

1907

CHAPTER 3.

An Act respecting the Supreme Court.

(Assented to February 11, 1907.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

SHORT TITLE.

Short title 1. This Act may be cited as "*The Supreme Court Act.*"

INTERPRETATION.

2. In this Act, unless the context otherwise requires —
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| Interpretation | (a) The expression "rules of court" includes the rules in force by virtue of this Act as well as any other rules to be made under the authority of this Act, and also includes forms; |
| Rules of court | |
| Cause | (b) The expression "cause" includes any action, suit or other original proceeding between a plaintiff and a defendant; |
| Action | (c) The expression "action" includes suit, and means a civil proceeding commenced in such manner as may be prescribed by rules of court; |
| Matter | (d) The expression "matter" includes every proceeding in the court not in a cause; |
| Plaintiff | (e) The expression "plaintiff" includes every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise; |
| Petitioner | (f) The expression "petitioner" includes every person making any application to the court either by petition, motion or summons otherwise than as against any defendant; |
| Defendant | (g) The expression "defendant" includes every person served with any process, or served with notice of or entitled to attend any proceedings; |
| Party | (h) The expression "party" includes every person served with notice of or attending any proceeding, although not named on the record; |

- (i) The expression "judgment" includes decree; Judgment
 (j) The expression "order" includes rule; Order
 (k) The expression "oath" includes solemn affirmation and statutory declaration; Oath
 (l) The expression "Court" means the court by this Act established; Court
 (m) The expression "Judge" means a judge of such court, and includes the Chief Justice; Judge
 (n) The expression "verdict" includes the finding of a jury and the decision of a judge. Verdict

ORGANIZATION.

3. There shall be in and for the province a Superior Court of civil and criminal jurisdiction known as "The Supreme Court of Alberta": Organization

Provided that for the purposes of reference in this or any other Act the said court may be styled "The Supreme Court."

SEAL OF COURT.

4. The said court shall have and use as occasion may require such seal as is authorized to be used by the Lieutenant Governor in Council; and any seal so authorized may afterwards be changed by the Lieutenant Governor in Council. Seal

JUDGES.

5. The court shall consist of a Chief Justice who shall be styled "The Chief Justice of Alberta," and four puisne judges who shall be called and be the justices of the court; and the Chief Justice and justices of the court shall have, use, exercise and enjoy all the powers, rights, incidents, privileges and immunities of a judge of a Superior Court of Record, and all other powers, rights, incidents, privileges and immunities, as amply and as fully to all intents and purposes as the same were, on and prior to the fifteenth day of July one thousand eight hundred and seventy, used, exercised and enjoyed by any of the judges of any of Her late Majesty's Superior Courts of Law or Equity, or by the judges of Her late Majesty's Court of Exchequer as a Court of Revenue, or by the judges of the Court of Probate in England as well as by the judges of any of Her late Majesty's Courts created by Commissions of Assize, of Oyer and Terminer and of Gaol Delivery, or any of such Commissions. Puisne judges
Powers of judges

(2) Subject to any statute prohibiting or restricting proceedings by way of certiorari, a single judge shall, in addition to his other powers, have all the powers of the court as to proceedings by way of certiorari over the proceedings, Writs of certiorari

orders, convictions, and adjudications had, taken and made by justices of the peace, and in addition thereto shall have the power of revising, amending, modifying or otherwise dealing with the same; and writs of certiorari may, upon the order of a judge, be issued by the clerk of the court mentioned in such order returnable as therein directed.

Precedence of
judges

6. The Chief Justice of the court shall have rank and precedence over all other judges of any court in the province; and the puisne judges shall have rank and take precedence over the judges of any other court and between themselves according to seniority of appointment.

Oath of judges

7. Every judge of the court previous to entering upon the duties of his office, shall take the following oath, to be administered by the Lieutenant Governor, the Chief Justice of the court, or any puisne judge thereof:

"I, _____, solemnly and sincerely promise and swear that I will duly and faithfully, and to the best of my skill and knowledge, exercise the powers and trusts reposed in me as Chief Justice (or one of the puisne judges) of the Supreme Court. So help me God."

Judge
resigning may
give judgment

8. Where a judge resigns his office and any case which has been fully heard by such judge, either alone or jointly with other judges, stands for judgment, he may give judgment therein as if he were still a judge of the court; and any such judgment shall be of the same force and validity as if he were still such judge, provided that such judgment of the judge be delivered within six weeks after his resignation.

