

SAORSTÁT EIREANN.

BILLE CUIRTEANNA BREITHIUNAIS, 1928.

COURTS OF JUSTICE BILL, 1928.

Mar do leasúidh ar Thuarasgabháil.

As amended on Report.

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SAORSTÁT ÉIREANN.

BILLE CUIRTEANNA BREITHIUNAIS, 1928. COURTS OF JUSTICE BILL, 1928.

BILL

entitled

5

AN ACT TO AMEND THE COURTS OF JUSTICE ACT, 1924,
TO MAKE PROVISION IN RELATION TO CERTAIN
ORDERS MADE BY THE MASTER OF THE HIGH
COURT AND TO AMEND SECTION 70 OF THE DUBLIN
POLICE ACT, 1842.

10

BE IT ENACTED BY THE OIREACHTAS OF SAORSTÁT
ÉIREANN AS FOLLOWS:—

Interpretation.

1.—(1) In this Act—
the expression “ the Minister ” means the Minister for Justice;
the expression “ the Principal Act ” means the Courts of Justice 15
Act, 1924 (No. 10 of 1924); and
the expression “ the Chief Justice ” means the Chief Justice of
the Irish Free State.

(2) In every Act passed after this Act references to the Chief
Justice shall, unless the context otherwise requires, be construed 20
as references to the Chief Justice of the Irish Free State.

Illness or absence
of Chief Justice.

2.—Whenever the Chief Justice is unable through illness or
absence from Saorstát Éireann to transact the business of his
office, the jurisdictions transferred to and vested in him by
section 19 of the Principal Act and all statutory authorities and 25
functions for the time being vested in him in virtue of his office
shall be exercised and performed by the President of the High
Court or, in the event of the said President being prevented
through illness or absence from Saorstát Éireann from exercising
the said jurisdictions and authorities and performing the said 30
functions, by the senior ordinary Judge of the Supreme Court
or, in the event of both the said President and such ordinary
Judge being so prevented, by the junior ordinary Judge of the
Supreme Court.

Lunacy
jurisdiction.

3.—It is hereby declared that references in the Lunacy 35
Regulation (Ireland) Act, 1871, and the Acts amending the
same and any rules and orders made thereunder to “ the Lord
Chancellor entrusted as aforesaid ” shall be construed and have
effect as references to the Chief Justice and shall be deemed so
to have had effect as from the commencement of Part I of the 40
Principal Act.

Amendment of
lunacy forms.

4.—The Chief Justice may from time to time by order made
under section 118 of the Lunacy Regulation (Ireland) Act, 1871,
amend any form prescribed by or under that Act for use in
relation to the jurisdiction in lunacy matters transferred to him 45
by section 19 of the Principal Act by substituting in such form
the expression “ ward of court ” or such other similar expression
as he shall think proper for the word “ lunatic ” and the
expression “ person of unsound mind ” respectively and making
such further consequential amendments in such form as shall 50
appear to him to be necessary and proper.

5.—(1) In addition to the jurisdictions conferred on the Court of Criminal Appeal by section 34 of the Principal Act, the Court of Criminal Appeal or, on appeal, the Supreme Court shall have the following jurisdictions, that is to say:—

Additional powers of the Court of Criminal Appeal.

- 5 (a) the Court may notwithstanding that they are of opinion that a point raised in an appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no miscarriage of justice has actually occurred;
- 10 (b) where the Court reverse a conviction in whole, the Court shall have jurisdiction to make an order (in this section referred to as an order for a re-trial) authorising the person in respect of whom such conviction was obtained to be re-tried for the same
- 15 offence as that which was the subject of such conviction and may by such order give such directions as to costs as they may consider proper, and may by such order or any subsequent order direct the person in respect of whose conviction the order was made to be retained in custody or to be admitted to bail on
- 20 such terms as they think proper.

(2) Whenever an order for a re-trial is made under this section by the Court of Criminal Appeal or the Supreme Court the person in respect of whose conviction the order was made may, notwithstanding any rule of law, be again indicted and tried and, if found guilty, sentenced for the offence which was the subject of such conviction.

