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**WORKING PAPER ON A BILL TO ALTER THE CIVIL
JURISDICTION OF THE DISTRICT COURT OF
QUEENSLAND**

DISTRICT COURT JURISDICTION

Working Paper 29

Queensland Law Reform Commission
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**QUEENSLAND
LAW REFORM COMMISSION
CONFIDENTIAL**

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THE CIVIL JURISDICTION OF THE
DISTRICT COURT OF QUEENSLAND**

Q.L.R.C. W.P. 29

PREFACE

The Law Reform Commission has been functioning since 1st March, 1969, and is constituted by the Law Reform Commission Act 1968 - 1984.

MEMBERS:-

The Honourable Mr. Justice B.H. McPherson, Chairman,
The Honourable Mr. Justice G.N. Williams,
Mr. F.J. Gaffy, Q.C., Full Time Member,
Mr. R.E. Cooper, Q.C.,
Sir John Rowell,
Mr. J.R. Nosworthy.

STAFF:-

Mr. K.J. Dwyer, Principal Legal Officer,
Mr. P.M. McDermott, Senior Legal Officer,
Mr. L.A.J. Howard, Secretary.

The office of the Commission is situated at the Central Courts Building, 179 North Quay, Brisbane.

The short citation for this Working Paper is Q.L.R.C. W.P. 29.

LAW REFORM COMMISSION

**WORKING PAPER ON A BILL TO ALTER
THE CIVIL JURISDICTION OF THE
DISTRICT COURT OF QUEENSLAND**

The third programme of the Law Reform Commission of Queensland as approved by the Governor in Council in September, 1983 has as its tenth item an examination of the desirability of adjusting the limits of jurisdiction between the Supreme and District Courts including the equitable jurisdiction which should be vested in the District Court and the limitations, if any, that should be imposed therein.

This working paper contains a commentary with recommendations for amending legislation relative to certain aspects of the jurisdiction of District Courts.

The working paper is being circulated to persons and bodies known to be interested in this subject from whom comment and criticism are invited. It is circulated on a confidential basis and recipients are reminded that any recommendations for the reform of the law must have the approval of the Governor in Council before being laid before Parliament. No inferences should be drawn as to any Government policy.

It is requested that any observations you may desire to make be forwarded to the Secretary, Law Reform Commission, P.O. Box 312, North Quay, Qld., 4000 so as to be received no later than 1st August, 1985.

(Sgd. B.H. McPherson)

The Hon. Mr. Justice B.H.
McPherson,
Chairman.

DISTRICT COURTS' CIVIL JURISDICTION

1. Reference on District Courts, civil jurisdiction

On 6th December 1984 the Honourable the Minister for Justice and Attorney-General, Mr N.J. Harper M.L.A., wrote to the Chairman of the Commission as follows:-

"In the third programme of the Queensland Law Reform Commission, the Commission was requested to examine the desirability of adjusting the limits of jurisdiction between the Supreme and District Courts including the equitable jurisdiction which should be vested in the District Courts and, if so, what limitations, if any, should be imposed thereon.

The Honourable the Chief Justice has now written to me following a meeting of the Judges of the Supreme Court suggesting that the personal injury jurisdiction of the District Court of Queensland should be increased to \$150,000.00 but that the general civil jurisdiction should remain at the current level of \$40,000.00.

In view of the previous reference of this subject to the Queensland Law Reform Commission I would be pleased if you could advise me of any views which the Commission might hold in relation to the suggestion of the Chief Justice."

After receipt of this letter the matter was again considered at a meeting of the Judges of the Supreme Court in December, 1984. After further discussion at that meeting those present expressed themselves in favour of conferring on District Courts in Queensland a jurisdiction that was: (a) unlimited in amount as regards personal injury actions; and (b) extended to \$50,000 in the case of other actions.

In view of this development, as well as the terms of the original reference in the Commission's programme, the Commission considered it appropriate to review the civil jurisdiction of the District Courts not only as regards the monetary limits of that jurisdiction but also in terms of the present and potential subjects or heads of such jurisdiction.

In order to state our views and recommendations, we commence

with an account of the origins of District Courts in Queensland, and of the purpose that the civil jurisdiction of those Courts is designed to serve in the administration of justice in this State.

2. Origins of District Courts civil jurisdiction.

Shortly before Separation the New South Wales legislature in 1858 enacted legislation (22 Vict.c. 18) establishing District Courts in New South Wales. The Act was in force when Queensland became a separate colony in 1859. It therefore formed part of the law of Queensland and appears in Pring's Statutes of Queensland: 1 Pring 496 (1861). In 1867 the application to Queensland of the New South Wales legislation was ended when the Queensland Parliament enacted a new District Courts Act (31 Vict.no. 30) in 1867.

Both of the early colonial enactments were based upon the English County Court Act 1846. The object of that statute was twofold. It was designed to decentralize the administration of justice in England and Wales by creating courts sitting regularly in all the counties; and also to provide a summary and less expensive form of procedure for determining cases involving small amounts of money. At that time the courts of common law sat exclusively at Westminster, with the consequence that it was necessary for all civil cases to be heard in London. The only exception of any importance was the practice by which single judges heard civil cases at nisi prius on circuit if time permitted after disposing of the hearing of criminal matters on the assize list. With immaterial exceptions, at that time equitable jurisdiction was exercised exclusively by the Court of Chancery in London. Much the same state of affairs prevailed in the case of the Court of Probate and the Court of Admiralty. None of this equitable

probate or admiralty jurisdiction was conferred on the county courts at the time of their establishment.

Hence in creating county courts no attempt was made in the Act of 1846 to combine and vest in those courts fragments of each of the jurisdictions of all the courts (such as Chancery, Probate and Admiralty) in London by which the whole body of law was separately administered. All that was given to the county courts was a portion of the jurisdiction exercised by the courts of common law. The jurisdiction so conferred was limited to personal actions, i.e. essentially actions in contract and tort, where the debt or damages claimed did not exceed 20. Even to this there were certain exceptions including, for example, ejectment, libel, and breach of promise. The county courts were invested with no equitable jurisdiction of any kind.

The establishment of the county courts encountered some opposition from the legal profession, who feared a reduction in the amounts of civil litigation at nisi prius: see Radcliffe & Cross: The English Legal System, 4th ed., at p. 282; but the courts were an immediate and lasting success. Within the first five years of their existence the yearly average of cases tried by them was 433,000 compared with 100,000 tried by the common law courts in the years before 1846 (ibid.). As a result, county court jurisdiction was steadily extended. In 1850 it was increased from 20 to 50 , and there was added a power to hear cases involving larger amounts if the parties consented. Over the ensuing century there have been continual accretions to the jurisdiction of the county courts in England, including the addition after the Judicature Act of a jurisdiction in equity, probate and admiralty cases. Radcliffe and Cross (op.cit.)

summarize what they describe as the most important ordinary jurisdiction of the county courts under the County Courts Act 1959 as follows:-

- (1) Actions founded on contract or tort.
- (2) Actions for recovery of land.
- (3) An equity jurisdiction in cases of administration, foreclosure, specific performance and rectification.
- (4) Admiralty jurisdiction in certain cases.
- (5) A probate jurisdiction in the case of small estates.

In addition, there is a vast array of other powers and jurisdictions conferred by particular statutes, as well as an extensive criminal jurisdiction. The result is, as Professor Plucknett remarks (A Concise History of the Common Law, 5th ed., at pp.208-209), that in England the county courts are at the present moment ... the most important courts in the country for the ordinary run of business." A new County Courts Act 1984 has recently been passed in England that confirms and again extends the civil jurisdiction of the county courts.

3. Development of District Courts civil jurisdiction in Queensland

The foregoing historical discursus with respect to the development of jurisdiction of the county courts in England is necessary in order to understand both the origins and purpose of District Courts in Queensland, and also the extent to which, in matters of jurisdiction, the Queensland District Courts have lagged behind the English county courts as well as their counterparts in other Australian States. The latter have generally taken the English legislation as a model but in several instances have gone well beyond it.

