

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1932.

A BILL

To amend the law with respect to the administration of justice; to amend the Supreme Court Procedure Act, 1900, and certain other Acts; and for purposes connected therewith.

BE 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:—

1. (1) This Act may be cited as the "Administration of Justice Act, 1932."

Short title
and com-
mencement.

(2) This Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

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2. In this Act, unless the context or subject-matter otherwise indicates or requires,—

“ Court ” means the Supreme Court.

“ Judge ” means a judge of the court.

“ Prescribed ” means prescribed by rules.

“ Rules ” means rules of court.

3. Nothing in this Act shall alter the practice in any criminal cause or matter.

Interpreta-
tion.

Act not to
affect criminal
causes or
matters.

4. Subject to the express provisions of any other Act, in questions relating to the custody and education of infants, and generally in all matters in which there was at the commencement of this Act, or is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail in all courts in New South Wales so far as the matters to which those rules relate are cognisable by those courts.

Rules of
equity to
prevail.

5. If a plaintiff or applicant claims to be entitled to any equitable estate or right, or to relief on any equitable ground against any deed, instrument or contract, or against any right, title or claim whatsoever asserted by any defendant or respondent in the cause or matter, or to any relief founded upon a legal right, which, before the commencement of this Act, could have been given only by the court in its equitable jurisdiction, the court or judge shall give to the plaintiff or applicant the same relief as ought before such commencement to have been given by the court in its equitable jurisdiction in a suit or proceeding for the like purpose properly instituted.

Relief may
be given on
equitable
grounds.

6. 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 any such cause or proceeding might before the commencement of this Act have been obtained, whether unconditionally or on any terms or conditions, may be relied on by way of defence thereto:

Cause or
proceeding
not to be
restrained
by injunc-
tion.

Provided that—

(a) nothing in this Act shall disable the court or a judge from directing a stay of proceedings in any cause or matter; and

(b)

(b) any person, whether a party or not to any such cause or matter, who would before the commencement of this Act have been entitled to apply to the court in its equitable jurisdiction to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule or order, in contravention of which all or any part of the proceedings in the cause or matter have been taken, may apply to the court or judge 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 or judge shall thereupon make such order as shall be just.

7. Subject to the provisions of this Act for giving effect to equitable rights and other matters of equity, the court or judge shall 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 statute, in the same manner as those matters would before the commencement of this Act have been given effect to by the court or judge.

Legal claims.

8. The court shall in every cause or matter pending before it either in its common law or in its equitable jurisdiction, grant, either absolutely or on such terms and conditions as it thinks just, all such remedies whatsoever as any party thereto may appear to be entitled to, in respect of any legal or equitable claim properly brought forward in the cause or matter, so that as far as possible all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided.

Complete justice to be done.

9. Any cause or matter may at any time and at any stage thereof, and either upon or without the application of any party thereto, be transferred in whole or in part, by such authority and in such manner and upon such conditions as may be prescribed, or as the court or a judge may direct, from the common law to the equitable jurisdiction, or from the equitable to the common law jurisdiction of the court.

Transfer of causes, etc.

10.

10. (1) Subject to the provisions of this Act and of the rules, every cause or matter which but for this Act ought to have been commenced in the common law jurisdiction of the court shall be commenced in that jurisdiction; and every cause or matter which but for this Act ought to have been commenced in the equitable jurisdiction of the court shall be commenced in that jurisdiction.

Proceedings where to be taken.

(2) Provided that if any cause or matter is commenced in a jurisdiction in which according to the provisions of this Act or of the rules it ought not to be commenced, all steps and proceedings taken therein and all orders made therein by the court or a judge before any transfer or in the absence of any transfer, shall be valid and effectual to all intents and purposes as if they had been taken or made in the jurisdiction in which the cause or matter ought to have been commenced.

11. (1) Issues of fact in actions in the common law jurisdiction of the court shall be tried by a judge with a jury in every case where—

Trial of issues of fact in common law jurisdiction.

