

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1933.

A BILL

To provide for the concurrent administration of law and equity in the Supreme Court; to amend the law with respect to the administration of justice and the procedure and practice of the Supreme Court; to amend the Supreme Court and Circuit Courts Act, 1900, and certain other Acts; to repeal the Common Law Procedure Act, 1899, the Equity Act, 1901, 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:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Supreme Court Act, 1933." Short title.

93755 —(1)

(2)

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(2) This Act shall, except where any provision thereof is declared to take effect on the date upon which His Majesty's assent to this Act is signified, commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette. Commencement.

2. This Act is divided into Parts and Divisions as follows:— Division of Act.

PART I.—PRELIMINARY.

PART II.—JURISDICTION AND LAW.

DIVISION 1.—*Law and Equity.*

DIVISION 2.—*General.*

PART III.—DISTRIBUTION OF BUSINESS.

PART IV.—TRIAL; APPEALS AND MOTIONS FOR NEW TRIAL.

PART V.—PROCEDURE; RULES OF COURT.

PART VI.—APPOINTMENT AND POWERS OF OFFICERS.

3. There shall be repealed—

- (a) the Acts mentioned in the first Schedule to this Act to the extent therein expressed;
- (b) any enactment inconsistent with this Act, or with any rules made under this Act:

Repeal of Acts. First Schedule.

Provided that every person appointed under any enactment hereby repealed, and holding office at the commencement of this Act, shall be deemed to have been appointed hereunder.

4. All causes, matters and proceedings which are pending in the Court at the commencement of this Act shall be continued and concluded so far as relates to the form and manner of procedure, either in the same or the like manner as they would have been continued and concluded if this Act had not passed, or according to the practice hereunder, so far as the same may be applicable thereto as the Court or a Judge may think fit to direct.

Pending business. 36 and 37 Vic., c. 66, s. 22.

5.

5. Save as expressly provided, nothing in this Act or in rules made under this Act shall affect the procedure and practice in any criminal causes or matters whatsoever in the Court, including appeals under the Criminal Appeal Act of 1912.

Saving as to procedure and practice in criminal causes or matters. cf. 38 and 39 Vic., c. 77, s. 19.

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

Interpretation.

“ Action ” means a civil proceeding commenced by writ or in such other manner as may be prescribed.

“ Admiralty Jurisdiction ” means the jurisdiction vested in the Court under the Imperial Act the Colonial Courts of Admiralty Act, 1890.

“ Bankruptcy Jurisdiction ” means the jurisdiction and authority vested in or exercised by the Court or by the Judge in Bankruptcy under the Bankruptcy Act, 1898.

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

“ Commercial causes ” include causes arising out of the ordinary transactions of merchants and traders; amongst others those relating to the construction of mercantile documents, export or import of merchandise, affreightment, insurance, banking and mercantile agency and mercantile usages.

Act No. 19, 1903, s. 3.

“ Common Law Jurisdiction ” means the jurisdiction and authority vested in or exercised by the Court in respect of all civil causes and matters except such as are the subject of the Admiralty, Bankruptcy, Lunacy, Matrimonial Causes, and Probate Jurisdictions, and formerly were the subject of the Equity Jurisdiction.

“ Court ” means the Supreme Court.

“ Defendant ” includes any person served with any writ of summons or process, or served with notice of or entitled to attend any proceedings.

“ Equity

- “Equity Jurisdiction” means the jurisdiction and authority which formerly was vested in or exercised by the Court, or by the Chief Judge or other Judge sitting in Equity under the Equity Act, 1901.
- “Formerly” means immediately before the commencement of this Act.
- “Inferior Court” includes a District Court as well as any other inferior Court.
- “Judge” means Judge of the Court.
- “Judgment” includes decree.
- “Land” includes tenements and hereditaments, corporeal and incorporeal, and every estate and interest therein whether vested or contingent, freehold or leasehold, and whether at law or in equity. Act No. 6, 1919, s. 7.
- “Lunacy Jurisdiction” means the jurisdiction and authority vested in or exercised by the Court, or by the Chief Judge or Judge in Equity under the Lunacy Act of 1898.
- “Matrimonial Causes Jurisdiction” means the jurisdiction and authority vested in or exercised by the Court, or by the Judge appointed in that behalf under the Matrimonial Causes Act, 1899.
- “Matter” includes every proceeding in Court not in a cause.
- “Party” includes every person served with notice of, or attending any proceeding, although not named on the record.
- “Person of unsound mind” includes an insane person, insane patient and incapable person within meaning of the Lunacy Act of 1898.
- “Plaintiff” includes every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the proceeding is by action suit petition motion summons or otherwise.
- “Prescribed” means prescribed by rules.
- “Probate

“Probate Jurisdiction” means the jurisdiction and authority vested in or exercised by the Court, or by the Probate Judge under the Wills, Probate and Administration Act, 1898-1932.