The failure to develop the jurisdiction of the District Courts in Queensland is at least in part due to the fact that

in 1921 the District Courts were, for reasons never fully explained or justified, abolished: see The Supreme Court Act of 1921, s.3.

However in 1958 District Courts were re-created and established with both civil and criminal jurisdiction by The District Court Act of 1958. That Act was, after various amendments, repealed and replaced in 1967 by The District Courts Act of 1967.

It may justifiably be said that, without District Courts, the administration of civil and criminal justice in Queensland would almost certainly have broken down during the last 25 years. However, a comparison of the extent of the present civil jurisdiction of those courts with that conferred by the original District Courts Act of 1867 shows that, in terms of subject matter, it has not developed much beyond what was originally conferred on those courts in 1867. The District Courts Act of 1867 invested the District Courts in Queensland with civil jurisdiction in the following matters:-

- (1) personal actions in which the amount claimed was 200 : s.42;
- (2) the whole or part of the unliquidated balance of a partnership account, the amount claimed being limited to 200 : s.43;
- (3) the amount or part of the amount of the distributive share under an intestacy or of any legacy under a will, the amount claimed being limited to 200 : s.43;
- (4) actions for recovery of possession by landlord against tenant where the tenancy had been determined : s.35, or half a year's annual rent amounting to 200 was unpaid : s.37;
- (5) any actions that might have been brought in the Supreme Court, where both parties to the action agree by memorandum signed by them or their attorneys that the District Court should have jurisdiction to try such action : s.44.

4. Present civil jurisdiction

Apart from repeated increases over the years in the jurisdictional amount involved (now set at \$40,000) there has since 1867 been very little addition to the general civil jurisdiction, in terms of subject matter, of the District Courts. As regards (1) above, jurisdiction is still confined primarily to personal actions (meaning essentially actions in contract and tort): see s.66 of the Act of 1967. Section 66 continues to preserve the limitation imposed by s.42 excluding the jurisdiction of the Court to try questions (a) of title to land, or (b) the validity of dispositions under a will or trust. Items (2) and (3), concerning shares in partnerships, intestacies and legacies, continue to appear in s.67 of the current Act in the same form as in s.43 of the Act of 1867. The consent jurisdiction in (5) above is perpetuated in s.73 of the Act of 1967, as in ss.88 and 90 is the power to entertain actions for recovery of possession conferred by ss.35 and 37.

As regards the latter, s.88 confers jurisdiction in what is commonly called ejectment; that is, in actions by a landlord against his tenant, or someone claiming through the latter, to recover possession of premises where the tenant's lease has expired or been brought to an end. Section 90 continues the special jurisdiction in actions to recover possession of premises where half a year's rent is in arrear and the annual rent does not exceed \$5,000. There is no monetary limit to the jurisdiction conferred by s.88, but if a claim for rent or mesne profits is joined, as it may be under s.89, the amount of the claim is restricted to the general monetary limit imposed by s.66 of the Act.

The effect of the Judicature Act of 1876 was to combine the administration in the Supreme Court of both law and equity. In the District Courts only a slight concession to this development has been made. Section 68 of the District Court Act of 1967 now confers jurisdiction in respect of "an equitable claim or demand" to recover a sum of money. It is not altogether easy to say what this comprehends; but a sum of money, against the forfeiture of which equity could relieve, may be an example. Another example may be damages under Lord Cairns's Act. Section 69 adds an express jurisdiction to grant specific performance and rectification "and all other powers and authorities of the Supreme Court in its equitable jurisdiction". By itself the latter expression is very wide, but it is confined by s.69 to "the purposes of the last preceding section" (that is to say, s.68) and also "for the purpose of applying the doctrine of part performance". The form of expression chosen is not a happy one. Meagher, Gummow & Lehane: Equity Doctrines and Remedies, 2nd ed. at p. 62, describe these provisions as "curious" and "eccentric". Their precise scope and extent are certainly not clear.

A specific jurisdiction in actions for replevin is conferred by s.72. Replevin is the remedy for a wrongful distress for rent or rates, which was abolished by the Property Law Act, 1974-1981, s.103. The jurisdiction is thus now quite obsolete and s.72 should therefore be repealed. We do not recommend any amendment to the consent jurisdiction provisions in s.73, although in practice very little use is made of this facility.

5. Comparison with civil jurisdiction elsewhere and proposals for reform.

Apart from Queensland, there are in all the Australian States courts that correspond in status, structure and function to the District Courts in Queensland. In Victoria they are called County Courts; in South Australia they are called Local Courts. In New South Wales and Western Australia they are District Courts. There is some variation in the nature of the jurisdictional subject matter vested in such courts, and also in the monetary limits imposed on the exercise of that jurisdiction. There is however also a considerable measure of common ground. It is proposed to examine first the subjects of jurisdiction possessed by the various district/county courts in England and Australia before considering the varying amounts of the monetary limits imposed.

(a) Personal actions: cl.67(1)(a).

In England and in the Australian States all district/county courts have jurisdiction in personal actions subject to an express monetary limit or limits in amount, and also subject, in some cases, to the exclusion of questions of title to land.

The expression "personal actions" is a technical legal one used to distinguish what were known as real actions and mixed actions at common law. Prima facie it refers to actions in contract and tort: see Wylie: Queensland District Courts, p. 120. Indeed, the description used in England is "any action founded on contract or tort" : see County Courts Act 1984 (Eng. 1984), s.15(1). In Australia the common form of description is "personal actions" : Qld. 1967, s.66(1); Victoria County Court Act 1958 (Vic. 1958), s.37; District Court of Western Australia Act 1969 (W.A. 1969), s.50(1)(a). South Australia also uses the expression "personal actions": S.A. 1926, s.31(1).

In New South Wales the expression used is "personal action at law".

Despite the circumstance that "personal actions" has a technical legal meaning, it has in practice given rise to remarkably few difficulties of interpretation. There is a lengthy and readily accessible list of what are and have been held to be personal actions in 1 Halsbury, 3rd ed., pp.24-33; cf. 37 Halsbury, 4th ed., para. 85. We recommend its retention in preference to the expression "action founded in contract or tort" current in s.15(1) of Eng. 1984. However we consider that the following subjects should be expressly included as "personal actions":-

- (i) equitable claims or demands for recovery of money or damages, whether liquidated or unliquidated (now covered by s.68 of Qld. 1967);
- (ii) claims for detention of goods;
- (iii) claims for rent or mesne profits (now covered by Qld. 1967, s.89 and probably also s.66(1) of that Act);
- (iv) claims for debt, damages, or compensation arising under a statute;

These particular heads of jurisdiction require some further explanation.

Equitable claims: cl. 67(1)(a)(i). We propose the inclusion of (i) equitable claims and demands primarily because they are already within the jurisdiction expressly conferred by s.68 of Qld. 1967. Since "personal actions" refers to personal actions at law it prima facie excludes claims that have an equitable source or foundation. Despite a degree of uncertainty about their scope, we consider it undesirable to remove an existing express head of jurisdiction.

Claims for detention of goods: cl. 67(1)(a)(ii). There may be a doubt whether an action in detinue seeking specific

restitution of goods is, historically, a personal or a real action. Probably for this reason it is included by express provision in s.44(2) of N.S.W. 1973. Elsewhere we propose that the District Courts be given the power under the Common Law Practice Act 1867 to order specific restitution of chattels.

Claims for rent and mesne profits: cl. 67(1)(a)(iii). At present these are expressly included by Qld. 1967, s.89, at least where joined to a claim for recovery of possession under s.88. Such claims are in any event probably also within the "personal action" jurisdiction in s.66(1). We consider that this should be made specific by express provision.

Claims for debt or damages under statute: cl. 67(1)(a)(iv). The "personal action" jurisdiction under s.66(1) is wide enough to comprehend claims of this kind. However, in England the county courts have long had an express jurisdiction "for the recovery of a sum recoverable by virtue of any enactment for the time being in force" subject to an exception where such sums are recoverable only in the High Court of England and Wales: Eng. 1984, s.16. The jurisdiction extends, for example, to claims for rates and other levies owing to local authorities, and, in the form in which we propose it, would extend to claims for damages or compensation for breach of statutory duty.

