

Western Australia.

THE SUPREME COURT ACT, 1935.

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SUPREME COURT.

26° GEO. V., No. XXXVI.

No. 36 of 1935.

AN ACT to consolidate and amend the Law [relating to
the Supreme Court.

[Reserved 7th January, 1936; Royal Assent proclaimed
3rd April, 1936.]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Supreme Court Act, 1935*, and shall come into operation on a date to be fixed by proclamation.* Short title and commencement.

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

Division.

PART I.—PRELIMINARY, ss. 1-5.

PART II.—CONSTITUTION OF THE SUPREME COURT,
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PART III.—JURISDICTION AND LAW.

(1) *Jurisdiction*, ss. 16-23.

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* Proclaimed to commence 1st May, 1936. (See *Gazette*, 9th April, 1936.)

PART IV.—SITTINGS AND DISTRIBUTION OF BUSINESS.

- (1) *Sittings and Vacations*, ss. 38-45.
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- (1) *Divorce and Nullity of Marriage*, ss. 69-85.
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FIRST SCHEDULE.—ENACTMENTS REPEALED.

SECOND SCHEDULE.—JUDICIAL OATH.

3. The Acts mentioned in the First Schedule to this Act are hereby repealed to the extent therein stated:

Provided that, subject as in this Act otherwise expressly provided, and to the provisions of section sixteen of the Interpretation Act, 1918:—

Repeal and savings
cf. S. C. of J.
(Consolidation) Act,
1925, s. 226 (Imp.).
S. C. Act, 1928
s. 2 (Victoria).

- (a) Nothing in this repeal shall affect any Proclamation published, Order in Council, rule, order or regulation made, commission issued, direction given, or thing done, under any enactment repealed by this Act; and every such Proclamation, Order in Council, rule, order, regulation, commission or direction shall continue in force, and shall have effect as if published, made, issued, or given under this Act:
- (b) Any person holding office, or serving, or deemed to be serving under any Act or enactment repealed by this Act, shall continue in office or service as if he had been appointed under this Act, and nothing in this repeal shall affect the terms and conditions on and subject to which any person held office immediately before the commencement of this Act:
- (c) Save as therein otherwise expressly provided, nothing in this Act—
 - (i) shall affect the operation of any enactment which is in force at the commencement of this Act, and is not expressly repealed by this Act:
 - (ii) shall be construed to take away, lessen, or impair any jurisdiction, power, or authority (judicial or ministerial) which is now vested in or capable of being exercised by the Supreme Court, or any one or more of the Judges thereof:
 - (iii) shall affect the operation of any Rules of Court in force at the commencement of this Act, or, subject to the Rules of Court, any practice or procedure of the Court, or any practice or usage of or connected with any of the offices of the Court, or the officers thereof, in force at the commencement of this Act:
- (d) All actions, matters and proceedings commenced under any Act or enactment repealed by this Act, and pending or in progress at the commencement of this Act may be continued, completed and enforced under this Act.

Interpretation.

44 Vict., No. 10,
s. 38.S. C. of J.
(Consolidation)
Act, 1925, s. 225
(Imp.).

4. In this Act, unless the context otherwise requires—
- “Action” means a civil proceeding commenced by writ or in such other manner as may be prescribed by Rules of Court, but does not include any criminal proceeding by the Crown:
- “Cause” includes any action, suit or other original proceeding between a plaintiff and defendant, and any criminal proceeding by the Crown:
- “Court” means the Supreme Court of Western Australia:
- “Defendant” includes any person served with any writ of summons or other process, or served with notice of, or entitled to attend any proceedings:
- “Full Court” means all the Judges of the Supreme Court, or two or more of them, sitting together as a Court:
- “Inferior Court” includes a local court or any other inferior court:
- “Issue of fact” includes the assessment of damages in any cause:
- “Judgment” includes decree:
- “Jurisdiction” includes all powers and authorities incident to the exercise of jurisdiction:
- “Matrimonial cause” means any action for dissolution of marriage, nullity of marriage, judicial separation, jactitation of marriage, or restitution of conjugal rights:
- “Matter” includes every proceeding in the Court, not in a cause:
- “Oath” includes solemn affirmation and statutory declaration:
- “Officer of Court” includes a referee:
- “Order” includes rule:
- “Owner,” when used with reference to a vessel, includes any person other than the owner responsible for the fault of the vessel, as though the term “owner” included such person; and in any case where by virtue of any charter or demise, or for any other reason, the owner is not responsible for the navigation and management of the vessel, the expression “owner” shall be read as though for references to the owner there were substituted references to the charterer

or other person for the time being so responsible; and when used with reference to any cargo or property on board a vessel, means any person entitled to maintain an action against a wrongdoer in respect of any direct and immediate injury to such cargo or property; and it includes a part owner:

“Party” includes every person served with notice of or attending any proceeding, although not named on the record:

“Person” includes a corporation sole, and any body corporate, and any public body:

“Petitioner” includes a petitioner under Part VI., and every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant:

“Plaintiff” includes every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding, whether the proceeding is by action, suit, petition, motion, summons or otherwise:

“Pleading” includes any petition or summons, and also includes the statements in writing of the claim or demand of the plaintiff, and of the defence of any defendant thereto, and of a counter-claim (if any) of a defendant, and of the reply of the plaintiff to any counter-claim of a defendant, and any subsequent pleading.

“Prescribed” means prescribed by Rules of Court:

“Rules of Court” includes forms:

“Statute” means any Imperial Act in force in this State and any Commonwealth Act and any Act of the Parliament of Western Australia, and includes this Act:

“Suit” includes action.

5. Where any Act or document refers to any enactment repealed by this Act, or any corresponding previous enactment, or to any mode of procedure or form of pleading under any such enactment, the Act or document shall be construed and shall operate as if it referred to this Act, or to the corresponding provisions of this Act and of the Rules of Court.

Construction with other Acts, etc.
S. C. of J. (Consolidation) Act, 1925, s. 226. (1), (c), (Imp.).
S. C. Act, 1928, s. 4 (Victoria).

PART II.—CONSTITUTION OF THE SUPREME COURT.

The Supreme Court
of Western Aus-
tralia.

24 Vic., No. 15,
s. 4; 44 Vic., No.
10, s. 3.

6. There shall continue to be in and for Western Australia and its dependencies a Supreme Court of Judicature, styled as heretofore the Supreme Court of Western Australia:

Provided and it is hereby declared that the Supreme Court of Western Australia heretofore and now held and henceforth to be held is and shall be deemed and taken to be the same Court.

Constitution of
Court.

44 Vic., No. 10,
ss. 4, 5.

7. (1.) The Supreme Court shall be a superior court of record, and shall consist of one Judge to be appointed by the Governor by commission under the great seal in His Majesty's name, and to be styled the Chief Justice of Western Australia, and of such other Judges, not exceeding three in number, as the Governor may, in like manner from time to time appoint.

(2.) The Chief Justice and other Judges in office at the commencement of this Act shall be the Chief Justice and Judges of the Supreme Court as if their appointments had been made under this Act.

(3.) The Judges, other than the Chief Justice, shall have seniority according to the dates of their commissions.

Qualification of
Judges.

See 24 Vic., No. 15,
s. 11.

Cf. S. C. Act, 1928,
s. 7 (Victoria).

8. The qualification of a Judge of the Supreme Court shall be as follows:—

He must either be—

- (a) a practitioner as defined by the Legal Practitioners Act, 1893, of not less than eight years' standing, and practice; or
- (b) a practising barrister of the English bar, or of the High Court of Australia, of not less than eight years' standing.

Tenure of Judges
and oaths of office.
Of 24 Vic., No. 15,
ss. 11, 12.

S. C. of J. (Con-
solidation Act,
1925, s. 12. (Imp.)
Schedule 2.

9. (1.) All the Judges of the Supreme Court shall hold their offices during good behaviour, subject to a power of removal by His Majesty upon the address of both Houses of Parliament.

(2.) Every person appointed to be a Judge of the Supreme Court shall, when he enters on the execution of his office, take, in the presence of the Governor, the oath of allegiance, and the judicial oath as prescribed in the Second Schedule to this Act.

10. (1.) During any vacancy in the office of Chief Justice, or when and so often as the Chief Justice is absent on leave or in consequence of sickness, or for any reason is temporarily unable to perform the duties of his office, all the duties and powers of the Chief Justice shall during such vacancy, absence, or inability devolve upon the senior Judge.

Vacancy of office of Chief Justice.

Cf. 24 Vict., No. 15, s. 11.

Judiciary Act, 1903, s. 7 (Com.).

(2.) In case of the absence or inability of the Judge upon whom such powers and duties devolve, they shall during such absence or inability devolve upon the Judge who is next in seniority.

11. (1.) When and so often as any Judge of the Supreme Court is absent on leave, or in consequence of sickness or for any other reason is temporarily unable to perform the duties of his office, the Governor may appoint a fit and proper person qualified to be appointed a Judge to be an acting Judge for the period during which such Judge is temporarily absent or unable to perform the duties of his office, and for no longer.

Qualified person may be appointed temporarily in place of a Judge.

S. C. Act, 1928, s. 11 (Victoria).

(2.) Such acting Judge shall, during such period, have the same powers and jurisdiction as a Judge of the Court.

(3.) Every such acting Judge shall, during the period for which he was so appointed, be liable to be removed from office in such manner and upon such grounds as Judges of the Supreme Court are liable to be removed from office.

12. (1.) A Judge 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.

Powers of Judges to act in cases of rates and taxes.

S. C. of J. (Consolidation) Act, 1925, s. 17. (Imp.)

S. C. Act, 1928, s. 46 (Victoria).

(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.

13. (1.) The rate of the annual salary payable to the Chief Justice of Western Australia shall be two thousand three hundred pounds, and the rate of the annual salary payable to each of the Judges of the Supreme Court other than the Chief Justice shall be two thousand pounds.

Judges' salaries.

No. 37 of 1902, s. 2.

No. 4 of 1927, s. 2.

(2.) Such salaries are hereby charged on the Consolidated Revenue Fund, and such fund, to the extent required for the payment thereof, is hereby permanently appropriated.

Judges' pensions.
No. 24 of 1896,
ss. 2, 3, and 4.

14. (1.) Every Judge of the Supreme Court shall be entitled, on resigning his office after having served for fifteen years as a Judge of that Court and attained the age of sixty years, or on its being made to appear by medical certificate, to the satisfaction of the Governor, that he is incapable, by permanent infirmity of mind or body, of performing the duties of his office, to demand a pension by way of annuity, to be continued during his life, to the amount of one-half of the annual salary of his office.

Provided that if after such pension shall have become payable, the person entitled thereto shall accept any appointment under the Crown in any part of His Majesty's dominions, such pension shall, during the tenure of such appointment, be suspended or be reduced *pro tanto* according as the salary of such appointment added to such pension is greater than the salary of the office held by such Judge when he vacated the same.

(2.) If any person who may be entitled to, or be in receipt of, a pension by virtue of this Act, shall practise as a barrister, solicitor, or proctor in Western Australia, or in any other part of His Majesty's dominions, his right to such pension shall be forfeited, and the pension, if already granted, shall cease to be payable.

(3.) The pensions payable to Judges of the Supreme Court are hereby charged on and shall be paid out of the Consolidated Revenue Fund of Western Australia.

Seal of Supreme
Court.
24 Vict., No. 15,
s. 13.

15. The Supreme Court shall have and use, as occasion may require, a Seal bearing a device and impression of the Royal Arms, with an exergue or label surrounding the same, with the inscription, "The Seal of the Supreme Court of Western Australia."

PART III.—JURISDICTION AND LAW.

(1).—*Jurisdiction.*

General jurisdiction.
24 Vict., No. 15,
s. 4.
Cf. S. C. of J. (Consolidation) Act,
1925, s. 18. (Imp.)
Cf. S. C. Act, 1928,
s. 15 (Victoria).

16. (1.) Subject as otherwise provided in this Act, and to any other enactment in force in this State, the Supreme Court—

(a) is invested with and shall exercise such and the like jurisdiction, powers, and authority within Western Australia and its dependencies, as the Courts of

Queen's Bench, Common Pleas, and Exchequer, or either of them, and the Judges thereof, had and exercised in England at the commencement of the Supreme Court Ordinance, 1861; and

- (b) shall be at all times a court of oyer and terminer and general gaol delivery in and for Western Australia and its dependencies; and 24 Vict., No. 15,
s. 4.
- (c) is authorised, empowered, and required to take cognisance of and hold all pleas and all manner of causes, suits, actions, pleas of the Crown, prosecutions, and informations, whether civil, criminal, or mixed, with the same and as full power within Western Australia and its dependencies to hear, judge, determine, and execute therein, as the Courts of Queen's Bench, Common Pleas, and Exchequer, and as justices of oyer and terminer and general gaol delivery, had in England at the commencement of the Supreme Court Ordinance, 1861, and as shall be necessary for carrying into effect the several jurisdictions, powers, and authorities committed to the Court, and shall adjudge and determine in all and every the same matters according to the laws and statutes of the realm of England in force in Western Australia, the laws and statutes of Western Australia, and the Acts of the Commonwealth of Australia; and Ibid., s. 4;
Cf. S. C. Act, 1928,
s. 15. (Victoria).
- (d) shall be a court of equity, with power and authority within Western Australia and its dependencies— 24 Vict., No. 15,
s. 5.
Cf. S. C. Act, 1928,
s. 16 (Victoria)
- (i) to administer justice, and to do, exercise, and perform all acts, matters, and things necessary for the due execution of such equitable jurisdiction as, at the commencement of the Supreme Court Ordinance, 1861, the Lord Chancellor of England could or lawfully might have done within the realm of England in the exercise of the jurisdiction to him belonging; and
- (ii) to appoint guardians and committees of the persons and estates of infants, lunatics, and persons of unsound mind according to the order and course observed in England, and for that purpose to inquire into, hear, and determine by inspection of the person the subject of inquiry, or by examination on oath or otherwise of the 24 Vict., No. 15,
s. 10.
Cf. S. C. Act, 1928,
s. 16 (Victoria).

party in whose custody or charge such person is, or of any other person or persons, or by such other ways and means by which the truth may be best discovered, and to act in all such cases as fully and amply to all intents and purposes as the said Lord Chancellor or the grantee from the Crown of the persons and estates of infants, lunatics, and persons of unsound mind might lawfully have done at such date; and

44 Vict., No. 10,
s. 6.

(e) is invested with all the jurisdictions which were vested in or capable of being exercised by the Supreme Court of Western Australia, and the Court for Divorce and Matrimonial Causes, at the commencement of the Supreme Court Act, 1880.

Cf. S. G. of J. (Consolidation) Act, 1925, s. 18 (2), (b), and (c) (Imp.).

(2.) There shall be vested in the Supreme Court and the Judges thereof all original and appellate jurisdiction which, under and by virtue of any statute which came into force in Western Australia after the commencement of the Supreme Court Act, 1880, and is not repealed, was immediately before the commencement of this Act vested in or capable of being exercised by the Court or a Judge thereof, and such other jurisdiction as by and under this Act or any subsequent statute is conferred on or vested in the Court and the Judges thereof.

Cf. S. G. of J. (Consolidation) Act, 1928, s. 18 (3) (Imp.).

(3.) The jurisdiction vested in the Court and the Judges thereof shall include all ministerial powers, duties, and authorities incident to any and every part of such jurisdiction.

Admiralty jurisdiction.
53 and 54 Vict.,
c. 27, s. 3.

17. (1.) The Supreme Court is hereby declared to be a Colonial Court of Admiralty within the meaning and for the purposes of the Colonial Courts of Admiralty Act, 1890.

Ibid. s. 7.

Tas., No. 58 of 1932,
s. 4, s. 9 (5).

(2.) This Act and the Rules of Court shall apply to and govern the procedure and practice of the Court in Admiralty causes and matters; but nothing in this Act or the Rules of Court shall be construed to confer on the Court or any Judge thereof any jurisdiction in Admiralty which is not conferred upon the Court or a Judge thereof by or pursuant to the Colonial Courts of Admiralty Act, 1890, or some later Imperial Act; and the Rules of Court shall not (except as provided by the Colonial Courts of Admiralty Act, 1890, or some later Imperial Act) be constructed as extending to matters relating to the slave trade.

18. The Supreme Court shall have voluntary and contentious probate jurisdiction and authority in relation to the granting or revoking of probate of wills and letters of administration of all real and personal estate whatsoever within Western Australia and its dependencies of any deceased person; and all such powers and authorities in respect of such jurisdiction as were given to the Court by the Administration Act, 1903-1934, and any other Act in force in Western Australia immediately before the commencement of this Act, with authority to hear and determine all questions relating to testamentary causes and matters.

