

# NORTHERN TERRITORY SUPREME COURT.

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**No. 11 of 1961.**

An Act to create a Supreme Court of the Northern Territory of Australia, in place of the Supreme Court previously established.

[Assented to 5th May, 1961.]

**BE** it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

## PART I.—PRELIMINARY.

Short title.

**1.** This Act may be cited as the *Northern Territory Supreme Court Act 1961*.

2. This Act shall come into operation on a date to be fixed by Proclamation. Commencement.

3. This Act is divided into Parts, as follows:— Parts.

Part I.—Preliminary (Sections 1–5).

Part II.—Constitution and Jurisdiction of the Supreme Court (Sections 6–18).

Part III.—Concurrent Administration of Law and Equity (Sections 19–28).

Part IV.—Registries, Seals and Officers (Sections 29–33).

Part V.—General Matters of Procedure (Sections 34–45).

Part VI.—Appeals (Sections 46–48).

Part VII.—Miscellaneous (Sections 49–55).

4.—(1.) Notwithstanding section eighteen of the *Northern Territory (Administration) Act 1910–1959*, the Supreme Court of the Northern Territory as established by law immediately before the commencement of this Act is abolished. Provisions with respect to the former Supreme Court.

(2.) Subject to the Rules of Court and to any directions given by a Judge with respect to matters of practice and procedure—

(a) all proceedings in the former Supreme Court, whether civil or criminal (including proceedings by way of appeal) that were pending or uncompleted at the commencement of this Act may be continued and completed in the Supreme Court as if they had been instituted in that Court; and

(b) where, in relation to a judgment of a court given or pronounced before the commencement of this Act, an appeal lay, at the commencement of this Act, to the former Supreme Court (whether or not subject to conditions as to leave to appeal or other conditions), a like appeal, subject to the like conditions, if any, lies to the Supreme Court, and for that purpose the Supreme Court may exercise any power or jurisdiction that belonged to the former Supreme Court.

(3.) All judgments of the former Supreme Court subsisting at the commencement of this Act continue in force, and this Act and all other laws in force in the Territory apply in relation to them as if they were judgments of the Supreme Court.

(4.) The provisions with respect to appeals to the High Court that were contained in section twenty-one of the *Supreme Court Ordinance 1911–1954* of the Territory continue, by force of this Act, to apply in relation to any judgment that was pronounced or made before the commencement of this Act.

(5.) Where any Act or Ordinance that was in force immediately before the commencement of this Act contained a reference to the former Supreme Court (including that Court under its previous name of the Supreme Court of North Australia), or an expression that included a reference to that Court, that reference or expression shall, from the commencement of this Act, be read as a reference to the Supreme Court, or as including a reference to the Supreme Court, as the case may be.

## Definitions.

5. In this Act, unless the contrary intention appears—

- “additional Judge” means a Judge appointed under sub-section (2.) of section seven of this Act;
- “affidavit” includes, in relation to a person who conscientiously objects to taking an oath, a solemn affirmation or declaration in writing;
- “cause” includes a suit or criminal proceedings;
- “defendant” includes a person against whom relief is sought in a matter or who is required to attend the proceedings in a matter as a party to the proceedings;
- “Judge” or “Judge of the Supreme Court” means the Judge appointed under sub-section (1.) of section seven of this Act or an additional Judge and, in the expressions “the Supreme Court or a Judge”, “the Court or a Judge” and “the Court or Judge”, means a Judge sitting in Chambers;
- “judgment” includes a decree, order, conviction or sentence, and a refusal to make a decree or order;
- “matter” includes any proceeding in the Supreme Court, whether between parties or not, and also any incidental proceeding in a cause or other proceeding;
- “Ordinance” means an Ordinance in force under the *Northern Territory (Administration) Act 1910–1959*;
- “plaintiff” includes a person seeking relief against another person by any form of proceeding in the Court;
- “practice and procedure” includes matters relating to costs, the method of pleading, the attendance of witnesses, the custody or bail of accused or convicted persons and the enforcement and execution of judgments;
- “suit” includes an action or original proceeding between parties of a civil nature;
- “the Court” means the Supreme Court;
- “the former Supreme Court” means the Supreme Court of the Northern Territory as established by law immediately before the commencement of this Act;
- “the Judicature Act” means The Supreme Court of Judicature Act, 1873 of the United Kingdom;

