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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No.       , 1923.

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## A BILL

To amend the law with respect to the administration of justice; to provide that the rules of equity shall prevail in the administration of justice; to amend the Jury Act, 1901, and certain other Acts; to facilitate the reciprocal enforcement of judgments and awards in the State of New South Wales, and in the United Kingdom and other parts of His Majesty's Dominions or Territories under His Majesty's protection; and for purposes connected therewith.

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**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

**PART I.**

**PRELIMINARY AND INTERPRETATION.**

**1.** (1) This Act may be cited as the "Administration <sup>Short title.</sup> of Justice Act, 1923."

(2) This Act shall come into operation on a day <sup>Commence-</sup> to be proclaimed by the Governor, and notified in the <sup>ment.</sup> Gazette.

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

**PART I.—PRELIMINARY AND INTERPRETATION.**

**PART II.—JURISDICTION AND LAW.**

**PART III.—DISTRIBUTION OF BUSINESS.**

**PART IV.—TRIAL AND PROCEDURE.**

**PART V.—RECIPROCAL ENFORCEMENT OF JUDGMENTS.**

**PART VI.—MISCELLANEOUS.**

**3.** In the interpretation of this Act and of rules of court made under the authority thereof, unless the context or subject-matter otherwise indicates or requires,—

"Action" means a civil proceeding commenced by writ.

"Cause" includes any suit, action, or other original proceeding between a plaintiff and a defendant.

"Court" means the Supreme Court.

"Defendant" includes respondent.

"Existing" means existing at the commencement of this Act.

"Full Court" means a court constituted of two or more judges sitting in Banco.

"Judge" means judge of the court.

"Judgment"

- “Judgment” includes decree, and, in Part V of this Act, means any judgment or order given or made by a court in any civil proceedings whether before or after the commencement of this Act whereby any sum of money is made payable and includes an award for the payment of any sum of money on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.
- “Judgment creditor” means, in Part V, the person by whom the judgment was obtained and includes the successors and assigns of that person.
- “Judgment debtor” means, in Part V, the person against whom the judgment was given and includes any person against whom the judgment is enforceable in the place where it was given.
- “Matter” includes every proceeding in the court not in a cause.
- “Order” includes rule.
- “Original court,” in relation to any judgment, means, in Part V, the court by which the judgment was given.
- “Party” includes every person served with notice of or attending any proceeding, although not named on the record.
- “Plaintiff” includes applicant or petitioner.
- “Pleading” includes any petition, notice of motion, or summons, and also includes the statements in writing of the claim or demand of any plaintiff and of the defence of any defendant thereto and of the reply of the plaintiff to any counter-claim of a defendant.
- “Registering court,” in relation to any judgment, means, in Part V, the court by which the judgment was registered.

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PART

PART II.

JURISDICTION AND LAW.

4. In every civil cause or matter [in the court] law and equity shall be administered by the court according to the rules following :—

Law and equity to be administered in all suits in Supreme Court. 36 and 37 Vic., c. 66, s. 24.

- (1) If any plaintiff claims to be entitled to an equitable estate or right, or to relief upon an equitable ground against a deed, instrument, or contract, or against a right, title, or claim whatsoever asserted by any defendant in the cause or matter, or to relief founded upon a legal right, which heretofore could only have been given by the court in its equitable jurisdiction, the court and every judge thereof shall give to the plaintiff such and the same relief as ought to have been given by the court in its equitable jurisdiction, in a suit or proceeding for the same, or the like purpose, properly instituted before the commencement of this Act.
- (2) If a defendant claims to be entitled to an equitable estate or right, or to relief upon an equitable ground against a deed, instrument, or contract, or against a right, title, or claim asserted by the plaintiff in the cause or matter, or alleges a ground of equitable defence to a claim of the plaintiff in the cause or matter, the court and every judge thereof shall give to every equitable estate, right or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim, of the plaintiff as the court in its equitable jurisdiction ought to have given if the same or the like matters had been relied on by way of defence in a suit or proceeding instituted in that jurisdiction for the same or the like purpose before the commencement of this Act.
- (3) The court, and every judge thereof, shall also have power to grant to a defendant in respect of

Equitable relief claimed by plaintiff.