6.—(1) In the case of a sentence of death or corporal punishment—

Execution of sentence in case of appeal to the Court of Criminal Appeal.

- 30 (a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal to the Court of Criminal Appeal may be given in accordance with Rules of Court, and
- 35 (b) if such notice is so given, the appeal or the application for leave to appeal shall be heard and determined with as much expedition as practicable, and the sentence shall not be executed until after the determination of the appeal, or, in cases where an
- 40 application for leave to appeal is refused, of the application.

(2) Where in the case of a conviction involving sentence of death the appeal is dismissed or the application for leave to appeal is refused by the Court of Criminal Appeal, the Court

45 shall fix a day for the execution of the sentence which day shall not be less than 14 or more than 18 clear days after the day when the appeal is dismissed or the application for leave to appeal is refused, and the sentence pronounced at the trial shall have effect as if, for the day therein mentioned, the day fixed

50 in pursuance of this sub-section were substituted.

7.—Where a person convicted on indictment before the Central Criminal Court or the Circuit Court appeals to the Court of Criminal Appeal or applies to the Court of Criminal Appeal for leave to appeal, any interlocutory application in relation to such

55 appeal or application may be heard and determined by the Chief Justice or by any Judge of the Supreme Court nominated by the Chief Justice for that purpose.

Interlocutory applications to Court of Criminal Appeal.

8.—An order of the Master of the High Court made before the 8th day of December, 1927, in purported exercise of jurisdiction

60 conferred on him by Statute or Rule of Court shall not after the passing of this Act be impugned, set aside or reversed on the ground that the jurisdiction to make such order was not conferred on the said Master by such Statute or Rule of Court.

Certain orders of the Master of the High Court not to be impugned.

Additional Judges
of the Circuit
Court.

9.—(1) So much of section 37 of the Principal Act as limits the number of the Judges of the Circuit Court shall cease to have effect and in lieu thereof it is hereby enacted that the Circuit Court shall consist of not more than ten Judges.

(2) A Judge of the Circuit Court (but not more than two such Judges at any one time) may, in lieu of being permanently assigned to a particular Circuit, be temporarily assigned by the Minister from time to time as occasion requires to any Circuit as an additional Judge for such Circuit and every such Judge shall, while so assigned to a Circuit, have in relation to such Circuit and concurrently with the Judge permanently assigned to such Circuit all the privileges, powers and duties for the time being conferred or imposed by law on the Judge assigned to such Circuit.

Judge of the
Circuit Court
acting outside
his own Circuit.

10.—Whenever it appears to the Minister on the representation of a Judge of the Circuit Court that such Judge cannot properly deal with any matter pending before him by reason of the fact that he has a personal interest in such matter or such personal knowledge of the facts or of the parties as might prejudice the trial of such matter, the Minister may appoint another Judge of the Circuit Court (who so consents) to hear and determine such matter in the Circuit of the first mentioned Judge and thereupon such matter may be so heard and determined.

Circuit Court
Appeals.

11.—(1) Every appeal under section 61 of the Principal Act from a judgment or order of the Circuit Court shall be expressed in the notice of appeal to be grounded on the evidence at the trial or hearing (as the case may require) before the Circuit Court and shall be heard and determined in accordance with this section.

(2) Subject to the provisions of this section every appeal under section 61 of the Principal Act shall be heard and determined on the report of the official stenographer but the Court hearing such appeal may on such hearing do all or any of the following things, that is to say:—

- (a) admit additional evidence either oral or on affidavit;
- (b) re-hear the evidence of any witness whose evidence is contained in such report;
- (c) refer any matter arising on such report to the Judge of the Circuit Court from whose decision the appeal is taken for his observations thereon;
- (d) order a new trial of the case;
- (e) enter such judgment in the case as to the Court may seem fit.

(3) Where it appears to the Court hearing an appeal under section 61 of the Principal Act that the report of the official stenographer is, through no default on the part of the appellant, not forthcoming, the Court may either determine the appeal by rehearing the case either on oral evidence or by affidavit or partly on oral evidence and partly by affidavit, or may order a new trial of the case to be had.