JURISDICTION.

Jurisdiction

9. The court shall within the province and for the administration of the laws for the time being in force within the province, in addition to any other jurisdiction, rights, powers, incidents, privileges and authorities which immediately prior to the coming into force of this Act were vested in or capable of being exercised within the province by the Supreme Court of the North-West Territories, possess the jurisdiction which on the fifteenth day of July, one thousand eight hundred and seventy, was vested in, or capable of being exercised in England by:

1. The High Court of Chancery, as a Common Law Court, as well as a Court of Equity, including the jurisdiction of the Master of the Rolls, as a Judge or Master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a Common Law Court;

2. The Court of Queen's Bench;

3. The Court of Common Pleas at Westminster;

4. The Court of Exchequer as a Court of Revenue, as well as a Common Law Court;

5. The Court of Probate;

6. The Court created by Commissioners of Assize and Oyer and Terminer and of Gaol Delivery, or any of such Commissions.

(2) The jurisdiction aforesaid shall include the jurisdiction which, at the commencement of this Act, was vested in or capable of being exercised by all or any one or more of the judges of the said courts, respectively, sitting in court or chambers, or elsewhere, when acting as judges or a judge in pursuance of any statute, law or custom; and all powers given to any such court, or to any judges or judge, by any statute; and also all ministerial powers, duties and authorities, incident to any and every part of the jurisdiction so conferred.

10. For the purpose of removing doubts and ambiguity but not so as to restrict the generality of the next preceding section, it is declared and enacted that the court shall have the like jurisdiction and powers as by the laws of England were, on the fifteenth day of July in the year one thousand eight hundred and seventy, possessed and exercised by the Court of Chancery in England in respect of the matters hereinafter enumerated or referred to, that is to say:

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|---|-----------------------------------|
| (a) Fraud, mistake and accident; | Fraud and accident |
| (b) In all matters relating to trusts, executors and administrators, co-partnerships and accounts, mortgages and awards, or to infants, idiots or lunatics and their estates; | Trusts, &c. |
| (c) The staying of waste; | Waste |
| (d) The compelling of the specific performance of agreements and contracts; | Specific performance |
| (e) The compelling of the discovery of concealed papers or evidence, or such as may be wrongfully withheld from the party claiming the benefit of the same; | Discovery |
| (f) The preventing of multiplicity of actions or suits; | Multiplicity of actions |
| (g) The decreeing of the issue of letters patent from the Crown to rightful claimants; | Decreeing issue of letters patent |
| (h) The decreeing of the repeal and of the making void of letters patent issued erroneously, or by mistake, or improvidently, or through fraud; | Repealing letters patent |
| (i) The administration of justice in all cases in which there exists no adequate remedy at law; | Powers in cases not provided for |
| (j) The granting of injunctions to stay waste in proper case, notwithstanding that the party in possession claims by an adverse legal title. | Injunction staying waste |

11. The rules of decision in the said matters in the last preceding section mentioned shall, except where otherwise provided, be the same as governed the Court of Chancery in

England in like cases on the fifteenth day of July, one thousand eight hundred and seventy.

Relief against forfeiture for breach of covenant to insure in certain cases

12. The court shall have power to relieve against a forfeiture for breach of a covenant or condition in any lease to insure against loss or damage by fire, where no loss or damage by fire has happened, and the breach has in the opinion of the court been committed through accident or mistake, or otherwise without fraud or gross negligence, and there is an insurance on foot at the time of the application to the court in conformity with the covenant to insure, upon such terms as to the court may seem fit.

When relief is granted, same to be recorded

13. The court where relief is granted shall direct a record of such relief having been granted to be made by indorsement on the lease or otherwise.

To what leases preceding provisions apply

14. The preceding two sections shall be applicable in the case of leases for a term of years absolute, or determinable on a life or lives or otherwise, and also in the case of a lease for the life of the lessee or the life or lives of any other person or persons.

Relief against consequences of nonpayment of principal or interest by mortgagor

15. The court shall have jurisdiction to grant and shall grant relief from the consequences of nonpayment of principal or interest by a mortgagor in any case in which the mortgagor, his heirs or assigns, shall pay all the arrears due under the mortgage with lawful costs and charges in that behalf at any time before any judgment in the premises is recovered or within such time as by the practice of the court relief therein could be obtained.