(b) Equitable jurisdiction.

As has been pointed out, one of the weaknesses of the present jurisdictional provisions of the Act of 1967 is its failure to take account of the "fusion" of law and equity effected by the Judicature Act. Unlike their counterparts elsewhere the Queensland District Courts have, apart from the somewhat inscrutable provisions of ss.68 and 69, no equitable jurisdiction. We can

see no justification for maintaining such a state of affairs. Rules of equity have now lost much of their mystique together with much of the difficulty that was once thought to surround them. Appointments to the bench of the District Court must be made from barristers of at least five years' standing: s.9. In practice it is the rule for such appointees to have had considerably more than five years' experience much of it in the Supreme Court, where equitable rules simply form part of the general law applied to the determination of all cases. Having regard to the extensive equitable jurisdiction enjoyed by county and district courts elsewhere, we consider that District Courts in Queensland should now be invested with corresponding equitable powers and jurisdiction. In all cases, where relevant, the general monetary jurisdictional limit will continue to apply.

Foreclosure and redemption proceedings: cl. 67(1)(b).

In England, New South Wales, Victoria and South Australia, the county, district or local courts all enjoy a jurisdiction with respect to mortgages and similar forms of security. In England the jurisdiction is conferred in "proceedings for foreclosure or redemption of any mortgage, or for enforcing any charge or lien ..." In South Australia s.259(1)(iii) of the Local and District Courts Act (S.A. 1926) confers jurisdiction in identical terms, as does s.134(1)(a) of the New South Wales Act of 1973. A similar jurisdiction is conferred by s.41(c) of the Victorian County Courts Act 1958.

We recommend the adoption of this provision in Queensland. Foreclosure and redemption actions as such are not common in practice. Usually what the mortgagee or other secured creditor requires is delivery or possession of the mortgaged property

for the purpose of sale. We consider that it should be made clear in the provision itself that the District Courts have such jurisdiction.

In Victoria the jurisdiction under this provision is confined by reference to the amount of the mortgage. In the other jurisdictions it is limited by reference to the amount owing (which may be considerably less) under the mortgage. The latter form is preferable.

Fraud or mistake: cl. 67(1)(c). In England, New South Wales and South Australia there is an express jurisdiction to entertain proceedings for relief against fraud or mistake: Eng. 1984, s.23(g); N.S.W. 1973, s.134(1)(d); and S.A. 1926, s.259(1)(vi). This head would no doubt extend to the recognition of and giving effect to rescission for fraud or mistake, including setting aside a deed procured by misrepresentation: Stephenson v. Garnett [1898] 1 Q.B. 677.

We recommend that this subject of jurisdiction be adopted in Queensland, subject to the monetary limit.

Specific performance and rectification: cl. 67(1)(a),(e). The Act of 1967 confers no power on District Courts in Queensland to grant specific performance or rectification, although, as mentioned earlier, there is a limited power under s.69 of Qld. 1967 to grant "notional" specific performance for the purpose of the doctrine of part performance.

Elsewhere, but subject to monetary limits, there is an extensive jurisdiction to order specific performance or restitution. In England the jurisdiction is given in proceedings "for the specific performance, or for the rectification, delivery up or cancellation, of any agreement for the sale, purchase or

lease of any property ...": Eng. 1984, s.23(a). South Australia is similar: S.A. 1926, s.259(1)(v). Substantially Victoria is also the same: Vic. 1958 s.41(a), and so is New South Wales: see N.S.W. 1973, s.134(1)(b). Western Australia added a similar jurisdiction in 1969: see W.A. 1981, s.50(1)(bb), which nowever is not confined, as is the case in the other jurisdictions mentioned, to sales or leases.

Our view is that a jurisdiction of this kind should be adopted in Queensland, and that it should follow the form of s.50(1)(bb) of the W.A. Act of 1969 (as amended). We also consider it prudent to provide expressly that the Court should have power to award damages in lieu of or in addition to specific performance.

Partnership: cl. 67(1)(f). Section 67 of the Act of 1967 confers jurisdiction in actions brought to recover a sum "which is the whole or part of the unliquidated balance of a partnership account". There are similar provisions in N.S.W. 1973, s.44(1)(b) and W.A. 1969, s.50(1)(b). This represents a repetition of the original form of the jurisdiction conferred by s.43 of the Qld. Act of 1867. It is very limited in effect and does not authorise an order declaring a partnership to be dissolved or perhaps even the taking of a partnership account. It has been held to be available only where the partnership is at a close: Birkbeck v. Crowley (1925) 42 W.N. (N.S.W.) 86, ex p. Lawry (1868) 7 S.C.R. (N.S.W.) 183. In Western Australia s.50(1)(b) was expressed in similar terms. However, in 1981 the W.A. provision was amended by adding the words "including in any such action jurisdiction powers and authority relating to declaration of partnership or dissolution of partnership".

In England jurisdiction was conferred in s.52(1)(f) of

the 1959 Act and again in s.23(r) of the 1984 Act in proceedings "for the dissolution or winding up of any partnership (whether or not the existence of the partnership is in dispute), where the whole assets of the partnership do not exceed" the county court limit; cf. also S.A. 1926, s.259(1)(iv). In Victoria s.41 confers jurisdiction "in all actions whether for declaration of partnership or dissolution thereof or otherwise relating to any partnership", where the "whole property" does not exceed the monetary limit.

There is, we think, a need to extend the jurisdiction of the Queensland District Court in regard to partnership proceedings. The assets of many such partnerships are small, and the expense of Supreme Court proceedings is not warranted in such cases. We recommend the adoption of a combination of the English and Victorian formulae for conferring jurisdiction.

Partition: cl. 67(1)(g). Partition proceedings no longer exist as such. Their place is taken by applications by co-owners under s.38 of the Property Law Act 1974 for the appointment of trustees to sell land and divide the proceeds of sale. Section 41 of that Act confers on the District Court an express jurisdiction in respect of chattels but not in respect of land.

In South Australia jurisdiction is conferred by S.A. 1926, s.259(1)(vii) in the case of actions for partition of land, subject to the monetary limit.

There are few, if any, defences to such proceedings, which are of an uncomplicated nature. We therefore recommend that, subject to the monetary limit, District Courts be given the jurisdiction of the Supreme Court under s.38 of the Property Law Act.

Administration of estates: cl. 67(1)(h). The present jurisdiction conferred by Qld. 1967 s.67 is confined to actions in which what is sought to be recovered is the amount or part of the amount of the distributive share under an intestacy or a legacy under a will. This means in effect that the estate must be completely administered or the legatee absolutely entitled before the jurisdiction arises. Where there are continuing duties requiring the active intervention of the executor or trustee, the District Court has no jurisdiction: see Stanton v. Donaldson (1946) 63 W.N. (N.S.W.) 192. This remains the form in Western Australia: W.A. 1969, s.51(ba).

The corresponding jurisdiction has been considerably enlarged elsewhere. In England it now extends to "proceedings for the administration of the estate of a deceased person",, where the amount or value of the estate does not exceed the county court limit. In Victoria s.41(a) of Vic. 1958 is differently expressed but includes all actions for administration, which is in substance the same as in England. South Australia is similar to Victoria: S.A. 1926, s.259(1)(i); but New South Wales follows the English model: N.S.W. 1973, s.134(1)(f).

We recommend the adoption of the form of provision in New South Wales and England. Administration actions are sometimes not without complexity; but we consider this factor to be more than outweighed by considerations of cost-savings in the case of smaller estates if such proceedings are permitted in the District Court.