Probate jurisdiction.
24 Vict., No. 15,
s. 6.
No. 13 of 1903,
s. 4.
Cf. S. C. of J.
(Consolidation) Act,
1925, s. 20 (Imp.).
S. C. Act, 1928,
s. 17 (Victoria).

19. Subject to the provisions of Part VI. of this Act, the Supreme Court shall have, in Western Australia, such jurisdiction—

Jurisdiction in
matrimonial causes
and legitimacy de-
clarations.
27 Vict., No. 19,
s. 1.
Cf. S. C. of J.
(Consolidation) Act,
1925, s. 21 (Imp.).

(a) in relation to matrimonial causes and matters, as was vested in or exercisable by the Court for Divorce and Matrimonial Causes in England constituted by the Matrimonial Causes Act, 1857, in respect of dissolution of marriage, judicial separation, nullity of marriage, jactitation of marriage, or restitution of conjugal rights, and in respect of any other matrimonial cause or matter, except marriage licenses; and

(b) with respect to declarations of legitimacy and of validity of marriage, as is hereinafter in this Act provided;

and all such jurisdiction in relation to divorce and other matrimonial causes and matters as was immediately before the commencement of this Act vested in or capable of being exercised by the Supreme Court, and as enacted in Part VI. of this Act.

20. Subject to the provisions of the Local Courts Act, 1904, the Justices Act, 1902-1926, the Courts of Session Act, 1921, and the Mining Act, 1904, the Supreme Court shall have jurisdiction to hear and determine—

Jurisdiction with
respect to appeals
from Inferior
Courts.
Cf. S. C. of J.
(Consolidation) Act
1925, s. 24 (Imp.).

(a) any appeal from any court which might immediately before the commencement of this Act have been made to the Court or a Judge; and

(b) any application, or any appeal, whether by way of case stated or otherwise, which by virtue of any enactment the Court or a Judge has power to hear and determine.

Jurisdiction to be exercised in manner provided by this Act and Rules of Court.

Cf. 44 Vict., No. 10, ss. 6, 20.

S. C. Act, 1928, s. 22 (Victoria).

Tas., No. 58 of 1932, s. 6

21. (1.) Except as otherwise provided by this Act, all jurisdiction, whether original or appellate, which immediately before the commencement of this Act was vested in or capable of being exercised by the Court, or by any one or more of the Judges thereof sitting in court or chambers, or elsewhere when acting as Judges, or a Judge, by, under, or by virtue of any Imperial Act or any Act of the Parliament of Western Australia, shall (notwithstanding that the same was conferred by an Imperial Act or an Act of the Parliament of Western Australia repealed by this Act) be exercised, so far as regards procedure and practice, in the manner provided by this Act and the Rules of Court; but where no provision, or no appropriate provision, as to the exercise of any such jurisdiction is contained in this Act or in the Rules of Court, such jurisdiction shall be exercised as nearly as may be in the same manner as the same might have been exercised if this Act had not passed, or in such manner as the Court or a Judge may in each case direct.

Existing jurisdiction under Commonwealth Acts.

(2.) Except as is otherwise provided by this Act, and subject to the provisions of any Commonwealth Act, all the jurisdiction whether original or appellate, which immediately before the commencement of this Act was vested in or capable of being exercised by the Court, or any one or more of the Judges thereof sitting in court or chambers, or elsewhere when acting as Judges, or a Judge by, under, or by virtue of any Commonwealth Act, shall be exercised so far as regards procedure and practice in the manner provided by the Rules of Court; but where no provision as to the exercise of such jurisdiction is contained in this Act or the Rules of Court, such jurisdiction shall be exercised as nearly as may be in the same manner as the same might have been exercised if this Act had not passed.

Future jurisdiction under any statute.

(3.) Any jurisdiction, whether original or appellate, which is conferred on or vested in the Court, or any one or more of the Judges thereof sitting in court or chambers, or elsewhere when acting as Judges, or a Judge by, under, or by virtue of any statute passed after the commencement of this Act, shall (except as otherwise provided by any such statute) be exercised (so far as regards procedure and practice) in the manner provided by this Act and the Rules of Court; or if no provision, or no appropriate provision, as to the exercise of any such jurisdiction is contained in this Act or in the Rules of Court, then such jurisdiction shall be exer-

cised in such form, mode, and manner as the Court or a Judge may from time to time direct.

(4.) Where any statute passed after the commencement of this Act, or any order, rule, regulation, or other instrument made under or by virtue of any such statute confers any jurisdiction, whether original or appellate, on the Court or on the Court or a Judge thereof, such jurisdiction shall (except as otherwise provided by any such statute) be exercised so far as regards procedure and practice in the manner directed by subsection (3) of this section.

22. (1.) Save as is otherwise provided by this Act or by the Rules of Court, all forms and methods of procedure which, under or by virtue of any law, custom, general order, or rules whatsoever, were formerly in force in the Supreme Court, and which are not inconsistent with this Act or with the Rules of Court, may continue to be used and practised in the Supreme Court in the like cases and for the like purposes, as those in and for which they would have been applicable if this Act had not been passed.

Saving of former procedure,

44 Vict., No. 10, ss. 27, 29.

S. C. of J. (Consolidation) Act, 1925, s. 103 (Imp.).

(2.) Subject to the Rules of Court and the General Rules prescribed under the Criminal Code, the practice and procedure in all criminal causes and matters whatsoever in the Supreme Court shall be the same as the practice and procedure in force at the commencement of this Act in relation to similar causes and matters.

23. Where any Act of Parliament in force in England on the first day of June, One thousand eight hundred and twenty-nine, and applicable to Western Australia, or any Act of Parliament adopted and directed to be applied in Western Australia, authorises and directs any proceeding, act, matter, or thing to be had, done, performed, or executed by or before His Majesty's Courts at Westminster, or the respective Judges thereof, or by or before the Lord Chancellor or any Equity Judge, in the administration of justice, every such proceeding, act, matter, and thing, subject to any express enactment to the contrary and to any Rules of Court for the time being in force, shall be, and the same is hereby authorised and directed to be had, done, executed, and performed by the Supreme Court and the Judges thereof in like manner as if the same had been in and by such Act of Parliament expressly authorised and directed to be had, done, executed,

Supreme Court authorised to perform certain acts required to be performed by the Courts in England,

24 Vict., No. 15, s. 4.

Cf. S. C. A., 1928, s. 22 (Victoria),

and performed by the said Supreme Court or the Judges thereof.

(2).—*Law and Equity.*

Law and equity to be concurrently administered.
44 Vict., No. 10, s. 7.
8 C. of J. (Consolidation) Act, 1925, ss. 30-44 (Imp.).

24. Subject to the express provisions of any other Act, in every civil cause or matter commenced in the Supreme Court, law and equity shall be administered by the Court according to the rules following:—

Equities of plaintiff.

(1) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which before the commencement of the Supreme Court Act, 1880, could only have been given by a court of equity, the Court, and every Judge thereof, shall give to such plaintiff or petitioner 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 the said Act.

Equitable defences.

(2) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such 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 such plaintiff or petitioner, 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 any suit or proceeding instituted in the Court for the same or the like purpose before the commencement of the Supreme Court Act, 1880.

(3) The Court, and every Judge thereof, shall have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him—

Counterclaims
third parties.

(a) all such relief against any plaintiff or petitioner as such defendant shall have properly claimed, by his pleading, and as the Court, or any Judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and

(b) 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 any 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.

Every person served with any such notice as aforesaid shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such 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 any 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 any suit or proceeding duly instituted therein before the commencement of the Supreme Court Act, 1880.

Equities appearing
incidentally.

(5) No cause or proceeding at any time pending in the Supreme Court shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if the Supreme Court Act, 1880, had not been

Defence or stay
instead of injunction
or prohibition.

passed, either 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, 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 have been entitled, if the Supreme Court Act, 1880, had not been passed, to apply to any court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, may apply to the Court, by motion in a summary way, for a stay of proceedings in such 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 shall be just.

- (6) Subject to the foregoing provisions for giving effect to equitable rights and other matters of equity, 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 statute, in the same manner as the same would have been recognised and given effect to if the Supreme Court Act, 1880, had not been passed in any branch of its jurisdiction, or by the Court for Divorce and Matrimonial Causes.

- (7) The Court, in the exercise of the jurisdiction vested in it by this Act, in every cause or matter pending before it, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as shall seem 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

Legal, customary,
and statutory
rights to be recog-
nised.

Determination of
matter completely
and finally.

forward by them in such cause or matter; so that, as far as possible, all matters so in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

(3).—*Miscellaneous Rules of Law.*

25. The law to be administered as to the matters in this section mentioned shall, unless the contrary is expressly provided by some other enactment, be as follows:—

Rules of law upon certain points.
44 Vict., No. 10,
s. 8.

- (1) In the administration by the Court of the assets of any person who has died since the commencement of the Supreme Court Act, 1880, or who hereafter dies, and whose estate has proved or proves to be insufficient for the payment in full of his debts and liabilities, and in the winding up of any company under the Companies Act, 1893, whose assets may prove insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

Administration of assets of insolvent estates.

- (2.) Except as provided by the Trustee Act, 1900, no claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations.

Statutes of limitation inapplicable to express trusts.

- (3) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste,

Equitable waste.

unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Merger.

- (4) There shall not be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Suits for possession of land by mortgagors.

- (5) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person: Provided that, in the case of mortgages under the Transfer of Land Act, 1893, this subsection is subject to section one hundred and seventeen of that Act.

No action to be open to objection merely because declaratory judgment sought.
15 and 16 Vict., c. 88, s. 50.
S. C. Act, 1928, s. 62 (Victoria).

- (6) No action shall be open to objection on the ground that a merely declaratory judgment is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief.

Assignment of debts and choses in action.

- (7) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if the Supreme Court Act, 1880, and this Act had not been passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor:

Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the Supreme Court under and in conformity with the provisions of any Act for the time being in force for the relief of trustees.

- (8) Stipulations in contracts, as to time or otherwise, which would not before the passing of the Supreme Court Act, 1880, have been deemed to be or to have become of the essence of such contracts in a court of equity, shall receive in the Court the same construction and effect as they would have received in equity before such date. Stipulations not of the essence of contracts.
- (9) A mandamus or an injunction may be granted, or a receiver appointed, by an interlocutory order of the Court or a Judge in all cases in which it shall appear to the Court or a Judge 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 the Court or Judge shall think 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, such injunction may be granted, if the Court or a Judge shall think fit, whether the person against whom such 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 under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable. Mandamus, injunction, and appointment of receiver.
- (10) In all cases in which the Court entertains 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 covenant Power to award damages in addition to or in substitution for injunction or specific performance.

S. C. Act, 1928, s. 62
(4) (Victoria),

contract or agreement, the Court may, if it thinks fit, award damages to the party injured, either in addition to or in substitution for such injunction or specific performance, and such damages may be assessed in such manner as the Court directs:

Provided that nothing in this subsection shall limit or affect the jurisdiction or powers which the Court has apart from this subsection.

Custody of infants,

- (11) Subject to the express provisions of any other Act, in questions relating to the custody and education of infants, the rules of equity shall prevail.

Conflict between law and equity.

- (12) Generally (subject to the express provision of any other Act), in all matters not hereinbefore particularly mentioned, in which there was, before the passing of the Supreme Court Act, 1880, 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.

Rules as to division of loss on collision of ships.

Cf. 44 Vict., No. 10
s. 8 (9).
1 & 2 Geo. V.,
c. 57, s. 1,
S. C. Act, 1928,
s. 64 (Victoria).
Tas. No. 53 of 1932,
s. 11.

26. (1.) Where by fault of two or more vessels, damage or loss is caused to one or more vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault:

Provided that if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

(2.) Nothing in this section shall operate so as to render any vessel liable to any loss or damage to which her fault has not contributed.

(3.) Nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract, or by any provision of law, or as affecting the right of any person to limit his liability in manner provided by law.

(4.) For the purposes of this section the expression "freight" includes passage money and hire, and references to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses consequent upon that fault recoverable at law by way of damages.

(5.) In this section, and the three next succeeding sections, "vessel" includes any ship, boat, or any other description of vessel used for any purpose on the sea or in navigation.

(6.) Nothing in this section and the next succeeding sections shall affect the right of an owner of a vessel not itself in fault which has suffered damage or loss by reason of the fault of two or more other vessels, to recover his damage or loss from the owners of the vessels in fault jointly or severally.

27. (1.) Where loss of life is or personal injuries are suffered by any person on board a vessel, owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several.

Damages for loss of life or personal injury as the result of collision between vessels.

Cf. 44 Vict., No. 10, s. 8 (9).

1 & 2 Geo. V., c. 57, s. 2.

S. C. Act, 1928, s. 65 (Victoria).

Tas. No. 53 of 1932, s. 11.

(2.) Nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

28. (1.) Where loss of life is or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and any vessel or vessels, and a proportion of the damage is recovered against the owner of one of the vessels which exceeds the proportion in which she was in fault, he may recover by way of contribution the amount of the excess from the owners of the other vessels to the extent to which those vessels were respectively in fault:

Right of contribution in case of collision between vessels.

Cf. 44 Vict., No. 10, s. 8 (9).

1 & 2 Geo. V., c. 57, s. 3.

S. C. Act, 1928, s. 66 (Victoria).

Tas. No. 53 of 1932, s. 11.

Provided that no amount shall be recovered which could not by reason of any statutory or contractual limitation of or exemption from liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2.) In addition to any other remedy provided by law, the persons entitled to any contribution as provided by subsection (1) of this section shall, for the purposes of recovering the contributions, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

Limitation of actions in cases of collisions between vessels.

1 and 2 Geo. V., c. 57.
Tas. No. 58 of 1932,
s. 11, (11, V. (a)).

29. No action or other proceeding shall be maintainable to enforce any claim against the owner of a vessel in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel is wholly or partly in fault, unless proceedings are commenced within two years from the date when the damage or loss or injury was caused; and an action shall not be maintainable to enforce any contribution in respect of an overpaid proportion of any damage for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment:

Provided that the Court or a Judge may, in accordance with the Rules of the Court, extend any such period to such extent and on such conditions as it or he thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of enforcing the claim, extend such period to an extent sufficient to give such reasonable opportunity.

Provisions to be read subject to s. 17 and to the Navigation Act 1912-1926.
Tas. No. 58 of 1932,
s. 11, (11 VI.).

30. The provisions of the last preceding four sections shall be read and construed subject to the provisions of section seventeen of this Act, and subject to the Navigation Act, 1912-1926.

Any interest may be contracted to be paid, but if no contract not more than 6 per cent. may be allowed.

See 30 Vict., No. 1, ss. 1 and 2,
64 Vict., No. 27, s. 1.
S. C. Act, 1928, s. 77 (Victoria).

31. (1.) Subject to the provisions of the Money Lenders Act, 1912, there shall be no limit to the amount of interest which any person may lawfully contract to pay.

(2.) In all cases where interest for the loan of money, or upon any other contract, may be lawfully recovered or allowed in any action, suit, or other proceeding in the Supreme Court, or any other court of law or equity, but where the rate of such interest has not been previously agreed upon by or between the parties, it shall not be lawful for the party entitled to interest to recover or be allowed in any such action, suit, or other proceeding above the rate of six pounds for interest or forbearance of one hundred pounds for a year, and so after that rate for a greater or lesser sum or for a longer or shorter time.

Interest may be allowed on trial in certain cases.
3 & 4 Will. IV., c. 42, s. 28.

32. Upon all debts or sums certain, payable at a certain time or otherwise, in any action the Court at the hearing, or the jury on the trial of any issue, or on an assessment of

damages, may, if the Court or jury think fit, allow interest to the creditor at a rate not exceeding eight pounds per centum per annum from the time when such debts or sums certain were payable, if such debts or sums are payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment was made in writing, giving notice to the debtor that interest would be claimed from the date of such demand or any later date: Provided that interest shall be payable in all cases in which it is now payable by law.

(Adopted by 6 Will. IV., No. 4).
Cf. S. C. Act, 1928, s. 78 (Victoria).

33. The Court at the hearing, or the jury on any trial or assessment of damages, may, in all actions of trover or trespass concerning goods, give damages in the nature of interest, if the Court or jury think fit, over and above the value of the goods at the time of the conversion or seizure, and over and above the money recoverable in all actions on any policies of insurance.

