

## POOR PERSONS LEGAL ASSISTANCE ACT, 1925.

No. 1689 of 1925.

An Act to make provision for granting legal assistance to poor persons.

[Assented to 10th December, 1925.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Poor Persons Legal Assistance Act, 1925."

Short title.  
Cf. U.K.  
20 & 21  
Geo. 5 c. 32.

2. Every reference in this Act to any rules or rules of court shall include a reference to any rules or rules of court made in substitution for the said rules or rules of court.

Interpreta-  
tion.

3. (1) Any person committed for trial for an indictable offence against the laws of South Australia may at any time before the jury is impanelled for the trial of such offence apply to a judge for the appointment of counsel for his defence.

Legal aid  
for persons  
accused of  
indictable  
offences.  
Cf. U.K.  
3 & 4 Vict.  
c. 90, s. 3  
(part);  
3 Edw. 7  
c. 38;  
20 & 21  
Geo. 5 c. 32.

(2) If—

- (a) the offence for which the person is committed for trial is punishable with death, or is such that in the opinion of the judge the person committed for trial should be defended by counsel; and
- (b) the judge is satisfied that the person committed for trial is without adequate means to retain counsel or summon witnesses,

the judge may order that the accused person be defended by counsel and may assign a counsel or solicitor or both to assist him and may order such sum as the judge deems sufficient to

s. 3. R. v. SCOTT (1926) S.A.S.R. 166. Mere poverty without other grounds is insufficient to justify the assignment of counsel for the defence under s. 3. Difficulty of facts or law may justify the assignment of counsel, but there may be other circumstances also.

be paid by the Sheriff for the purpose of the defence to such persons as the judge directs, and the Sheriff shall pay every such sum accordingly in like manner as he now pays the expenses of witnesses for the prosecution.

No. 38 of  
1876.

(3) Section 373 of the Criminal Law Consolidation Act is hereby repealed.

Suits *in forma  
pauperis* in  
the Supreme  
Court.

4. The right of suing or defending *in forma pauperis* in the Supreme Court pursuant to the Rules of Court, 1913, is hereby extended to any person who proves that he is not worth one hundred pounds, his wearing apparel and the subject-matter of the cause or matter excepted.

Matrimonial  
suits *in forma  
pauperis*.

5. The right of prosecuting a suit *in forma pauperis* pursuant to the Matrimonial Causes Act, 1867, and the rules and regulations in force thereunder is hereby extended to any person who proves that he is not worth one hundred pounds, wearing apparel excepted; and the provisions of the said Act and the rules and regulations thereunder relating to suits *in forma pauperis* shall hereafter apply in respect of persons desirous of defending suits in the same manner as they apply in respect of persons desirous of prosecuting suits.

Power of  
Court to  
order payment  
of witness  
fees and cost  
of evidence  
on commission.

6. (1) Whenever a judge makes an order admitting a person to sue or defend as a pauper in any jurisdiction in the Supreme Court, and assigning a solicitor to assist such person, such judge may by the same or a subsequent order direct the Sheriff to pay to the solicitor assigned to assist such person as aforesaid such sum as the judge deems proper for the following purposes:—

(a) the payment of the fees and expenses of witnesses:

(b) the expenses of or incidental to the taking of evidence on commission.

(2) Any sum ordered to be paid by the Sheriff under this section shall be paid by him in the same manner as he now pays the expenses of witnesses for the prosecution in criminal cases.

(3) Any sum so paid by the Sheriff shall be a first charge on and repayable to the Sheriff in aid of the general revenue

s. 5. The Matrimonial Causes Act, 1867, is repealed by the Matrimonial Causes Act, 1929. The provisions of the Act of 1867 and of s. 5 (*supra*) as to poor persons, are superseded by rules 77 to 83 of Order LXVIII. contained in the Second Schedule to the Matrimonial Causes Act, 1929.

of the State out of any money (including costs) or other real or personal property which is ordered to be paid to or is recovered by the person suing *in forma pauperis* in the proceedings taken by him.

7. The Governor may appoint a practitioner of the Supreme Court to be the Public Solicitor under this Act.

Appointment  
of a Public  
Solicitor.

8. Upon the appointment of a person as Public Solicitor the following provisions shall have effect:—

Functions of  
Public  
Solicitor.

(a) Every case for the opinion of counsel on the question whether a person desirous of taking proceedings *in forma pauperis* in the Supreme Court in any jurisdiction pursuant to any rules or rules of court in force in that behalf has reasonable grounds for proceeding shall be laid before the Public Solicitor:

Cf. U.K.  
23 & 24  
Geo. 5 c. 38,  
s. 2.

(b) Whenever a judge makes an order under any rules or rules of court permitting a person to sue or defend as a pauper, the order shall direct that the case be assigned to the Public Solicitor, and the Public Solicitor shall undertake the conduct of the case:

(c) Whenever a judge makes an order for an accused person to be defended by counsel pursuant to this Act, the order shall direct that the defence be undertaken by the Public Solicitor, and the Public Solicitor shall undertake the conduct of the defence:

(d) Every case under section 360 of the Criminal Law Consolidation Act, 1935, shall be assigned to the Public Solicitor.

9. Nothing in this Act shall affect the powers of the judges or of any of them, to make, alter, or revoke any rules of court relating to proceedings *in forma pauperis*: Provided that nothing in any rules of court so made, altered, or revoked shall be inconsistent with any provision of this Act.

Saving rule-  
making power  
of Judges.

10. The moneys required for the purposes of this Act shall be paid out of moneys provided by Parliament for those purposes.

Financial  
provision.

s. 7. On the 21st day of July, 1937, the office of Public Solicitor was vacant and had been so since 31st August, 1933.

s. 8. (d) The expression "section 360 of the Law Consolidation Act, 1935," substituted for the expression "section 18 of the Criminal Appeals Act, 1924," pursuant to the Acts Republication Act, 1934.