Trusts: cl. 67(1)(i). At present there is no jurisdiction in the District Court to deal with matters involving trusts. In England the county court is given jurisdiction in proceedings:-

- (i) for the execution of any trust;
- (ii) for a declaration that a trust subsists; or
- (iii) under section 1 of the Variation of Trusts Act

(Eng. 1984, s.23(b). Victoria 1958 s.41(b) confines the jurisdiction to the execution of trusts, but in s.41(e) adds all proceedings under the Trustee Act except s.70. Even allowing for the monetary limit on jurisdiction, this is very wide. There is also a further addition in Vic. 1958 s.44 enabling a trustee to pay into court. New South Wales 1973 s.134(1)(e) confines the jurisdiction to "the execution of a trust or a declaration that a trust subsists." In South Australia the jurisdiction is confined to the execution of trusts.

We do not favour the extension to the District Court of a jurisdiction as extensive as that conferred in Victoria by Vic. 1958, s.41(e). Such matters are at present determined for the most part in Supreme Court Chambers in a relatively inexpensive manner. The Queensland Trust Act 1973-1981 is a fairly radical piece of legislation and until some of its novel features become better known and understood we consider that the powers it confers should not be extended to the District Court. On the other hand, we recommend that the District Courts in Queensland be given jurisdiction co-extensive with that conferred in New South Wales; that is, in respect of execution of trusts and declarations that a trust subsists.

Infants: cl. 67(1)(j). At present the District Court has no general jurisdiction in respect of children or "infants". The Supreme Court has the general or inherent supervisory jurisdiction deriving from the powers of the Lord Chancellor as parens patriae. In practice this is now largely confined

to what were formerly called "illegitimate" children. This is because most of the child custody disputes arise out of matrimonial causes in respect of which the jurisdiction of the Federal Family Court is made exclusive by the Family Law Act.

In England (where there is also a specialized Family Division of the High Court) the jurisdiction of the county court is limited to proceedings for the maintenance or advancement of minors subject to the county court monetary limit: s.23(e). However in Victoria county courts are in addition given jurisdiction in relation to the "appointment of a guardian to the property or person of infants" subject to the monetary limit. Vic. 1958, s.41(f).

Most applications for custody in the Supreme Court are made by persons with few resources. Most of them are legally aided, and many of those that are not are often made by grandparents, who generally are themselves not well off financially. The principles applied to the determination of such applications are governed entirely by reference to the interests of the child, and are well known and well settled. The court functions simply as a fact finding tribunal. In these circumstances the interests of all concerned are best served by enabling such disputes to be determined in a less expensive manner in the District Courts, which are in any event locally more accessible to litigants in non-metropolitan areas throughout the State.

We therefore recommend that the District Court be given jurisdiction in guardianship and custody proceedings in the case of infants, as well as their maintenance and advancement. We do not see the need to impose the monetary limit in this instance. There must be few "illegitimate" children with property

that is likely to exceed the monetary limit.

Testator's family maintenance: cl. 67(1)(k). Only in England (Eng. 1984, s.25) and in New South Wales is the county or district court given jurisdiction in applications for what are commonly called testator's family maintenance, i.e., for an order that provision be made out of the estate of the testator for the benefit of a dependent relative or relatives: see Old. Succession Act 1981-1983, ss.40-43 (family provision).

It is perhaps surprising that the conferment of this form of jurisdiction has not been more widespread. Perhaps it has something to do with the accident that the provision conferring jurisdiction in the English County Courts legislation appears in a separate section and may have been passed over unnoticed by those who used that source as their legislative model.

In any event, there is no doubt that, as in the case of the last matter discussed (infants), the principles upon which the court acts in making orders under such provisions are well settled, and that the function of the trial judge in most of such cases is to act simply as a fact-finding tribunal. There is therefore no doubt of the competence of District Court to act in this role. It may be expected that the conferment of this jurisdiction will effect some savings in costs in cases of the smaller kind, of which there is a considerable number.

In England the jurisdiction is made to depend on the amount or value of the testator's estate. In New South Wales the monetary limit is applied to the amount of the provision ordered: see N.S.W. 1973, s.134(2). We consider that the adoption of the latter course is preferable. The amount or value of the estate is largely irrelevant if the amount of the provision sought

by the applicant is small.

Construction of deed, will or written instrument: cl. 67(1)(n). Only South Australia has conferred jurisdiction in this area. The jurisdiction is obviously based on the analogy provided by the Supreme Court jurisdiction under Qlu. O.64, r.1A. Confined within the monetary limit, we consider that this jurisdiction would prove most useful in cases of the smaller kind, which at present must be heard in the Supreme Court.

We recommend the adoption as a head of jurisdiction of a provision along the lines of S.A. 1926, s.259(1)(ix).

Injunctions, declarations and associated relief: cl. 67(1)(m); cl. 67(2)(a),(b). The Queensland District Courts have no jurisdiction to grant injunctions. This is almost certainly a direct consequence of the strict common law origins of those courts in the nineteenth century. In England, New South Wales, Victoria and South Australia the equivalent courts are each given a power to grant injunctions: see Eng. 1984, s.22; N.S.W. 1973, s.46; Vict. 1958 s.41(h); and S.A. 1926, s.259(1)(vii).

In England the power conferred is to grant an injunction or declaration "in respect of, or relating to, any land, or the possession occupation or use of any land": s.22(1); but there is a monetary limit calculated by reference to the annual rating value of the land. This roughly corresponds to a special jurisdiction in New South Wales enabling the District Court to grant a "temporary" injunction to restrain (a) a threatened or apprehended trespass or nuisance, or (b) the breach of a negative stipulation in a contract the consideration for which does not exceed \$5,000 (in 1973). By N.S.W. 1973, s.140(2)

the injunction is to continue in force for only 14 days, or longer if the court is satisfied that additional time is required to enable proceedings to be commenced or heard in the Supreme Court: s.140(3). A temporary injunction ceases once the Supreme Court grants relief in relation to the same matter.

Apart from this special jurisdiction the legislation in New South Wales and the other two Australian jurisdictions mentioned confers jurisdiction to grant injunctions but only in relation to proceedings otherwise within the jurisdiction of the court. Both the Victorian and South Australian provisions include a power to stay proceedings to recover a debt where administration of an estate is proceeding in the court.

We consider that this form of injunction jurisdiction should be conferred on District Courts in Queensland; that is, in relation to actions otherwise within the jurisdiction of those Courts: cf. N.S.W. 1973, s.46. There should be added a power to make declarations and also to stay proceedings and to appoint receivers in matters otherwise falling within jurisdiction. The justification for conferring a power to make declarations is twofold. There is no good reason for withholding a power to make a declaration in appropriate cases, where the court otherwise has power to grant relief such as judgment for an injunction or damages. Furthermore, if the power to make a declaration is not granted it becomes an easy matter to evade the jurisdictional limitations by seeking a declaration so as to bring the matter within the jurisdiction of the Supreme Court.

It is perhaps another question whether the special injunction jurisdiction allowed in England and New South Wales (and also recently recommended by the Civil Justice Committee in Victoria)

should be adopted in Queensland. The argument against such adoption no doubt is that the primary means of enforcing obedience to such injunctions is by attachment of the person; that is, by imprisonment, which involves the liberty of the subject. On the other hand, there is a pressing need to provide a less expensive tribunal than the Supreme Court for cases of noise nuisance and persistent trespasses between adjoining owners in the suburban residential environment.

We therefore recommend that District Courts in Queensland also be given a separate jurisdiction to grant injunctions (or damages in lieu thereof) along the lines of s.46 of the N.S.W. Act of 1973, although without limiting the power to temporary injunctions only. There should be a monetary limitation related to the value of the land alleged to be affected. The application of this limit is discussed at length hereafter. It is designed to include many average residential allotments but not a great deal more. According to the success or otherwise of the experiment the amount in question can be increased or reduced in the future.

(c) Recovery of possession of land: cl. 67(1)(1).

All the legislation constituting county or district courts confers jurisdiction in actions by landlords to recover possession of premises from tenants whose leases have been determined or have expired. As already noted, in Queensland this provision appears in s.88 of the 1967 Act. In that form there is no monetary limit to the jurisdiction. That is also true of the summary jurisdiction provisions in Division 5 of Part VIII of the Property Law Act 1974-1981, which confer jurisdiction in ejectment on the magistrates court. The Supreme Court has, of course, a concurrent jurisdiction that is sometimes invoked at the last

moment by the tenant in an effort to stave off the inevitable: cf. Boyd v. Halstead, ex p. Halstead (Qld. Sup. Ct. 12th November 1984 unrep.)