Damages in the nature of interest in certain actions.
3 & 4 Will. IV., c. 42, s. 29.
(Adopted by 6 Will. IV., No. 4.)
S. C. Act, 1928, s. 79 (Victoria).

34. The several rules of law enacted and declared by this Act shall be in force and take effect in all courts whatsoever in Western Australia so far as the matters to which such rules relate shall be respectively cognisable by such courts.

Rules of law to apply to inferior courts.
44 Vict., No. 10, s. 32.

35. 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 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 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.
55 Vict., No. 11, s. 3.
S. C. of J. (Consolidation) Act, 1925, s. 47 (Imp.).

36. Proceedings in *quo warranto* shall be deemed civil proceedings, whether for the purposes of appeal or otherwise.

Quo warranto.
55 Vict., No. 11, s. 4.
S. C. of J. (Consolidation) Act, 1925, s. 48 (Imp.).

37.* (1.) Subject to the provisions of this Act and to the Rules of Court and to the express provisions of the Local Courts Act, 1904, or any other Act, the costs of and incidental to all proceedings in the Supreme Court, including the admin-

Costs.
S. C. of J. (Consolidation) Act, 1925, s. 50 (Imp.).

istration 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 or out of what estate, fund, or property, and to what extent such costs are to be paid.

(2.) Nothing in this section shall alter the practice in any criminal cause or matter, or in proceedings on the Crown side of the Court.

PART IV.—SITTINGS AND DISTRIBUTION OF BUSINESS.

(1.) *Sittings and Vacations.*

38. Subject to the Rules of Court, the Supreme Court and the Judges thereof shall have power to sit and act at any time, and at any place, for the transaction of any part of the business of the Court or a Judge, or for the discharge of any duty which by any statute or otherwise is required to be discharged.

39. Subject to the Rules of Court, civil sittings for the trial of causes and issues of fact in Perth shall, so far as reasonably practicable and subject to vacations, be held from time to time throughout the year by such Judge or Judges as the business to be disposed of may render necessary.

40. The Supreme Court criminal sittings in Perth shall be held monthly, except in the month of January.

41. (1.) All causes and matters within the jurisdiction of the Court which are not required by this Act or the Rules of Court, or by any statute in force in this State, to be heard and determined by the Full Court shall be heard, determined, and disposed of by a single Judge in accordance with the provisions of this Act and the Rules of Court.

(2.) Subject to the provisions of this Act and the Rules of Court, the trial of—

(a) all actions and causes; and

(b) all issues and questions of fact (whether in a cause or a matter) tried with a jury—

which are not ordered to be tried at bar shall be held before a single Judge sitting in court as a Court.

(3.) Subject to the provisions of section fifty-eight and subsection (2) of this section, and the Rules of Court, all the jurisdiction of the Court which is subject to this Act may be

Time and place of sittings of the Court.
44 Vict., No. 10,
s. 9.

Civil sittings in Perth.
Cf. 44 Vict., No. 10,
s. 13.

Criminal sittings in Perth.
63 Vict., No. 7, s. 2,
No. 6 of 1934.

Causes and matters to be brought before a single judge.
Cf. 44 Vict., No. 10,
s. 14.
15 and 16 Geo. V.,
c. 49, s. 61 (Imp.).
Tas. No. 58 of 1932,
s. 16.

exercised by a single Judge, whether sitting in court or in chambers.

(4.) A single Judge, whether sitting in court or in chambers, shall have and may exercise, with respect to any cause or matter properly brought before him, all the jurisdiction, powers, and authorities of the Court, as the circumstances may require to be exercised.

42. Subject as hereinafter provided, if, on the application of any party to an action made not later than such time before the trial as may be limited by the Rules of Court, the Court or a Judge is satisfied that—

Trial with or without a jury.
23 and 24 Geo. V.,
c. 36, s. 6 (Imp.).

(a) a charge of fraud against that party; or

(b) a claim in respect of libel, slander, malicious prosecution, false imprisonment, seduction, or breach of promise of marriage,

is in issue, the action shall, subject to the provisions of the Jury Act, 1898, be tried by a jury, unless the Court or Judge is of opinion that the trial thereof requires any prolonged examination of documents or accounts or any scientific or local examination which cannot conveniently be made with a jury; but, save as aforesaid, any action may, subject to Rules of Court, in the discretion of the Court or a Judge, be ordered to be tried with or without a jury:

Provided that the provisions of this section shall be without prejudice to the power of the Court or a Judge to order, in accordance with the Rules of Court, that different questions of fact arising in any action be tried by different modes of trial, and where such order is made the provisions of this section requiring trial with a jury in certain cases shall have effect only as respects questions relating^a to such charge or claim as aforesaid.

43. (1.) Any Judge, whether sitting in court or in chambers, may at any time before final judgment, and whether before or after argument, reserve any case, or any point or question in a case, for the consideration of the Full Court, or may at any such time as aforesaid direct any case, point, or question to be argued before the Full Court, or may give judgment in any cause or matter subject to the judgment of the Full Court on any point or question arising in such cause

Reservation by Judge of cases and questions for determination by Full Court.
44 Vict., No. 10,
s. 16.
Tas. No. 53 of 1982,
s. 17.

or matter, and may reserve such point or question for such judgment, and the Full Court shall thereupon hear and determine such case, point, or question.

(2.) Any Judge, whether sitting in court or in chambers, may, when granting a rule *nisi* or order to show cause, make the same returnable before the Full Court.

Vacations.
Cf. 44 Vict., No. 10,
s. 10.

44. (1.) The Governor may, from time to time, upon any report or recommendation of the Judges of the Supreme Court, make, revoke, or modify Orders in Council regulating the vacations to be observed by the Court.

(2.) Any Order in Council made pursuant to this section shall, so long as it continues in force, have effect as if enacted by this Act, and Rules of Court may be made accordingly for carrying the Order in Council into effect.

Sittings in vacation.
44 Vict., No. 10,
s. 11.

45. Provision shall be made by the Rules of Court for the hearing in Perth during vacation by the Court or a Judge of all such applications as may require to be immediately and promptly heard.

(2).—Circuit Districts.

Circuit districts, and
sittings of the Su-
preme Court therein.
Cf. 61 Vict., No. 28,
s. 2.

46. (1.) The Governor may, by proclamation, declare that such portions of Western Australia as he thinks fit shall form circuit districts, and shall assign a name to each of such districts, and define the boundaries of the same respectively; and may, in like manner, increase or decrease the number of such districts, and may alter the name and boundaries of any such district.

(2.) The time and place of every sitting of the Supreme Court in a circuit district shall be regulated by the Rules of Court; but, subject to a cause or matter being entered for trial or hearing in the circuit court, or to the committal for trial of some person in the circuit court for an indictable offence, a sitting of the Supreme Court shall be held in every circuit district once at least every three months.

(3.) Any proclamation under this section may be revoked by a subsequent proclamation and shall cease to have effect from the publication thereof in the *Gazette*, or from a later date to be therein stated.

Summoning of
jurors.
Cf. *Ibid.*, ss. 5, 6, 7.

47. (1.) The stipendiary or resident magistrate to whom is assigned the magisterial district within which a sitting of

the Supreme Court as a circuit court is to be held shall be the summoning officer on behalf of the sheriff to empanel, and by precept under his hand directed to the bailiff of the local court, to cause jurors to be summoned under the Jury Act, 1898, for the trial of any cause with a jury in a circuit court.

(2.) The provisions of the Jury Act, 1898, shall *mutatis mutandis* apply to the compilation of jurors' books for circuit districts.

48. The expression "circuit court" shall mean any sitting of the Supreme Court in a circuit district. Interpretation.
Ibid., s. 14.

(3).—*Jurisdiction of a Commissioner.*

49. (1.) The Governor, by commission either general or special, may assign to any practitioner of the Supreme Court of at least seven years' standing, or to a stipendiary or resident magistrate, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law or partly of fact and partly of law in any cause or matter, depending in the Supreme Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by a Judge. Jurisdiction of
commissioner.
44 Vict., No. 10,
s. 12.

(2.) Any commission so granted shall be of the same validity as if it were enacted in the body of this Act.

(3.) Any commissioner appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction so assigned to him, perform such and the like duties, and have such and the like powers, as by this Act are imposed or conferred upon a Judge in the exercise of the ordinary jurisdiction of the Court.

(4.) Subject to any restrictions or conditions imposed by Rules of Court, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of a Judge, require the question or issue to be tried or determined by a commissioner as aforesaid, and such questions or issues shall be tried and determined accordingly.

(5.) A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

No. 10 of 1903, s. 2.

(6.) The civil and criminal jurisdiction capable of being exercised by a Judge which under this section the Governor may by commission either general or special assign to the persons mentioned in subsection one, may include each and every jurisdiction, civil or criminal and original or appellate, which by any custom, law, or prerogative, or any statute heretofore enacted, or hereafter to be enacted, or otherwise howsoever, a Judge of the Supreme Court, can now or hereafter shall be empowered to exercise; and every general or special commission by the Governor granted and issued under this section, which by its terms purports to assign any such jurisdiction as above mentioned, shall in that respect be good, valid, and effective:

Provided that no appellate jurisdiction shall be assigned unless the commission is granted to a Judge or a practitioner of the Court of at least seven years' standing.

(4).—*Inquiries and Trials by Referees.*

50. (1.) Subject to the Rules of Court, and to any right to have particular cases tried by jury, the Court or a Judge may refer to the Master or to a referee for inquiry or report any question arising in any cause or matter, other than a criminal proceeding by the Crown.

(2.) The report of the Master or referee may be adopted wholly or partially by the Court or a Judge, and, if so adopted, may be enforced as a judgment or order to the same effect.

51. In any cause or matter, other than a criminal proceeding by the Crown,—

- (a) if all the parties interested who are not under disability consent; or
- (b) if the cause or matter requires any prolonged examination of documents, or any scientific or local investigation, which cannot, in the opinion of the Court or a Judge, conveniently be made before a jury or conducted by the Court; or
- (c) if the question in dispute consists wholly or in part of matters of account;

the Court or a Judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before the Master or a special referee or arbitrator agreed on by the parties.

Reference for report.

44 Viet., No. 10, s. 20.

S. C. of J. (Consolidation) Act, 1925, s. 88 (Imp.).

Reference for trial. 44 Viet., No. 10, s. 21.

S. C. of J. (Consolidation) Act, 1925, s. 89 (Imp.).

52. (1.) In all cases of reference to the Master or to a special referee or arbitrator, the Master or special referee or arbitrator shall, subject to Rules of Court, have such authority, and conduct the reference in such manner, as the Court or a Judge may direct, and the special referee or arbitrator shall be deemed an officer of the Court.

Powers and remuneration of referees.
44 Vict., No. 10, s. 22.
S. C. of J. (Consolidation) Act, 1925, s. 90 (Imp.).

(2.) The report or award of the Master or special referee or arbitrator on any reference shall, unless set aside by the Court or a Judge, be equivalent to the verdict of a jury.

(3.) The remuneration to be paid to a special referee or arbitrator to whom any matter is referred under an order of the Court or a Judge shall be determined by the Court or a Judge.

53. The Court or a Judge shall, in relation to references, have all such powers as are conferred by the Arbitration Act, 1895, on the Court or a Judge in relation to references by consent out of Court.

Court to have powers as to references by consent.
S. C. of J. (Consolidation) Act, 1925, s. 91 (Imp.).

54. The Master or a special referee or arbitrator may, at any stage of the proceedings under a reference, and shall, if so directed by the Court or a Judge, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference.

Statement of case pending arbitration.
S. C. of J. (Consolidation) Act, 1925, s. 95 (Imp.).

55. An order made under the provisions of this Part of this Act relating to inquiries and trials by referees may be made on such terms as to costs or otherwise as the Court or a Judge thinks fit.

Power of Court to impose terms as to costs, etc.
S. C. of J. (Consolidation) Act, 1925, s. 95 (Imp.).

(5).—Assessors.

56. (1.) In any cause or matter before the Supreme Court, other than a criminal proceeding by the Crown, the Court may, if it thinks it expedient so to do, call in the aid of one or more assessors specially qualified, to try and hear the cause or matter wholly or partially with their assistance.

Trial with assessors.
44 Vict., No. 10, s. 20.
S. C. of J. (Consolidation) Act, 1925, s. 98 (Imp.).

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

(6).—The Full Court.

57. Except as hereinafter provided a Full Court may be constituted by any two or more Judges of the Supreme Court sitting together:

Quorum of Full Court.
44 Vict., No. 10, s. 15.

C. Code, s. 687.

Provided that the Full Court when sitting as the Court of Criminal Appeal shall be constituted by an uneven number of Judges.

Appeals and applications to, and causes and matters to be disposed of by the Full Court.

Cf. 44 Vict., No. 10, ss. 15, 16.

S. C. Act, 1928 (Victoria), s. 34.

Tas. No. 58 of 1932, s. 15.

58. (1.) Subject as otherwise provided in this Act and to the Rules of Court, the Full Court shall hear and determine—

- (a) Applications for a new trial or re-hearing of any cause or matter, or to set aside or vary any verdict, finding or judgment found given or made in any cause or matter tried or heard by a Judge, or before a Judge and jury;
- (b) Appeals from a Judge whether sitting in court or in chambers;
- (c) Rules *nisi* and orders to show cause returnable before the Full Court;
- (d) Cases, points, and questions referred to or reserved by a Judge for the consideration or judgment of the Full Court, or directed by a Judge to be argued before the Full Court;
- (e) Trials at bar;
- (f) Appeals under Part X. of the Lunacy Act, 1903-1920:
- (g) Appeals to the Court of Criminal Appeal under and subject to Chapter LXIX. of the Criminal Code:
- (h) Appeals by way of Order of Review under the Justices Act, 1902-1926, if made returnable before the Supreme Court sitting as the Full Court; and an appeal from the refusal of a Judge to grant an order to review:
- (i) Appeals from Local Courts:
- (j) Appeals from a single Judge on a question of law pursuant to subsection (3) of section two hundred and sixty-five of the Mining Act, 1904:
- (k) Cases of *habeas corpus*, in which a Judge directs that the order *nisi* for the writ or the writ be made returnable before the Full Court:
- (l) Special cases where all parties agree that the same be heard before the Full Court:
- (m) All causes and matters and proceedings which—
 - (a) by any Act of this State, or the Rules of Court; or

Ss. 198 and 204.

Cf. No. 51 of 1904, s. 107.

(b) by or under any Imperial Act, or Act of the Commonwealth of Australia

are required to be heard and determined by the Full Court.

59. (1.) In any cause or matter in which a verdict has been found by a jury, or by a Judge without a jury, or by referees, or by a Judge sitting with assessors, the Full Court may order a new trial or reference, or vary or set aside such verdict, or reduce the damages awarded.

Applications for new trial, or to set aside verdict, etc.
44 Vict., No. 10,
s. 16.

(2.) Subject to the provisions of this Act, any application for a new trial may be made on any ground on which a new trial could be ordered in an action at law immediately before the commencement of this Act.

Tas. No. 58 of 1932,
s. 39.

(3.) A new trial may be ordered as to part only of any matter in controversy or as to some or one only of the parties, or as to any question or issue without disturbing any finding or decision as to any other part of the controversy or any other party, or on any other question or issue, and final judgment may be given as to any such other part or party or on any such other question or issue.

Ibid.

(4.) On the hearing of any such application the Full Court shall have and may exercise all such powers as are exercisable by it upon the hearing of an appeal and may, if it is satisfied that it has before it all the materials necessary for finally determining the question in dispute or any of them, or for awarding any remedy or relief sought, give judgment accordingly, and for that purpose shall have and may exercise all the jurisdiction, powers, and duties of the Court, whether as to amendment or otherwise, and may draw any inference of fact not inconsistent with the findings of the jury, if any, or may, if it is of the opinion that it has not sufficient materials before it to enable it to give judgment, direct the application to stand over for further consideration, and may direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it thinks fit, or may direct judgment to be entered in accordance with the finding or determination of any issue or question directed to be tried or determined, or may give judgment, in any of the modes authorised by this Act or the Rules of Court.

Ibid.

(5.) Notwithstanding anything contained in subsection (4), the Full Court on the hearing of any application for a

Ibid.

new trial in any case in which a verdict has been found by a jury, if it is satisfied—

- (a) that it has before it all the facts, and that no further material evidence could be produced at another trial; and
- (b) that the verdict was one which a jury, viewing the whole of the evidence reasonably, could not properly find—

may enter judgment for the party for whom the verdict should have been given at the trial, and for that purpose may exercise any of its powers under subsection (4).