Equitable relief claimed by defendant.

Counter-claim and third parties.

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, all such relief against a plaintiff as the defendant shall have properly claimed, and as the court or any judge thereof might have granted in a suit instituted for that purpose by the same defendant against the same plaintiff; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of court, or an order of the court as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to the cause or matter 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.

- (4) The court, and every judge thereof, shall recognise and take notice of all equitable estates, titles and rights and all equitable duties and liabilities appearing incidentally in the course of a cause or matter in the same manner in which the court in its equitable jurisdiction would have recognised and taken notice of the same in a suit or proceeding duly instituted therein before the commencement of this Act. Equitable rights appearing incidentally.
- (5) No cause or proceeding at any time pending in the court shall be restrained by injunction; but every matter of equity on which an injunction against the prosecution of the cause or proceeding might have been obtained if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always that Injunctions restraining proceedings in the court.

that nothing in this Act contained shall disable the court from directing a stay of proceedings in any cause or matter pending before it if it thinks fit; and any person, whether a party or not to the cause or matter, who would have been entitled if this Act had not passed to apply to the court in any jurisdiction to restrain the prosecution thereof, or who may be entitled to enforce by attachment or otherwise a judgment or order, contrary to which all or any part of the proceedings in the cause or matter may have been taken, may apply in a summary way for a stay of proceedings in the cause or matter either generally or so far as may be necessary for the purposes of justice, and the court shall thereupon make such order as is just: Provided also that nothing in this subsection contained shall affect the provisions of the Bankruptcy Act, 1898.

Stay of proceedings.

- (6) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the court and every judge thereof shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations and liabilities existing by the common law or by any custom, or created by any custom, or created by any statute, in the same manner as the same would have been recognised and given effect to if this Act had not passed.
- (7) The court and every judge thereof in every cause or matter [pending in the court] shall have power to grant and shall grant, either absolutely or on such reasonable terms and conditions as may be just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to, in respect of any and every legal or equitable claim properly brought forward by them respectively in the cause or matter: so that, as far as possible, all matters

Legal, &c., rights to be recognised.

Final determination of matters in controversy.

so in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

5. The law to be hereafter administered as to the matters next hereinafter mentioned, shall be as follows:—

- (1) A mandamus or a mandatory order or an injunction may be granted, or a receiver appointed by an interlocutory order [of the court] in all cases in which it appears [to the court] to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as appear [the court thinks] just; and if an injunction is asked, either before or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, the injunction may be granted, whether the person against whom the injunction is sought is, or is not, in possession under a claim or title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.
- (2) In all cases in which the court has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract or agreement, or against the commission or continuance of any wrongful act, or for the specific performance of any contract or agreement, damages may be awarded to the party injured, either in addition to or in substitution for such injunction or specific performance.
- (3) In question relating to the custody and education of infants, the rules of equity shall prevail.
- (4) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and

Rules of law upon certain points.

Mandamus injunctions and receivers. (1901, No. 24, s. 16.)

Power of court to award damages in certain cases. (1901, No. 24, s. 9.)

Custody of infants.

Law and equity.

and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

6. The several rules of law enacted and declared by the last preceding section shall be in force and receive effect in all courts whatsoever so far as the matters to which the rules relate are respectively cognisable by such courts. New rules of law to apply to all courts. 36 & 37 Vic., c. 66, s. 91.

7. Subject to the provisions of this Act and rules of court, and subject to the express provisions of any Act, whether passed before or after the commencement of this Act, the costs of and incident to all proceedings in the court, including the administration of estates and trusts, shall be in the discretion of the court or judge; and the court or judge shall have full power to determine by whom and to what extent such costs are to be paid. Costs. 53 & 54 Vic., c. 44, s. 5.

PART III.

DISTRIBUTION OF BUSINESS.

8. (1) Until otherwise provided in rules of court, a cause or matter shall be initiated in that jurisdiction of the court in which prior to the commencement of this Act it would have been proper to have initiated it, save that all applications directed by the Real Property Act, 1900, or any amendment thereof to be made to the Supreme Court or a judge thereof shall be made to the court in its equitable jurisdiction. Jurisdiction in which causes, &c., should be initiated. 38 & 39 Vic., c. 77, s. 11.

