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BILLE NA gCUIRTEANNA, 1971
COURTS BILL, 1971

As introduced in Seanad Éireann

EXPLANATORY MEMORANDUM

1. The purpose of the Bill is to increase the civil jurisdictions of the District and Circuit Courts and to provide for a number of miscellaneous matters relating to the courts. The Bill provides, *inter alia*, for an increase in the weekly amount of maintenance which may be awarded by the District Court to a married woman deserted by her husband; for the award to a deserted wife of maintenance for any child of the marriage who is maintained by the wife and who is under 16 years; for an increase in the maintenance allowance that may be awarded in respect of an illegitimate child; for a right of audience for solicitors in all courts; for the early trial in the District Court of summary offences to be specified by the Minister for Justice by order where the Minister is of opinion that early trial of such offences is desirable; and for amendments in the law relating to the service of court documents.

II—REPORTS OF COMMITTEE ON COURT PRACTICE AND PROCEDURE

2. The question of increasing the jurisdictions of the District Court and the Circuit Court was examined by the Committee on Court Practice and Procedure (Fifth Interim Report, April, 1966 : Pr. 8936). The existing limits of the civil jurisdiction of these courts were for the most part settled in the Courts of Justice Act, 1953. The Committee unanimously recommended that the civil jurisdictions of both courts should be substantially increased, not alone to compensate for the fall in the value of money since 1953 but also to provide against a further fall in money values over the next 20 years or so. They were further of opinion, unanimously in regard to the Circuit Court, and by a majority in the case of the District Court, that there should be, in addition, a real or basic increase in jurisdiction. The members of the Committee were not unanimous on the actual increases under the various heads of jurisdiction. The monetary limits of jurisdiction (1) under existing legislation and (2) as recommended by the members of the Committee are as follows:

Circuit Court

Jurisdiction	Present Jurisdiction	Recommendation of Courts Committee
Contract and Tort	£600	2 members—£3,000 3 members—£2,000 7 members—£1,500
Hire-purchase and credit-sale	£1,000	Same as for contract and tort
Equity	Personalty—£2,000 Rateable valuation of land— £60	8 members—£5,000 4 members—£3,000 10 members— £100 2 members— £200

Jurisdiction	Present Jurisdiction	Recommendation of Courts Committee
Distress for Rent Act, 1741	£300	None
Cork Local Admiralty Court	£400 (probably)	Unanimous—same limit as for contract and tort
Actions transferred from High Court and splitting of Circuit Court actions	£600	None

District Court

Jurisdiction	Present Jurisdiction	Recommendation of Courts Committee
Contract and Tort	£50	2 members— £500 5 members— £200 5 members— £100
Hire-purchase and credit-sale	£100	No recommendation
Ejectment	Annual Rent—£53	Annual Rent 2 members— £500 1 member — £315 5 members— £265 4 members— £105
Proceedings at the suit of the State or a Minister or Government Department, a local authority, a board of fishery conservators or a drainage board	£50	None
Section 50 of Rent Restrictions Act, 1960	Annual Rent—£53 Valuation— £10	Unanimous—same limit as for ejectment

III—PROVISIONS OF THE BILL

3. *Section 1* is the definitions section.

4. *Subsection (1)* of *section 2* extends the jurisdiction of the Circuit Court (1) in equity matters, to cases where the subject matter or the property in so far as it consists of personalty does not exceed £5000 (£2000 at present) or in so far as it consists of land does not exceed £100 rateable valuation (£60 at present); (2) in civil debt and tort and claims for rent and use and occupation of land, to cases where the claim does not exceed £2000 (£600 at present); (3) in actions involving hire-purchase and credit-sale agreements, to cases where the claim does not exceed £2000 (£1000 at present); (4) in actions involving title to land (other than ejectment actions) and in ejectment actions for a year's rent in arrear under section 52 of the Landlord and Tenant Law (Amendment) Act, Ireland, 1860, to cases where the rateable valuation of the land does not exceed £100 (£60 at present); and (5) in actions under the Distress for Rent Act, 1741, for the recovery of double the value of goods fraudulently removed to prevent distress for rent, to cases where the value of goods removed does not exceed £1000 (£300 at present).