(6.) Except as may be otherwise provided by the Rules of Court every application—

- (i) for a new trial; or
- (ii) to set aside a verdict, finding, or judgment

in any cause or matter where there has been a trial by a Judge sitting without a jury, shall be made by way of appeal to a Full Court in accordance with the Rules of Court relating to appeals from a Judge to a Full Court.

Restriction on
appeals.

Cf. S. C. of J. (Consolidation) Act, 1925, s. 31 (Imp.).
S. C. A. 1928, s. 40 (Victoria).

Cf. No. 4 of 1912,
s. 6.

44 Vict., No. 10
s. 17.

60. (1.) No appeal shall lie to the Full Court—

- (a) from an order of a Judge 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 a decision of a Judge where it is provided by any Act that such decision is to be final;
- (d) from an order absolute for the dissolution or nullity of marriage in favour of any party who having had time and opportunity to appeal to the Full Court from the decree *nisi* on which such order is founded has not appealed therefrom;
- (e) without the leave of the Judge making the order, from the order of a Judge made with the consent of the parties, or as to costs only which by law are left to the discretion of the Judge;
- (f) without the leave of the Judge or of the Full Court, from any interlocutory order or interlocutory judgment made or given by a Judge, except in the following cases, namely—
 - (i) where the liberty of the subject or the custody of infants is concerned;

- (ii) where an injunction or the appointment of a receiver is granted or refused;
- (iii) in the case of a decision determining the claim of any creditor, or the liability of any contributory under the Companies Act, 1893, or the liability of any director or other officer under the said Act, in respect of misfeasance or otherwise;
- (iv) the granting or refusal of a decree *nisi* in matrimonial cause;
- (v) in the case of an order on a special case stated under the Arbitration Act, 1895; and
- (vi) in such other cases to be prescribed as are in the opinion of the authority having power to make Rules of Court in the nature of final decisions.

(2.) An order refusing unconditional leave to defend an action shall not be deemed to be an interlocutory order within the meaning of this section.

(3.) An application for leave to appeal may be made *ex parte*, unless the Judge or the Full Court otherwise directs. S. C. Act, 1928, s. 40 (Victoria).

61. (1.) In any cause or matter pending before the Full Court, any direction incidental thereto not involving the decision of the appeal may be 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, if he thinks fit. Power of single Judge.
S. C. of J. (Consolidation) Act, 1925, s. 69 (Imp.).

(2.) Every order made by a Judge in pursuance of this section may be discharged or varied by the Full Court.

62. (1.) When the Judges sitting as a Full Court are divided in opinion as to the decision to be given on any question, the question shall be decided according to the decision of the majority, if there is a majority. Decision in case of difference of opinion.
53 Vict. No. 15, s. 2.
S. C. Act, 1928, s. 39 (3). (Victoria).

(2.) Subject as hereinafter provided, if an appeal is heard before a Full Court constituted by two Judges and they differ in opinion, either party to the appeal may within one month after the delivery of the judgments of the said two Judges serve upon the Registrar and also upon the other party to the appeal notice in writing that he requires the appeal to be reheard before a Full Court consisting of not less than three Judges, and thereafter the appeal shall be reheard accordingly: Provided that (i) if neither party to the appeal gives notice as aforesaid within the said period of one month, then the appeal shall not be reheard and the judgment or order Judiciary Act, 1903, s. 23 (Com.).

against which the appeal was taken shall remain unaltered; and (ii) where the appeal has been taken against the judgment or order of a court, other than the Supreme Court, and the two Judges hearing the appeal differ in opinion as aforesaid, they may, of their own motion, direct that the appeal shall be reheard before a Full Court consisting of not less than three Judges, and thereafter the appeal shall be reheard accordingly.

(3.) If an appeal is heard before the Full Court consisting of more than three Judges and the Court is equally divided in opinion, the opinion of the Chief Justice, or if he is absent the opinion of the senior Judge present, shall prevail.

PART V.—ARREST IN PENDING ACTIONS.

Power under certain circumstances to arrest a person about to remove out of jurisdiction of the Court.

24 Vict., No. 15, s. 23.

34 Vict., No. 21, s. 4.

32 and 33 Vict., c. 62, s. 6 (Imp.).
S. C. Act, 1928, ss. 140, 141 (Victoria).

63. (1.) All actions in the Supreme Court shall be commenced by writ of summons, or in such other manner as may be prescribed by Rules of Court, and not by arrest of the person.

(2.) Where the plaintiff in any action in the Supreme Court proves at any time before final judgment by the affidavit of himself or some other person, to the satisfaction of a Judge—

- (a) that such plaintiff has a cause of action against the defendant to the amount of fifty pounds or upwards, or has sustained damage to that amount, and
- (b) that there is probable cause for believing that the defendant is about to remove out of the jurisdiction of the Court unless he is apprehended, and
- (c) that the absence of the defendant will materially prejudice the plaintiff in the prosecution of his action,

the Judge may order such defendant to be arrested and imprisoned until further order of the Court or a Judge, unless and until he has sooner given security not exceeding the amount claimed in the action that he will not remove out of the jurisdiction of the Court without the leave of the Court or a Judge:

Provided that the plaintiff claiming such order of arrest shall prosecute his action with reasonable diligence, otherwise a Judge may discharge the defendant from custody:

Provided also that where the action is for a penalty or sum in the nature of a penalty other than a penalty in the nature of any contract, it shall not be necessary to prove that

the absence of the defendant will materially prejudice the plaintiff in the prosecution of the action; and the security given shall be to the effect that any sum recovered against the defendant in the action shall be paid.

(3.) The order to arrest (which shall be in the prescribed form, with such variations as the circumstances may require), may be made on affidavit and *ex parte*, but the defendant may at any time apply to the Court or a Judge to rescind or vary the order, or to be discharged from custody, or for such other relief as may be just.

(4.) An order to arrest shall, before delivery to the sheriff, be indorsed with the address for service of the plaintiff, and of his solicitor (if any), as required by Rules of Court in relation to writs of summons.

64. (1.) The security to be given by a defendant may be a deposit in Court of the amount mentioned in the order not exceeding the amount claimed in the action, or a bond to the plaintiff by the defendant and two sufficient sureties (or with the leave of a Judge, one surety), or with the plaintiff's consent any other form of security.

Security.
S. C. Act, 1923,
s. 140 (Victoria).

(2.) The plaintiff may, after receiving particulars of the names and addresses of the proposed sureties, give notice that he objects thereto, stating in the notice the particulars of his objections.

(3.) In such case the sufficiency of the security shall be determined by the Master, who shall have power to award costs to either party, and such order may be enforced as if it were an order of a Judge.

(4.) It shall be the duty of the plaintiff to obtain an appointment for the purpose of determining the sufficiency of the security, and unless he does so within four days after giving notice of objection, the security shall be deemed sufficient.

65. The money deposited and the security and all proceedings thereon shall be subject to the order and control of the Court or a Judge.

Control of the
Court.
Ibid., s. 150

66. Unless otherwise ordered, the cost of and incidental to an order for arrest shall be costs in the cause, and in all proceedings under this Part of this Act the Court or Judge may make such orders as to costs as it or he thinks fit.

Costs.
Ibid., s. 151.

67. (1.) Upon payment into Court of the amount mentioned in the order, a receipt shall be given; and upon receipt

Discharge of de-
fendant.
Ibid., s. 152.

ing the bond or other security, a certificate to that effect shall be given, signed by the plaintiff's solicitor if he has one, or by the plaintiff, if he sues in person.

(2.) The delivery of such receipt or certificate to the sheriff or officer executing the order shall, on payment of the sheriff's fees and allowances, entitle the defendant to be discharged out of custody.

Date of arrest.
Ibid., s. 153.

68. The sheriff or other officer named in the order shall, within two days after the arrest, indorse on the order the true date of such arrest.

PART VI.—MATRIMONIAL CAUSES AND MATTERS.

(1).—*Divorce and Nullity of Marriage.*

Grounds for petition
for divorce.
No. 7 of 1912, s. 2.

69. (1.) It shall be lawful for any husband, domiciled in Western Australia, to present a petition to the Court praying that his marriage may be dissolved on the ground that his wife has since the celebration thereof been guilty of adultery.

(2.) It shall be lawful for any wife, domiciled in Western Australia, to present a petition to the Court praying that her marriage may be dissolved on the ground that since the celebration thereof her husband has been guilty of adultery, sodomy, or bestiality.

(3.) It shall be lawful for any married person, domiciled in Western Australia, to present a petition to the Court praying that his or her marriage may be dissolved—

(a) on the ground that since the celebration thereof his wife or her husband, as the case may be, has without just cause or excuse wilfully deserted him or her, and without any such cause left him or her continually deserted for three years and upwards; or

(b) on the ground that the respondent, being the petitioner's husband, has during four years and upwards been an habitual drunkard and either habitually left his wife without means of support or habitually been guilty of cruelty towards her, or being the petitioner's wife has for a like period been an habitual drunkard and habitually neglected her domestic duties or rendered herself unfit to discharge them; or

(c) on the ground that at the time of the presentation of the petition the respondent has been imprisoned

No. 52 of 1920,
s. 3.

for a period of not less than three years and is still in prison under a commuted sentence for a capital crime or under sentence of imprisonment for seven years or upwards, or being a husband has within five years undergone frequent convictions for crime or misdemeanour and been sentenced in the aggregate to imprisonment for three years or upwards and left his wife habitually without the means of support; or

(d) on the ground that within one year previously the respondent has been convicted of having attempted to murder the petitioner or having assaulted him or her with intent to inflict grievous bodily harm; or

(e) on the ground that the respondent is a lunatic or person of unsound mind, and is confined as such in an asylum or other institution under the Lunacy Act, 1903-1920, in Western Australia, or in a like institution in any other part of the British Dominions, and has been so confined for a period or periods not less in the aggregate than five years and is unlikely to recover from such lunacy or unsoundness of mind; or

*Cf. No. 7 of 1912,
s. 2 (d).
N.Z. No. 16 of 1928
s. 10 (g).*

(f) on the ground that the respondent, being the petitioner's husband.—

*No. 23 of 1925,
s. 2.*

(i) is separated from the petitioner under a decree or order of a competent court or by virtue of a deed or agreement of separation, and has been so separated for a period of three years and upwards; and

(ii) is, and has been during the period aforesaid, liable by virtue of a decree or order of the said court or of a covenant in the said deed or of such agreement to make periodical payments to the petitioner, or to some person on her behalf, by way of alimony or for the maintenance and support either of the petitioner alone or of her and any child being offspring of the marriage; and

(iii) has during the period aforesaid failed to make such payments periodically as required by the decree, order, covenant, or agreement, either entirely or repeatedly and habitually.

and every such petition shall state as distinctively as the nature of the case permits the facts on which the claim to have such marriage dissolved is founded.

Non-compliance
with decree for
restitution of con-
jugal rights a
ground for divorce.
No. 33 of 1919, s. 5.
No. 52 of 1920, s. 2.

(4.) If the respondent shall fail to comply with a decree for restitution of conjugal rights, such respondent shall thereupon be deemed to have been guilty of wilful desertion without just cause or excuse, and a suit for dissolution of marriage may be instituted, and the petitioner shall, subject to this Act and as hereinafter provided, be entitled to a decree *nisi* for the dissolution of the marriage:

Provided that no such decree shall be made unless the desertion shall have continued for three years, but wilful desertion without just or reasonable cause or excuse prior to the decree for restitution of conjugal rights if continuous with subsequent desertion shall be included in computing such period of three years:

Provided also that such decree *nisi* shall not be made absolute until after the expiration of six calendar months from the pronouncement thereof, unless the Court shall for good cause fix a shorter time.

Ante-nuptial incontinence a ground for divorce.
No. 33 of 1919, s. 7;

(5.) Any married person domiciled in Western Australia may present a petition to the Court praying that his or her marriage may be dissolved, and it shall be competent for the Court to decree a dissolution thereof—

(a) in the case of a wife on the ground that prior to the celebration of the marriage the husband has been guilty of incontinence whereby at the time of such marriage a woman other than the wife of such marriage is pregnant to such husband, and

(b) in the case of a husband on the ground that prior to the celebration of the marriage his wife has been guilty of incontinence and was, at the time of the celebration of the marriage, pregnant to a person other than the husband of the marriage:

Provided that the petition must be presented within nine months after the date of the marriage:

Provided also, that the respondent to any such petition may avail himself or herself of any defence or answer thereto which would be competent to a respondent to a petition for dissolution of marriage on the ground of adultery.

Domicile.
No. 7 of 1912, s. 6.

70. No person shall be entitled to petition under this Part of this Act who shall have resorted to this State for that purpose only.

71. A domiciled person shall, for the purposes of this Act, include a deserted wife who was domiciled in Western Australia at the time of desertion, and such wife shall be deemed to have retained her Western Australian domicile notwithstanding that her husband may have since the desertion acquired any foreign domicile, and for the purposes of this Act a deserted wife's husband, who was domiciled in Western Australia at the time of the desertion, shall be deemed to have retained his Western Australian domicile notwithstanding that such husband may have acquired a foreign domicile since the desertion.

Domicile of deserted wife.
No. 7 of 1912, s. 6.
No. 7 of 1929, s. 3.*

72. (1.) On any petition for the dissolution of marriage on the ground of adultery presented by the husband, the petitioner shall make the alleged adulterer a co-respondent to the petition, unless on special grounds to be allowed by the Court he shall be excused from so doing.

Provisions as to making adulterer co-respondent.
27 Vict., No. 19, s. 24.
Vict., No. 2726, s. 79.

(2.) On any such petition on the ground of adultery presented by the wife the Court may, if it thinks fit, direct that the person with whom the husband is alleged to have committed adultery be made a respondent.

(3.) The parties to a petition for the dissolution of marriage on the ground of adultery, or either of them, may require the contested matters of fact tried by a jury.

Either party may require contested facts to be tried by jury.

73. Upon any petition for dissolution of marriage, it shall be the duty of the Court to satisfy itself, so far as it reasonably can, as to the facts alleged, and also to inquire into any counter-charge which may be made against the petitioner.

Court to satisfy itself as to facts alleged, and to inquire into any counter-charge:
27 Vict., No. 19, s. 26.
15 and 16 Geo. V., c. 49, s. 178 (Imp.).
Vic., No. 2726, s. 80.

74. Upon any petition for dissolution of marriage charging adultery, it shall be the duty of the Court to satisfy itself, so far as it reasonably can, whether or not the petitioner has been in any manner accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery complained of.

Upon petition for dissolution of marriage charging adultery, Court to satisfy itself as to connivance or condonation.
27 Vict., No. 19, s. 26.
15 and 16 Geo. V., c. 49, s. 178 (Imp.).
Vic., No. 2726, s. 81.

75. In case the Court finds that a petition for dissolution of marriage is presented or prosecuted in collusion with the respondent or respondents or either of them, or with any person liable to be made a respondent under the provisions hereinbefore contained, the Court shall dismiss the petition.

If collusion proved petition to be dismissed.
27 Vict., No. 19, s. 26, 27.
15 and 16 Geo. V., c. 49, s. 178 (Imp.).
Vic., No. 2726, s. 82.

* This section has effect as amended from the commencement of the Act No. 7 of 1912. See No. 7 of 1929, s. 3.

If adultery is found to have been connived or condoned, petition to be dismissed.

27 Vict., No. 19, s. 27.

15 and 16 Geo. V., c. 49, s. 178 (Imp.).

Vict., No. 2726, s. 83.

76. Upon any petition for dissolution of marriage charging adultery, in case the Court finds that the petitioner has during the marriage been accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery complained of, the Court shall dismiss the petition, unless on some other ground not involving adultery the petitioner is entitled to relief.

Cases in which Court may refuse decree of dissolution.

27 Vict., No. 19, s. 28.

15 and 16 Geo. V., c. 49, s. 178 (Imp.).

Vict., No. 2726, s. 84.

77. (1.) The Court shall not be bound to pronounce a decree for dissolution of marriage if it finds that the petitioner has during the marriage been guilty of adultery, or if the petitioner in the opinion of the Court has been guilty of unreasonable delay in presenting or prosecuting the petition, or of cruelty towards the other party to the marriage.

(2.) In the case of a petition charging adultery, the Court shall not be bound to pronounce a decree of dissolution of marriage or any ground involving adultery, if it finds that the petitioner has during the marriage been guilty of having deserted or wilfully separated himself or herself from the other party before the adultery complained of and without reasonable excuse, or of such wilful neglect or misconduct as has conduced to the adultery.