(2) All interlocutory and other steps and proceedings in or before the court in a cause or matter subsequent to the initiation thereof shall be taken (subject to any rules of court and to the power of transfer) in the jurisdiction of the court in which the cause or matter is for the time being pending.

(3) If a plaintiff at any time initiates his cause or matter in a jurisdiction of the court to which, according to the rules of court or the provisions of this or any other



other Act, the same ought not to have been initiated, the court or any judge ordinarily exercising such jurisdiction, upon being informed thereof, may, on a summary application at any stage of the cause or matter, direct the same to be transferred to the jurisdiction of the court in which, according to such rules or provisions, the same ought to be initiated, or may retain the same in the jurisdiction in which the same was initiated; and all steps and proceedings whatsoever taken by a party in such cause or matter, and all orders made therein before any such transfer, shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper jurisdiction of the court to which such cause or matter ought to have been assigned.

(4) No cause or matter shall be dismissed by reason only of the same having been initiated in a jurisdiction in which the same ought not, according to such rules or provisions, to have been initiated.

9. A cause or matter may, at any time and at any stage thereof, and either with or without application by any of the parties thereto, be transferred by such authority and in such manner as rules of court may direct from one jurisdiction or judge of the court to any other jurisdiction or judge thereof, or may be retained in the jurisdiction in which the same was initiated, although such may not be the proper jurisdiction to which the same cause or matter ought in the first instance to have been initiated.

*Transfer.*  
36 & 37 Vic.,  
c. 66, s. 36.

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PART IV.

TRIAL AND PROCEDURE.

10. A judge may, subject to any rules of court, exercise in court or in chambers all or any part of the jurisdiction of the court in all such causes and matters, and in all such proceedings in any causes or matters, as before the commencement of this Act might have been heard in court or in chambers respectively, by a single judge,

*Powers of one or more judges.*  
*Ibid.* s. 39.

judge, or as may be directed or authorised to be so made by any rules of court. In all such cases, a judge sitting in court shall be deemed to constitute the court :

Provided that every question or issue of law and every special case stated by consent of parties shall be heard and determined by a single judge in the first instance, unless either party requires that the same be heard and determined by a Full Court in the first instance, in which case the same shall be so heard and determined accordingly.

(Queensland Judicature Act, 1876, s. 6.)

**11.** Subject to any rules of court any judge of the court sitting in the exercise of its jurisdiction elsewhere than in a Full Court, may reserve any case, or any point in a case, for the consideration of a Full Court, or may direct any case, or point in a case, to be argued before the Full Court.

Cases or points may be reserved for, or ordered to be argued before a Full Court. 36 & 37 Vic., c. 66, s. 46.

**12.** Every motion for a new trial, or to set aside a verdict, finding or judgment, in any cause or matter where there has been a trial thereof, or of any issue therein, shall be heard and determined by a Full Court of not less than three judges.

Motions, for new trials, &c., to be heard by Full Court. cf. 53 & 54 Vic., c. 44, s. 1.

**13.** Subject to the provisions of this Act, an appeal shall lie to a Full Court from every judgment or order given or made by a judge in court or chambers : Provided that no appeal shall lie without the leave of the judge or of a Full Court from any order or judgment given or made by a judge—

Appeals. 36 & 37 Vic., c. 66, ss. 49 and 50. 57 & 58 Vic., c. 16, s. 1.

- (a) by the consent of parties ; or
- (b) as to costs only which by law are left to the discretion of the judge ; or
- (c) as to the enlargement or abridgment of the time for doing any act or taking any proceeding ; or
- (d) giving unconditional leave to defend an action ;
- (e) directing an action to be entered as a commercial cause.

1903, No. 19, s. 5.

**14.** In any application or appeal pending before a Full Court under either of the last two preceding sections any order or direction incidental thereto not involving the decision of the application or appeal may be made or given by a single judge, and the order or direction shall

Power of single judge to give directions as to appeal, &c. cf. 36 and 37 Vic., c. 66, s. 52.

shall have the same force and effect as though it had been made or given by a Full Court, and shall not be subject to appeal: Provided that no such order or direction shall be made or given by the judge whose judgment or order is being appealed from, or who presided at the trial of the cause, matter, or issue.