“Rules” means rules of Court, and includes forms.

PART II.

JURISDICTION AND LAW.

DIVISION 1.—*Law and Equity.*

7. Subject to the express provisions of any other Act, in every civil cause or matter commenced in the Court law and equity shall be administered by the Court according to the provisions of this Division of this Part of this Act.

Law and equity to be concurrently administered. 15 and 16 Geo. 5, c. 49, s. 36.

8. The Court shall, in every cause or matter pending before the Court, grant, either absolutely or on such terms and conditions as the Court 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 regarding the cause of action, or arising out of or connected with the cause of action, may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided.

Determination of matter completely and finally. *Ibid.*: s. 43, Commonwealth Judiciary Act, 1903-1927, s. 32.

9. 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 formerly 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 cognizable by those courts.

Rules of equity to prevail. 15 and 16, Geo. 5, c. 49, s. 44.

10. 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 formerly have

Defence or stay instead of injunction. *Ibid.* s. 41.

have been obtained, whether unconditionally or on any terms or conditions, may be relied on by way of defence thereto:

Provided that—

- (a) nothing in this Act shall disable the Court, if it thinks fit so to do, from directing a stay of proceedings in any cause or matter pending before it; and
- (b) any person, whether a party or not to any such cause or matter, who would formerly have been entitled to apply in the Equity jurisdiction to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, 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 a Judge thereof 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 the Court or Judge thinks just.

DIVISION 2.—General.

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

Mandamus,
injunctions
and
receivers.
15 and 16,
Geo. 5, c. 49,
s. 45.

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

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

restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

12. 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, covenant or agreement, the Court may award damages to the party injured either in addition to or in substitution for such injunction or specific performance.

Power to Court to award damages in certain cases. Act No. 24, 1901, s. 9.

13. In the case of any action for a forfeiture brought for non-payment of rent, the Court or a Judge thereof shall have power to give relief in a summary manner, and subject to the same terms and conditions in all respects as to payment of rent, costs and otherwise as could formerly have been imposed in the Equity jurisdiction, and if the lessee, his executors, administrators, or assigns are so relieved, they shall hold the demised premises according to the terms of the lease, and without the necessity of any new lease.

Relief against forfeiture for non-payment of rent. 15 and 16, Geo. 5, c. 49, s. 46.

14. (1) No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed, or not.

Declaratory judgments or orders. cf. Act No. 24, 1901, s. 10.

(2) The Court may in its discretion, on any ground which it deems sufficient, decline to give a declaratory judgment or make a declaratory order.

R.S.C.O. 25, r. 5.

(3) In any action or proceeding for a declaratory judgment or order the Court may make such order by way of injunction or otherwise as it thinks fit for preserving the rights of the parties until the action or proceeding has been disposed of.

15. The Court or a Judge may at any time, and on such terms as to costs or otherwise as the Court or Judge thinks 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 question or issue raised by or otherwise depending on the proceedings.

Amendment of defects and errors. R.S.C.O. 28, r. 12. High Court Procedure Act, 1903-1925, s. 23.

16.

16. 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 to costs or otherwise as the Court or Judge thinks just.

Formal defects not to invalidate proceedings. High Court Procedure Act, 1903-1925, s. 24.

cf. Act No. 49, 1900, s. 16.

17. The Court or a Judge may at any stage of any proceedings—

Power to dispense with technical rules of evidence and to require admissions.

cf. Act No. 19, 1903, s. 6 (b).

(1) dispense with compliance with the technical rules of evidence—

- (a) as to proof of any matter not bona fide in dispute;
- (b) as to proof of handwriting, documents, identity of parties or parcels, or of authority;

in any case in which unnecessary delay and expense would, in the opinion of the Court or Judge, be occasioned by such compliance;

(2) require any party to the proceedings, not being an infant or person of unsound mind or person under any other disability, to make admissions with respect to any question of fact incidentally involved in the proceedings; and in case of refusal or neglect to make the admissions, may order that the costs of proof occasioned by such refusal or neglect shall be paid by that party:

cf. *Ibid.* s. 6 (c).

Provided that—

- (a) any admissions so made shall be deemed to be made only for the purpose of those proceedings and not as admissions to be used against that party on any other occasion; and
- (b) the Court or Judge may allow such party to amend or withdraw any admissions so made on such terms as the Court or Judge thinks just.

18.

18. Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract or other document, or to indorse any negotiable instrument, the Court or Judge may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be indorsed by such person as the Court or Judge may nominate for that purpose, and a conveyance, contract, document or instrument so executed or indorsed shall operate and be for all purposes available as if it had been executed or indorsed by the person originally directed to execute or indorse it.

Execution of instruments by order of court.
15 and 16, Geo. 5, c. 49, s. 47.

19. Proceedings in quo warranto shall be deemed to be civil proceedings whether for purposes of appeal or otherwise.

Quo warranto.
Ibid. s. 48.

20. 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.
Ibid. s. 50.

21. (1) If, on an application made by the Crown Solicitor on the direction of 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 Supreme 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 *primâ facie* ground for the proceedings.

Restriction on institution of vexatious actions.
Ibid. s. 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)

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

22. (1) A Judge of the Court shall not be incapable of acting in his judicial office in any proceeding by reason of his being as one of several ratepayers or as one of any other class of persons liable, in common with others, to contribute to or to be benefited by any rate or tax which may be increased, diminished or in any way affected by that proceeding.

Power of judges to act in cases relating to rates and taxes.

15 and 16, Geo. 5, c. 49, s. 17.

cf. Act No. 34, 1902, s. 14.

(2) In this section the expression "rate or tax" means any rate, tax, duty or assessment whether public, general or local, and also any fund formed from the proceeds of any such rate, tax, duty or assessment, or applicable to the same or like purposes to which any such rate, tax, duty or assessment might be applied.

Attachment.

23. (1) A judgment or order for the payment of money shall not be enforceable by attachment of the person except in the following cases:—

Attachment.

cf. 32 and 33 Vic., c. 62, s. 4.

- (a) default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract.
- (b) default by a trustee or person acting in a fiduciary capacity and ordered to pay any sum in his possession or under his control.
- (c) default by a solicitor in payment or costs where ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the Court.
- (d) default in payment into Court where the payment is not ordered in respect of a debt.

Provided that—

- (1) no person shall be imprisoned in any of such cases for a longer period than one year; and

(2)

(2) nothing in this section shall alter the effect of any judgment or order of the Court for payment of money except as regards the arrest and imprisonment of the person making default in paying such money.

(2) The Court or a Judge thereof may grant or refuse either absolutely or upon terms any application for attachment of the person, or for staying the operation of the writ of attachment, or for the discharge from arrest or imprisonment of the person attached.

cf. 41 and 42
Vic., c. 54,
s. 1.

(3) Nothing in this section shall affect the power of the Court—

Saving as
to certain
proceedings.

(a) in the Divorce Division to enforce by attachment any order for payment of any sum due in respect of alimony, or the maintenance of children, or for payment of money into Court by a husband as security for his wife's costs, or for giving a bond to secure such costs;

(b) in the Bankruptcy Division as to the arrest and imprisonment of any person.

PART III.

DISTRIBUTION OF BUSINESS.

24. (1) For the more convenient despatch of business in the Court there shall be Divisions in the Court as follows:—

Divisions
and
distribution
of business.

(a) The Equity Division.

(b) The Admiralty, Bankruptcy, Divorce, Lunacy and Probate Divisions.

cf. 15 and 16,
Geo. 5, c. 49,
ss. 4, 55.

(c) The Common Law Division.

(2) All causes and matters pending in the Court at the commencement of this Act or commenced thereafter shall be distributed among the several Divisions and Judges of the Court in such manner as may be directed by rules or by orders of transfer, and subject thereto

thereto all such causes and matters shall be assigned to the said Divisions respectively in the manner hereinafter provided.

25. Without prejudice to any other provision of this Act, there shall be assigned—

Assignment
of business
to Divisions.

(1) to the Equity Division—

cf. 15 and
16, Geo. 5,
c. 49, s. 56.

(a) all causes and matters pending in the Equity jurisdiction at the commencement of this Act;

(b) all causes and matters commenced after the commencement of this Act which under rules or by virtue of or in pursuance of any enactment for the time being in force are directed to be heard in the Equity jurisdiction or which would have been commenced in the Equity jurisdiction if this Act had not passed;

(c) all causes and matters for any of the following purposes:—

the administration of the estates of deceased persons;

the dissolution of partnerships or the taking of partnership or other accounts;

the redemption or foreclosure of mortgages;

the raising of portions or other charges on land;

the sale and distribution of the proceeds of property subject to any lien or charge;

the execution of trusts, charitable or private;

the rectification or setting aside, or cancellation of deeds or other written instruments;

the specific performance of contracts between vendors and purchasers of land, including contracts for leases;

the

the partition or sale of land;
the wardship of infants and the care of
infants' estates;

(d) all applications directed by the Real Property Act, 1900, to be made to the Supreme Court: Provided that the trial of any issues under that Act may be directed by the Court or a Judge to be had before any Judge with or without a jury;

Act No. 49,
1900, s. 6.