Dismissal or granting of petition founded on desertion.

No. 7 of 1912, s. 4.

78. In case the Court, on the hearing of a petition for dissolution of marriage on the ground of desertion, shall find that the petitioner has condoned the desertion complained of, the Court shall dismiss the petition.

Power of Court to grant or dismiss petition generally.

No. 7 of 1912, s. 5.

Vict., No. 3726, s. 75.

79. If, in the opinion of the Court, the petitioner's own habits or conduct induced or contributed to the wrong complained of, or (as the case may be) to the lunacy or unsoundness of mind of the respondent, the petition may be dismissed.

Dismissal of co-respondent from proceedings.

27 Vict., No. 19, s. 25.

No. 7 of 1912, s. 3.

15 & 16 Geo. V., c. 49, s. 179 (Imp.).

80. In all cases in which, on the petition of the husband for a divorce, the alleged adulterer is made a co-respondent, or in which, on the petition of the wife, the person with whom the husband is alleged to have committed adultery is made a respondent, the Court may, after the close of the evidence on the part of the petitioner, direct such co-respondent or

respondent to be dismissed from the suit, if it thinks there is not sufficient evidence against him or her.

81. If in any proceedings in a matrimonial cause the respondent opposes the relief sought the Court may give the respondent the same relief to which he or she would have been entitled if he or she had presented a petition seeking such relief.

Relief to respondent
on petition for
divorce.

34 Vict., No. 7, s. 2.

82. In the case of any petition for the dissolution of marriage or the nullity of marriage—

Duties of Attorney
General.

27 Vict., No. 19,
ss. 45, 46.

43 Vict., No. 9, s. 1.

(1) The Court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Attorney General, who shall instruct counsel to argue before the Court any question in relation to the matter which the Court deems to be necessary or expedient to have fully argued:

(2) Any person may, at any time during the progress of the cause or before the decree *nisi* is made absolute, give information to the Attorney General of any matter material to the due decision of the case, and the Attorney General may thereupon take such steps as he considers necessary or expedient:

(3) If in consequence of such information or otherwise the Attorney General suspects that any parties to the suit are or have been acting in collusion for the purpose of obtaining a decree contrary to the justice of the case, he may, after obtaining the leave of the Court, intervene in the suit and retain counsel and subpoena witnesses to prove the alleged collusion; and the Court may order the costs arising from such intervention to be paid by the parties or such of them as it thinks fit, including the wife if she has separate property, and may also reverse the decree *nisi* or make such other order as it may deem fit.

83. Subject to the provisions of this Part of this Act, the Court, if satisfied that the case of the petitioner is established,

Decree *nisi* for
dissolution of
marriage,
1912, No. 7, s. 5.
Vict., No. 3726,
s. 86.

shall pronounce a decree *nisi* for dissolution of the marriage.

Decree *nisi* for divorce or nullity of marriage.

27 Vict., No. 19, s. 46.

34 Vict., No. 7, s. 3.

Cf. S. C. of J. (Consolidation) Act, 1925, s. 183 (Imp.).

84. (1.) Every decree for a dissolution of marriage or for the nullity of marriage shall, in the first instance, be a decree *nisi* not to be made absolute until after the expiration of six months from the pronouncing thereof, unless the Court by the decree *nisi* fixes a shorter time.

(2.) After the pronouncing of the decree *nisi* and before the decree is made absolute, any person may, in the prescribed manner, show cause why the decree should not be made absolute by reason of the decree having been obtained by collusion, or by reason of material facts not having been brought before the Court, and in any such case the Court may make the decree absolute, reverse the decree *nisi*, require further inquiry, or otherwise deal with the case as the Court thinks fit.

N.Z., 1928, No. 10, s. 26.

(3.) If after a decree *nisi* for the dissolution of marriage or for the nullity of marriage (pronounced before or after the commencement of this Act) the petitioner does not, on the expiration of six months from the pronouncement thereof, or within two months from the expiration of any shorter period fixed by the decree *nisi*, apply to have the decree made absolute, the Court may, on the application of the respondent, on such notice to the petitioner as the Registrar directs, or such substituted notice as the Court allows, make such decree absolute, and shall have on, or in respect of such application, the same powers as if the application were made by the petitioner: Provided that the Court may refuse to grant or may adjourn consideration of the application if any costs awarded against the respondent or the co-respondent in the suit have not been paid.

Re-marriage of divorced persons.

Cf. 27 Vict., No. 19, ss. 62, 63.

See Subdivision (5), ss. 108, 109.

Cf. S. C. of J. (Consolidation) Act, 1925, s. 184 (Imp.).

Marriage Act, 1898 s. 88 (Victoria).

85. As soon as any decree *nisi* for a dissolution of marriage or the nullity of marriage is made absolute, either of the parties to the marriage may, if there is no right of appeal against the decree absolute, marry again as if the prior marriage had been dissolved by death, or, if there is such a right of appeal, may so marry again, if no appeal is presented against the decree, as soon as the time for appealing has expired, or, if an appeal is so presented, as soon as the appeal has been dismissed.

(2).—*Judicial Separation and Restitution of Conjugal Rights.*

86. (1.) A petition for judicial separation may be presented to the Court either by the husband or the wife on the ground of adultery or cruelty, desertion without cause for not less than two years, or failure to comply with a decree for restitution of conjugal rights. A petition for judicial separation may also be presented to the Court by the husband on any other ground for which a decree for divorce may be pronounced at the suit of a husband under section sixty-nine of this Act, or by the wife on any ground for which a decree for divorce may be pronounced at the suit of a wife under the said section.

Decree for judicial separation.
27 Vict., No. 19, ss. 2, 11, 12.
No. 33 of 1919, s. 6.
Cf. S. O. of J. (Consolidation) Act, 1925, s. 185.

(2.) The court may, on being satisfied that the allegations contained in the petition are true, and that there is no legal ground why the petition should not be granted, make a decree for judicial separation, and any such decree shall have the same force and effect as a decree for divorce *a mensâ et thoro* had in England before the commencement of the Matrimonial Causes Act, 1857.

(3.) The Court may, on the application by petition of the husband or wife against whom a decree for judicial separation has been made, and on being satisfied that the allegations contained in the petition are true, reverse the decree at any time after the making thereof, on the ground that it was obtained in the absence of the person making the application, or, if desertion was the ground of the decree, that there was reasonable cause for the alleged desertion.

(4.) The reversal of a decree for judicial separation shall not affect the rights or remedies which any other person would have had if the decree had not been reversed in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the date of the decree and the reversal thereof.

87. A petition for restitution of conjugal rights may be presented to the Court either by the husband or the wife, and the Court, on being satisfied that the allegations contained in the petition are true, and that there is no legal ground why a decree for restitution of conjugal rights should not be granted, may make the decree accordingly.

Decree for restitution of conjugal rights.
27 Vict., No. 19, s. 12.
Cf. S. O. of J. (Consolidation) Act, 1925, s. 186 (Imp.).

Periodical payments
in lieu of attach-
ment.

No. 33 of 1919, s. 2
Of, S. C. of J. (Con-
solidation) Act,
1925, s. 187.

88. (1.) A decree for restitution of conjugal rights shall not be enforced by attachment, but where the application is made by the wife the Court, at the time of making the decree or at any time afterwards, may, in the event of the decree not being complied with within the time in that behalf limited by the Court, order the respondent to make to the petitioner such periodical payments as may be just, and the order may be enforced in the same manner as an order for alimony in proceedings for judicial separation.

(2.) The Court may, if it thinks fit, order that the husband shall, to the satisfaction of the Court, secure to the wife the periodical payments, and for that purpose may direct that it shall be referred to the Master to settle or approve a proper deed or instrument to be executed by all necessary parties.

(3).—*Legitimacy Declarations.*

Declaration of
legitimacy, etc.
21 and 22 Vict.,
c. 93.

(Adopted by 31
Vict., No. 8.)
Of, S. C. of J. (Con-
solidation) Act,
1925, s. 188 (Imp.).

89. (1.) Any person who is a natural born subject of His Majesty, or whose right to be deemed a natural-born subject of His Majesty depends wholly or in part on his legitimacy or on the validity of any marriage, may, if he is domiciled in Western Australia, or claims any real or personal estate situated in Western Australia, apply by petition to the Court for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother or of his grandfather and grandmother was a valid marriage, or that his own marriage was a valid marriage.

(2.) Any person who is so domiciled or claims as aforesaid may apply to the Court for a decree declaring his right to be deemed a natural-born subject of His Majesty.

(3.) Applications under subsections (1) and (2) of this section may be included in the same petition, and on any such application the Court shall make such decree as the Court thinks just, and the decree shall be binding on His Majesty and all other persons whatsoever:

Provided that the decree of the Court shall not prejudice any person—

(i) if it is subsequently proved to have been obtained by fraud or collusion; or

- (ii) unless the person has been cited or made a party to the proceedings, or is the real or personal representative of, or derives title under or through, a person so cited or made a party.

(4.) A copy of every petition under this section, and of any affidavit accompanying the petition, shall be delivered to the Attorney General at least one month before the petition is presented or filed, and the Attorney General shall be a respondent on the hearing of the petition and on any subsequent proceedings relating thereto.

(5.) In any application under this section, such persons shall, subject to Rules of Court, be cited to see proceedings or otherwise summoned as the Court shall think fit, and any such persons may be permitted to become parties to the proceedings and to oppose the application.

(6.) The provisions of this Act relating to matrimonial causes shall, so far as applicable, extend to any proceedings under this section.

(7.) No proceedings under this section shall affect any final judgment or decree already pronounced or made by the Court.

(4).—*Miscellaneous.*

90. In all suits and proceedings other than those for dissolution of marriage, the Court shall proceed and act and give relief on principles and rules which in the opinion of the Court are as nearly as may be conformable to the principles and rules on which the ecclesiastical courts in England acted previously to the operation of the provisions of the Matrimonial Causes Act, 1857, but subject to the provisions herein contained, and to Rules of Court.

Court to act on principles of ecclesiastical courts.
27 Vict., No. 19,
s. 18

91. Every person seeking a dissolution of marriage, or a decree of nullity of marriage or a decree for judicial separation, or a decree in a suit of jactitation of marriage, shall file, together with the petition or other application for relief, an affidavit verifying the same so far as the deponent is able to do so, and stating that there is not any collusion or connivance between the deponent and the other party to the marriage.

Affidavit in support of petition
27 Vict., No. 19,
s. 37

92. Every such petition shall be served on the party to be affected thereby, either within or without Western Australia, in such manner as the Court by any general or special order

Service of petition,
27 Vict., No. 19,
s. 38.

from time to time directs, and for that purpose the Court shall have and may exercise all the powers it now possesses by law:

Marriage Act, 1928,
s. 112 (Victoria).

Provided that the Court may dispense with such service where it seems necessary or expedient so to do.

Action for criminal
conversation
abolished.

27 Vict., No. 19,
s. 64.

93. No action for criminal conversation shall be maintained.

Damages.

27 Vict., No. 19,
s. 30.

Cf. S. C. of J. (Consolidation) Act,
1925, s. 189 (Imp.).

94. (1.) A husband may, on a petition for dissolution of marriage, or for judicial separation, or for damages only, claim damages from any person on the ground of adultery with the wife of the petitioner.

(2.) A claim for damages on the ground of adultery shall be tried on the same principles and in the same manner as actions for criminal conversation were tried before the commencement of the Ordinance to regulate Divorce and Matrimonial Causes (27 Victoria, No. 19), and the provisions of this Act with reference to the hearing and decision of petitions shall, so far as may be necessary, apply to the hearing and decision of petitions on which damages are claimed.

(3.) The Court may direct in what manner the damages recovered on any such petition are to be paid or applied, and may direct the whole or any part of the damages to be settled for the benefit of the children, if any, of the marriage, or as a provision for the maintenance of the wife.

Court may order
adulterer to pay
costs.

27 Vict., No. 19,
s. 31.

95. Where in any petition presented by a husband the alleged adulterer has been made a co-respondent, or where in answer to his wife's petition a husband has alleged that his wife has committed adultery, and in any such case the adultery has been established, the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

Alimony and
maintenance.

27 Vict., No. 19,
s. 29.

Cf. C. C. of J.
(Consolidation)
Act, 1925, s. 190
(Imp.).

96. The Court may, if it thinks fit, on any decree for dissolution of marriage or nullity of marriage, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money or annual sum of money for any term, not exceeding her life, as having regard to her fortune, if any, to the ability of her husband, and to the conduct of the parties, the Court may deem to be reasonable, and

the Court may for that purpose order that it shall be referred to the Master to settle and approve a proper deed or instrument to be executed by all the necessary parties, and may, if it thinks fit, suspend the pronouncing of the decree until the deed or instrument has been duly executed.

(2.) In any such case as aforesaid the Court may, if it thinks fit, by order, either in addition to or instead of an order under subsection (1) of this section, direct the husband to pay to the wife during the joint lives of the husband and wife such monthly or weekly sum for her maintenance and support as the Court may think reasonable: 31 Vict., No. 7, s. 1.

Provided that

- (a) if the husband, after any such order has been made, becomes from any cause unable to make the payments, or if such wife shall re-marry, or if her circumstances shall, in the opinion of the Court, render the continuance of such payments or any part thereof no longer necessary for her maintenance or support, the Court may discharge or modify the order, or temporarily suspend the order as to the whole or any part of the money ordered to be paid, and subsequently revive it wholly or in part as the Court thinks fit; and No. 33 of 1919, s. 9
- (b) where the Court has made any such order as is mentioned this subsection and the Court is satisfied that the means of the husband have increased, the Court may, if it thinks fit, increase the amount payable under the order. No. 7 of 1929, s. 2.

(3.) Where any decree for restitution of conjugal rights or judicial separation is made on the application of the wife, the Court may make such order for alimony as the Court thinks just.

(4.) On any petition for dissolution of marriage, restitution of conjugal rights, nullity of marriage, or judicial separation the Court shall have the power to make such interim orders for the payment of money by way of alimony to the wife as the Court thinks fit.

(5.) In all cases where the Court makes an order for alimony, the Court may direct the alimony to be paid either to the wife or to a trustee approved by the Court on her behalf, and may impose such terms or restrictions as the Court thinks expedient, and may, from time to time, appoint a new trustee if for any reason it appears to the Court expedient so to do.

Power of Court to order settlement of wife's property.

Cf. 27 Vict., No. 19, s. 41.

No. 38 of 1919, s. 3.

S.C. of J. (Consolidation) Act,

1925, s. 191 (Imp.).

97. (1.) If it appears to the Court in any case in which the Court pronounces a decree for dissolution of marriage or for judicial separation by reason of the adultery of the wife, that the wife is entitled to any property either in possession or in reversion, the Court may, if it thinks fit, order such settlement as it thinks reasonable to be made of the property, or any part thereof, for the benefit of the innocent party, and of the children of the marriage, or any or either of them.

Any instrument made under any order of the Court made under this section shall be valid and effectual, notwithstanding the existence of coverture at the time of the execution thereof.

(2.) Where the application for restitution of conjugal rights is by the husband, and it appears to the Court that the wife is entitled to any property, either in possession or reversion, or is in receipt of any profits of trade or earnings, the Court may, if it thinks fit, order a settlement to be made to the satisfaction of the Court of the property or any part thereof for the benefit of the petitioner and of the children, if any, of the marriage, or either or any of them, or may order such part of the profits of trade or earnings, as the Court thinks reasonable, to be periodically paid by the respondent to the petitioner for his own benefit, or to the petitioner or any other person for the benefit of the children of the marriage, or either or any of them.

Power of Court to make orders as to application of settled property.

27 Vict., No. 19, s. 43.

43 Vict., No. 9, s. 2.

S.C. of J. (Consolidation) Act,

1925, s. 192 (Imp.).

98. The Court may, after pronouncing a decree for dissolution of marriage or for nullity of marriage, inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or any part of the property settled either for the benefit of the children of the marriage or of the parties to the marriage, as the Court thinks fit, and the Court may exercise the powers conferred by this section notwithstanding that there are no children of the marriage.

Custody of children.

27 Vict., No. 19, s. 42.

Cf. S.C. of J. (Consolidation) Act,

1925, s. 193 (Imp.).

99. (1.) In any proceedings for dissolution of marriage or nullity of marriage or judicial separation, the Court may from time to time, either before or by or after the final decree, make such provision as appears just with respect to the custody, maintenance, and education of the children, the marriage of whose parents is the subject of the proceed-

ings, or, if it thinks fit, direct proper proceedings to be taken for placing the children under the protection of the Court.