- “ the Master ” means the Master of the Supreme Court, and includes a Deputy Master of the Supreme Court;
- “ the senior Judge ” means the Judge appointed under sub-section (1.) of section seven of this Act or, if that Judge is, by reason of absence or for any other reason, unable to discharge the duties of his office or there is no Judge holding office by virtue of appointment under that sub-section, the senior additional Judge who is available for the discharge of duties under this Act;
- “ the Sheriff ” means the Sheriff of the Territory, and includes a Deputy Sheriff of the Territory;
- “ the Supreme Court ” means the Supreme Court of the Northern Territory of Australia, as constituted by this Act;
- “ the Territory ” means the Northern Territory of Australia.

#### PART II.—CONSTITUTION AND JURISDICTION OF THE SUPREME COURT.

6.—(1.) There shall be a superior court of record to be known as the Supreme Court of the Northern Territory of Australia. Establishment of Supreme Court.

(2.) The Court shall consist of the Judge or Judges for the time being holding office by virtue of appointment under the next succeeding section.

7.—(1.) The Governor-General may, by commission issued in pursuance of this sub-section, appoint a person who is or has been a practising barrister or solicitor of the High Court or of the Supreme Court of a State of not less than five years' standing to be a Judge of the Supreme Court. Appointment of Judge and additional Judges.

(2.) The Governor-General may, by commission issued in pursuance of this sub-section, appoint a person who, or persons each of whom, is a Judge of another court created by the Parliament to be a Judge or Judges of the Supreme Court.

(3.) The Judges appointed under the last preceding sub-section have seniority as Judges of the Supreme Court according to the dates of their commissions.

8. A person may be a Judge of the Supreme Court notwithstanding that he is also a Judge of another court created by the Parliament, or is also the holder of a judicial office in relation to a Territory of the Commonwealth other than the Northern Territory of Australia, by virtue of an appointment made either before or after his appointment as a Judge of the Supreme Court. Holding of other judicial offices.

Salaries and  
travelling  
expenses.

9.—(1.) The Judge appointed under sub-section (1.) of section seven of this Act shall receive a salary at the rate of Seven thousand pounds a year and that salary shall be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

(2.) An additional Judge shall be remunerated with the salary that he receives as a Judge of the other court, or other courts, of which he is a Judge.

(3.) A Judge of the Supreme Court shall be paid in respect of his expenses in travelling to discharge the duties of his office such sums as the Governor-General determines.

Oath of  
allegiance  
and office by  
Judge.

10. A Judge shall, before proceeding to discharge the duties of his office, take before the Governor-General, or before some person appointed by the Attorney-General in that behalf, an oath or affirmation in accordance with the form in the Schedule to this Act.

Principal seat  
of the Supreme  
Court.

11. The principal seat of the Supreme Court shall be at Darwin, in the Territory.

Sittings of the  
Supreme Court.

12.—(1.) The Supreme Court may sit at Darwin and Alice Springs, in the Territory, and at such other places in the Commonwealth, whether in the Territory or not, as are from time to time appointed by the Attorney-General by notice published in the *Government Gazette* of the Territory.

(2.) The jurisdiction of the Supreme Court exercisable by the Judge sitting in Chambers may be so exercised at any place in the Commonwealth and at any time.

(3.) Subject to this section, the times of the sittings of the Supreme Court at any place shall be fixed from time to time by the senior Judge by notice published in the *Government Gazette* of the Territory.

Exercise of  
jurisdiction

13.—(1.) The jurisdiction of the Supreme Court is exercisable by one Judge, sitting in Court, or, as provided by the next succeeding section, sitting in Chambers.