(2) to the Admiralty, Bankruptcy, Divorce, Lunacy and Probate Divisions respectively, all causes and matters pending at the commencement of this Act in the jurisdiction corresponding to each such Division, or commenced after the commencement of this Act which would have been commenced in that jurisdiction if this Act had not passed;

(3) to the Common Law Division all civil causes and matters pending at the commencement of this Act in the Common Law jurisdiction, or commenced after the commencement of this Act which would have been commenced in that jurisdiction if this Act had not passed.

26. (1) The jurisdiction of the Court in the several Divisions shall, subject to appeal as hereinafter in this Act provided, be exercised—

Judges to
act in the
several
Divisions.

(a) in the Common Law Division by the Chief Justice and such other Judges as may be appointed by the Chief Justice to act in that Division;

(b) in the Equity Division by the Chief Judge, the Judge in Equity, and such other Judge or Judges as may be appointed by the Chief Justice to act in that Division;

Act No. 24,
1901, s. 3.

(c) in the Lunacy Division by the Chief Judge or Judge in Equity or other Judge or Judges appointed to act in the Equity Division;

(d) in the Admiralty, Bankruptcy, Divorce and Probate Divisions respectively by the Judge or Judges appointed to exercise the jurisdiction corresponding to each such Division.

(2)

(2) Any Judge may exercise the jurisdiction of the Court in any Division with all the power and authority of a Judge appointed under this or any other Act or rules, to act in that Division or in the jurisdiction corresponding to that Division, subject to the same right of appeal. Act No. 35, 1900, s. 15.

27. Any cause or matter may at any time and at any stage thereof, and either with 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 one Division or Judge of the Court to any other Division or Judge thereof, or may by the like authority be retained in the Division in which it was commenced, although not the Division to which it ought in the first instance to have been assigned. Power of transfer. 15 and 16, Geo. 5, c. 49, s. 59.

28. (1) Subject to the provisions of this Act and of the rules, every cause or matter which formerly ought to have been commenced in any of the jurisdictions of the Court shall be commenced in the Division corresponding to that jurisdiction. Divisions in which proceedings are to be commenced. Ibid. s. 59.

(2) If any cause or matter is commenced in a Division in which according to the provisions of this Act or of the rules it ought not to be commenced, all steps and proceedings taken and all orders made in the cause or matter 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 Division in which the cause or matter ought to have been commenced.

PART IV.

TRIAL, APPEALS AND MOTIONS FOR NEW TRIAL.

29. Every proceeding in the Court and all business arising thereout shall, so far as is practicable and convenient and subject to the provisions of this or any other Act or the rules relating to the Full Court, be heard and disposed of before a single Judge. Proceedings in Court to be disposed of by single Judge. Ibid. s. 60.

30.

30. (1) A Judge of the Court may, subject to rules, exercise in Court or in chambers all or any part of the jurisdiction vested in the Court, in all such causes and matters and in all such proceedings in any causes or matters as might formerly have been heard in Court or in chambers respectively by a single Judge, or as may be directed or authorised to be so heard by rules, or by or in pursuance of any Act for the time being in force.

Powers of single Judge in court and in chambers. 15 and 16, Geo. 5, c. 49, s. 61.

(2) In all such cases any Judge sitting in Court shall be deemed to constitute the Court.

31. (1) In every cause, matter or issue, unless under subsection four of this section a trial with a jury is ordered, the mode of trial shall be by a Judge without a jury: Provided that in any such case the Court or a Judge may at any time order any cause, matter or issue of fact to be tried by a Judge with a jury or by a Judge sitting with assessors.

Mode of trial. cf. R.S.C.O. 36, rr. 3, 5 and 6.

(2) Causes or matters assigned by this Act to the Equity Division shall be tried by a Judge without a jury unless the Court or a Judge otherwise orders.

(3) The Court or a Judge may direct the trial without a jury of—

- (a) any cause, matter or issue of fact requiring any prolonged examination of documents or accounts or any scientific or local investigation which cannot in its or his opinion conveniently be made with a jury;
- (b) any commercial cause;
- (c) any cause or issue of fact in which leave of the Court or Judge to defend the cause or issue is required by the rules.

(4) Subject to the provisions of subsection three, in any cause or issue of fact in the Common Law Division, upon the application, made within the prescribed time, of any party thereto for a trial with a jury of the cause or issue, an order shall be made for a trial with a jury.