(2.) On an application made in that behalf the Court may, at any time before final decree, in any proceedings for restitution of conjugal rights, or, if the respondent fails to comply therewith, after final decree, make from time to time all such orders and provisions with respect to the custody, maintenance, and education of the children of the petitioner and respondent as might have been made by interim orders if proceedings for judicial separation had been pending between the same parties.

100. (1.) In every case of judicial separation—

- (a) the wife shall, as from the date of the decree and so long as the separation continues, be considered as a *feme sole* with respect to any property which she may acquire or which may devolve upon her, and any such property may be disposed of by her in all respects as a *feme sole* and if she dies intestate shall devolve as if her husband had been then dead; and
- (b) the wife shall, during the separation, be considered as a *feme sole* for the purpose of contract and wrongs and injuries, and of suing and being sued, and the husband shall not be liable in respect of her contracts or for any wrongful act or omission by her or for any costs she incurs as plaintiff or defendant:

Wife's property in case of judicial separation.
S.C. of J. (Consolidation) Act, 1926, s. 194 (Imp.), 27 Vict., No. 19, s. 22.

Provided that—

- (i) where on any judicial separation alimony has been ordered to be paid and has not been duly paid by the husband, he shall be liable for necessities supplied for the use of the wife;
- (ii) if the wife returns to cohabitation with her husband, any property to which she is entitled at the date of her return shall, subject to any agreement in writing made between herself and her husband while separate, be her separate property; and
- (iii) nothing in this section shall prevent the wife from joining at any time during the separation in the exercise of any joint powers given to herself and her husband.

(2.) In any case where the decree for judicial separation is obtained by the wife, any property to which she is entitled for an estate in remainder or reversion at the date of the decree, and any property to which she becomes entitled as executrix, administratrix, or trustee after the date of the decree, shall be deemed to be property to which this section applies, and for the purpose aforesaid the death of the testator or intestate shall be deemed to be the date when the wife became entitled as executrix or administratrix.

Protection of third parties.
27 Vict., No. 19, s. 17.
Of. S. C. of J. (Consolidation Act, 1925, s. 195 (Imp.).

101. (1.) Where a wife obtains a decree for judicial separation, the decree shall, so far as may be necessary for the protection of any person dealing with the wife, be valid and effectual until discharged, and the discharge or variation of the decree shall not affect any rights or remedies which any person would have had, if the decree had not been discharged or varied, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done during the period between the date of the decree and the discharge or variation thereof.

(2.) Any person who, in reliance on any such decree as aforesaid, makes any payment to or permits any transfer or act to be made or done by the wife, shall, notwithstanding the subsequent discharge or variation of the decree, or the fact that the separation has ceased or has been discontinued, be protected and indemnified in the same way in all respects as if at the time of the payment, transfer, or other act the decree were valid and still subsisting without variation in full force and effect, or the separation had not ceased or been discontinued, as the case may be, unless at that time that person had notice of the discharge or variation of the decree or that the separation had ceased or been discontinued.

Power to vary orders.
No. 38 of 1919, s. 4.
S. C. of J. (Consolidation) Act, 1925, s. 198 (Imp.).

102. The Court may from time to time vary or modify any order for the periodical payment of money made under the provisions of this Act relating to matrimonial causes and matters either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the order as to the whole or any part of the money ordered to be paid, and subsequently revive it wholly or in part, as the Court thinks just.

Power to allow intervention on terms.
Ibid., s. 197.

103. In every case in which any person is charged with adultery with any party to a suit or in which the Court may consider, in the interest of any person not already a party to the suit, that that person should be made a party to the

suit, the Court may, if it thinks fit, allow that person to intervene upon such terms, if any, as the Court thinks just.

104. The parties to any proceedings instituted in consequence of adultery and the husbands and wives of the parties shall be competent to give evidence in the proceedings, but no witness in any such proceedings, whether a party thereto or not, shall be liable to be asked or be bound to answer any question tending to show that he or she has been guilty of adultery unless he or she has already given evidence in the same proceedings in disproof of the alleged adultery.

Evidence.
Ibid., s. 108.
27 Vict., No. 19,
s. 39.

105. (1.) Subject to Rules of Court, the witnesses in all proceedings before the Court, when their attendance can be had, shall be sworn and examined orally and, subject to section one hundred and eight, in open Court:

Mode of taking
evidence.
27 Vict., No. 19,
s. 47.

Provided that the parties, with the leave of the Court, may verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit, on the application of the opposite party or by the direction of the Court, shall be subject to be cross-examined by or on behalf of the opposite party orally in open Court, and after such cross-examination may be re-examined orally in open Court by or on behalf of the party by whom such affidavit was filed.

(2.) Where a witness is out of the jurisdiction of the Court, or where by reason of illness or from other circumstances the Court shall not think fit to enforce the attendance of the witness in open Court, the Court may order a commission to issue for the examination of such witness in the same way to all intents as if the matter before it were an action pending in the ordinary jurisdiction.

Ibid., s. 48.

(3.) The Court may from time to time adjourn any petition and require further evidence thereon if it thinks fit so to do.

Ibid., s. 40.

106. In questions of fact arising in proceedings under this Part of this Act, it shall be lawful for but, except as hereinbefore provided, not obligatory on the Court to direct the truth thereof to be determined by the verdict of a jury, and in such case the provisions of the Jury Act, 1898, relating to civil issues shall apply.

Questions of fact
may be determined
by jury.
27 Vict., No. 19,
s. 33.
See Section 71 of
this Act.

107. (1.) A Judge may, in any cause or proceeding under this Part of this Act, sit in chambers for the despatch of such part of the business of the Court as in his opinion can with

Judge may sit in
Chambers.
27 Vict., No. 19,
ss. 5, 6.

advantage to the parties be heard in chambers, and the time at which such sitting shall be held shall from time to time be fixed by the Judge.

(2.) The Judge when so sitting in chambers shall have and exercise the same power and jurisdiction in respect of the business to be brought before him as if sitting in open Court.

Proceedings may be heard *in camera*.
N.Z. 1928, No. 16,
s. 55.

108. The Court, on the application of either the petitioner or the respondent, or at its discretion, if it thinks it proper in the interests of public morals may hear and try any suit or proceedings under this Part of this Act *in camera*; and may at all times in any such suit or proceeding, whether heard and tried in open Court or *in camera*, make an order forbidding the publication of any report or account of the evidence or other proceedings therein, either as to the whole or any portion thereof; and the breach of any such order, or any colourable or attempted evasion thereof, may be dealt with as contempt of Court.

Costs,
27 Vict., No. 19,
s. 55.

109. Subject to the foregoing provisions of this Part of this Act relating to costs, the Court, on the hearing of any suit, proceeding or petition, may make such order as to costs as to the Court seems just.

Enforcement of
decrees and orders.
27 Vict., No. 19,
s. 56.

110. All decrees and orders made by the Court in any suit, proceeding or petition instituted under this Part of this Act may be enforced and put into execution in the same or the like manner as other judgments, orders, and decrees of the Court may be enforced and put into execution.

(5).—*Appeal.*

Appeals in matri-
monial causes.
No. 4 of 1912, s. 2.

111. Subject to Rules of Court, and as hereinafter provided, the Full Court shall have jurisdiction to hear and determine an appeal from every judgment, decree, and order made by the Judge in a matrimonial cause, whether in Court or in chambers.

New trials,
Ibid., s.s. 3, 4.

112. In any matrimonial cause in which there has been a trial, with or without a jury, the Full Court in the exercise of its appellate jurisdiction may review any finding of fact, and may grant a new trial:

Provided that no finding of fact by the jury in a matrimonial cause shall be reviewed or set aside otherwise than in accordance with the rules and practice for the time being observed by the Court in relation to the findings of juries in other civil causes.

113. The Full Court in the exercise of its appellate jurisdiction may affirm, reverse, or modify the judgment, decree, or order appealed from, and may give such judgment or make such decree or order as ought to have been given or made in the first instance.

Powers of Court
Ibid., s. 5

114. No appeal from an order absolute for dissolution or nullity of marriage shall lie in favour of any person who, having had time and opportunity to appeal to the Full Court from the decree *nisi* on which such order may be founded, shall not have appealed therefrom.

Restriction on
appeals from
decrees absolute.
Ibid., s. 6.

115. Conditions and restrictions may be imposed by Rules of Court on the exercise of the jurisdiction conferred by this subdivision, and such jurisdiction shall be in addition to any jurisdiction possessed by the Full Court independently of this subdivision.

Rules of Court
Ibid., s. 8.

(6).—*Seal.*

116. (1.) The seal of the Court to be used in respect of its jurisdiction in matrimonial causes and matters shall be such as the Governor may from time to time direct.

Seal of Court for
use in matrimonial
causes.
27 Vict., No. 19,
s. 7.

(2.) All decrees and orders of the Court, or copies thereof, made in pursuance of the said jurisdiction shall, if purporting to be sealed with the said seal, be received in evidence without further proof.

PART VII.—ENFORCEMENT OF JUDGMENTS AND ORDERS.

(1).—*For recovery or payment of Money.*

117. (1.) Subject as hereinafter provided, and to the Rules of Court, a judgment for the recovery by or payment to any person of money may be enforced—

Enforcement of
judgments for
recovery or payment
of money.
Cf. 24 Vict., No. 15
s. 24.

- (a) by a writ of *fiery facias* or other like process;
- (b) by attachment of debts due or accruing to the judgment debtor;
- (c) by an order charging stocks and shares;
- (d) by equitable execution by means of a receiver or charging order supplemented, if deemed necessary, by an injunction restraining the judgment debtor or any other person from dealing with any property, or any interest therein;

6 Vict., No. 15, s. 3.

34 Vict., No. 21, s. 3.

(e) by commitment under and subject to the Debtors Act, 1871;

and where the judgment or order is for payment to any person of money and the time for payment is limited by the judgment or order or by a subsequent order, such judgment or order after being duly served may also, by leave of the Court or a Judge, be enforced

(f) by writ of sequestration; or

(g) by attachment in case of—

(i) default in payment of a penalty, or sum in the nature of a penalty;

(ii) default by a trustee or a person acting in a fiduciary capacity, and ordered by the Court or a Judge to pay any sum in his possession or under his control:

Provided that in any case within this paragraph, the Court or a Judge may (subject to the next following proviso) grant or refuse, either absolutely or upon terms, any application for a writ of attachment, and any application to stay the operation of any such writ, or for discharge from arrest or imprisonment thereunder:

Provided also that no person shall be imprisoned in any case within this paragraph for a longer period than one year.

(2.) Subject to paragraphs (e) and (g) of subsection (1), all process of execution on a judgment or order of the Court for recovery by or payment to any person of money shall be directed against property real as well as personal and not against the person, except when otherwise provided by a law in force in this State.

(2).—*Writ of fieri facias.*

118. Under a writ of *feri facias* or other like process of execution, the sheriff or other officer having the execution of the writ, may seize and sell all the real, chattel real, and personal estate and property in Western Australia and its dependencies of the defendant or other person ordered or directed to pay the money, or such part of such estate and property as may prove sufficient to realise a sum sufficient to satisfy the judgment or order under which the writ of *feri facias* was issued, and the costs, fees, and expenses of seizure and sale.*

*This section is subject to Section 11 of the Mortgagees' Rights Restriction Act, 1931 (which has been continued until 31st December, 1936) whereby it is enacted that process of execution against land may not be issued for the recovery of £50 or upwards without the leave of the Supreme Court.

Cf. 24 Vict., No. 15,
s. 5.

32 & 33 Vict., c. 62,
s. 4.

41 & 42 Vict., c. 54,
s. 1.

24 Vict., No. 15;
s. 23.

Writ of *feri facias*
24 Vict., No. 15,
s. 24.

119. The houses, lands, and other hereditaments and real estates, situate or being within Western Australia and its dependencies, belonging to any person indebted, including an equity of redemption, and all interests to which such person is entitled in such houses, lands, and other hereditaments corporeal or incorporeal and real estates in Western Australia and its dependencies, and which such person might according to law dispose of, and all powers vested in any such person which he might legally execute for his own benefit shall be subject to the like remedies, proceedings and process in the Supreme Court for seizing, extending, selling, or disposing of such houses, lands, and other hereditaments and real estates, towards the satisfaction of the debts, duties and demands of what nature or kind soever owing by such person to His Majesty or any of his subjects, or other persons entitled in like manner as subjects, and in like manner as personal estates in Western Australia are seized, extended, sold, or disposed of for the satisfaction of debts.

Lands, etc., subject to process of Court.
25 Vict., No. 8, s. 1.
Of P. L. Act, 1928, s. 208 (Victoria).

120. (1.) It shall not be necessary for the sheriff or other officer having the execution of a writ of *fiery facias* or other like process to make any actual seizure of land, or of the right, title and interest of any person to or in any land, under any writ of execution before the sale of such land, right, title or interest, any law to the contrary hereof notwithstanding:

Seizure of land unnecessary before sale under execution.
P. L. Act, 1928, s. 208 (3), (Victoria).

Provided that no land, or right, title, or interest therein of any person shall be sold under any writ of *fiery facias* or other like process until at least seven days after notice of the time and place of such sale has been published in a newspaper circulating in the neighbourhood of such land.

(2.) Nothing in this Part of this Act shall affect the provisions of the Transfer of Land Act, 1893, relating to execution against land under the operation of that Act.

121. In the case of a sale of the right, title and interest of any person of to or in any land, under a writ of *fiery facias* or other like process, a deed or conveyance under the hand and seal of the sheriff, or a transfer under his hand, shall, subject to the provisions of the Transfer of Land Act, 1893, give to the purchaser as good and sufficient an estate or title therein and thereunto, as the defendant or other person against whom the writ is issued has or can or may have in or to the said land.

Conveyance or transfer to be executed by the sheriff.
25 Vict., No. 8, s. 2.

Sheriff may seize money, notes, etc.
6 Vict., No. 15, ss. 1 and 2.
1 & 2 Vict., c. 110, s. 12.
(Adopted by 31 Vict., No. 8.)
P. L. Act, 1928, s. 219 (Victoria).

122. (1.) By virtue of any writ of *feri facias* or other like process, the sheriff or other officer having the execution thereof—

- (a) may seize and take money or bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, belonging to the person against whose lands and effects such writ of *feri facias* or other like process is sued out; and
- (b) may seize and retain for not exceeding forty-eight hours the books and accounts of such person relating to the trade, business, calling, or occupation of such person; and
- (c) may and shall pay and deliver to the party suing out such execution any money or bank notes which are so seized or a sufficient part thereof; and
- (d) may and shall hold such cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, as a security or securities for the amount of such writ of *feri facias* or other like process directed to be levied, or so much thereof as has not been otherwise levied or raised; and
- (e) may sue in the name of the sheriff for the recovery of the sum or sums secured thereby if and when the time of payment thereof has arrived.

(2.) The payment to the sheriff or other officer by the party liable on any such cheque, bill of exchange, promissory note, bond, specialty, or other security, with or without suit, or the recovery on levying execution against the party so liable, shall discharge him to the extent of such payment or of such recovery and levy in execution as aforesaid, as the case may be, from his liability on such cheque, bill of exchange, promissory note, bond, specialty, or other security.

(3.) The sheriff shall pay over to the party suing out such writ the money so to be recovered, or so much thereof as is sufficient to discharge the amount of such writ directed to be levied, and if after satisfaction of the amount so to be levied, together with the sheriff's poundage fees and expenses, any surplus remains in the hands of the sheriff, the same shall be paid to the party against whom the writ is so issued.

6 Vict., No. 15, s. 1

(4.) The sheriff or other officer shall not be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, bond, specialty, or other security, unless the party suing out such execution enters into a bond with a sufficient surety for indemnifying the sheriff from all costs and expenses to be incurred in the prosecution of such action, or to which he may become liable in consequence thereof, the expense of such bond to be deducted out of any money to be recovered in such action.

123. A written notice signed by the sheriff, addressed to any person who appears by any such books of account as aforesaid to be indebted to any person against whom any such writ of execution is issued, warning the person served with the notice not to pay such debt to any other person than the sheriff, shall, after service thereof, have the effect of restraining the party served therewith from paying such debt otherwise than to the sheriff until a written countermand of such notice is signed and served by the sheriff.

Parties indebted not to pay debt except to Sheriff.
6 Vict., No. 15, s. 2.
P. L. Act, 1928, s. 219 (5), (Victoria).