Jurisdiction in alimony

16. The court shall have jurisdiction to grant alimony to any wife who would be entitled to alimony by the law of England, or to any wife who would be entitled by the law of England to a divorce and to alimony as incident thereto, or to any wife whose husband lives separate from her without any sufficient cause and under circumstances which would entitle her, by the law of England, to a decree for restitution of conjugal rights; and alimony when granted shall continue until further order of the court.

Injunction may be granted in alimony cases

(2) In any action for alimony the court may, whenever such a course appears to it to be proper, and either before or after judgment, grant an injunction for such time and upon such terms as may be just to prevent any apprehended disposition of his property, either real or personal or both, by the defendant therein.

Registration of judgment for alimony

17. An order or judgment for alimony may be registered in any land titles office and the registration shall, so long as the order or judgment registered remains in force, bind the estate

and interest of every description which the defendant has in any lands in the land titles district where the registration is made, and operate thereon in the same manner, and with the same effect, as the registration of a charge by the defendant of a life annuity on his lands.

18. The court shall have jurisdiction to entertain an action for criminal conversation. The law applicable to such actions shall be as the same was in England prior to the abolition of such action in England; and the practice shall be the same as in other actions in the court, so far as it is applicable.

19. In every case in which the court has authority to order the execution of a deed, conveyance, transfer or assignment of any property, real or personal, the court may by order vest such real or personal estate in such person or persons, and in such manner, and for such estates, as would be done by any such deed, conveyance, assignment or transfer if executed; and thereupon the order shall have the same effect as if the legal or other estate or interest in the property had been actually conveyed, by deed or otherwise, for the same estate or interest, to the person in whom the same is so ordered to be vested, or in the case of a chose in action, as if such chose in action had been actually assigned to such last mentioned person.

20. The court shall have the same jurisdiction as the Court of Chancery had in England on the fifteenth day of July of the year one thousand eight hundred and seventy in regard to leases and sales of settled estates, and in regard to enabling infants with the approbation of the court to make binding settlements of their real and personal estate on marriage; and in regard to questions submitted for the opinion of the court in the form of special cases on the part of such persons as may by themselves, their committees or guardians, or otherwise, concur therein.

- (a) The examination of a married woman apart from her husband as to her knowledge of the nature and facts of an application for the sale or leasing of any settled estate, or as to her consent thereto, shall in no case be necessary, unless expressly directed by the court or a judge; Examination of married women
- (b) Infants and persons of unsound mind (not so found) for whom there is no committee, required to be served with notice of any application to the court, may be served by delivery to the public administrator of the judicial district where the proceedings commenced, of a copy of the petition or other proceeding required to be served; and from the time of such service the said public administrator shall be the guardian *ad litem* of the infant or person of unsound mind, unless and until the court or judge otherwise orders; and Service of infants

the said public administrator or any other guardian appointed by the court for the infant or person of unsound mind, shall take all such proceedings as he may think necessary for the protection of the interests of the infant or person of unsound mind in the proceedings in which he is so appointed guardian;

Service in case of more than one infant, etc.

- (c) In case there be more than one infant or person of unsound mind (not so found) for whom service is made on the public administrator, one copy only of the petition or other proceeding need be so served, but the name of each person on whose behalf the public administrator is served is to be stated on the copy served;

Application of money realized.

- (d) Money realized from the sale or leasing of any settled estate, or any interest therein, shall be paid, applied or invested as the court or a judge shall direct.

The court may try the validity of wills

21. The court shall have jurisdiction to try the validity of last wills and testaments, whether the same respect real or personal estate, and whether probate of the will has been granted or not, and to pronounce such wills and testaments to be void for fraud and undue influence or otherwise, in the same manner and to the same extent as the court has jurisdiction to try the validity of deeds and other instruments.

Jurisdiction formerly exercised by the Supreme Court of the N.W.T.