(2.) The senior Judge may, from time to time, make arrangements as to which Judge is to exercise the jurisdiction of the Court.

(3.) The Court constituted by one Judge may sit and exercise the jurisdiction of the Court notwithstanding that the Court constituted by another Judge is at the same time sitting and exercising the jurisdiction of the Court.

(4.) The exercise of the jurisdiction of the Court by a Judge is not invalidated and shall not be called in question on the ground that it is not in accordance with arrangements made in pursuance of this section.

14.—(1.) The jurisdiction of the Supreme Court may be exercised by a Judge sitting in Chambers— Jurisdiction  
in Chambers.

- (a) in matters in which jurisdiction is, by this Act, expressed to be exercisable by a Judge;
- (b) as provided by Rules of Court or by any Act, Ordinance or other law in force in the Territory; and
- (c) in all matters of practice and procedure.

(2.) A Judge may order a matter that is brought before him in Chambers to be adjourned into Court and heard in open court.

15.—(1.) The Supreme Court—

- (a) has, subject to this and any other Act and to any Ordinance, in relation to the Territory, the same original jurisdiction, both civil and criminal, as the Supreme Court of South Australia had in relation to the State of South Australia immediately before the first day of January, One thousand nine hundred and eleven; Jurisdiction of  
Supreme Court.
- (b) has such jurisdiction, whether civil or criminal, as is from time to time vested in or conferred on the Supreme Court by Act or by Ordinance (including an Act or Ordinance passed or made before the commencement of this Act, as affected by sub-section (5.) of section four of this Act);
- (c) has jurisdiction in matters in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth, being matters arising in, or under the laws in force in, the Territory; and
- (d) has jurisdiction, with such exceptions and subject to such conditions as are provided by Act or by Ordinance, to hear and determine appeals from all judgments of inferior courts in the Territory given or pronounced after the commencement of this Act.

(2.) The jurisdiction of the Supreme Court of South Australia referred to in paragraph (a) of the last preceding sub-section includes jurisdiction that that Court had as federal jurisdiction.

(3.) The jurisdiction of the Supreme Court referred to in sub-section (1.) of this section is in addition to the jurisdiction that the Court has under any Imperial Act.

16. Where, by a law of the State of South Australia that is continued in force in the Territory as a law of the Territory, a power or function is vested in or conferred on the Supreme Court of South Australia, or in or on a Judge of that Court, that power or function is, in relation to the Territory, vested in or conferred on the Supreme Court or a Judge, as the case may be. Powers of  
Judge.

Security of the  
peace and for  
good behaviour

17. The Court or a Judge has authority to hold to security of the peace and for good behaviour in matters arising under the laws in force in the Territory.

Costs.

18.—(1.) The Supreme Court or a Judge has jurisdiction to award costs in all matters brought before the Court, including matters dismissed for want of jurisdiction.

(2.) Subject to Rules of Court and to any law in force in the Territory, the costs of and incidental to all proceedings in the Supreme Court, including the administration of estates and trusts, are in the discretion of the Court or Judge, and the Court or Judge has full power to determine by whom and to what extent the costs are to be paid.

(3.) Nothing in this section affects the practice that would otherwise be followed in any criminal matter or in proceedings on the Crown side of the Court.

### PART III.—CONCURRENT ADMINISTRATION OF LAW AND EQUITY.

Law and equity  
to be  
concurrently  
administered.

19. Subject to the express provisions of any other Act or of an Ordinance, in every civil matter commenced in the Supreme Court, law and equity shall be administered according to the provisions of this Part.

Equities of  
plaintiff.

20. If a plaintiff claims to be entitled to an equitable estate or right, or to relief on an equitable ground against a deed, instrument or contract, or against a right, title or claim asserted by any defendant in the matter, or to relief founded upon a legal right that could in England immediately before the commencement of the Judicature Act only have been given by a Court of Equity, the Supreme Court shall give to the plaintiff the same relief as ought then to have been given by the English Court of Chancery in a suit or proceeding for the like purpose properly instituted.