To date this concurrence of jurisdiction does not seem to have been a source of any real difficulty. No doubt this is because the landlord of particularly valuable premises is likely in any event to commence proceedings claiming summary judgment in the Supreme Court. We therefore see no compelling reason for altering the present state of affairs. However s.88 of Qld 1967 in its original form limited the jurisdiction by excluding "land which is not land to which Part III of the Landlord and Tenants Acts, 1948 to 1961 applies". Those Acts were repealed by the Termination of Tenancies Act in 1970. In 1976 s.88 of the District Court Act 1967 was amended by omitting the words quoted and substituting a reference to Division 5 of Part VIII of the Property Law Act. It is that Division that confers summary ejection jurisdiction on the magistrates court, and as we have seen that jurisdiction is unlimited. The amendment thus had the accidental effect of removing this head of District Court jurisdiction altogether. However, this state of affairs was corrected by a further amendment (Act 53 of 1976) which deleted the words in question and so created a jurisdiction that is unlimited.

Section 89 (which deals with the recovery of rents and mesne profits) may also be repealed consequent upon the placement, as earlier recommended, of an equivalent provision in the proposed new s.67 under the heading personal actions.

The other jurisdictional provision concerning the recovery of land is s.90. It seems clearly enough to be confined to yearly

tenancies, and is limited to cases in which the rent payable does not exceed \$5,000 p.a. (as amended in 1982). Under s.90 the rent must be in arrears and the landlord must have the right to re-enter for non-payment of it. In that event he may without formal demand or re-entry bring an action in the District Court to recover possession.

It is difficult to know what purpose this particular provision is intended to serve. Section 88 speaks of a tenancy being determined by "demand of possession". The issue and service of a writ of ejectment is a demand for possession and constitutes re-entry by the landlord: Woodfall on Landlord and Tenant, 28th ed., para. 1-1899. The same is certainly true of a plaint claiming recovery of possession by the landlord. In the rare case where there is no right of re-entry for non-payment of rent, s.108 of the Property Law Act is available and confers an independent jurisdiction on the District Court. It is very seldom necessary to invoke it. Section 90 of Qld. 1967 does not appear to have been perpetuated in the more modern legislation of any other jurisdiction and we see no need for it to be continued in Queensland. We recommend its repeal.

The jurisdiction under these provisions of the Act of 1967 is confined to recovery of land held by a tenant from a landlord. There seems to be no compelling reason any longer for so confining it. Actions by proprietors to recover land from trespassers are extremely rare in Queensland because of the prevalence of the Torrens system of registration of land titles. Hereafter we give reasons for recommending the abolition of the present prohibition imposed on the District Court against determining questions of title to land. Having regard to those reasons

and recommendation, there is no logical ground for refusing to extend District Court jurisdiction to all actions for recovery of possession of land, provided they fall within the monetary limit as defined. A similar recommendation has recently been made by the Civil Justice Committee in Victoria in relation to county courts in that State.

In view of this it will follow that ss.88, 89 and 90 of the 1967 Act will be repealed.

6. Limitations on Jurisdiction

There are two principal forms of limitation that are or have in the past been features of the jurisdiction of all the county and district courts considered. One is a monetary limit related to the amount of the claim or value of the property involved. The other is the limitation that removes jurisdiction where a question of title to land arises.

It is convenient to deal with the latter question first.

(a) Title to land. Section 66(2) of Qld. 1967 expressly excludes the jurisdiction of a District Court to try any case in which title to land, or the validity of devise, bequest or limitation under a will or settlement, is in question. There is a proviso to the subsection by which the Court is given power to decide the claim in the action if the question of title arises "incidentally" but the judgment is declared to be no evidence of title between the parties or their privies in other proceedings.

As a matter of history similar provisions have appeared in all the legislation since the English County Courts Act of 1846. It is designed to ensure that only decisions of the Supreme Court should be allowed to affect or disturb titles to land. The same object is apparent in the reference to devises and

limitations under a will or settlement (which may be the source of a title to land).

The limitation in question was, and no doubt still is, of considerable importance in England where there is no universal system of registration of title. Hence in England a judgment of a court of competent jurisdiction may constitute a good "root of title" binding parties and their privies for all time. It is much less important in Australia, where title to land under the Torrens system is determined by reference to the certificate of title of the registered proprietor, which is generally conclusive of the matter subject to the exceptions recognized in s.44 of the Real Property Act, 1861-1981: see ss.34, 44, and 96 of that Act. Even in England the county courts are given jurisdiction by the Land Registration Act 1925 in cases involving registered land.

Occasions for the application of the prohibition in s.66(2) therefore do not often arise in Queensland, particularly as the dispute as to title must be raised bona fide and not merely for the purpose of ousting jurisdiction: O'Brien v. Wilson (1894) 15 L.R. (N.S.W.) 291. On the other hand, it has been held in New South Wales that, once properly raised, a question of title ousts jurisdiction even in an action for recovery of rates: cf. Borough of Granville v. Armstrong (1897) 18 L.R. (N.S.W.) 426. Furthermore, such a question of title is raised where one party claims, and the other denies, that particular land is subject to a lease: Smith v. Patison (1934) 51 W.N. (N.S.W.) 137.

The limitation upon trying questions of title to land remains in New South Wales, where nowever it applies only to land the

value of which is more than \$100,000: see N.S.W. 1973, s.48(2) as amended in 1982. In England the county courts have now also been given jurisdiction in cases in which title to land comes in question subject to monetary limits. No limitation of any or this kind appears in the Victorian, South Australian, or West Australian legislation.

In view of these developments elsewhere we recommend the repeal of s.66(2).

(b) Monetary limitation: cl. 67(2). In all legislation dealing with county and district courts limitations are imposed on the jurisdiction of these courts by reference to a money sum applied to the amount of the claim or the value of property involved. In Queensland there have in the past been two monetary limits - one for personal actions as such and a considerably higher limit for actions "arising out of any accident in which any vehicle is involved." Injury to a person stepping out of a train that had overshot a platform was held in Jones v. Commissioner for Rys. (1969) 31 Q.J.P.R. 119 to involve a "vehicle".

This distinction in the monetary limit between "vehicle" cases and other personal actions was abandoned when the District Courts jurisdiction was increased to \$15,000 in 1976 by the District Courts and Magistrates Courts Jurisdiction Act, 1976, s.5. The distinction was not revived when the jurisdiction was again increased in 1982 to \$40,000 at which level it now remains.

Two questions are raised by the present monetary limit in s.66. One is whether it is sufficient in amount for any purpose. The other is whether the former distinction between personal actions as such and those involving a motor vehicle should be re-introduced, and a higher limit set for such cases.

The general jurisdictional level. The two questions are to a considerable extent interrelated. Whatever view one takes of the second question, it seems clear that the jurisdictional level in the District Court has once again become too low. This may be demonstrated by a comparison of jurisdictional limits for similar courts elsewhere in Australia. In Victoria (where a distinction between personal injury and other claims is maintained) the monetary limit was raised in 1983 to \$100,000 in personal injury actions and \$50,000 in other "personal actions" (hereinafter referred to as the general jurisdiction). In New South Wales the level was raised to \$100,000 in 1982. However, in New South Wales the jurisdiction of the Supreme Court Masters in personal injuries cases is unlimited both as regards liability and quantum. In Western Australia the general jurisdiction limit was raised to \$50,000 in 1981. In that State the legislation also distinguishes between cases in the general jurisdiction (where the limit is now \$50,000) and those in which the claim is for death or personal injury arising out of the use of any motor vehicle: see W.A. 1969, ss.50(2). Since their inception in 1969 the West Australian District Courts have had unlimited jurisdiction in cases falling within s.50(2). In other words, they hear and determine all personal injury claims arising from the use of a motor vehicle irrespective of the quantum of the claim involved. In South Australia the jurisdictional distinction is also made between the two classes of action. In the case of personal injury claims arising from the use of a motor vehicle the limit set in early 1984 was \$60,000 and in other cases \$40,000. We are reliably informed that legislation has been drafted and will soon be enacted increasing these amounts to \$150,000 and \$100,000 respectively.