(4) This section applies to appeals under section 61 of the Principal Act brought before as well as after the passing of this Act.

Circuit Court
Appeals in
Admiralty causes.

12.—An appeal from any judgment decree order or decision of the Circuit Court in an Admiralty cause shall lie under the provisions and subject to the terms and conditions of section 61 of the Principal Act.

Assistant Justices
of the District
Court.

13.—(1) In addition to the number of Justices of the District Court (in this section referred to as ordinary Justices) prescribed by section 68 of the Principal Act, there may be appointed not more than four additional Justices of the District Court (in this Act referred to as assistant Justices) to discharge the duties imposed by this Act on assistant Justices.

(2) An assistant justice shall be a Justice of the District Court within the meaning of the Principal Act and accordingly all the provisions of the Principal Act in relation to Justices of the District Court shall, so far as they are not inconsistent with this section, apply to assistant justices.

(3) The age of retirement of an assistant justice shall be 65 years.

(4) Every assistant justice shall receive a salary of £800 per annum and such salary shall be charged on and be payable out of the Central Fund or the growing produce thereof.

(5) An assistant justice shall be eligible to be appointed an ordinary justice.

(6) An assistant justice may be temporarily assigned by the Minister from time to time as occasion requires as an additional justice for any District and every assistant justice while so assigned to any District shall have in relation to such District and concurrently with the ordinary justice permanently assigned to such District all the privileges, powers and duties for the time being conferred or imposed by law on the Justice of the District Court assigned to such District.

14.—No person admitted to practise as a barrister or admitted a solicitor after the passing of this Act shall be appointed an assistant justice unless before he is so appointed he satisfies the Minister that he is competent to discharge the duties of his office through the medium of the Irish language.

Qualification for appointment of Assistant Justice of the District Court.

15.—(1) Whenever it appears to the Minister on the representation of a Justice of the District Court that such Justice cannot properly deal with any matter pending before him by reason of the fact that he has a personal interest in such matter or such personal knowledge of the facts or of the parties as might prejudice the trial of such matter, the Minister may appoint another Justice of the District Court (who so consents) to hear and determine such matter in the District of the first mentioned Justice and thereupon such matter may be so heard and determined.

Justice of the District Court acting outside his own District.

(2) In case of the illness or absence of a Justice of the District Court assigned to a particular District, any other Justice of the District Court may (with the consent of the Minister) in addition to exercising the privileges, powers and duties in relation to the District to which he is assigned, exercise during such illness or absence the privileges, powers and duties for the time being conferred by law on such first named Justice in relation to the District to which such Justice is assigned.

16.—(1) Clause (iii) of paragraph (a) of section 77 of the Principal Act is hereby amended by the deletion of the sign and figures "£26" now contained therein and the insertion in lieu of the said sign and figures so deleted of the sign and figures "£27."

Amendment of section 77 of the Principal Act.

(2) Notwithstanding anything in clause (iii) of paragraph A of section 77 of the Principal Act, the District Court shall not have jurisdiction in ejectment for non-payment of rent in respect of tenancies less than tenancies from year to year or where less than one year's rent is in arrear.

17.—In addition to the jurisdiction now vested in the District Court by the Principal Act as amended by this Act, the District Court shall have and may exercise concurrently with the Circuit Court the jurisdiction under section 82 of the Civil Bill Courts (Ireland) Act, 1851, formerly vested in Recorders and County Court Judges and now vested in the Circuit Court.

Additional jurisdiction of the District Court.

18.—(1) An appeal shall lie in criminal cases from a Justice of the District Court against any order (not being merely an order returning for trial or binding to the peace or good behaviour or to both the peace and good behaviour) for the payment of a penal or other sum or for the doing of anything at any expense or for

Appeals from the District Court in criminal cases.

the estreating of any recognizance or for the undergoing of any term of imprisonment by the person against whom the order shall have been made.