- (a) the court or a judge so orders; or
- (b) any party to the action at or before the time it is set down for trial, or within such other time as the rules prescribe, or as the court or a judge directs, files a notice that he requires the case to be tried with a jury.

(2) In every other case the trial shall be by a judge without a jury.

(3) Provided that if any such action or any issue or matter therein requires any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the court or judge, conveniently be made with a jury, the court or judge may direct that such action, issue or matter—

- (a) be tried by a judge without a jury, or
- (b) be referred to an arbitrator under the provisions of the Arbitration Act, 1902.

12.

12. (1) In every case where the trial is to be by a judge without a jury, the court or judge may direct that the case be tried wholly or partially with the assistance of one or more assessors specially qualified, to be appointed by the court or a judge. Assessors.

(2) The remuneration to be paid to an assessor shall be determined by the court or a judge.

13. The judge shall, at or after trial, direct judgment to be entered as he shall think right, and judgment shall thereupon be entered accordingly. Entry of judgment.

14. (1) The court may make binding declaratory decrees or orders as to the rights of persons claiming to be interested under or in respect of any written instrument, in any case where the court is satisfied that there is at the time of hearing a bona fide dispute as to such rights. Declaratory decrees and orders.

In this section "written instrument" includes any deed or will, any agreement made or evidenced by writing, any memorandum or articles of association of any company or body corporate, any instrument prescribing the powers of any company or body corporate, any statute, and any ordinance, regulation, rule or by-law made or purporting to be made under the authority of any statute; but this enumeration shall not restrict the generality of that expression.

(2) The provisions of this section are not limited merely to questions of construction, but extend also to the question whether the instrument or any provision thereof is valid, and whether any act proposed to be done or any refusal is within the rights of any of the parties.

(3) No proceeding in which the court in its equitable jurisdiction is asked to make a declaratory decree or order shall be open to objection on the ground of want of equity; but the court may in its discretion, on any grounds which it deems sufficient, decline to make a declaratory decree or order.

(4) Where proceedings are commenced for a declaratory decree or order, the court may make such order by way of injunction or otherwise as it thinks fit, to preserve the rights of the parties until the proceedings have been disposed of.

15. (1) Any powers of the court in its equitable jurisdiction may be delegated by rules to the Master in Equity, and the order of the Master made in any matter under a power so delegated shall, when passed and entered, have the effect of a decree or order of the court, unless appealed from within such time and in such manner as may be prescribed.

Power to delegate to Master in Equity.

(2) If before the Master enters upon the hearing of any such matter any person interested therein so requests, by a notice filed and served within such time and in such manner as may be prescribed, the Master shall refer the matter for hearing to the court.

16. In any proceeding before the court in its equitable jurisdiction the court may refer any matter for decision to the Master in Equity, and the certificate of the finding of the Master upon such matter shall, when filed, be binding on the parties and have the effect of a decree or order of the court unless appealed from within such time and in such manner as may be prescribed.

References to Master in Equity.

17. Subject to the provisions of this Act and of the rules, and to the express provisions of any other Act, the costs of and incidental 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 the costs are to be paid.

Costs.

18. Section fourteen of the Supreme Court Procedure Act, 1900, is amended by omitting paragraph (d) and by inserting in lieu thereof the following new paragraphs:—

Amendment of Act No. 49, 1900, s. 14. (Rules.)

- (d) for the purpose of providing for and regulating the joinder of defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative;
- (e) for the purpose of providing for and regulating the joinder as parties of—
 - (i) persons against whom a defendant has a claim of indemnity, and
 - (ii) persons who claim to be interested in the subject-matter of the proceedings;
- (f)

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- (f) for the purpose of regulating the investment and distribution of any money recovered in any cause or proceeding by or on account of an infant;
 - (g) for the purpose of providing for substituted service of any process at common law, and for regulating the terms and conditions under which substituted service may be allowed; and
 - (h) generally for the purpose of regulating the practice and procedure of the court.

19. Subsections two and three of section seventy-two of the Equity Act, 1901, and sections seventy-nine and eighty of that Act are hereby repealed.

Amendment of
Act No. 24,
1901, ss. 72
(2) (2),
79, 80.