The result expressed in tabular form is as follows:-

	<u>General</u>	<u>Personal injury</u>
Qld.	\$40,000	\$40,000
N.S.W.	\$100,000	\$100,000
Vic.	\$50,000	\$100,000
S.A.	\$40,000	\$60,000
W.A.	\$50,000	Unlimited

From this it will be seen that overall the Queensland District Courts have the lowest jurisdiction in money terms of any of the courts in question. We consider that there is an unanswerable case for increasing the monetary limit of the general jurisdiction of the District Court to \$50,000. We would be inclined to recommend a somewhat higher upper limit in the general jurisdiction but for the circumstance that the proposal in this paper also envisage an extension of the general jurisdiction in terms of subject-matter. We consider that some time should be permitted to elapse during which the District Courts acquires experience in handling these new areas of jurisdiction before any further substantial increase in the monetary limit takes place.

Personal injury claims. The monetary limit in the case of personal injury claims raises different considerations. Until the amendment in 1976 the monetary level was higher in the case of personal claims arising out of the use of a motor vehicle than it was in the general jurisdiction. As we have seen this distinction was abandoned in 1976. The reason for taking this step is not clear. In three out of four of the other States considered here the distinction is maintained, the personal injury jurisdictional limit being considerably

nigher than the general jurisdiction limit. In the other State (New South Wales) the Masters have unlimited jurisdiction.

We consider that the distinction should be re-introduced and that the monetary limit of jurisdiction in personal injury claims should be substantially higher than that in the general jurisdiction of the District Courts. The justification for this course is that the principles governing the award or quantum of damages in personal injury cases are now well settled by decisions of courts of the highest authority. There will therefore be no difficulties for District Court judges in adjusting themselves to the higher limit in cases of this kind. As it is, they are at present called upon to assess damages in unlimited amounts in cases of references from the Supreme Court under R.S.C. O.39, r.52(1).

We have toyed with the idea of making the jurisdiction in such cases unlimited, as it is in Western Australia. This has been recommended by the Supreme Court Judges in their most recent resolution on the subject which is referred to at the beginning of this paper. Although we favour this approach in the long term, we consider that until the District Court has settled down to its enlarged jurisdiction in this field, there is some justification for temporarily retaining an upper limit. In our view this upper limit should be set at \$250,000. In practice this will mean that only the most serious personal injury cases, involving for example severe brain damage or quadriplegic and paraplegic consequences, are likely to remain with and be tried by the Supreme Court. At that level one would expect to find that in practice the services of Senior Counsel are engaged.

It is necessary also to say something about the types of claims in which this enlarged jurisdiction will be exercised in the District Courts. So far we have assumed that it will be confined to personal injury actions "arising out of any accident in which a vehicle is involved." This is the formula that was employed in 66(1)(a) of the Act of 1967. In terms it was not confined either to personal injury claims or to claims arising out of automobile accidents. As we have already noted, it includes a claim arising out of a railway accident: see Jones v. Commissioner for Rys. (supra). In Western Australia the term used is "motor vehicle", which is defined to mean "any vehicle propelled by ...any motive power, not being animal power": W.A. 1969, s.50(3). In practice most, but by no means all, cases within the scope of the terms in s.66(1)(a) of the Act of 1967 were personal injury claims arising out of motor vehicle accidents. In terms of issues as to liability, these follow a distressingly uniform pattern and for experienced judges present no difficulties of determination.

There is, however, no logical justification for confining jurisdiction in the case of the \$250,000 limit to accidents involving vehicles. The effect of this would be to exclude personal injury claims resulting from occupier's liability or arising out of industrial accidents. Indeed, it is not uncommon for a motor vehicle to be alleged to be involved in an industrial accident causing personal injury. Disputes then arise between insurers as to their respective obligations to indemnify under separate policies covering motor vehicle and employer's liability. It would be invidious to introduce a distinction that required such questions to be determined in different jurisdictions although

arising out of the same set of facts.

We therefore recommend that in all actions where the damages claimed by the plaintiff consist of or include damages in respect of personal injury (whether fatal or non-fatal) the monetary limit of the jurisdiction of the District Court should be fixed at \$250,000. Substantially this represents an adoption of the criterion in use in Victoria : Vic. 1958, s. 37(1)(a)(i).

(c) The application of the monetary limit.

The apparent justification for imposing monetary limits on the jurisdiction of District Courts is to ensure so far as possible that cases raising more complex issues of fact and law or involving larger amounts continue to be determined by the Supreme Court. Of course, the monetary limit is by no means necessarily a reliable guide to the degree of difficulty involved in a particular case. Some actions for comparatively small amounts may raise legal questions of great complexity, while cases in which only questions of fact arise may involve huge amounts of money. There are however no satisfactory alternatives available, and the setting of jurisdictional limits by reference to monetary levels is and has always been a feature of all legislation of this kind.

Potentially there are three different criteria involved. When the claim is for a liquidated sum in money, such as a debt, the monetary limit can readily be applied by reference to the sum claimed. There are some special provisions, such as those in s.74 governing the splitting of demands, etc. It is not proposed to alter these provisions. Similar considerations apply to claims for unliquidated damages; that is to say, the monetary limit may be applied to the amount claimed by way of

damages.

Difficulties can however arise where the jurisdictional limit is defined by reference not to an amount of money but to the value of property whether it be land or goods. In either of these cases there is potential for argument about the true value of the property involved. It is essential that disputes of this kind should be avoided so that, as far as possible, the funds of the parties that are available for litigation are applied in determining the substantive issues and are not dissipated in what have been described as "arid jurisdictional disputes". In this area certainty is more important than accuracy.

Land. In the enlarged jurisdiction that we propose there are several instances in which the value of the land involved is used as the criterion for jurisdiction. Examples are to be found in paragraphs (d) (specific performance), (l) (recovery of possession of land), and (m) (trespass or nuisance to land). In many jurisdictions it has been sought to solve the problem by adopting as the criterion the annual or rental value of the land. That criterion seems to have been adopted because of its use in England, where however it is the basis for rating assessments. We consider it to be unsuitable for use in Queensland for the reason that, particularly in the case of vacant allotments and ordinary owner-occupied residential allotments, there is seldom any conception of the annual or rental value of the land. Instead we propose that in cases of this kind the criterion adopted should be related to the current valuation made by the Valuer-General's Department. That valuation is, of course, of unimproved value only, but we nevertheless consider that it is the only standard capable of affording a reasonably certain

means of applying a monetary limit where land is concerned. Its overriding advantage is that the Valuer-General's valuation is readily accessible and inexpensive to obtain and prove. See cl. 67(3)(a).

Inquiries made in this field of expertise suggest that the average residential homesite in the Brisbane metropolitan area at present probably falls within a limit fixed at \$25,000 as the unimproved value of the land. Most building units would fall beyond this limit because individual units are not valued separately. Likewise most commercial premises, and rural properties used for agricultural or pastoral purposes would fall outside this limit. These estimates are at best only approximate and the Valuer-General's Department is undertaking a continuing process of revaluation. That process, which in the case of Brisbane is expected to be completed in 1987, will probably place the average homesite beyond the \$25,000 limit. This tends to be confirmed by valuations in areas north of Brisbane where revaluation has already been undertaken.

The adoption of the unimproved value as the yardstick for fixing jurisdiction is open to some obvious criticisms. One is that it bears no necessary direct relationship to the value of the improvements located on the land. Nevertheless it is essential to have some criterion that is readily ascertainable, applicable, and not open to dispute. We therefore recommend the adoption of the general \$50,000 figure as the upper limit of jurisdiction in the case of actions concerning land of the kind specified above. Where there is no applicable Valuer-General valuation, the jurisdiction should be related to unimproved values otherwise ascertained.