If any person served with such notice, after service thereof and before service of such countermand, pays such debt otherwise than to the sheriff, such person shall be liable to the execution creditor for the amount so paid.

124. On the sale of goods by the sheriff under a writ of execution for a sum exceeding twenty pounds (including legal incidental expenses) the sale shall, unless the Court from which the process issued otherwise orders, be made by public auction.

Sales of goods under execution to be public.
55 Vict., No. 32, s. 129.
Cf. 6 Vict., No. 1 s. 7.

125. A writ of *fieri facias*, or other like process of execution against goods, shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation of such time, it shall be the duty of the sheriff upon the receipt of such writ to indorse upon the back thereof the hour, day, month, and year when he received the same:

Effect of writ of *fi. fa.* in binding goods of debtor.
59 Vict., No. 41, s. 26.

Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached, had been delivered to and remained unexecuted in the hands of the sheriff.

(2.) In this section the term "sheriff" includes any officer charged with the enforcement of a writ of execution, and the term "goods" includes all chattels personal other than things in action and money.

Writs in aid.

(3.) A writ of *venditioni exponas* and any other writ in aid of a writ of *fiery facias* may be issued and executed in the same cases as heretofore.

(3).—Attachment of Debts.

Attachment of debts.

17 & 18 Vict., c. 125, s. 60-67.

23 & 24 Vict., c. 126, ss. 29, 30.

126. (1.) Debts, legal or equitable, owing or accruing from any third person within the jurisdiction of the Court to a defendant against whom any person has obtained a judgment or order for the recovery or payment of money may, subject to Rules of Court, by order of the Court or a Judge, be attached to answer the judgment or order together with the cost of the proceedings:

Of 34 & 34 Vict., c. 30, s. 1 (Imp.).

Provided that no order shall be made for the attachment—

No. 69 of 1912, 1st schedule, cl. 18.

(a) of any weekly payment under the Workers' Compensation Act, 1912-1924, or a sum payable in redemption thereof:

1904, No. 51, s. 145

(b) of the wages of any servant, labourer or workman; or of any seaman or apprentice to the sea service:

62 Vict., No. 35, s. 6.

Provided also that nothing herein shall affect the provisions of section six of the Workmen's Wages Act, 1898.

Examination of judgment debtor.
17 & 18 Vict., c. 125, s. 60.

(2.) The party entitled to enforce any such judgment or order may apply to the Court or a Judge for an order that the debtor liable under such judgment or order, or in the case of a corporation that any officer thereof, be orally examined as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order, before a Judge or an officer of the Court as the Court or Judge shall appoint; and the Court or Judge may make an order for the attendance and the examination of such debtor, or of any other person, and for the production of any books or documents.

Order for attachment of debts.
17 & 18 Vict., c. 125, s. 61.

(3.) An order may be made under subsection (1) of this section upon the *ex parte* application of any person who has obtained a judgment or order, for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment or order, and upon affidavit by himself or his solicitor stating that judgment has been

recovered or the order made and that it is still unsatisfied, and to what amount, and that any other person (hereinafter called the garnishee) is indebted to such debtor and is within the jurisdiction of the Court; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a Judge or any officer of the Court as the Court or Judge shall appoint, to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

(4.) Service of an order that debts, due or accruing to a debtor liable under a judgment or order, shall be attached, or notice thereof to the garnishee, in such manner as the Court or Judge may direct, shall bind such debts in his hands.

Service and effect of order on garnishee.
Cf. 17 & 18 Vict., c. 125, s. 62.

(5.) If the garnishee does not forthwith pay into Court the amount due from him to the debtor liable under a judgment or order, or an amount equal to the judgment or order, and does not dispute the debt due or claimed to be due from him to such debtor, or if he does not appear upon summons, then the Court or Judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

Execution against garnishee.
Cf. 17 & 18 Vict., c. 125, s. 63.

(6.) If the garnishee disputes his liability, the Court or a Judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined, or may refer the matter to the Master.

Trial of liability of garnishee.
Cf. 17 & 18 Vict., c. 125, s. 64.

(7.) Whenever in any proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or a Judge may order such third person to appear, and state the nature and particulars of his claim upon such debt.

Lien or claim of third person on debt.
Cf. 23 & 24 Vict., c. 126, s. 29.

(8.) After hearing the allegations of any third person under such order, as in subsection (7) mentioned, and of any other person who by the same or any subsequent order the Court or a Judge may order to appear, or in case of such third person not appearing when ordered, the Court or Judge may order execution to issue to levy the amount due from such

Trial of claim of third person and order thereon or on non-appearance.
Cf. 23 & 24 Vict., c. 126, s. 30.

garnishee, together with the costs of the garnishee proceedings, or any issue or question to be tried or determined according to the preceding subsections, and may bar the claim of such third person, or make such other order as the Court or Judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Court or Judge shall think fit and reasonable.

Payment by or execution on garnishee a valid discharge.
Cf. 17 & 18 Vict., c. 125, s. 85.

(9.) Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the debtor, liable under a judgment or order, to the amount paid or levied, although such proceeding may be set aside, or the judgment or order reversed.

Attachment book.

(10.) There shall be kept in the Central Office of the Supreme Court a debt attachment book in which entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered and otherwise; and copies of any entries therein may be taken by any person upon application to the proper officer.

Costs of proceedings.
Cf. 17 & 18 Vict., c. 125, s. 87.

(11.) The costs of any application for an attachment of debts and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a Judge, and as regards the costs of the judgment creditor shall, unless otherwise directed, be retained out of the money recovered by him under the garnishee order, and in priority to the amount of the judgment debt.

(12.) Debts owing from a firm carrying on business within the jurisdiction of the Court may be attached, although one or more members of such firm may not be resident within Western Australia: provided that any person having the control or management of the partnership business or any member of the firm within the jurisdiction is served with the garnishee order.

(4).—*Charging Stocks and Shares.*

Stocks and shares may be charged.
6 Vict., No. 15, s. 3.
1 & 2 Vict., c. 110, s. 14.
(Adopted by 31 Vict., No. 8.)
Cf. S.C. Act, 1928, s. 188.
(Victoria).

127. If any person against whom any judgment has been entered up in the Supreme Court has any Government stock, funds, or annuities, or any stock or shares of or in any company in Western Australia (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, a Judge, on the application of any judgment creditor, may order that such stock, funds, annuities, or shares, or such of them or such part thereof re-

spectively as he thinks fit, shall stand charged with the payment of the amount for which such judgment has been so recovered and interest thereon, and such order shall entitle the judgment creditor to use such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor:

Provided that no proceeding shall be taken to have the benefit of such charge until after the expiration of six months from the date of such order.

123. (1.) In order to prevent any person against whom judgment has been obtained from transferring, receiving, or disposing of any stock, funds, annuities, or shares, hereby authorised to be charged—

Order to charge,
6 Vict., No. 15,
s. 4.

1 & 2 Vict., c. 110,
s. 15.
(Adopted by 31
Vict., No. 8)

Cf. S. C. Act, 1928,
s. 187
(Victoria).

(a) every order of a Judge charging any Government stock, funds, or annuities, or any stock or shares in any company, shall be made in the first instance *ex parte*, and without any notice to the judgment debtor, and shall be an order to show cause only; and

(b) such order, if any Government stock, funds, or annuities standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is to be affected by such order, shall restrain the officer or person having the registry, control, or management of such stock, funds or annuities, or of the transfers thereof, from permitting a transfer thereof in the meantime and until such order is made absolute or discharged; and

(c) such order, if any stock or shares of or in any company, standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is or are to be affected by any such order, shall in like manner restrain such company from permitting a transfer thereof.

(2.) If after notice of such order to the person or persons to be restrained thereby, or in the case of corporations to any authorised agent of such corporation, and before the same order is discharged or made absolute, such corporation or person or persons shall permit any such transfer to be made, then and in such case the corporation or person or persons so permitting such transfer shall be liable to the judgment

creditor for the value or amount of the property so charged and so transferred, or such part thereof as is sufficient to satisfy the judgment; and no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor.

(3.) Unless the judgment debtor shall within a time to be mentioned in such order show to a Judge sufficient cause to the contrary, the said order shall, after proof of notice thereof to the judgment debtor, his attorney or agent, be made absolute:

Provided that any Judge shall upon the application of the judgment debtor or any person interested have full power to discharge or vary such order, and to award such costs upon such application as he thinks fit.

Power of charging
stock defined.

3 & 4 Vict., c. 82,
s. 1.
(Adopted by 31
Vict. No. 8)

Cf. S. C. Act, 1928,
s. 188 (Victoria)

129. (1.) The last two preceding sections shall be deemed and taken to extend to the interest of any judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent, as well in any such stocks, funds, annuities, or shares as in the said sections mentioned, as also in the dividends, interest, or annual produce of any such stocks, funds, annuities, or shares.

(2.) Whenever any such judgment debtor has any estate, right, title, or interest, vested or contingent in possession, remainder, or reversion, in, to, or out of any such stocks, funds, annuities, or shares as aforesaid, which now are or shall hereafter be standing in the name of any officer of the Court, or in, to, or out of the dividends, interest, or annual produce thereof, a Judge may make an order as to such stock, funds, annuities, or shares, or the interest, dividends, or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of such judgment debtor:

Provided always that no order of a Judge as to any stock, funds, annuities, or shares standing in the name of any such officer as aforesaid, or the interest, dividends, or annual produce thereof, shall prevent the Treasurer, or any company, from permitting any transfer of such stocks, funds, annuities, or shares, or payment of the interest, dividends, or annual produce thereof in such manner as a Judge may direct, or shall have any greater effect than if such debtor had charged such stock, funds, annuities, or shares, or the

interest, dividends, or annual produce thereof, in favour of the judgment creditor, with the amount of the sum to be mentioned in any such order.

(5).—*Recovery of Land and other Property.*

130. (1.) A judgment or order for the recovery of land may be enforced by a writ of possession in manner used in actions of ejectment in the Supreme Court before the commencement of the Supreme Court Act, 1880.

Writ of possession.
Cf. R. S. C. (Eng.)
Order 47.

(2.) Where by any judgment or order a person therein named is directed to deliver up possession of any land to some other person, the person prosecuting such judgment or order shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment or order, and that the same has not been obeyed.

(3.) Upon any judgment or order for the recovery of, or for the delivery of possession of, any land, and for costs, there may be either one writ or separate writs of execution for the recovery or delivery of possession and for the costs at the election of the successful party.

(4.) Where, after entry by the sheriff under a writ of possession, or after the plaintiff has been put into possession by the sheriff, the defendant forcibly or by stratagem resumes possession of the property, the Court or a Judge, on an application made by the plaintiff *ex parte* on an affidavit as to the facts, may make an order for the issue to the sheriff of a writ of restitution.

131. (1.) A judgment or order for the recovery of any property other than land or money may be enforced,—

Writ of delivery.
17 & 18 Vict., c. 123,
s. 78.

(a) subject to subsection (2) of this section, by writ for delivery of the property; or
if the judgment or order is in a form which orders the defendant to deliver up the property within a given time,—

(b) by order of the Court or a Judge, on proof of personal service on the defendant of the judgment or order and of his neglect to obey, by writ of attachment; or

(c) by writ of sequestration.

(2.) Where it is sought to enforce a judgment or order for the recovery of any property other than land or money

by writ of delivery, the Court or a Judge may, upon the *ex parte* application of the plaintiff, order—

- (a) that execution shall issue for the delivery of the property, without giving the defendant the option of retaining the property upon paying the value assessed (if any); and that if the property cannot be found, and unless the Court or a Judge shall otherwise order, the sheriff shall distrain the defendant by all his lands and chattels till the defendant delivers the property; or
- (b) at the option of the plaintiff, that the sheriff cause to be made of the defendant's land and goods the assessed value, if any, of the property.
- (3.) It shall be lawful for the sheriff in the execution of a writ of delivery, to enforce the actual delivery of the property without the issue of a writ of assistance.
- (4.) A writ of delivery shall be in the prescribed form, and when such writ is issued, the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's land and goods the damages (if any) and costs awarded, and interest.
- (5.) After the assessment of the value of the property and damages (if any) the plaintiff may either issue, by leave of the Court or a Judge, a writ of delivery, or, without leave a writ of *fiery facias* for the recovery of the assessed value, damages, and costs.

(6.) *Sequestration.*

Writ of sequestration.
B. 8. C. (Eng.),
O. 43, rr. 6, 7.

132. (1.) Where any person is by any judgment or order directed to pay money into Court or to do any other act in a limited time (including the payment of money to a person within a limited time or from time to time, or for payment of costs) and after due service of such judgment or order refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment or order shall, at the expiration of the time limited for the performance thereof, be entitled by leave of the Court or a Judge to issue a writ of sequestration against the estate and effects of such disobedient person.

(2) Such writ of sequestration shall have the same effect as a writ of sequestration issued out of the Court in its equitable jurisdiction has heretofore had, and the proceeds of such sequestration may be dealt with in the same manner as

the proceeds of writs of sequestration were heretofore dealt with.

(7).—*Attachment.*

133. Subject to the provisions of section one hundred and seventeen, subsection (1), paragraph (g), a writ of attachment shall have the same effect as a writ of attachment issued out of the Court in its equitable jurisdiction has heretofore had.

Effect of writ of attachment.

R. C. C. (Eng.),
O. 44, r. 1.

134. No writ of attachment shall be issued without the leave of the Court or a Judge, to be applied for on notice to the party against whom the attachment is to be issued.

Application for leave to issue writ.

Ibid., r. 2.

135. (1.) A judgment or order requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal:

Enforcement of judgment to do or abstain from any act.

R. C. C. (Eng.),
O. 42, r. 7.

Provided that every judgment or order requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done, and the copy of the judgment or order which shall be served upon the person required to obey the same shall be indorsed with a memorandum in the prescribed form of the consequences of disobedience.

(2.) A judgment or order for the payment of money to a person or into Court may be enforced by writ of attachment or by committal in cases when attachment is authorised by paragraph (g) of subsection (1) of section one hundred and seventeen.

(8).—*Miscellaneous.*

136. Subject to Rules of Court, every order of the Court or a Judge in any cause or matter may be enforced against all persons bound thereby in the same manner, and by the like process of execution, as a judgment to the same effect.

Orders enforceable like judgments.
Cf. 6 Vict., No. 15, s. 6.
R. S. C. (Eng.),
O. 42, r. 24.
S. C. Act, 1928,
s. 173 (Victoria).

137. (1.) A judgment or order against a corporation may be enforced by writ of *fiery facias*, or other process of execution.

Enforcing judgment against a corporation.
Cf. 23 & 24 Vict.,
c. 126, s. 33.

(2.) Any judgment or order against a corporation willfully disobeyed may, by leave of the Court or a Judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property.

Joint property.

H. L. of E., Vol 14,
par. 101.

138. Where property belongs to a judgment debtor jointly or in common with some other person, such property may be seized under a writ of *fiery facias*, and the interest of the debtor therein may be sold, unless a co-owner of property held jointly has become solely entitled by survival upon the death of the judgment debtor before delivery of the writ.

Enforcing judgment
against a partner
individually.

59 Vict., No. 23,
s. 28.

139. The enforcement of a judgment or order against a partner individually is subject, with respect to his share or interest in partnership property, to section twenty-eight of the Partnership Act, 1895.

Court may order
act to be done at
expense of party
refusing.

Cj. 17 & 18 Vict.;
c. 125, s. 74.

140. If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific performance of any contract is not complied with, the Court or a Judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the Court or Judge, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court or a Judge may direct, and execution may issue for the amount so ascertained, and costs.

Execution to issue
within six years.
15 & 16 Vict., c. 76,
s. 128.
It C. C. (Eng.),
O. 42, r. 22, 23.

141. (1.) As between the original parties to a judgment or order, execution may issue at any time within six years from the recovery of the judgment, or the date of the order.

Leave to issue in
certain cases.

(2.) In the following cases, namely:

- (a) where six years have elapsed since the judgment or date of the order, or any change has taken place by death or otherwise in the parties entitled or liable to execution;
- (b) (i) where a husband is entitled to execution upon a judgment in favour of his wife; or
- (ii) where a husband is liable to execution upon a judgment against his wife;
- (c) where a party is entitled to execution upon a judgment of assets *in futuro*;
- (d) where a party is entitled to execution against any of the shareholders of a joint-stock company upon

a judgment recorded against such company, or against a public officer or other person representing such company;

the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly; and the Court or Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. In either case such Court or Judge may impose such terms as to costs or otherwise as shall be just.