**15.** Subject to any right hereunder to have particular cases tried by a jury, the court or a judge may refer any question arising in any cause or matter for inquiry and report to a special referee, and the report of such referee may be adopted wholly or partially by the court or judge. The court or a judge may also, in any cause or matter in which it may be thought expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear the cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to the assessors shall be determined by the court or judge.

Referees and assessors.  
36 & 37 Vic., c. 66, s. 56.  
cf. 52 & 53 Vic., c. 49, s. 13.  
(Queensland Judicature Act, 1876, s. 11.)

**16.** The court or a judge may at any time, and on such terms as are just, amend any 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.

Amendment of defects and errors.  
(Federal Act) No. 7 of 1903, s. 23.

**17.** No proceedings in the court shall be invalidated by any formal defect or by any irregularity, unless the court or a judge so directs. Any such proceedings may be set aside either wholly or in part as irregular, or may be amended or otherwise dealt with in such manner and upon such terms as the court or judge thinks fit.

Formal defects not to invalidate proceedings.  
*Ibid.* s. 24.

**18.** It shall be the duty of a jury to answer any question of fact that may be left to them by the presiding judge at the trial.

Duty of judge or jury.  
38 & 39 Vic., c. 77, s. 22.

But nothing herein, or in any rule of court, shall take away or prejudice the right of any party to any action where the action is heard before a jury, to have the issues for trial submitted and left by the judge to the jury, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to the issues :

Provided

Provided that where it is necessary to ascertain the law of any other country which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law shall instead of being submitted to the jury be decided by the judge alone.

Questions of foreign law to be decided by judge. (10 & 11 Geo. V, s. 15.)

**19.** (1) The judges, or any three of them, of whom the Chief Justice, or, in his absence from the State, or incapacity from any cause, the senior puisne judge shall be one, may at any time after the passing of this Act alter or annul any rules of court for the time being in force, and may make any further or additional rules for carrying this Act into effect, and in particular for all or any of the following matters, that is to say—

Provisions for making rules of court. 38 & 39 Vic., c. 77, ss. 17, 26.

- (a) regulating the sittings of the court and of the judges thereof, and the distribution among the judges of the business of the court;
- (b) regulating the pleading, practice, and procedure in the court;
- (c) empowering the regulation by order made upon summons for directions pursuant to rules of court of the means by which particular facts may be proved and the mode in which evidence thereof may be given;
- (d) regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given in any proceedings or on any application in connection with or at any stage of any proceedings;
- (e) fixing the fees and percentages to be taken in the court or in any office which is connected with the court, or in which any business connected therewith is conducted, or by any officer paid wholly or partly out of public moneys who is attached to the court or any judge;
- (f) regulating the practice and forms in all matters under the Lunacy Act of 1-98, and the amount of percentage and of the fees payable in proceedings relating to insane persons and patients as defined in the said Act, and their estates, and the mode in which the same shall be ascertained and paid;
- (g)

(57 & 58 Vic., c. 16, s. 3.)

(1898, No. 45, s. 169.)

- (g) authorising and regulating the issue of writs of summons and writ of subpoena at any country towns; (1904, No. 6, s. 3.)
- (h) generally, for regulating any matters relating to the practice and procedure of the court or to the duties of the officers thereof or to the costs of proceedings therein.

(2) All rules of court, made in pursuance of this section if made before the commencement of this Act, shall from and after the commencement of this Act, and if made after the commencement of this Act, shall from and after they come into operation, regulate all matters to which they relate until altered in pursuance of this section or annulled.

(3) This section shall come into operation immediately on the passing of this Act.

**20.** No rule of court made or to be made hereunder which rescinds a rule by which a previous rule has been rescinded shall have the effect of reviving the last mentioned rule without express words. No revivor of rescinded rule unless express.

**21.** The practice and procedure in all criminal causes and matters whatsoever, including the practice and procedure with respect to criminal appeals, shall be the same as the practice and procedure in similar causes and matters before the commencement of this Act. Rules in criminal cases. 38 & 39 Vic., c. 77, s. 19.