Equities of  
defendant.

21. If a defendant claims to be entitled to an equitable estate or right, or to relief on an equitable ground against a deed, instrument or contract, or against a right, title or claim asserted by a plaintiff in the matter, or alleges a ground of equitable defence to a claim of the plaintiff, the Supreme Court shall give to every equitable estate, right or ground of relief so claimed, and to every equitable defence so alleged, the same effect, by way of defence against the claim of the plaintiff, as the English Court of Chancery ought, immediately before the commencement of the Judicature Act, to have given if the like matters had been relied on by way of defence in a suit or proceeding instituted in that Court for the like purpose.

**22.—(1.)** The Supreme Court has power to grant to a defendant, in respect of an equitable estate or right or other matter of equity, and also in respect of a legal estate, right or title claimed or asserted by him—

Counter claims and third parties.

(a) all such relief against a plaintiff as the defendant has properly claimed by his pleading and as the Court might have granted in a suit instituted for that purpose by that defendant against the same plaintiff; and

(b) all such relief relating to or connected with the original subject of the suit, being relief claimed in like manner against another person, whether already a party to the suit or not, who has been duly served with notice in writing of the claim pursuant to Rules of Court, an Ordinance or an order of the Court, as might properly have been granted against that person if he had been made a defendant to a suit duly instituted by the same defendant for the like purpose.

(2.) A person served with such a notice shall thenceforth be deemed a party to the suit with the same rights in respect of his defence against the claim as if he had been duly sued in the ordinary way by the defendant.

**23.** The Supreme Court shall take notice of all equitable estates, titles and rights, and of all equitable duties and liabilities appearing incidentally in the course of a civil matter, in the manner in which the English Court of Chancery would, immediately before the commencement of the Judicature Act, have taken notice of those matters in a suit or proceeding properly instituted in that Court.

Equities appearing incidentally.

**24.—(1.)** Every matter of equity on which an injunction against the prosecution of any such proceeding, if the proceeding had been a proceeding properly instituted in the English Court of Chancery for the like purpose, might, immediately before the commencement of the Judicature Act, have been obtained, whether unconditionally or on any terms or conditions, may be relied on by way of defence.

Defence or stay instead of injunction or prohibition.

(2.) Notwithstanding the last preceding sub-section—

(a) nothing in this Part disables the Court, if it thinks fit so to do, from directing a stay of proceedings in a matter pending before it; and

(b) a person, whether a party or not to a proceeding in the Supreme Court, who—

(i) if the proceeding had been a proceeding properly instituted in the English Court of Chancery for the like purpose, would, immediately before the commencement of



the Judicature Act, have been entitled to apply to a court to restrain the prosecution of the proceeding; or

- (ii) may be entitled to enforce, by attachment or otherwise, a judgment in contravention of which the proceeding, or any part of the proceeding, has been taken,

may apply to the Court, by motion in a summary way, for a stay of proceedings, either generally, or so far as is necessary for the purposes of justice, and the Court shall thereupon make such order as is just.

Common law and statutory rights and duties.

25. Subject to the provisions of this Part for giving effect to equitable rights and other matters of equity, the Supreme Court shall give effect to all legal claims and demands, and to all estates, titles, rights, duties, obligations and liabilities, existing under the law in force in the Territory, including common law and custom.

Determination of matter completely and finally.

26. The Supreme Court, in the exercise of its jurisdiction, shall, in every matter pending before the Court, grant, either absolutely or on such terms and conditions as the Court thinks just, all remedies to which any of the parties appears to be entitled in respect of a legal or equitable claim properly brought forward by him in the matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined and all multiplicity of legal proceedings concerning any of those matters avoided.

Rules of equity to prevail.

27. In questions relating to the custody and education of infants and generally in all matters not particularly mentioned in this Part in which there was formerly or is a conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

Mandamus, injunctions and receivers.

28.—(1.) The Supreme Court may grant a mandamus or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the Court to be just or convenient so to do.