22. The court shall have, generally, all the jurisdiction, powers and authority which prior to the coming into force of this Act was by any law, order or regulation vested in or capable of being exercised by the Supreme Court of the North-West Territories within the province; and where in any statute, act or ordinance or in any order or regulation made thereunder reference is made to the Supreme Court of the North-West Territories, or to any court which may after the passing of such statute, act or ordinance be constituted, exercising within the province the jurisdiction, powers and authority at the date of the passing of such statute, act or ordinance exercised therein by the Supreme Court of the North-West Territories, or to any judge thereof, such reference shall, after the coming into force of this Act, be taken to mean and to refer to the court by this Act established and a judge of such court respectively.

Exercise of jurisdiction as regards procedure

23. The jurisdiction of the court shall be exercised so far as regards procedure and practice in the manner provided by this Act or by rules and orders of the court made pursuant to this Act.

RULES OF COURT.

Rules of court

24. The Lieutenant Governor in Council may from time to time make and authorize the promulgation of rules of court

governing the practice and procedure in the court, the duties of the officers thereof, the costs of the proceedings therein, and the fees to be taken by officers of the court, and may alter and annul any rules of court or tariff of costs or fees for the time being in force whether the same be included in *The Judicature Ordinance* or any amendments thereto or in any rules made by the judges of the Supreme Court of the North-West Territories pursuant to the powers granted to them in relation thereto or otherwise, and may make any further and additional rules for carrying this Act into effect, or may authorize the judges of the court to make and promulgate such rules, tariffs or to alter and annul any of such rules or tariffs or make additional rules, as hereinbefore mentioned; but until such rules are so made and promulgated, or such tariffs of fees and costs so brought into force, the rules, practice and procedure and the tariff of costs upon the higher scale of the Supreme Court of the North-West Territories shall be the rules, practice and procedure in the said Court, and the tariff of costs to be allowed to solicitors and counsel therein; and the fees in the said rules of the Supreme Court of the North-West Territories prescribed to be taken by clerks and sheriffs in actions over \$200 shall be the fees to be taken by clerks and sheriffs in proceedings in the court until so repealed or altered.

CLERKS AND OTHER OFFICERS.

25. The clerks, acting clerks and deputy clerks of the Supreme Court of the North-West Territories in the several judicial districts, shall be and they are hereby appointed clerks, acting clerks and deputy clerks respectively of the court for such judicial districts respectively as they were before the passing of this Act appointed to as clerks, acting clerks and deputy clerks respectively of the said Supreme Court of the North-West Territories, during pleasure; and they shall perform in relation to the court hereby constituted all the functions and duties required by any law, order or regulation to be performed by the clerks, acting clerks and deputy clerks respectively of the court.

Clerks and other officers

OTHER OFFICERS.

26. All other officers and functionaries of the Supreme Court of the North-West Territories residing in the province shall be and they are hereby appointed during pleasure to be similar officers and functionaries of the court with the same duties and powers as they respectively exercised and enjoyed under any law, order or regulation with relation to the said Supreme Court of the North-West Territories.

Other officers

27. The Lieutenant Governor in Council may appoint a registrar of the court and such other officers, clerks and

Appointment of officers

assistants as the business of the court may from time to time require, and may designate such officers, clerks and assistants by appropriate names, specify their duties and fix their remuneration.

Officers may administer oaths, etc.

28. Any officer of the court shall, for the purposes of any proceedings directed by the court to be taken before him, have full power to administer oaths, to take affidavits, to receive affirmations, and to examine witnesses and parties as the court may direct.

SITTINGS OF COURT.

Sittings of court

29. The court shall hold its sittings and the judges thereof shall sit in chambers at such times and places as the Lieutenant Governor in Council from time to time by order appoints: Provided that a judge may hold a special sittings of court or chambers at such time and place as he may direct.

COURT EN BANC.

Court en banc

30. The court shall sit *en banc* at such times and places as the Lieutenant Governor in Council by order from time to time appoints, and three judges shall constitute a quorum.

Chief Justice to preside

31. The Chief Justice of the court when sitting shall preside over the court *en banc*, and in his absence the senior judge sitting shall preside.