(5) Sections twenty-nine, thirty and thirty-one of the Jury Act, 1912, shall be read with and subject to the provisions of this section.

Act No. 31, 1912, ss. 29, 30 and 31.

32.

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32. (1) Subject to the provisions of section thirty-one the Court or a Judge thereof in any cause, matter or issue may remit any question or issue of fact arising therein to be tried by a Judge of a District Court without a jury or by a jury before a Judge of a District Court..

Remission of issues of fact to District Court.
cf. Act No. 7, 1901, s. 8B.

(2) The provisions of sections one hundred and thirty-three, one hundred and thirty-four and one hundred and thirty-five of the District Courts Act, 1912, shall extend to the question or issue so remitted.

Act No. 23, 1912, ss. 133, 134 and 135.

33. 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.

But nothing herein, or in any rules, 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 such issues.

38 and 39, Vic., c. 77, s. 22.

34. The Judge shall, at or after trial, direct judgment to be entered as he thinks right, and judgment shall thereupon be entered accordingly.

Entry of judgment.
cf. E.S.C.O. 36, r. 39.

35. 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 case be heard and determined by the Full Court in the first instance, in which case the same shall be so heard and determined accordingly.

Special case.
Queensland Judicature Act, 1896, s. 6.

36. Subject to the rules, any Judge sitting in any Division of the Court elsewhere than in the Full Court, may reserve any case, or any point in a case, for the consideration of the Full Court, or may direct any case or point in a case to be argued before the Full Court.

Cases and points may be reserved for or directed to be argued before the Full Court.
36 and 37, Vic., c. 66, s. 46.

Assessors.

37. (1) On the trial without a jury of any cause, matter or issue, the Court or Judge may call in the aid of one or more assessors specially qualified, and try and hear the cause, matter or issue wholly or partially with his or their assistance.

Trial with assessors.
15 and 16, Geo. 5, c. 49, s. 98.

(2) The remuneration, if any, to be paid to an assessor shall be determined by the Court or a Judge.

Interest

Interest and damages in the nature of interest.

38. Upon a trial or assessment of damages the jury or, in cases where there is no jury, the Judge may allow interest at such rate as may be prescribed—

Interest and damages in the nature of interest included in judgments. cf. Act No. 21, 1899, ss. 140-141.

- (a) to the creditor upon any debt or sum certain recovered—
 - (i) from the time when such debt or sum was payable (if payable by virtue of some written instrument, and at a date or time certain); or
 - (ii) if payable otherwise, then from the time when demand of payment has been made in writing giving notice to the debtor that interest would be claimed from the date of such demand;

(b) to the party recovering damages—

- (i) in an action of trover or trespass concerning goods, upon the value of the goods at the time of the trespass or conversion; and
- (ii) in an action on a policy of insurance, upon the money recoverable.

39. (1) Every judgment debt recovered in the Court shall carry interest at the prescribed rate from the date of the judgment until the same is satisfied.

Interest on judgments. cf. Act No. 42, 1924, s. 16.

(2) The amount of such interest shall be included in the body of, and may be levied under a writ of execution on the judgment.

Appeals and motions for new trials.

40. Every motion for a new trial, or to set aside a verdict, finding or judgment, in any cause or matter in the Court in which there has been a trial thereof or of any issue therein with or without a jury, shall be heard and determined by the Full Court.

Motions for new trial. cf. 15 and 16 Geo. 5, c. 49, s. 30.

41.

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41. (1) Subject as otherwise provided in this or any other Act or in the rules, an appeal shall lie to the Full Court from every judgment given or made by a Judge in Court or in chambers.

Appeals and restrictions on appeals. cf. 15 and 16, Geo. 5, c. 49, s. 31.

(2) No appeal shall lie—

- (a) from an order allowing an extension of time for appealing from a judgment or order;
- (b) from an order of a Judge giving unconditional leave to defend an action;
- (c) from the decision of the Court or of any Judge thereof where it is provided by any Act that the decision of the Court or Judge is to be final;
- (d) from an order of a Judge directing an action to be entered in the list of commercial causes in accordance with the rules;
- (e) without the leave of the Court or Judge making the order, from an order of the Court or any Judge thereof made with the consent of the parties or as to costs only which by law are left to the discretion of the Court, except where such costs are the subject-matter of a review of taxation;

Act No. 19, 1903, s. 5.

42. (1) Subject to the provisions of this Act every appeal to the Full Court against an order or judgment, or by way of motion for a new trial or to set aside a verdict, finding or judgment in any cause or matter in the Court in which there has been a trial thereof or of any issue therein with or without a jury, shall be heard before not less than three judges.