**22.** Nothing in this Act, or in any rules of court to be made under this Act, save as far as relates to the power of the court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or shall affect the rules of evidence, except as provided in section eighteen, subsections three and four hereof, or shall affect the law relating to jurymen or juries, other than the sections of the Jury Act, 1901, by this Act repealed. Provisions as to Act, not affecting rules of evidence or juries. 38 & 39 Vic., c. 77, s. 20.

**23.** Where any provisions in respect of the practice or procedure of the court are contained in any existing Act, rules of court may be made in the manner hereinbefore provided for modifying such provisions to any extent that may be deemed necessary. Additional power as to regulation of practice and procedure by rules of court. 38 & 39 Vic., c. 77, s. 24. Queensland Judicature Act, 1876, s. 21.

**24.**

**24.** Every rule of court made in pursuance of this Act shall be laid before each House of Parliament within fourteen sitting days next after it is made, if Parliament is then sitting, or if not, within fourteen sitting days after the commencement of the then next ensuing session; and if an address is presented to the Governor by either House of Parliament, within the next subsequent thirty days praying that any such rule may be annulled, the Governor may thereupon annul the same, and the rule so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Orders and rules to be laid before Parliament and may be annulled by address from either House. 39 & 39 Vic. c. 77, s. 25.

This section shall come into operation immediately on the passing of this Act.

PART V.

RECIPROCAL ENFORCEMENT OF JUDGMENTS.

**25.** Where a judgment has been obtained in a superior court outside this State in any part of His Majesty's dominions to which this Act extends, the judgment creditor may apply to the Supreme Court of this State, at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the court, to have the judgment registered in the court, and on such application the court may, if in all the circumstances of the case they think it is just and convenient that the judgment should be enforced in this State, and subject to the provisions of this section, order the judgment to be registered accordingly.

**26.** No judgment shall be ordered to be registered under this section if—

- (a) the original court acted without jurisdiction; or

(b)

- (b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court; or
- (c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or
- (d) the judgment was obtained by fraud; or
- (e) the judgment debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment; or
- (f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.

**27.** Where a judgment is registered under this section—

- (a) the judgment shall, as from the date of registration, be of the same force and effect, and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered up on the date of registration in the registering court;
- (b) the registering court shall have the same control and jurisdiction over the judgment as it has over similar judgments given by itself, but in so far only as relates to execution under this section;
- (c) the reasonable costs of and incidental to the registration of the judgment (including the costs of obtaining a certified copy thereof from the original court and of the application for registration) shall be recoverable in like manner as if they were sums payable under the judgment.

**28.**

**28.** Rules of court shall provide—

- (a) for service on the judgment debtor of notice of the registration of a judgment under this section; and
- (b) for enabling the registering court on an application by the judgment debtor to set aside the registration of a judgment under this section on such terms as the court thinks fit; and
- (c) for suspending the execution of a judgment registered under this section until the expiration of the period during which the judgment debtor may apply to have the registration set aside.

**29.** In any action brought in any court in this State on any judgment which might be ordered to be registered under this section, the plaintiff shall not be entitled to recover any costs of the action unless an application to register the judgment under this section has previously been refused or unless the court otherwise orders.

**30.** Where a judgment has been obtained in the Supreme Court of this State against any person the court shall, on an application made by the judgment creditor, and on proof that the judgment debtor is resident within or outside this State in some part of His Majesty's dominions to which this Act extends, issue to the judgment creditor a certified copy of the judgment.

**31.** Provision may be made by rules of court for regulating the practice and procedure (including the scales of fees and evidence) in respect of proceedings of any kind under this Act.

**32.** (1) Where the Governor is satisfied that reciprocal provisions have been made by the legislature of any part of His Majesty's dominions outside this State for the enforcement within that part of His dominions of judgments obtained in the Supreme Court of this State, the Governor may, by proclamation, extend this Act to that part of His dominions, and on any such proclamation being made this Act shall extend accordingly.

(2) A proclamation under this section may be varied or revoked by a subsequent proclamation.



PART VI.

MISCELLANEOUS.