(2.) Such an order may be made either unconditionally or on such terms and conditions as the Court thinks just.

(3.) If, whether before, at or after the hearing of a matter, an application is made for an injunction to prevent a threatened or apprehended waste or trespass, the injunction may be granted, if the Court thinks fit, whether the person against whom the injunction is sought is or is not in possession under a claim of title or otherwise, or (if out of possession) does or does not

claim a right to do the act sought to be restrained under a colour of title, and whether the estate claimed by any of the parties is legal or equitable.

PART IV.—REGISTRIES, SEALS AND OFFICERS.

29.—(1.) There shall be a Registry of the Court at Darwin, Registries.  
in the Territory.

(2.) The Attorney-General may authorize the establishment of additional Registries of the Court at such places in the Territory as he determines.

30.—(1.) The Supreme Court shall have a Seal of the Court Seals and Stamps.  
for sealing writs and other instruments or documents issued out of the Court and required to be sealed.

(2.) There shall be inscribed on the seal the words “The Seal of the Supreme Court of the Northern Territory of Australia”.

(3.) The Seal of the Court shall be kept at such place and in such custody as the senior Judge directs.

(4.) The Court shall also have a stamp or stamps of the Court of a design approved by the senior Judge.

(5.) Each such stamp shall be kept at such place and in such custody as the senior Judge directs.

(6.) A document or a copy of a document marked with a stamp referred to in sub-section (4.) of this section is as valid and effectual as if it had been sealed with the Seal of the Court.

(7.) All Courts (whether exercising federal jurisdiction or not) and all persons acting judicially shall take judicial notice of the Seal of the Court or the mark of a stamp referred to in sub-section (4.) of this section affixed on a document or a copy of a document and, in the absence of proof to the contrary, shall presume that it was affixed by proper authority.

31.—(1.) The Attorney-General may appoint—

- (a) a person to be the Master of the Supreme Court;
- (b) a person or persons to be the Deputy Master or Deputy Masters of the Supreme Court; and
- (c) such other officers of the Court as are necessary.

Appointment of officers.

(2.) Subject to the directions of the Master, a Deputy Master of the Supreme Court has, and may exercise and perform, all the powers and functions of the Master under this or any other Act, an Ordinance or Rules of Court.

(3.) The appointment of a person to be a Deputy Master of the Supreme Court does not affect the exercise or performance of a power or function by the Master.

Powers and  
duties of  
Master.

32.—(1.) The Master has power to administer oaths, and shall perform such duties in respect of proceedings in the Supreme Court as are assigned to him by Act, by Ordinance, by Rules of Court or by a special order of the Court.

(2.) Where, under a law in force in the Territory, a power is exercisable, or a duty is to be performed, or a thing is to be done, by the Chief Clerk, the Clerk, the Master or a Registrar or other officer of a court, other than a Sheriff, it may, in relation to proceedings in the Supreme Court, be exercised, performed or done by the Master.

Sheriff.

33.—(1.) It is the duty of the Sheriff—

- (a) to serve or execute all writs, summonses, orders, warrants, precepts, process and commands of the Supreme Court that are directed to him, and to make such return of them to the Court, together with the manner of their execution, as he is required by them; and
- (b) to take, receive and detain all persons who are committed to his custody by the Court, and to discharge all such persons when directed so to do by the Court or by any law in force in the Territory.

(2.) When the Sheriff is a party to a cause in the Supreme Court, all writs, summonses, orders, warrants, precepts, process and commands in the cause that should in the ordinary course be directed to him shall be directed to such disinterested person as the Court or a Judge appoints, and the person so appointed may execute and return them.

#### PART V.—GENERAL MATTERS OF PROCEDURE.

Rules of  
Court.

34. Except as provided by this Act or by any other law in force in the Territory, the practice and procedure of the Supreme Court shall be as provided by Rules of Court.

Practice and  
procedure in  
matters not  
provided for.