Jurisdiction

32. The court sitting *en banc* shall have all the jurisdiction and powers possessed by the Supreme Court of the North-West Territories *en banc* immediately prior to the coming into force of this Act and shall have jurisdiction and power subject to the provisions of the rules of court to hear and determine all applications for new trials, all questions or issues of law, all questions of points in civil or criminal cases reserved for the opinion of the court, all appeals or motions in the nature of appeals respecting any judgment, order or decision of any judge of the Supreme Court (provided that the same shall not have been made as the judgment or decision of the court *en banc*) or respecting any judgment, order or decision of any judge of a court of inferior jurisdiction where an appeal is given by any other Act and all other petitions, motions, matters or things whatsoever which might lawfully be brought before any Divisional Court of the Supreme Court of Justice or the Court of Appeal in England.

Judge of first instance not to sit in court *en banc* reviewing his verdict or decision.

33. Subject to the provisions of the next following section, on any motion, application or proceeding before the court *en banc*, the judge by or before whom the verdict then in question was rendered, or by whom the judgment, order or decision, then being appealed against or reviewed, was rendered

or pronounced at a previous proceeding in the same cause or matter, or by whom the cause or matter then being reheard was determined, shall not sit as one of the judges composing the court, unless it shall be determined by any three of the judges that, on account of there being a vacancy in the court, or of a judge being disqualified from sitting through interest in the matter in question or being in ill health, or of other exceptional circumstances, or of it being impossible to otherwise constitute the court, it would be in the interest of justice in a particular instance that the court should be composed of any three judges.

34. Although the provisions of the preceding section and of section 30 shall in general be followed and complied with, yet, in exceptional cases and for special reasons, the court may, upon special order of the court, or of any two judges thereof, on and for the purpose of any rehearing, appeal, application or motion, be composed of two judges only, of whom one may be the judge by or before whom any verdict then in question was rendered, or by or before whom any order or decision then being appealed from or reviewed was rendered or pronounced, or by whom the cause then being reheard was determined.

35. In case after a cause or matter in the court has been heard by three or more judges thereof and stands for judgment, one of the judges by whom the said cause or matter was heard is transferred to the Supreme Court of Canada or to any other Court of Justice, resigns his office, dies or is absent through illness or other cause, the remaining judges may give judgment as if such judge were still a judge of the court and were present and taking part in such judgment, if unanimous in their decision, or if the judgment of such dead or absent judge, if given, could not affect the result.

MISCELLANEOUS.

36. The provisions of *The Judicature Ordinance* and all amendments thereto shall, save where provision is made in this Act to the contrary or in substitution thereof, apply *mutatis mutandis* to the court and to officers thereof, as well with regard to the rules of law according to which law and equity are to be administered in the court as to other matters therein contained:

Provided however that the provisions of the said *Judicature Ordinance* contained in Part III thereof and known as the Small Debt Procedure shall not apply to the court.

37. Sheriffs, deputy sheriffs, gaolers, constables and other peace officers shall aid, assist and obey the court and the judges thereof respectively in the exercise of the jurisdiction conferred by this Act.

Criminal procedure not affected

38. Nothing in this Act shall be deemed to be intended to affect the procedure in criminal matters; or any other matter which by law is not within the cognizance of the Legislature of the province.

Transfer of cases in Supreme Court of North-West Territories

39. The Supreme Court of the North-West Territories shall be superseded within the province by the court established by this Act, and for all purposes affecting or extending to the province the said Supreme Court of the North-West Territories is abolished, but nevertheless all causes, matters and things except those to which the Small Debt Procedure of *The Judicature Ordinance* applies pending in the Supreme Court of the North-West Territories in the province and all proceedings taken therein, and all writs of summons or of execution and all other writs and process issued out of the Supreme Court of the North-West Territories prior to the coming into force of this Act as well as all moneys paid into the said Supreme Court of the North-West Territories in any such cause, action or matter are transferred to and shall be deemed and taken to be causes, matters and things pending proceedings taken and writs and process issued in and out of the court by this Act established, and may be treated and carried on and final process thereon may be issued as if such causes, matters, things, proceedings and process had been commenced or issued respectively in or out of the court hereby established and the said moneys as transferred shall be deemed and taken to be moneys in the court hereby established in the cause, action or matter respectively in which they have been paid into the said Supreme Court of the North-West Territories:

Provided however that notwithstanding anything in this Act contained the scale of costs and fees under *The Judicature Ordinance* shall govern in respect to cases pending in the Supreme Court of the North-West Territories at the date of the coming into force of this Act and continued as in this section provided in the court hereby established.

Act to come into force on proclamation

40. This Act shall come into force upon proclamation.