

Supreme Court Procedure (Amendment) Bill.

EXPLANATORY NOTE.

THIS Bill deals with the jurisdiction and procedure of the Supreme Court.

Subject to approval by resolution of each House of Parliament, rules of court may be made prescribing the cases and manner in which common law matters may come before the Equity Court, and equity matters may come before the Supreme Court on its common law side (clauses 3, 4).

The power of the Equity Court to make declaratory decrees and orders is extended to declaring the legal or equitable rights of persons under or in respect of any written instrument, including a statutory provision (clause 5).

Powers of the Equity Court may be delegated to the Master in Equity by rules of court, and may be exercised by him unless any party objects (clause 6).

The Equity Court may refer particular matters to the Master in Equity for decision (clause 7).

Subject to approval by resolution of each House of Parliament, rules of court may be made rescinding, amending, or varying provisions relating to procedure contained in a statute, or in a rule of court approved by each House (clause 8).

The power of the judges to make rules regulating the procedure of the Supreme Court is extended to the matters mentioned in the new paragraphs (d) to (h) proposed to be inserted by clause 9. New paragraph (i) merely re-enacts an existing provision (paragraph (d) of s. 14 of the Supreme Court Procedure Act, 1900) so that it may come in its proper order after the other new paragraphs.

A resolution of each House of Parliament approving rules of court is to be judicially noticed, and rules of court so approved are to be published in the *Government Gazette* (clause 10).

Certain sections of the Equity Act, 1901, are repealed as consequential amendments (clause 11).

[CONFIDENTIAL.]

PROOF

No. , 1930.

A BILL

To extend the powers of the Supreme Court of New South Wales in its common law and equitable jurisdictions; to amend the Supreme Court Procedure Act, 1900; the Equity Act, 1901, and certain other Acts; and for purposes connected therewith.

[MR. BAVIN;— , 1930.]

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. This Act may be cited as the "Supreme Court Short title. Procedure (Amendment) Act, 1930."

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Interpretation.

2. In this Act "the Common Law Court" means the Supreme Court in its common law jurisdiction, or a Judge thereof, and "the Equity Court" means the Supreme Court in its equitable jurisdiction.

Common Law Court.

3. The Common Law Court may exercise the jurisdiction of the Equity Court in such cases and in such manner as may be prescribed by rules of court approved by resolution of each House of Parliament.

Equity Court.

4. The Equity Court may exercise the jurisdiction of the Common Law Court in such cases and in such manner as may be prescribed by rules of court approved by resolution of each House of Parliament.

Declaratory decrees or orders.
cf. Act 1908, No. 220 (N.Z.), s. 3.

5. (1) The Equity 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.

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 Equity Court 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.

6. (1) Any powers of the Equity Court may be delegated by rules of court 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 Equity Court unless appealed from within such time and in such manner as may be provided by rules of court.

Delegation 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 by rules of Court, the Master shall refer the matter for hearing to the Equity Court.

7. In any proceeding before the Equity Court 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 Equity Court unless appealed from within such time and in such manner as may be prescribed by rules of Court.

Reference to Master in Equity.

8. Section thirteen of the Supreme Court Procedure Act, 1900, is amended by inserting at the end of the section the following new paragraphs :—

Amendment of Act No. 49, 1900, s. 13.

The power to make rules regulating the practice and procedure of the Court shall include the power to rescind, amend, or vary any provisions relating to such practice or procedure, whether contained in statutes or rules, but no rule rescinding, amending or varying any provision contained in a statute, or in a rule approved by resolution of each House of Parliament, shall come into force until it is approved by resolution of each House of Parliament.

Nothing in this section shall be construed to limit the power of the Court or Judges to make any rule which might have been made if the Supreme Court Procedure (Amendment) Act, 1930, had not been passed.

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Amendment of Act No. 49, 1900, s. 14.

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

- (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 ; 5
- (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 ; 10
- (f) for the purpose of regulating the investment and distribution of any money recovered by verdict, agreement or otherwise by or on account of an infant ; 15
- (g) to provide for substituted service of all process at common law, and to regulate the terms and conditions under which substituted service may be allowed ; 20
- (h) to provide for and regulate the transfer of proceedings from one jurisdiction to another jurisdiction of the Court in any case where at any time in the course of the proceedings a right to any relief is alleged which is not within the jurisdiction in which the proceedings are instituted, but is within the jurisdiction to which the proceedings are to be transferred ; 25 30
- (i) and generally for the purpose of regulating the practice and procedure of the Court. 30

Amendment of Act No. 49, 1900, s. 17.

10. Section seventeen of the Supreme Court Procedure Act, 1900, is amended by inserting at the end of the section the following new paragraphs :— 35

The foregoing provisions of this section shall not apply to rules of Court approved by resolution of each House of Parliament, and any such resolution shall be judicially noticed.

Rules

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Rules of Court so approved shall be published in the Gazette, and shall take effect from the date of publication or from a later date specified in such rules.

- 5 **11.** 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.

Repeal Act No.
24, 1901, ss. 72
(2), (3), 79, 80