Sittings of Full Court. 15 and 16, Geo. 5, c. 49, s. 68.

Act No. 35, 1900, ss. 17 and 18.

(2) Subject to the provisions of this section the Full Court may sit in two or more divisions at the same time.

(3) No Judge shall sit on the hearing of an appeal from a judgment or order made in any case by himself:

Provided that this subsection shall not apply to—

- (a) any judgment or order made pro forma by consent of parties; or
- (b) any rule nisi.

(4)

(4) Notwithstanding anything in the foregoing provisions of this section, if all parties to an appeal or motion before the hearing file a consent to the appeal or motion being heard and determined before two Judges, the appeal or motion may, with the approval of the Chief Justice, be heard and determined accordingly:

Provided that—

- (a) In all causes or matters to which any infant or person of unsound mind, or person under any other disability, is a party, no such consent shall be given by the next friend, guardian, committee or other person acting on behalf of the person under disability, so as to have the same force and effect as if that party were under no disability and had given such consent, unless with the previous consent of the Court or a Judge, nor so as to make such consent valid as between any committee of or manager of the estate of a person of unsound mind, unless with the previous sanction of the Chief Judge or Judge in Equity; and
- (b) if two Judges having heard an appeal or motion differ in opinion, the opinion of the Chief Justice, if sitting, or the opinion of the senior of the two Judges shall prevail.

43. (1) In any application or appeal pending before the Full Court, 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 a single Judge may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal, as he may think fit.

Power of single Judge to give directions as to applications or appeals to Full Court. cf. 15 and 16, Geo. 5, c. 49, s. 69.

(2) Every order made by a single Judge in pursuance of this section may be discharged or varied by the Full Court without appeal.

44. Nothing in this Act or the rules shall be construed to affect the right existing at the commencement of this Act of any party to appeal to His Majesty in Council from judgments or orders given or made by the Court or a single Judge thereof.

Saving as to existing right of appeal to Privy Council.

Evidence

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Evidence and Juries.

45. (1) Subject as hereinafter in this section expressly provided, nothing in this Act or in the rules shall affect the mode of giving evidence by the oral examination of witnesses in trials with a jury, or the rules of evidence, or the law relating to jurymen or juries.

Act not to affect rules of evidence or juries. 15 and 16, Geo. 5, c. 49, s. 101.

(2) Nothing in this section shall—

cf. Act No. 49, 1900, s. 15.

- (a) prejudice the operation of section seventeen or any rules made in pursuance of the express power conferred by this Act to make rules for regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given; or
- (b) prejudice the operation of section thirty-one; or
- (c) affect the power of the Court for special reasons to allow depositions or affidavits to be read.

PART V.

PROCEDURE; RULES OF COURT.

46. The rules in the Second Schedule to this Act shall come into operation at the commencement of this Act, and as to all matters to which they extend shall, subject as hereinafter provided, thenceforth regulate the proceedings in the Court.

Rules in Second Schedule. 38 and 39, Vic., c. 77, s. 16.

47. Where no special provision in respect of the procedure and practice of the Court in any of its Divisions is contained in this Act or in the Second Schedule hereto or in other rules made under this Act, the procedure and practice formerly in force shall as nearly as may be continue in force, and the rules in force regulating such procedure and practice at the commencement of this Act, except so far as they are inconsistent with this Act or the Second Schedule hereto or any other rules made under this Act, shall respectively remain and be in force.

Existing rules retained in certain cases. 36 and 37, Vic., c. 66, s. 23. 38 and 39, Vic., c. 77, s. 21. 15 and 16, Geo. 5, c. 49, s. 32.

48. Whenever the manner or form of procedure for taking any steps in any cause or matter in the Court is not prescribed by the Act under which the step is to be taken or by rules or by the practice of the Court, the Court

Court to direct procedure in certain cases. Act No. 42, 1924, s. 19.

Court or a judge thereof may direct what manner or form of procedure is to be followed, and any steps taken in accordance with the direction given shall be deemed to be regular and sufficient.

49. (1) Any of the rules contained in the Second Schedule to this Act or any rules for the time being in force may be altered or annulled, and any further or additional rules for carrying this Act into effect may be made by the Rule Committee constituted under this Act.

Provision for altering or annulling rules in Second Schedule and making other rules.

(2) All rules made in pursuance of this section shall be laid before each House of Parliament within such time, and shall be subject to be annulled in such manner as is in this Act provided.

38 and 39, Vic., c. 77, ss. 17, and 26.