Subsection (2) increases the jurisdiction of the Circuit Court under certain British statutes relating to the former County Courts, Courts of Quarter Sessions and the judges of those courts. These statutes were adapted in relation to the Circuit Court and Circuit Court Judges by the Fifth Schedule to the Courts (Supplemental Provisions) Act, 1961. The increases proposed are consequential on the proposed increases in the jurisdiction of the Circuit Court provided for in *subsection (1)*.

Subsection (3) extends the jurisdiction in lunacy matters which was conferred on the Circuit Court by section 22 (2) of the Courts (Supplemental Provisions) Act, 1961, to cases where the value of property does not exceed £5000 (£2000 at present) or the income therefrom does not exceed £300 (£100 at present). This jurisdiction is exercised by the Circuit Court concurrently with the High Court. (See paragraph 6 *infra*).

Subsection (4) amends section 20 (which deals with the jurisdiction of the Circuit Court in actions for unliquidated damages transferred from the High Court) and section 23 (which prohibits the splitting of actions in the Circuit Court) of the Courts of Justice Act, 1936. The amendments are consequential on the proposed increases in the jurisdiction of the Circuit Court.

5. Section 3 fixes the limit of jurisdiction of the Cork Local Admiralty Court at the same figure as for civil debt claims, viz., £2000. This is in accordance with a recommendation of the Committee on Court Practice and Procedure in their Fifth Interim Report.

6. Section 4 extends the jurisdiction of the High Court under section 68 of the Lunacy Regulation (Ireland) Act, 1871, to cases where the value of property does not exceed £5000 (£2000 at present) or the annual income therefrom does not exceed £300 (£100 at present). This jurisdiction is exercised by the President of the High Court, who may dispense with the inquiry under a commission where the property of the person concerned is within the limits specified.

7. Section 5 amends section 12 of the Courts of Justice Act, 1936, which deals with the limitation of a plaintiff's costs in the High Court where the amount recovered is within the jurisdiction of the Circuit Court or the District Court. This amendment is consequential on the proposed increases in the jurisdictions of the Circuit Court and the District Court. As to limitation of costs in actions proper to the District Court that are taken in the Circuit Court, see Circuit Court Rules, 1950, Order 58, rules 11 and 12.

8. Section 6 abolishes juries in civil cases in the Circuit Court. The right to civil jury trial in the Circuit Court is rarely exercised and abolition of the right was recommended by the Committee on Court Practice and Procedure in their Third Interim Report (Third and Fourth Interim Reports, 1965 : Pr. 8577).

9. Section 7 extends the jurisdiction of the District Court (1) in contract, breach of contract, tort (except slander, libel, criminal conversation, seduction, slander of title, malicious prosecution and false imprisonment) and claims for damages unconnected with contract, to cases where the claim does not exceed £250 (£50 at present); (2) in ejectment for non-payment of rent or overholding in any class of tenancy, to cases where the rent does not exceed such sum as amounts or might amount to £315 per annum (£53 per annum at present); and (3) in proceedings at the suit of the State or any Minister or Government Department or any officer thereof and in proceedings at the suit of local authorities or a board of fishery conservators or a drainage board, to cases where the claim does not exceed £250 (£50 at present). The section also removes the £10 valuation limit in tort actions involving title to land, but retains the existing proviso that the decision of a justice in a case of this type shall not operate as an estoppel in or a bar to a suit in any court in relation to such land. See section 77 of the Court of Justice Act, 1924, and recommendation in Fifth Interim Report of Committee on Court Practice and Procedure.

10. Section 8 extends the jurisdiction of the District Court in actions for wrongful detention to cases where the value of the goods claimed does not exceed £250 (£50 at present).

11. Section 9 extends the jurisdiction of the District Court in actions founded on hire-purchase agreements and credit-sale agreements to cases where the amount of the claim does not exceed £250 (£100 at present).

12. Section 10 extends the jurisdiction of the District Court in proceedings by way of interpleader by a sheriff or county registrar to cases where the value of the goods, animals or chattels taken in execution or intended execution does not exceed £250 (£50 at present).