35. Where no provision in relation to a matter of practice and procedure of the Supreme Court is contained in this Act or in any other law in force in the Territory, that matter shall, unless the Court or a Judge otherwise directs, be governed, as nearly as may be, by the practice and procedure of the Supreme Court of South Australia in similar matters.

Evidence  
by affidavit.

36.—(1.) On the hearing of any matter, not being the trial of a cause, evidence may be given by affidavit or orally as the Supreme Court or a Judge directs.

(2.) At the trial of a cause, evidence may be given by affidavit of the service of any document incidental to the proceedings in the cause or of the signature of a party to the cause, or of his solicitor, to such a document.

(3.) The Supreme Court or a Judge may, at any time, for sufficient reason, order that a particular fact in issue in a cause may be proved by affidavit at the trial, or that the affidavit of a person may be read at the trial of a cause, on such conditions in either case as are just.

(4.) An order under the last preceding sub-section shall not be made if any party to the cause desires in good faith that the person making the affidavit shall attend at the trial for cross examination.

37. Except as otherwise provided by this Act or by any other law in force in the Territory, or unless in any suit the parties agree to the contrary, testimony at the trial of causes shall be given orally in open Court.

Manner of giving testimony at trial of causes.

38. A party in a cause or matter may appear before the Supreme Court either personally or by a barrister or solicitor having the right to practise in the Court.

Appearance by barrister or solicitor.

39. The Supreme Court or a Judge may, in a suit or other civil matter pending in the Court, and at any stage of the proceedings—

Orders and commissions for examination of witnesses.

- (a) order the examination of a person upon oath, orally or on interrogatories, before the Court or a Judge or before an officer of the Court or other person, and at any place within the Commonwealth;
- (b) order a commission or letters of request to be issued to take evidence;
- (c) by the same or a subsequent order, give any necessary directions touching the time, place and manner of the examination or taking of evidence; and
- (d) empower a party to the matter to give in evidence in the matter the testimony so taken on such terms (if any) as the Court or Judge directs.

40.—(1.) When there are several defendants in a suit pending in the Supreme Court, if any defendant is not served with process and does not voluntarily appear, the Court may nevertheless entertain the suit and proceed to hear and determine it between the parties who are properly before the Court, but the judgment given in the suit does not conclude or prejudice other parties who are not regularly served with process and do not voluntarily submit to the jurisdiction of the Court.

Non-appearance or absence of some defendants.

(2.) When, in a suit in which the Supreme Court has jurisdiction, any defendant is not a resident of, or found within, the Commonwealth, and does not voluntarily appear in the suit, the Court may nevertheless proceed to exercise its jurisdiction after such notice to the defendant and upon such terms as are prescribed by Rules of Court.

Amendment of defect in proceedings.

41. The Supreme Court or a Judge may at any time, and on such terms as it or he thinks just, amend a defect or error in any proceedings in the Court, and all necessary amendments shall be made for the purpose of determining the real questions in controversy or otherwise depending on the proceedings.

Formal defects to be amended.

42.—(1.) A proceeding in the Supreme Court shall not be invalidated by a formal defect or by an irregularity, unless the Court is of opinion that substantial injustice has been caused and that the injustice cannot be remedied by an order of the Court.

(2.) The Court or a Judge may make an order declaring that any proceeding is valid notwithstanding any defect or irregularity.

Matter heard at one place may be further dealt with at another place.

43. When a matter has been heard at a sitting of the Supreme Court held at one place, the Court may pronounce judgment or give further hearing or consideration to the matter at a sitting of the Court held at another place, being a place at which the Court is empowered to sit.

Change of venue.

44. The Supreme Court or a Judge may, at any stage of a civil matter pending in the Court, direct that the trial be had or continued at a place specified in the order, being a place at which the Court is empowered to sit, subject to such conditions (if any) as the Court or Judge imposes.

Date of process.

45. All writs and process issued from the Supreme Court shall be dated as of the day on which they are issued.

#### PART VI.—APPEALS.

Appeals from Supreme Court in civil cases.