(3) All rules made in pursuance of this section, if made before the commencement of this Act, shall from and after such commencement, and if made after such commencement shall from and after they come into operation regulate all matters to which they extend until annulled or altered in pursuance of this section, and shall have the same force and effect as the rules in the Second Schedule to this Act.

(4) This section shall come into operation on the date upon which the assent of His Majesty to this Act is signified.

50. No rule of Court made under this Act which rescinds a rule by which a previous rule has been rescinded shall have the effect of reviving such last-mentioned rule without express words.

No revivor of rescinded rule unless express. cf. R.S.C.O. 72, r. 1.

Rules of Court.

51. (1) Rules may be made under this Act for the following purposes:—

Rules of Court.

- (a) for regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the Court in all civil causes and matters whatsoever in or with respect to which the Court has for the time being jurisdiction (including the procedure and practice to

15 and 16, Geo. 5, c. 49, s. 99.

be

be followed in the offices of the Court), and any matters incidental to or relating to any such procedure or practice, including (but without prejudice to the generality of the foregoing provision) the manner in which, and the time within which, any applications which under this or any other Act are to be made to the Court in banco or otherwise shall be made;

- (b) for regulating and prescribing the procedure on appeals from any court or person to the Supreme Court, and the procedure in connection with the transfer of proceedings from any inferior Court to the Supreme Court or from the Supreme Court to an inferior Court;
- (c) for regulating the sittings of the Court in banco or otherwise, and of the Judges of the Court whether sitting in Court or in chambers, and for regulating the vacations to be observed by the Court and in the offices of the Court;
- (d) for prescribing what part of the business which may be transacted and of the jurisdiction which may be exercised by judges of the Court in chambers may be transacted or exercised by the Prothonotary, the Master in Equity, the Registrars or other officers of the Court; cf. Act No. 35, 1904, s. 39A.
- (e) for authorising and regulating the issue at country towns of writs of summons for the commencement of actions and writs of subpoena to give evidence in civil or criminal cases; cf. Act No. 6, 1904, s. 3.
- (f) for regulating any matters relating to the costs of proceedings in the Court;
- (g) for regulating and prescribing the procedure and practice to be followed in the Court, and the procedure of appeals from any court or person to the Supreme Court, and the procedure in connection with the transfer of any proceedings from any inferior Court to the Supreme Court in cases in which—
 - (i) the procedure or practice is regulated by Acts in force immediately before the commencement of this Act, or by rules made under any such Acts; or
 - (ii)

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- (ii) rules of procedure or practice in the Court are required under any Act, but that Act contains no provision for making such rules;
 - (h) for repealing or modifying any provisions of any Act which relate to matters with respect to which rules may be made under this section;
 - (i) for regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given (including the taking of the evidence of witnesses on commission in or out of New South Wales), in any proceedings, or on any application in connection with, or at any stage of any proceedings;
 - (j) for regulating or making provision with respect to any other matters which were regulated, or with respect to which provision was made by rules or regulations of the Supreme Court in any of its civil jurisdictions in force immediately before the commencement of this Act;
 - (k) for fixing the fees and percentages (including the percentage on estates of insane persons and insane patients within the meaning of the Lunacy Act of 1898) to be taken in the Court, or in any office (other than the Sheriff's office) which is connected with the Court, or in which any business connected with the Court is conducted, or by any officer paid wholly or partly out of public moneys who is attached to the Court or any Judge;
 - (l) for the government and control of the officers and ministers of the Court. Act No. 35,
1900,
s. 39 (e).
- (2) Rules made under this section shall apply to all proceedings by or against the Crown.
- (3) Every rule made under this section shall be of the same force and effect as if the same had been inserted in and formed part of this Act.
- (4) This section shall come into operation on the date upon which the assent of His Majesty to this Act is signified.

52. Provision shall be made by rules for the hearing during vacation by Judges of the Court of all such applications as may require to be immediately or promptly heard.

Sittings in vacation.
15 and 16,
Geo. 5, c. 49,
s. 54.

53. When rules are required by this Act to be laid before both Houses of Parliament—

Rules of Court to be laid before Parliament.

- (a) the rules or a notification thereof shall be published in the Gazette;
- (b) the rules shall take effect from the date of the publication or from a later date to be specified in the rules;
- (c) the rules shall be laid before both Houses of Parliament within fourteen sitting days after publication, if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session;
- (d) if either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before the House, disallowing any rule or part thereof, that rule or part shall thereupon cease to have effect.

54. (1) Rules may be made under this Act by a committee (called the Rule Committee) consisting of the Chief Justice and two other Judges, one practising barrister being a member of the Council of the Bar, and one practising solicitor being a member of the Council of the Incorporated Law Institute of New South Wales.

