by himself either sitting alone or with other judges, or from a judgment or order reversing, varying, or affirming a judgment or order so made.
- (5) There shall be attached to the High Court of Appeal for Ireland such officers as the Lord Chancellor, with the approval of the Joint Exchequer Board as to number, may appoint, and there shall be paid to such officers out of moneys provided by the Parliament of the United Kingdom such salaries and allowances as the Joint Exchequer Board may determine, and there shall be paid out of moneys so provided to every judge of the said court such allowances as may be determined by the said Board in respect of attendances at the sittings of the court when it sits in a part of Ireland in which he does not reside.

43 Jurisdiction of High Court of Appeal for Ireland

- (1) An appeal shall lie to the High Court of Appeal for Ireland from any decision of the Court of Appeal in Southern Ireland or the Court of Appeal in Northern Ireland, and all questions which under the Crown Cases Act, 1848, would be reserved for the decision of the Judges of the High Court shall be reserved for the decision of the High Court of Appeal for Ireland, whose decision shall, except as hereinafter provided, be final,

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and the High Court of Appeal for Ireland shall have jurisdiction and power to hear and determine all such appeals and questions subject to the rules or orders of the Court.

- (2) The Lord Chancellor, with the assistance of the Lord Chief Justice of Southern Ireland and the Lord Chief Justice of Northern Ireland, and as respects fees subject to the approval of the Joint Exchequer Board, shall make rules for regulating the procedure of the High Court of Appeal for Ireland, and any other matter with respect to which rules of court may be made under the Judicature (Ireland) Acts, 1877 to 1907; and the court shall for all purposes of and incidental to the determination of any appeal within its jurisdiction, and the amendment, execution and enforcement of any judgment or order made on any such appeal have all the powers, authority and jurisdiction for the time being vested in the Supreme Court of Southern Ireland and the Supreme Court of Northern Ireland.

44 Provisions as to Lord Chancellor

- (1) The provisions relating to the tenure of office by a judge of the Supreme Court of Southern Ireland or Northern Ireland, shall apply to the office of Lord Chancellor of Ireland.
- (2) Nothing in this Act shall affect any jurisdiction exercised by the Lord Chancellor in respect of and on behalf of His Majesty as visitor of any college or other charitable foundation; but, save as aforesaid, the Lord Chancellor shall not exercise any executive functions, and the Lord Chancellor shall cease to be Keeper of the Great Seal of Ireland, and the custody thereof and such executive functions as aforesaid shall be transferred to the Lord Lieutenant.

45 Provisions as to Master of the Rolls

Any jurisdiction of the Master of the Bolls in Ireland with respect to public records in his custody shall be transferred to the Lord Lieutenant:

Provided that nothing in this section shall affect the rank, title or precedence of the existing Master of the Bolls.

46 Transitory provisions

The provisions set out in Part III of the Seventh Schedule to this Act shall have effect with respect to existing judges and officers of the Supreme Court of Ireland (including officers attached to that Court), existing barristers, solicitors and solicitors' apprentices, and pending proceedings.

47 Provisions as to judicature before and after Irish union

- (1) All matters relating to the Supreme Court of Southern Ireland, the Supreme Court of Northern Ireland and the High Court of Appeal for Ireland shall be reserved matters until the date of Irish union, but the constituent Acts, or any Act of the Parliament of Ireland, may provide for the amalgamation of the Supreme Court of Southern Ireland and the Supreme Court of Northern Ireland and the abolition or merger in the court so constituted of the High Court of Appeal for Ireland, and may provide, as respects judges appointed after the date of Irish union, for such judges being appointed by the Lord Lieutenant and the substitution of an address from both Houses of the Parliament of Ireland for an address from both Houses of the Parliament of the United Kingdom

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in the provisions relating to the removal of judges, and for the salaries and pensions of such judges being charged on and paid out of the Irish Consolidated Fund instead of the Consolidated Fund of the United Kingdom. The reservation of matters relating to Supreme Courts as aforesaid shall not extend to the regulation of the profession of solicitors.

- (2) The provisions of this Act as to existing judges and existing pensions shall, after the date of Irish union, with the necessary modifications, extend to the judges who at that date are judges of any of the said courts, and to any pensions which at that date are payable to any persons on account of service as such judges.

48 County court judges

- (1) A judge of any county court or other court with a like jurisdiction in Ireland, appointed after the appointed day, shall be appointed by the Lord Lieutenant, and shall hold his office on the same tenure as that by which the office is held at the time of the passing of this Act, with the substitution of an address from both Houses of the Parliament of Southern Ireland or of Northern Ireland, as the case may be, for an address from both Houses of the Parliament of the United Kingdom, and during his continuance in office his salary shall not be diminished or his rate of pension altered without his consent.
- (2) Such rearrangement of the areas within the jurisdiction of county court judges shall be made by order of the Lord Lieutenant that the area of jurisdiction of any such judge shall be wholly within Southern Ireland or Northern Ireland.