46.—(1.) The High Court has jurisdiction to hear and determine appeals from every judgment (whether final or interlocutory) of the Supreme Court in a civil matter which—

- (a) is given or pronounced for, or in respect of, a sum or matter at issue amounting to or of the value of One thousand five hundred pounds;
- (b) involves directly or indirectly a claim, demand or question to or respecting property, or a civil right, amounting to or of the value of One thousand five hundred pounds;
- (c) affects the status of a person under the laws relating to aliens, marriage or divorce; or
- (d) is one with respect to which the High Court thinks fit to give special leave to appeal.

(2.) Except as provided by the next two succeeding subsections, it is not necessary to obtain the leave of the Supreme Court or a Judge to appeal to the High Court in a civil matter.

(3.) An appeal does not lie to the High Court from an interlocutory judgment, except by leave of the Supreme Court or a Judge or of the High Court.

(4.) An appeal does not lie to the High Court from a decision of the Supreme Court or a Judge with respect to costs which are in its or his discretion, except by leave of the Supreme Court or a Judge or of the High Court.

(5.) An appeal does not lie from a judgment given by consent.

47.—(1.) A person convicted on indictment before the Supreme Court may appeal to the High Court—

Appeal from  
Supreme Court  
in criminal  
cases.

- (a) against his conviction on any ground of appeal that involves a question of law alone;
- (b) with the leave of the Supreme Court or a Judge, on any ground of appeal that involves a question of fact alone or a question of mixed law and fact;
- (c) with the leave of the High Court, on any ground of appeal mentioned in the last preceding paragraph, or on any other ground that appears to the High Court to be a sufficient ground of appeal; and
- (d) with the leave of the High Court, against the sentence passed on his conviction, unless the sentence is one fixed by law,

and the High Court has jurisdiction to hear and determine the appeal.

(2.) An appeal lies to the High Court against any judgment of the Supreme Court in a criminal matter with respect to which the High Court thinks fit to give special leave to appeal.

(3.) On an appeal against a sentence, the High Court, if it is of opinion that some other sentence, whether more or less severe, is warranted in law and should have been passed, shall quash the sentence and pass that other sentence in substitution for the sentence so quashed, and in any other case shall dismiss the appeal.

(4.) Where an appellant has, upon a trial with a jury, been convicted of an offence, and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the High Court that the jury must have been satisfied of facts which proved him guilty of that other offence, the High Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

Saving of  
other Acts.

48. Nothing in this Part applies to the exclusion of any provision contained in any other Act for or with respect to appeals to the High Court.

PART VII.—MISCELLANEOUS.

Application  
of laws of  
Territory.

49. Subject to the express provisions of this Act or of any other law of the Commonwealth, the laws that are in force in the Territory from time to time by virtue of the *Northern Territory Acceptance Act 1910–1952* and the *Northern Territory (Administration) Act 1910–1959* (including the laws relating to juries and evidence) apply, so far as they are capable of application, to and in relation to the exercise in any matter of the jurisdiction vested in or conferred on the Supreme Court by this Act or by any other law, and the power conferred on the Legislative Council for the Territory by the *Northern Territory (Administration) Act 1910–1959* to make Ordinances for the peace, order and good government of the Territory shall be construed as including provision to make Ordinances so applying.

Exercise of  
jurisdiction  
under other  
Acts.

50. In relation to any jurisdiction vested in or conferred on the Court by an Act other than this Act (whether passed before or after the commencement of this Act), the provisions of this Act are subject to the provisions made by or under that Act or any other Act with respect to the exercise of that jurisdiction.

Indictable  
offences.

51.—(1.) The trial on indictment, in the Supreme Court, of an offence against a law of the Commonwealth committed within the Territory shall be held at Darwin or Alice Springs, in the Territory.

(2.) An indictable offence triable before the Supreme Court shall be prosecuted by indictment in the name of the Attorney-General or of a person appointed by the Attorney-General in that behalf.

(3.) An indictment may be filed without examination or commitment for trial of the accused person.