Rule committee.
cf. 15 and 16,
Geo. 5, c. 49,
s. 99 (4).

(2) The two other Judges and the barrister and solicitor to act as aforesaid shall be appointed by the Chief Justice in writing under his hand, and shall hold office for the time specified in the appointment.

(3) Where under any Act power to make rules for regulating the procedure and practice of the Court in civil causes and matters is conferred on the Court or the Judges or any of the Judges thereof, the power may be exercised by the Rule Committee constituted under this section, and in the exercise of that power the committee shall have all the powers conferred on it by this Act.

(4)

(4) This section shall come into operation on the date upon which the assent of His Majesty to this Act is signified.

PART VI.

APPOINTMENT AND POWERS OF OFFICERS.

55. (1) The Governor may, with the approval of the Chief Justice in writing under his hand, appoint at such salary as may be deemed reasonable the following officers:—

Prothonotary,
Master in
Equity, Master
in Lunacy and
Registrars.
cf. Act No. 35,
1900, s. 39A.
Act No. 24,
1901, s. 71.

- (a) a Prothonotary for the Common Law Division;
- (b) a Master in Equity for the Equity Division;
- (c) a Master in Lunacy for the Lunacy Division, who shall respectively be a practising barrister or solicitor admitted by the Court, of at least five years standing: Provided that the persons holding the offices of Deputy-Prothonotary and Deputy-Master in Lunacy on the date upon which the assent of His Majesty to this Act is signified shall be eligible to be appointed Prothonotary and Master in Lunacy respectively though not so qualified as aforesaid; and
- (d) a Registrar for each of the several Divisions of the Court, who shall be an admitted barrister or solicitor of at least three years standing.

(2) The said officers shall respectively have power to do such things, transact such business, and exercise any such authority and jurisdiction in respect thereof as under this Act or the rules may be done, transacted and exercised by a Judge in chambers, except in respect of matters relating to the liberty of the subject.

(3) In case of the absence from Sydney or incapacity to act from any cause of any of the said officers, the Governor may appoint any person, qualified under this section to be appointed as such absent or incapable officer, to act as and exercise the powers and discharge the duties of such officer.

(4)

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(4) The Prothonotary may act as Registrar of the Divorce and Admiralty Divisions, and the Master in Equity may also act as Master in Lunacy.

(5) Section one hundred and fifteen of the Lunacy Act of 1898 is amended by omitting the words "and the Master in Equity for the time being shall be also the Master in Lunacy." Act No. 45,
1898, s. 115.

(6) This section shall come into operation on the date upon which the assent of His Majesty to this Act is signified.

56. The Master in Equity or any person appointed in that behalf by the Master may, without any license as an auctioneer under the Auctioneers Licensing Act, 1898, sell under the order of the Court any real or personal property. Power of
Master in
Equity to sell
by auction
under order
of the Court
without license.
cf. 15 and 16,
Geo. 5, c. 49,
s. 221.

SCHEDULES.

FIRST SCHEDULE.

REPEAL OF ACTS.

Reference to Act.	Subject or short title.	Extent of repeal.
1899, No. 21 ...	Common Law Procedure Act, 1899	The whole.
1900, No. 5 ...	Interest on Judgments Amendment Act, 1900.	The whole.
1900, No. 34 ...	Witnesses Examination Act, 1900	Sections 4, 5, 7, 9, 10, 11 and 12.
1900, No. 35 ...	Supreme Court and Circuit Courts Act, 1900.	Sections 15, 17 18, 19, 20 and 21.
1900, No. 49 ...	Supreme Court Procedure Act, 1900	The whole.
1901, No. 7 ...	Interpleader Act, 1901	The whole.
1901, No. 24 ..	Equity Act, 1901	The whole.
1901, No. 42 ..	Negotiable Instruments Procedure Act, 1901.	The whole.
1901, No. 44 ...	Prohibition and Mandamus Act, 1901.	The whole.

FIRST

Supreme Court.

FIRST SCHEDULE—continued.

REPEAL OF ACTS.

Reference to Act.	Subject or short title.	Extent of repeal.
1902, No. 34 ...	General Legal Procedure Act, 1902	Sections 3, 5, 6, 7, 8, 9, 10, 11, 12 and 13, and so far as it relates to a Judge of the Supreme Court, section 14.
1903, No. 19 ...	Commercial Causes Act, 1903 ...	The whole.
1904, No. 6 ...	Legal Process Facilitation Act, 1904	The whole.
1924, No. 42 ...	Administration of Justice Act, 1924	Section 19, so far as it applies to the Supreme Court.

SECOND SCHEDULE.