13. *Section 11* extends the jurisdiction of the District Court under the Rent Restrictions Act, 1960, to cases where the rateable valuation of the relevant dwelling does not exceed £25 (£10 at present) or if an order for recovery of the relevant dwelling is sought, to cases where the rent of the dwelling is a rent which does not exceed such sum as amounts or might amount to £315 per annum (£53 per annum at present).

14. *Section 12* provides that the District Court shall be a court of record. This appears to be the present position, although there is no statutory enactment similar to section 21 of the Courts (Supplemental Provisions) Act, 1961 (formerly section 47 of the Courts of Justice Act, 1924) which provides that the Circuit Court shall be a court of record.

15. *Section 13* provides that in any legal proceedings regard shall not be had to any entry or other record, other than the formal order of the Justice, relating to a decision of a Justice of the District Court in any case of summary jurisdiction. *Section 22* provides for the consequential repeal of the first proviso to section 70, and section 72, of the Dublin Police Act, 1842, as well as section 21 of the Criminal Justice Act, 1951.

16. *Section 14* provides that the Minister for Justice may by order specify the classes of offences in respect of which he is of opinion that early trial or disposal by the District Court is desirable. Such offences will be triable at a sitting of the Court in any court area in the district court district, and a justice will be able to hold a special sitting to deal with the offences. The section also provides that a summons in respect of a sitting for the trial of such offences may be issued at any time not later than two clear days before the sitting. Under the District Court Rules, summary offences are triable at a sitting of the District Court in the district court area where the offence was committed or where the accused was arrested or where the accused resides: and a summons must be served on the accused at least seven days before the sitting, unless the justice authorises a shorter time in a particular case. As sittings of the District Court are held in many rural areas only once per month, there may be a delay of several weeks before an alleged offender can be brought to court by way of summons. Under existing law, a justice has no power to hold a special sitting to deal with urgent summary cases.

17. *Section 15* provides that the Minister for Justice may, after consultation with the President of the District Court, appoint places and times for sittings in any newly created district court area and may assign a name to or change the name of any district court district or district court area. This provision is designed to resolve doubts that have arisen in relation to the Minister's powers under section 26 of the Courts of Justice Act, 1951.

18. *Section 16* provides that a solicitor acting generally for a party in an action, suit, matter or criminal proceedings, or a qualified solicitor acting as his assistant, shall have a right of audience in all courts. At present solicitors have a right of audience in the District Court and the Circuit Court, but, with minor exceptions, they have no right of audience in the Superior Courts. The repeal of section 65 of the Solicitors Act, 1954 (right of audience of solicitor-assistant), provided for in *section 22*, is consequential on the enactment of this section. As to right of audience of solicitors in the District Court and in the Circuit Court, see rule 7 of the District Court Rules, 1948, and section 60 of the Courts (Supplemental Provisions) Act, 1961.

19. Subsection (1) of *section 17* provides for an increase from £4 to £7.50 per week in the maximum rate of maintenance allowance which may be awarded by the District Court to a deserted wife under the Married Women (Maintenance in case of Desertion) Act, 1886. It also provides for the award of maintenance of up to £2.50 per week in such cases in respect of each child under sixteen years. There is no provision at present for the award of maintenance in respect of children.

Subsection (2) provides that the existing power of the District Court to vary maintenance awards shall include power to vary an award in respect of a child.

Subsection (3) provides that paragraph (2) of section 1 of the Married Women (Maintenance in case of Desertion) Act, 1886 (which provides that no order for maintenance shall be made in the case of a deserted wife proved to have committed adultery and that any order for maintenance made may be discharged on proof that the wife had committed adultery after the order was made) shall not apply in relation to an award of maintenance made in respect of a child.

Subsection (4) provides that the Minister for Justice may by order increase the maximum rate of maintenance payable in respect of a wife or a child or both and that any such order shall not be made until a draft of it has been laid before, and approved by resolution of, each House of the Oireachtas.

The repeal of paragraph (a) of section 7 of the Enforcement of Court Orders Act, 1940, provided for in *section 22*, is consequential on the enactment of this section.