49 Appeals from the High Court of Appeal for Ireland

An appeal shall lie from the High Court of Appeal for Ireland to the House of Lords—

- (a) in any case where under existing enactments such an appeal would lie from the existing Court of Appeal in Ireland to the House of Lords;
- (b) in any case where a person is aggrieved by any decision of the High Court of Appeal for Ireland in any proceedings taken by way of certiorari, mandamus, quo warranto or prohibition;
- (c) in any case where a decision of the High Court of Appeal for Ireland involves a decision of any question as to the validity of any law made by or having the effect of an Act of the Parliament of Southern Ireland or Northern Ireland and the decision is not otherwise subject to appeal:

Provided that—

- (i) where under the existing enactments an appeal does not lie to the House of Lords, except with the leave of the existing Court of Appeal in Ireland, an appeal under this section shall not lie except with the leave of the High Court of Appeal for Ireland ;
- (ii) an appeal shall not lie in the cases mentioned in paragraph (c) of this section, except with the leave of the High Court of Appeal for Ireland or the House of Lords.

50 Appeals where validity of Irish law questioned

Where any decision of a court in Ireland involves the decision of any question as to the validity of any law made by or having the effect of an Act of the Parliament of Southern Ireland or Northern Ireland, and the decision is not under the existing

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enactments subject to any appeal to the Court of Appeal in Ireland, an appeal shall lie to the High Court of Appeal for Ireland by virtue of this section.

51 Special provision for decision of constitutional questions

- (1) If it appears to the Lord Lieutenant or a Secretary of State expedient in the public interest that steps shall be taken for the speedy determination of the question whether any Act, or order having the effect of an Act of the Parliament of Southern Ireland or Northern Ireland, or any provision thereof, or any Bill introduced in either of those Parliaments, or any provision thereof, or any legislative proposal before the Council of Ireland, is beyond the powers of such Parliament or Council or whether any service is an Irish Service within the meaning of this Act or not, or if the Joint Exchequer Board, or any two members of the Board, in the execution of their duties under this Act, are desirous of obtaining the decision of any question of the interpretation of this Act, or other question of law, which arises in connexion with those duties, the Lord Lieutenant, Secretary of State, or Board, or Members thereof, as the case may be, may represent the same to His Majesty in Council, and thereupon, if His Majesty so directs, the said question shall be forthwith referred to and heard and determined by the Judicial Committee of the Privy Council.
- (2) Upon the hearing of the question such persons as seem to the Judicial Committee to be interested may be allowed to appear and be heard as parties to the case, and the decision of the Judicial Committee shall be given in like manner as if it were the decision of an appeal, the nature of the report or recommendation to His Majesty being stated in open court.
- (3) Nothing in this Act shall prejudice any other power of His Majesty in Council to refer any question to the Judicial Committee or the right of any person to petition His Majesty for such reference.

52 Appeals from decisions of Joint Exchequer Board

- (1) If any decision of the Joint Exchequer Board under this Act involves a decision with respect to any question of law, any person may petition His Majesty in Council to refer the question of law to the Judicial Committee of the Privy Council, and, if His Majesty so directs, the question of law shall be referred to and heard and determined by that Committee, and, if the Judicial Committee determine that the point of law has been erroneously decided by the Joint Exchequer Board, they shall report their determination to His Majesty, and, on such a report being made, the Joint Exchequer Board shall reconsider their decision with regard to the determination of the Judicial Committee.
- (2) Upon the hearing of any question referred under this section, such persons as seem to the Judicial Committee to be interested may be allowed to appear and be heard as parties to the case, and the decision of the Judicial Committee shall be given in like manner as if it were a decision of an appeal, the nature of the report or recommendation to His Majesty being stated in open court.
- (3) A petition shall not be entertained under this section unless it is presented within six months after the date on which the decision of the Joint Exchequer Board to which the petition relates has been published.

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53 Finality of decisions of the House of Lords and Judicial Committee

Any decision of the House of Lords or of the Judicial Committee of the Privy Council as to the validity of any law made by or having the effect of an Act of the Parliament of Southern Ireland or Northern Ireland, and any decision of the Judicial Committee of the Privy Council on any other question of law which is to be determined by the Judicial Committee of the Privy Council under this Act shall be final and conclusive and binding upon all courts.