A disadvantage that ensues from that proposal is that there will be two criteria of jurisdiction, namely (a) \$250,000 in personal injury cases; (b) \$50,000 in other cases. Whilst regretting the need for this distinction we are confident that it will give rise to no difficulties in practice, and that the advantages to the community resulting from this enlargement of the subject matter of District Court jurisdiction will greatly outweigh any disadvantages.

Goods. The case of goods presents somewhat greater difficulties because there is no ready means of arriving at the value of goods save the market value. However, in practice not much difficulty seems to have been encountered in this context. Probably this is because the value of goods as a jurisdictional criterion is critical only in cases of detinue where what is sought is specific restitution rather than damages in the form of the value of the goods. Hitherto the District Courts have not had power to award specific restitution of chattels under ss.16 and 17 of the Common Law Practice Act 1867; but the effect of our proposals for extending the subjects of jurisdiction of those courts will be to confer such a power: cf. cl. 68(1).

A possible problem is therefore capable of arising in relation to the value of the goods involved in such a claim. Elsewhere, however, it does not appear to in practice have produced difficulties of any magnitude. Perhaps this is because claims for specific restitution of chattels are comparatively rare, and also because such claims often arise out of or are preceded by a transaction, such as a sale, in which the parties themselves have placed a value on the chattel. In New South Wales jurisdiction in such cases is limited where both the chattel itself and damages

are claimed to the aggregate value of both falling within the monetary limit. See N.S.W. 1973, s.44(3). We recommend the adoption of this provision: cf. cl. 67(3)(b).

In Western Australia it is provided that the decision of the District Court on the matter of amount or value for the purpose of jurisdiction shall be "conclusive": W.A. 1969 s.53(2). We also recommend the adoption of this provision in the interests of avoiding time and cost-consuming disputes about value. See cl. 67(4). In all these matters it should be borne in mind that there is ample provision for appeals to the Full Court should a District Court, even if it exceeds its jurisdiction, fall into error in determining an action.

7. Powers of District Courts

The foregoing proposals involve an extension, subject to the monetary limit, to the District Courts of a part of the jurisdiction, both legal and equitable, of the Supreme Court. In order to render that extension of jurisdiction effective it is necessary to ensure that the District Courts also enjoy, and may exercise, all the powers, including powers conferred under The Judicature Act of 1876, of the Supreme Court. The principal purpose of that Act was to enable rules both of law and equity to be administered concurrently in a single proceeding.

We do not consider it necessary to repeat in the amending sections of the District Court Act the particular provisions of The Judicature Act itself. It is sufficient to extend to the District Courts, in the exercise of their extended jurisdiction, all the powers and authorities of the Supreme Court, which necessarily incorporate the powers conferred by The Judicature Act. This is the course that has been followed elsewhere, for

example in Western Australia: see W.A. 1969, s.53(1). We recommend that it be followed in Queensland: cf. cl. 68(1).

Clause 68(1)(c) requires that effect be given to equitable as well as legal matters of defence. The existing District Court Rules refer to equitable defences in terms that recognize the right to rely upon them in proceedings in those Courts. It is nevertheless preferable that express statutory recognition be given to such defences in the Act itself. Clause 68(2) is designed to ensure that, in acting within the jurisdiction otherwise conferred by cl. 67(1), the District Courts will also have power to grant injunctions and other similar relief, such as the appointment of a receiver: cf. N.S.W. 1973, s.46(2). Clause 68(4) is also in a form common to similar legislation in other States.

Clause 68(3) deals with matters of practice and procedure, and is comparable with W.A. 1969, s.52, and N.S.W. 1973, s.46(2d)(c). Because the effect of s.67(1) is to introduce a series of forms of jurisdiction that are new to the District Courts, the existing practice and procedure of those Courts is not expressly designed or equipped for the purpose. Clause 68(3) requires that in such cases the practice and procedure of the Supreme Court shall, so far as practicable, be followed. Some amendment to the District Court Rules will almost certainly also be necessary. One such alteration will be the provision of a form of originating summons similar to that in use in the Supreme Court for initiating matters such as applications for appointment of trustees, family provision, infants' custody orders, etc. At present s.4 of the Act of 1967 defines "action" as a civil proceeding commenced by plaint. There is no form

of originating summons currently in use in the District Courts. In view of this, and in order to ensure that the word "action" appearing in paragraphs (a) to (n) of cl. 67(1) is not read in an unduly narrow sense, that word is by cl. 66 intended to be given an extended meaning so as to include proceedings in any form. An alternative approach would be to re-define "action" in s.4 of the Act. However, any such re-definition will need to be considered in conjunction with appropriate amendments to the Rules. We have not attempted the latter task as we conceive it to be primarily a matter for the Judges of District Courts themselves.

8. Relationship with Supreme Court jurisdiction

The civil jurisdiction, present and proposed, of District Courts in Queensland may be said to be limited both horizontally by monetary limits, and vertically in terms of subject matter. The Supreme Court is a superior court of record with unlimited jurisdiction. As such it has jurisdiction over all justiciable subjects, save where expressly excluded by legislation, as it is, for example, in favour of the Industrial Court in certain instances; or in favour of the Federal Court and the Family Court to the extent that the jurisdiction of those courts is rendered exclusive by Commonwealth enactments. The Full Court of the Supreme Court also acts as the court of appeal in civil matters decided in the District Courts: s.92 of the 1967 Act. Except in relation to District Court proceedings involving very small amounts, it exercises a power to review, vary, and set aside findings of fact and conclusions of law that is as extensive as in the case of appeal from single judges of the Supreme Court. cf. s.93 of the 1967 Act. In addition, by means of prerogative

writs and like processes it has power to control the exercise of jurisdiction of District Courts so as to ensure that those Courts act within the jurisdiction prescribed for them by statute.

The recommendations and proposals contained in this paper will not in any way alter this relationship between the Supreme Court and the District Courts. The boundaries of the civil jurisdiction of the District Courts will be extended, but without diminishing the overriding jurisdiction of the Supreme Court to hear and determine legal proceedings of any kind or amount. The primary sanction against resorting to the Supreme Court in matters falling within the civil jurisdiction of the District Courts is the power of the Supreme Courts: (1) under s.77 of the Act of 1967 to remit such matters to a District Court for trial in that Court; or (2) under R.S.C. O. 91, r. 2 to award costs only according to the District Court scale of costs. The Rule mentioned (O. 91, r. 2) refers only to actions "to recover a debt or damages", and it will be necessary to amend the Rule by omitting these words in order to maintain the sanction of costs on the lower scale in cases where the action might have been brought in the District Court even if it is not one for "debt or damages".

It is naturally not possible to predict with any degree of accuracy the extent to which the number of trials of civil actions in the District Courts will be increased by adoption of these recommendations for enlargement of jurisdiction. An impression, though not necessarily an accurate one, may be gleaned from the figures for proceedings initiated in the Supreme Court and District Courts in Brisbane over the past few years. These are as follows:-

<u>Year</u>		<u>Supreme Court</u>	<u>District Courts</u>
1982	Writs : 6646		4190
	O.S. <u>916</u>	<u>7562</u>	
1983	Writs 5430		4896
	O.S. <u>1015</u>	<u>6445</u>	
1984	Writs 4205		3677
	O.S. <u>964</u>	<u>5169</u>	

Assuming that approximately the same proportions of actions commenced by writs of summons and by originating summons (O.S.) in the Supreme Court proceed to trial as do actions commenced by plaint in the District Court, it would follow that the present ratio of cases tried in Brisbane is approximately 6:4. This compares most unfavourably with the position in England, where by far the greater number of actions are commenced and determined in the county courts. An impression of the position in England can be gained from the following figures extracted from (U.K.) Judicial Statistics : Annual Report for 1982 and 1983 (H.M.S.O. 1982; 1983):-

(a) <u>High Court of England</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>
Queen's Bench	182,620	164,396	179,204
Chancery Division	<u>15,650</u>	<u>17,119</u>	<u>18,340</u>
	<u>198,270</u>	<u>181,515</u>	<u>197,544</u>
(b) <u>County Courts</u> (all matters)	1,849,260	2,048,568	2,117,383

(These figures do not include probate proceedings.)