20. *Subsection (1) of section 18 increases from £1 per week to £2.50 per week the maximum amount of maintenance which the District Court may order the putative father to pay towards the maintenance of an illegitimate child under the Illegitimate Children (Affiliation Orders) Act, 1930.*

Subsection (2) provides that the Minister may by order increase the maximum rate of maintenance which may be awarded in respect of an illegitimate child and that any such order shall not be made until a draft of it has been laid before, and approved by resolution of, each House of the Oireachtas.

21. *Section 19 amends section 2 of the Legitimacy Act, 1931, to provide that an application for a declaration of legitimacy may be made to the Circuit Court by a parent of a legitimated person and that all legitimacy applications shall be heard in chambers. Under the 1868 Act an application for a certificate in respect of a legitimated person may be made only by the legitimated person. As such an application is not specifically mentioned in section 45 of the Courts (Supplemental Provisions) Act, 1961 (administration of justice otherwise than in public), it appears that the application must be heard in open court.*

22. *Section 20 extends the application of section 7 of the Courts Act, 1964 (which deals with the service by registered post of District Court and Circuit Court documents) to a wider range of district court documents. It also provides that a summons server may be assigned by the county registrar to such area of the county and in respect of such documents as may be specified by the county registrar, and that, where no summons server stands assigned to an area for the service of a specified document, the provisions of section 7 of the 1964 Act will apply to the service of that document, thus allowing it to be served by registered post.*

Section 20 is designed to remove doubts as to the application of the 1964 Act section.

23. *Section 21 provides that superior court documents (apart from those for which personal service is required) may be served by leaving them at, or by sending them by registered post to, the residence or place of business in the State of the person to be served or the place of business in the State of the solicitor acting for him in the relevant proceedings. At present, rules of court provide for the delivery or service of superior court documents, for which personal service is not required, to a solicitor, only at his "registered place of business" which is defined as a place of business within a radial distance of two miles from the Four Courts, Dublin. See Eighth Report of Committee on Court Practice and Procedure (April, 1968 : Prl. 218).*

24. Section 22 provides for repeals. The repeal of the phrase "by virtue of this Act" in section 14 (2) of the Courts (Supplemental Provisions) Act, 1961, is designed to ensure that the Rules of the Superior Courts apply to the jurisdiction conferred on them by the Constitution as well as to the jurisdiction conferred on them by Act of the Oireachtas. The other repeals in section 22 have been referred to in previous paragraphs of this Memorandum.

25. Section 23 provides for the short title and collective citation and for the commencement of sections 2 to 11. It is proposed that the changes in the jurisdictions of the High Court, the Circuit Court and the District Court will not come into effect until 1 January, 1972, and that proceedings instituted before that date will not be affected.

Roinn Dlí agus Cirt,

Júil, 1971.

BILLE NA gCUIREANNA, 1971
COURTS BILL, 1971

Mur u tionsath isteach
As introduced

ARRANGEMENT OF SECTIONS

Section

1. Definitions.
2. Extension of jurisdiction of Circuit Court.
3. Extension of jurisdiction of Cork Local Admiralty Court.
4. Extension of jurisdiction of High Court under Littery Regulation (Ireland) Act, 1871.
5. Limitation on amount of plaintiff's costs in certain High Court actions.
6. Abolition of juries in civil cases in Circuit Court.
7. Extension of jurisdiction of District Court in certain cases.
8. Extension of jurisdiction of District Court in cases of debtors.
9. Extension of jurisdiction of District Court under Hire Purchase Acts, 1946 and 1960.
10. Extension of jurisdiction of District Court in insolvencies by under-sheriffs.
11. Extension of jurisdiction of District Court under Rent Restrictions Act, 1960.
12. District Court to be a court of record.
13. Evidence of decision in cases of summary jurisdiction.
14. Power of justice to deal with urgent cases of summary jurisdiction in any part of his district.
15. Amendment of section 26 of Act of 1953.
16. Right of audience of solicitors.
17. Weekly payments under Married Women (Maintenance in case of Desertion) Act, 1886.
18. Amendment of Illegitimate Children (Affiliation Orders) Act, 1920.
19. Amendment of section 2 of Legitimacy Act, 1931.
20. Service by post of Circuit Court and District Court documents.
21. Service by post of superior court documents.
22. Repeals.
23. Short title, collective citation, construction and commencement.

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