(4.) Upon an indictment being filed without examination or commitment for trial, the Supreme Court or a Judge may—

(a) cause a summons to be issued to the accused person to appear at the time and place specified in the summons and there to answer the charge specified in the indictment; or

(b) issue a warrant for the arrest of the accused person and hold him in custody or admit him to bail.

(5.) Where a person has been committed for trial upon a charge for an indictable offence triable before the Supreme Court, the indictment against the person may, subject to the next succeeding sub-section, include, either in substitution for, or in

addition to, a count charging the offence for which he was committed, any other count.

(6.) The last preceding sub-section does not authorize the inclusion of more than one count in the same indictment unless those counts are such as may lawfully be joined in the one indictment.

(7.) Where a person is under commitment upon a charge for an indictable offence triable before the Supreme Court, the Attorney-General, or a person appointed by the Attorney-General in that behalf, may decline to proceed further in the prosecution and, if the accused person is in custody, may, by warrant under his hand, direct the discharge of the accused person from custody, and the accused person shall be discharged accordingly.

52. Except as provided in any law in force in the Territory, a judgment debt carries interest at the rate of Five pounds per centum per annum, or at such other rate as is fixed by Rules of Court, from the date as of which the judgment is entered.

Interest on judgments.

53. When, in a matter pending in the Supreme Court, a receiver or manager appointed by the Court is in possession of any property, the receiver or manager shall manage and deal with the property according to the requirements of the laws of the State or part of the Commonwealth in which the property is situated, in the manner in which the owner or possessor of the property would be bound to do if in possession of the property.

Duty of receiver and manager.

54. A receiver or manager appointed by the Supreme Court in respect of any property may, without the previous leave of the Court, be sued in respect of any act or transaction of his in carrying on the business connected with the property.

Liability and protection of receivers and managers.

55.—(1.) The senior Judge may make Rules of Court, not inconsistent with this or any other Act or any Ordinance, for regulating and prescribing the practice and procedure to be followed in the Supreme Court (including the practice and procedure to be followed in the offices of the Court) and for regulating and prescribing all matters and things incidental to or relating to any such practice and procedure, or necessary or convenient to be prescribed for the conduct of any business of the Supreme Court.

Rules of court.

(2.) In particular, the Rules of Court may provide—

(a) for the service and execution of the process of the Court, including the manner in which and the extent to which the process of the Court may be served out of the jurisdiction of the Court;

(b) for the service and execution in the Territory of the process of any foreign Court;



- (c) for the issue by the Supreme Court of letters of request for the service in any foreign country of any process of the Supreme Court;
- (d) for regulating any matters relating to the costs of proceedings in the Court; and
- (e) for regulating the means by which particular facts may be proved and the mode in which evidence of particular facts may be given in any proceedings, or on any application in connexion with, or at any stage of, any proceedings.

(3.) All Rules of Court made in pursuance of this section shall come into operation on the day on which they are made or on a later date fixed by or under the rules.

(4.) Notice of the making of Rules of Court in pursuance of this section shall be published in the *Government Gazette* of the Territory, and copies of them shall be forwarded to the Attorney-General within fourteen days after they are made.

(5.) The Attorney-General may, by notification in the *Government Gazette* of the Territory, disallow any Rule of Court, and thereupon the Rule so disallowed ceases to have effect.

(6.) The Rules of Court that were in force under the *Supreme Court Ordinance* 1911-1961 of the Territory immediately before the commencement of this Act continue in force, *mutatis mutandis*, and subject to any directions of the Court or a Judge in a particular case, as if made under this Act, but may be amended or repealed by Rules of Court made under this Act.

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## THE SCHEDULE.

Section 10.

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### OATH.

I, \_\_\_\_\_, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of Judge of the Supreme Court of the Northern Territory of Australia and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will:

So HELP ME GOD!

### AFFIRMATION.

I, \_\_\_\_\_, do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of Judge of the Supreme Court of the Northern Territory of Australia and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.