The ratio of matters commenced in the High Court compared to matters commenced in the county courts in England is approximately 1:10, contrasted with the Supreme Court/District Court ratio mentioned above of 6:4. The English figures refer to proceedings commenced and not matters tried. However, the settlement rates for proceedings in the English High Court and county courts

appear to be approximately the same; that is about 95%.

It is probably true that a higher proportion of District Court cases than Supreme Court cases are instituted outside Brisbane; but there are other balancing factors, such as the fact that (apart from Local Government Court appeals) District Court civil trials tend to be of shorter duration than those in the Supreme Court.

9. Conclusions

The primary functions of the District Court in its civil jurisdiction are (1) to provide a less expensive forum than the Supreme Court for the decision of cases of lesser complexity and amount; and (2) to afford a considerable measure of decentralization in the administration of civil justice throughout the State. The levels and subjects of District Court jurisdiction are such that the District Courts in Queensland are not, in comparison with equivalent courts in England and also elsewhere in Australia, at present able to fulfil that function to best advantage. The increases and extensions of jurisdiction recommended here will bring the Queensland District Courts into line with those courts in other places.

Some obvious advantages are likely to result from adoption of these proposals. For litigants (including those who are legally aided) the costs of litigation will be reduced if a wider range of civil proceedings can be prosecuted in the District Courts. Some savings in costs are particularly likely to follow in motor accident cases, where third party insurers or the nominal defendant are involved, if the recommended ceiling of \$250,000 is adopted in those cases. There will also no doubt be a slight saving in judicial salaries in the appointment of additional

District Court Judges rather than Supreme Court Judges. In addition, the prospect of a more varied and extensive jurisdiction is likely to stimulate interest within the legal profession in accepting appointments to the Bench of the District Courts.

Overall civil justice will be rendered less expensive and more accessible to members of the public throughout Queensland.

BE IT ENACTED ... etc.

1. Short title. This Act may be cited as the District Court Amendment Act 1985.

2. Citation (1) In this Act the District Court Act 1967-1982 is referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the District Court Act 1967-1985.

3. Savings Nothing in this Act affects the jurisdiction of a District Court in respect of any action instituted before the commencement of this Act.

4. Amendment of Principal Act.

The Principal Act is amended by -

(a) omitting sections 66, 67, 68, 69, 72, 88, 89, 90 and subsection (c) of section 75;

(b) substituting the following provisions -

"66. Definition. In this Division "action" includes any proceeding before the Court or a Judge thereof, whether commenced by plaint or application or otherwise.

67. District Courts' civil jurisdiction.

(1) Subject to the provisions of this section, a District Court shall have jurisdiction to hear and determine the following actions -

(a) all personal actions, where the amount, value or damage sought to be recovered does not exceed the monetary limit including -

(i) any equitable claim or demand for recovery of money or damages, whether liquidated or unliquidated;

(ii) any claim for detention of chattels;

(iii) any claim for rent or mesne profits;

(iv) any claim for any debt, damages, compensation

fine or penalty arising under or imposed by any Act; and

- (b) actions for the foreclosure or redemption of a mortgage or encumbrance, or for enforcing, whether by delivery of possession or otherwise, any mortgage, encumbrance, charge or lien, where the amount owing in respect thereof does not exceed the monetary limit;
- (c) actions for relief against fraud or mistake, where the damage sustained or the estate or fund in respect of which relief is sought does not exceed in amount or value the monetary limit;
- (d) actions for specific performance of an agreement for the sale or other disposition of land or an interest in land or of any other property, where the value of the land or interest or property does not exceed the monetary limit; or in lieu of or in addition to specific performance, damages; but not so as to exceed the monetary limit;
- (e) actions for rectifying, delivering up or cancelling any agreement, where the amount in dispute or the value of the property affected does not exceed the monetary limit;
- (f) actions for a declaration of partnership or dissolution or winding up of, or otherwise relating to, any partnership, where the property of the partnership does not exceed in amount or value the monetary limit;
- (g) actions for the appointment of trustees of any property, and for vesting the same in such trustees, pursuant to section 38 of the Property Law Act 1974-1982, where the property does not exceed in amount or value the monetary limit;

- (h) actions for the administration of the estate of a deceased person, where the estate does not exceed in amount or value the monetary limit;
- (i) actions for the execution of a trust or a declaration that a trust subsists, where the estate or fund subject or alleged to be subject to the trust does not exceed in amount or value the monetary limit;
- (j) actions relating to the custody, maintenance or advancement of an infant including the appointment of a guardian to the property or person of an infant;
- (k) actions for family provision pursuant to sections 40-43 of the Succession Act 1981-1983, but so that any provision resulting from an order made by the Court shall not exceed in amount or value the monetary limit;
- (l) actions to recover possession of or for trespass to any land, where the value of the land does not exceed the monetary limit;
- (m) actions to restrain, whether by injunction or otherwise, any actual, threatened or apprehended trespass or nuisance to land, where the value of that land does not exceed the monetary limit; or, in lieu of or in addition to such an injunction, damages; but not so as to exceed the monetary limit;
- (n) actions for the determination of any question of construction arising under a deed, will or other written instrument, and for a declaration of the rights of the persons interested, where the sum or the property in respect of which the declaration is sought does not exceed in amount or value the monetary limit;

- (2) In this section the expression "monetary limit" means -
- (a) in the case of a personal action where the damages claimed by the plaintiff consist of or include damages in respect of personal injury, whether fatal or non-fatal - \$250,000;
 - (b) in all other cases - \$50,000.
- (3) For the purpose of -
- (a) an action falling within paragraphs (d), (l) or (m) of subsection (1), the value of land shall be the most recent valuation, current at the time of instituting the action, made by the Valuer-General under the Valuation of Land Acts, 1944-1981, or, if there is no such valuation in respect of the land, the current market value at that time of the land exclusive of improvements thereto;
 - (b) sub-paragraph (ii) of paragraph (a) of subsection (1) of section 67, the amount claimed in an action for detention of goods is the amount claimed for the value of the goods together with the amount, if any, claimed for damages for the detention of the goods.
- (4) Where any question arises as to the amount or value for the purpose of jurisdiction under this section, the decision of the District Court or Judge thereof shall be conclusive as to that matter.
68. Powers of District Court (1) Subject to this Act and to the Rules, a District Court and any Judge thereof has, for the purposes of exercising the jurisdiction conferred by section

67, all the powers and authorities of the Supreme Court, and any Judge thereof, and may in any action in like manner and to like extent -

- (a) grant such relief or remedy;
- (b) make any order; and
- (c) give effect to every ground of defence whether equitable or legal -

as may and ought to be done in like case by the Supreme Court or any Judge thereof.

(2) Without affecting the generality of subsection (1), a District Court and any Judge thereof shall, in any action in which jurisdiction is conferred by section 67, have power to grant relief -

- (a) by way of a declaration of rights of the parties;
- (b) by way of injunction, whether interim, interlocutory or final, in the action;
- (c) by staying the action or any proceedings in the action;
- (d) by appointing a receiver including an interim receiver.

(3) Subject to this Act and the Rules, the practice and procedure of the Court or a Judge thereof -

- (a) in exercising the jurisdiction conferred by section 67; and
- (b) in enforcing any judgment or order made in the exercise of that jurisdiction -

shall so far as practicable be the same as the practice and procedure of the Supreme Court or a Judge thereof in like matters.

(4) Without affecting the generality of subsection (3), the

appropriate officer of the District Court shall, in addition to any duties otherwise imposed on him, discharge -

- (a) any duty which an officer of the Supreme Court would be required under the practice of the Supreme Court to discharge in the like circumstances; and
- (b) any duty imposed on him by any order of the Court."