(2) Where immediately before the commencement of Part III of the Principal Act an appeal lay in a criminal case at the instance of a complainant or prosecutor against an order of a District Justice appointed under the District Justices (Temporary Provisions) Act, 1923 (No. 6 of 1923) an appeal of the like kind shall lie in such criminal case at the instance of a complainant or prosecutor from an order of a Justice of the District Court.

(3) Every appeal under this section from an order of a Justice of the District Court shall lie to the Judge of the Circuit Court within whose circuit the District or any part of the District of such Justice lies, and the decision of such Judge on such appeal shall be final and conclusive and not appealable.

Proceedings
on arrest.

19.—Sub-section (4) of section 88 of the Principal Act is hereby repealed and in lieu thereof it is hereby enacted that whenever any person charged with having committed an offence is lawfully arrested such person shall, unless the Justice of the District court assigned to the district where such person was arrested is immediately available, be brought before a Peace Commissioner and such Peace Commissioner, after hearing such evidence as may be offered, shall remand such person either in custody or in such bail as he shall think fit and remit the case for hearing before such justice to the sitting of the District Court hereinafter mentioned; that is to say:—

(a) if such person is remanded in bail and there and then finds such bail to the next sitting of the District Court for the district court area in which such person was arrested, or

(b) in any other case to a sitting of the District Court at a named place in the district where such person was arrested to be held within eight days after such arrest.

Amendment of
section 94 of the
Principal Act.

20.—Section 94 of the Principal Act is hereby amended by the deletion of all words from the words "unless the Judge shall consider" to the words "on the application of any party so order" now contained therein and the insertion in lieu of the words so deleted of the words "unless the Court on the application of any party instituted at any time not later than seven days after notice of trial or on its own motion at the trial shall consider a jury to be necessary or desirable for the proper trial of the action and so shall order".

Amendment of
section 70 of the
Dublin Police
Act, 1842.

21.—(1) Section 70 of the Dublin Police Act, 1842, is hereby amended by the deletion of the words "within six calendar months at the farthest next after the commission of such offence, or within such shorter time as shall be limited by the Act specifying the offence, and not afterwards" now contained therein.

(2) Paragraph 4 of section 10 of the Petty Sessions (Ireland) Act, 1851, shall apply to cases of summary jurisdiction within the Dublin Metropolitan Area in like manner as it applies to cases of summary jurisdiction outside the Dublin Metropolitan Area.

Repeals.

22.—The enactments specified in the Schedule hereto are hereby repealed to the extent specified in the third column of the said Schedule.

Short title
construction
and citation.

23.—(1) This Act may be cited as the Courts of Justice Act, 1928.

(2) This Act shall be construed as one with the Courts of Justice Acts, 1924 to 1927, and those Acts and this Act may be cited together as the Courts of Justice Acts, 1924 to 1928.

Schedule.

Enactments Repealed.

Session and chapter or year and number.	Short Title.	Extent of Repeal.
14 & 15 Vic., c. 93.	The Petty Sessions (Ireland) Act, 1851.	Section 24, para- graph 5.
30 & 31 Vic., c. 114.	The Court of Admiralty (Ireland) Act, 1867.	Sections 87, 88 and 89.
No. 10 of 1924.	The Courts of Justice Act, 1924.	Sections 62 and 85.

Saorstát Éireann

BILLE CUIRTEANNA BREITHIUNAIS,
1928.

BILLE

(mar do leasúodh ar Thuarasgabháil)
dá ngairmtear

Acht chun an tAcht Cúirteanna Breithiúnais,
1924, do leasú, chun soerú do dhéanamh
maidir le horduithe áirithe a dhin Máirtir
na hArd-Chúirte agus chun alt 70 den
Dublin Police Act, 1842, do leasú.

An tAire Dlí agus Cirt do thug isteach.

Do horduiodh, ag Dáil Éireann, do chló-bhuála,
4adh Iúil, 1928.

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Saorstát Éireann

COURTS OF JUSTICE BILL, 1928.

BILL

(As amended on Report)
entitled

An Act to amend the Courts of Justice Act,
1924, to make provision in relation to
certain orders made by the Master of the
High Court and to amend section 70 of the
Dublin Police Act, 1842.

Introduced by the Minister for Justice.

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