**33.** The Jury Act, 1901, is amended by the omission of sections thirty and thirty-one and by the insertion of the following new section :—

31. (1) The following provisions shall have effect in relation to the trial of causes in the Supreme Court :—

Trial with jury in Supreme Court.

- (a) In the case of proceedings in equity the trial shall, unless it is otherwise ordered by the court or a judge, be without a jury.
- (b) Any cause, not being a cause to which paragraph (a) applies, in which there is a claim in respect of libel, slander, malicious prosecution, false imprisonment, seduction, or breach of promise of marriage shall, if any party thereto makes an application in that behalf, be tried with a jury.
- (c) Any cause, not being a cause to which paragraph (a) or (b) of this section applies, shall be tried without a jury unless, upon application in that behalf by any party the court or a judge thinks the cause is more fit to be tried with a jury and so orders :  
Provided that if on the trial of any cause it appears to the judge that the cause is more fit to be tried with a jury, he may direct that the cause shall be tried with a jury.
- (d) And in any other cause in accordance with rules of court.
- (e) Nothing in this section shall affect—
  - (i) the provisions of sections fifty-two or sixty-nine of the Matrimonial Causes Act, 1899 ; or
  - (ii) the provisions of section one hundred and forty of the Wills, Probate and Administration Act, 1898 ; or

(iii)

- (iii) The power of the court or a judge in a case to which section fifteen of the Arbitration Act, 1902, applies to make an order for the trial of a cause in manner provided by that section ;
- (iv) the provisions of section ten of the General Legal Procedure Act, 1902.

(2) In this section the expression "cause" includes any action, suit, matter, or other proceeding requiring to be tried, or assessment to be had, other than a criminal cause or matter.

**34.** (1) If, on an application made by the Attorney-General under this section, the court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the court or in any inferior court, and whether against the same person or against different persons, the court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall, without the leave of the court or a judge thereof, be instituted by him in any court, and such leave shall not be given unless the court or judge is satisfied that the proceedings are not an abuse of the process of the court, and that there is prima facie ground for the proceedings.

Restriction on institution of vexatious actions. (59 & 60 Vic., c. 51.)

(2) If the person against whom an order is sought under this section is unable on account of poverty to retain counsel, the court shall assign counsel to him.

(3) A copy of any order made under this section shall be published in the Gazette.

**35.** (1) A council of the judges of the Supreme Court, of which due notice shall be given to all the said judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Chief Justice, for the purpose of considering the operation of this Act and of any rules of court, and also the working of the several offices and the arrangements relative to the duties of the officers of the Supreme Court, and of inquiring and examining into any defects which may appear to exist in the system of procedure or the administration

Council of judges to consider operation of Act, &c. 36 & 37 Vic., c. 66, s. 75.

administration of the law in the court, or in any other court from which any appeal lies to the court or any judge thereof.

(2) The said council shall report annually to the Attorney-General what amendments or alterations, if any, it would in their judgment be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provisions, if any, which cannot be carried into effect without the authority of Parliament it would be expedient to make for the better administration of justice.

(3) The Chief Justice may convene at any time an extraordinary council of the judges.

**36.** The Arbitration Act, 1902, is amended by the insertion of the following new section next after section eight :—

Power as to appointment of arbitrators where submission provides for three arbitrators. 10 & 11 Geo. V, c. 81, s. 16.

8A. (1) Where a submission to arbitration provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the two appointed by the parties, then, unless the submission expresses a contrary intention—

(a) if one party fails to appoint an arbitrator for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and the award of the arbitrator so appointed shall be binding on both parties as if he had been appointed by consent ;

(b) if after each party has appointed an arbitrator the two arbitrators appointed fail to appoint a third arbitrator within seven clear days after the service by either party of a notice upon them to make the appointment, the court or a judge may, on an application by the party who gave the notice, exercise in the place of the two arbitrators the power of appointing the third arbitrator :

(c)

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(c) if an arbitrator, appointed either by one of the parties, by the two arbitrators, or by the court or a judge, refuses to act, or is incapable of acting, or dies, a new arbitrator may be appointed in his place by the party, arbitrators, or court or judge, as the case may be.

(2) The court or a judge may set aside any appointment of a person to act as sole arbitrator made in pursuance of this section.

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