(3.) The leave of the Court or a Judge shall be obtained before execution is issued where a judgment or order is subject to a condition or contingency, and where the property to be seized is in the possession of a receiver acting under the authority of the Court.

142. (1.) Every judgment debt shall carry interest at the rate of eight pounds for every hundred pounds by the year from the time of entering up the judgment until the same shall be satisfied, and such interest may be levied under a writ or warrant of execution on such judgment.

Interest on judgment.
6 Vict., No. 15, s. 5.
64 Vict., No. 27.

(2.) This section applies to a judgment in a Local Court, except where the amount of the debt claim or demand allowed by the judgment does not exceed one hundred pounds.

No. 35 of 1930,
s. 7.

143. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution over and above the sum recovered.

Poundage fees, etc

144. This Part of this Act is subject to Rules of Court, and nothing in this Part of this Act shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

Saving of pre-existing mode of process.

145. (1.) Divisions (2) and (6) of this Part of this Act are subject to the Landlord and Tenant Act, 1709 (8 Anne, c. 14).

Application of 8 Anne, c. 14, the Bankruptcy Act (Com.), and 56 Vict. No. 8.

(2.) Divisions (2) and (3) of this Part of this Act are subject to Division (4) of Part VI. of the Bankruptcy Act, 1924-1933.

(3.) This Part of this Act is subject to section one hundred and seventy-nine of the Companies Act, 1893.

PART VIII.—RECIPROCITY IN THE ENFORCEMENT OF
JUDGMENTS.

Interpretation.
No. 20 of 1921,
s. 2.
Cf. S. C. Act, 1928,
s. 179 (Victoria).

146. (1.) In this Part of this Act, unless the context otherwise requires—

“Certified copy” in relation to the judgment of a court means a copy of the judgment certified by the proper officer of the court to be a true copy.

“Judgment” means any judgment or order given or made by a superior Court as hereinafter defined, or by the Supreme Court of Western Australia (as the case may be), 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 in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, or in Western Australia (as the case may be), become enforceable in the same manner as a judgment given by a superior court in that place, or by the Supreme Court of Western Australia (as the case may be).

“Judgment creditor” means the person by whom any judgment was obtained, and includes the legal representatives, successors, and assigns of that person.

“Judgment debtor” means any person against whom any judgment was given, and includes any person against whom the judgment is enforceable in that place where it was given.

“Original Court” in relation to any judgment means the Court by which the judgment was given.

“Reciprocating State” means any part of His Majesty’s dominions, outside the United Kingdom and the Commonwealth of Australia, to which the Reciprocal Enforcement of Judgments Act, 1921, has been extended and applies, or which is declared under this Part of this Act to be a reciprocating State for the purposes thereof.

“Superior Court” means His Majesty’s High Court of Justice and His Majesty’s Court of Appeal in England and in Northern Ireland; the Court of Session in Scotland; and in any reciprocating State any Court having original civil jurisdiction as a superior Court therein or declared by the legislature thereof or as hereinafter provided to be a superior Court therein.

(2.) The Governor may, by Order in Council, declare any Court in any reciprocating State to be a superior Court within the meaning of this Part of this Act; and any such Order in Council may be rescinded, revoked, amended or varied by a subsequent Order in Council.

147. (1.) This Part of this Act extends and applies to the United Kingdom, and where the Governor is satisfied that reciprocal provisions have been or are about to be made by the legislature or other competent authority of or in any part of His Majesty’s dominions outside the United Kingdom and outside the Commonwealth of Australia for the enforcement within that part of His Majesty’s dominions of judgments as hereinbefore defined so far as that definition relates to Western Australian judgments orders and awards, the Governor may by Order in Council declare—

Application of this Part.

No. 20 of 1921, ss. 7 and 8.

S. C. Act, 1928, s. 130 (Victoria).

(a) such part of His Majesty’s dominions to be a reciprocating State for the purposes of this Part of this Act; and

(b) that this Part of this Act shall extend and apply with respect to that part of His Majesty’s dominions;

and thereupon such part of His Majesty’s dominions shall become a reciprocating State within the meaning of this Part of this Act, which shall extend and apply to such part of His Majesty’s dominions accordingly.

(2.) The Governor may by Order in Council declare that this Part of this Act shall apply to any territory which is under His Majesty’s protection, or in respect of which a mandate is being exercised by the Government of any part of His Majesty’s dominions, as if that territory were part of His Majesty’s dominions, and on the making of any such order this Act shall, subject to the provisions of the order, have effect accordingly.

(4.) An Order in Council under this section may be varied or revoked by a subsequent order.

Enforcement in
Western Australia
of judgments
obtained in superior
courts in other
British dominions

No. 20 of 1921,
s. 3.

148. (1.) Where a judgment has been obtained in a superior Court in any part of His Majesty's dominions outside the Commonwealth to which this Part of this Act extends, the judgment creditor may apply to the Supreme Court of Western Australia 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 that Court, and on any such application the Court may, if in all the circumstances of the case it thinks it is just and convenient that the judgment should be enforced in Western Australia, and subject to the provisions of this section, order the judgment to be registered accordingly.

(2.) No judgment shall be ordered to be registered under this section if—

- (a) the original Court acted without jurisdiction; or
- (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 Supreme 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 Supreme Court.

(3.) 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 (including proceedings under the Debtors Act, 1871) as if it had been

a judgment originally obtained or entered up on the date of registration in the Supreme Court; and

- (b) the Supreme 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; and
 - (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.
- (4.) 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 Supreme 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.

(5.) In any action brought in any Court in Western Australia 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.

149. Where a judgment has been obtained in the Supreme Court against any person, the Court shall on an application made by the judgment creditor, and on proof that the judgment debtor is resident in England, Scotland, or Northern Ireland or in any reciprocating State, issue to the judgment creditor a certified copy of the judgment.

Issue of certificates of judgments obtained in Western Australia.
Ibid., s. 4.

150. Rules of Court made for the purposes of this Part of this Act may prescribe any special rules of evidence which shall be followed and observed in the Supreme Court in proceedings under this Part.

Power to make rules with regard to evidence.
Ibid., s. 5.

Powers of single Judge.
Ibid., s. 6.

151. Subject to the Rules of Court, any of the powers conferred by this Part of this Act on the Supreme Court may be exercised by a Judge of the Court sitting in Court or in chambers.

Evidence of Orders in Council, etc.
S. C. Act, 1928,
s. 185 (Victoria).

152. A copy of the *Gazette* purporting to contain a copy of any Order in Council under this Part of this Act shall be conclusive evidence of the validity, contents, making, and publication thereof, and of the fulfilment of all conditions precedent to the valid making thereof.

Construction of section 146 so far as relating to certain awards.
Vict., No. 4021,
s. 2.

153. So far only as relates to any award referred to in the interpretation of judgment in section one hundred and forty-six, and to the enforcement of which in Western Australia the Execution of Process Act, 1901-1931 or any other Act of the Parliament of the Commonwealth for the time being in force does not apply, this Part of this Act shall be read, construed and take effect as if in section one hundred and forty-six in the interpretation of reciprocating State the words "and the Commonwealth of Australia" were omitted.

PART IX.—OFFICERS AND OFFICES.

The Attorney General.
Cf. 24 Vict., No. 15,
s. 14.

154. (1.) His Majesty's Attorney General shall be a practitioner as defined by the Legal Practitioners Act, 1893, to be appointed from time to time by the Governor, and to hold office during the Governor's pleasure.

(2.) The Attorney General shall be the legal representative of the Crown in the Supreme Court, and shall have, exercise, and enjoy all the powers, authorities, and privileges usually appertaining and belonging to the like office in England.

Minister for Justice.
No. 24 of 1922,
s. 2.

(3.) During any vacancy in the office of Attorney General the Governor may appoint some person, being a member of Parliament, to be Minister for Justice, who shall have and may exercise all or any of the powers that would be exercisable by the Attorney General, whether by virtue of any statute or otherwise.

(4.) Whenever, under any statute or otherwise, any act is required to be done by, to, or with reference to the Attorney General, then, during any vacancy in the office of Attorney General, the act may be done by, to, or with reference to the Minister for Justice, and any such act heretofore done by,

to, or with reference to the Minister for Justice shall be deemed to have been done by, to, or with reference to the Attorney General.

(5.) Provided that nothing in this section shall be deemed to give any Minister for Justice the right of audience in any Court of law.

155. There shall be a Registrar, Master, and Keeper of the Records of the Supreme Court, and such and so many other officers as may be necessary for the administration of justice and the execution of all the powers and authorities of the Court.

Registrar, Master,
and Keeper of
Records, and
other officers.

24 Vict., No. 15,
s. 15.

44 Vict., No. 10,
s. 30.

Such officers shall be appointed by the Governor, and shall be subject to the Public Service Act, 1904.

156. The sheriff shall be an officer of the Supreme Court, and shall be charged with the service and execution of all writs, summonses, rules, orders, warrants, precepts, process and commands of the Court which are directed to him, and shall make such return of the same to the Court together with the manner of the execution thereof as he is thereby required, and shall take, receive, and detain all persons who are committed to his custody by the Court, and shall discharge all such persons when thereunto directed by the Court or the law.

The Sheriff.

Cf. 2, Will. IV.,
No. 3, s. 24.

Cf. Judiciary Act,
1903, s. 53 (Com.).

S. C. Act, 1928,
s. 190 (Victoria).

157. The Governor may appoint such officers as he thinks fit to assist the sheriff in the execution of his duties, and all acts done by those officers shall be deemed to be done by and under the authority of the sheriff.

Sheriff's officers

158. (1.) The sheriff may, from time to time, by writing under his hand, appoint a deputy or several deputies for whose acts and deeds the sheriff shall be held responsible and accountable, and the sheriff may from time to time revoke any such appointment.

Sheriff may appoint
deputies.

Cf. S. C. Act, 1928,
ss. 198, 199
(Victoria).

(2.) Every such deputy may execute any writ, summons, rule, order, warrant, precept, process or command directed to the sheriff, and make return of the same together with the manner of execution thereof, and receive and detain in prison all such persons as are committed to the custody of the sheriff, and do and perform all such other acts as the sheriff would be bound to do or perform.

Protection of
sheriff selling
goods under execu-
tion without notice
of claim by third
party.

3 & 4 Geo. V., c. 34,
s. 15.

159. Where any goods in the possession of an execution debtor at the time of seizure by the sheriff, or other officer charged with the enforcement of a writ, warrant, or other process of execution, are sold by the sheriff or other officer without any claim having been made to the same, the purchaser of the goods so sold shall acquire a good title to the goods so sold, and no person shall be entitled to recover against the sheriff, or any person lawfully acting under his authority, for any sale of such goods unless it is proved that the person from whom recovery is sought had notice, or might by making reasonable inquiry have ascertained, that the goods were not the property of the execution debtor:

Provided that nothing in this section contained shall affect the right of any claimant who may prove that at the time of sale he had a title to the goods so seized and sold, to any remedy to which he may be entitled against any person other than the sheriff or officer as aforesaid.

Disposal of chattels
on executing a writ
of possession.

160. On the execution of a writ of possession it shall be lawful but not obligatory for the sheriff to remove any chattels found on the land; and the expenses incurred in removing, storing, and keeping such chattels shall be a charge thereon, and in default of payment of such expenses by the owner such chattels may, at such time as the sheriff thinks fit, be sold by the sheriff and the proceeds applied to defray all such expenses reasonably incurred, and the surplus shall be held by the sheriff on behalf of the owner of the chattels, and shall be paid to him accordingly.

Limitation of
actions against
sheriff.

Cf. S. C. Act, 1928,
s. 202 (Victoria).

161. All actions brought against the sheriff for anything done by him in the intended execution of his duty shall be commenced within one year next after the cause of such action, and not after.

Sheriff may sell
property without
an auctioneer's
license.

Ibid. s. 203.

162. It shall be lawful for the sheriff or his deputy to sell by auction all property of whatever nature which may be taken by him in execution without having taken out an auctioneer's license, or to sell liquor taken in execution without any license under the Licensing Act, 1911, anything in any law now in force to the contrary notwithstanding.

Fees and poundage.

163. (1.) The sheriff, or any officer concerned in the execution of any process directed to the sheriff, may demand, take, and receive such fees and poundage as may be fixed by rules made by the Judges of the Supreme Court.

(2.) On a writ or other process being left with the sheriff for execution by him the person leaving such writ or other process shall, if required, deposit with the sheriff a sum not exceeding the prescribed fees for the execution thereof, except poundage.

31 Vict., No. 23,
s. 51 (Q.).

164. Whenever the Court awards any process in any cause or matter to which the sheriff is a party, or in which his interests may be affected, the Court in awarding such process may appoint some other fit person to execute and return the same to whom the process shall be directed.

If sheriff incompetent to act, the Court may award process to some other person.
2 Will. IV., No. 3,
s. 25.

165. (1.) Except as expressly provided nothing in this Part of this Act shall affect any such power, right, privilege, obligation, liability, or duty of the sheriff, or officers of the sheriff, as exists by common law at the commencement of this Act.

Saving.
Cf. S. C. Act, 1928,
s. 218 (Victoria),

(2.) Any fees or poundage authorised to be taken by or in pursuance of any enactment in force at the commencement of this Act may continue to be taken until altered in pursuance of this Part of this Act.

166. (1.) There shall be a Central Office of the Supreme Court comprising all such offices as were immediately before the commencement of this Act comprised in the Central Office as then constituted, together with such other offices as may from time to time, by Order in Council, be amalgamated with or transferred to the Central Office of the Supreme Court.

The Central Office.

(2.) The Central Office shall be under the control and superintendence of the Master of the Supreme Court.

PART X.—RULES OF COURT, ETC.

167. (1.) Rules of Court may be made under this Act, by the Judges of the Supreme Court, for the following purposes:—

Rules of Court.
Cf. 44 Vict., No. 10,
s. 24.
S. C. of J. (Consolidation) Act,
1925, s. 99 (Imp.).

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

- (b) For regulating the sittings of the Supreme Court, and of the Judges whether sitting in Court or in chambers:
- (c) For prescribing what part of the business which may be transacted and of the jurisdiction which may be exercised by a Judge in chambers, may be transacted or exercised by the Master or other officer of the Supreme Court:
- (d) For regulating any matters relating to the costs of proceedings:
- (e) For regulating and prescribing the procedure and practice to be followed in cases in which the procedure or practice is regulated by enactments in force immediately before the commencement of this Act, or by any provisions of this Act re-enacting any such enactments:
- (f) For prescribing, subject to the provisions of this Act, in what cases trials in the Supreme Court are to be with a jury, and in what cases they are to be without a jury:
- (g) For 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:
- (h) For regulating and directing the means by which and the mode in which an account may be taken and vouched, and for providing that the Court or a Judge may give special directions or make special orders in relation thereto:
- (i) For enabling and regulating service out of the jurisdiction of the Court of a writ of summons or other process, or notice thereof:
- (j) For regulating the procedure and practice to be followed on appeals from inferior courts:

- (k) Relating to funds in Court, and for the investment by the Official Trustee of any money under the control, or subject to any order of the Court:

No. 8 of 1921,
s. 3 (i).

- (1) For regulating or making provision with respect to any matters or proceedings which were regulated, or with respect to which provision was made by the Rules of the Supreme Court in force at the commencement of this Act, or by any rules or regulations so in force with respect to the practice and procedure in matrimonial causes and matters, or with respect to applications and proceedings relating to legitimacy declarations, and with respect to non-contentious or common form probate business.

The power given by the preceding paragraphs of this subsection shall extend and apply to all matters with respect to which rules of procedure might have been made under any enactment repealed by this Act.

(2.) No Rule of the Supreme Court which may involve the public revenue or expenditure out of the public funds, or the manner of dealing with trust funds, shall be made without the concurrence of the Treasurer, but the validity of a Rule shall not in any proceeding in any Court be called in question either by the Court or by any party to the proceedings on the ground only that it was a Rule to which the concurrence of the Treasurer was necessary, and that the Treasurer did not concur, or is not expressed to have concurred, in the making thereof.

168. Whenever by this or any other Act it is provided expressly or in effect that the Supreme Court or the Judges of the Court may make Rules, such power may be exercised at any time and from time to time, and may be exercised by a majority of the Judges at a meeting for that purpose, and shall be deemed to include the power to alter, annul, or add rules, and to prescribe, alter, annul, or add forms.

Manner of making
rules.
S. C. Act, 1928,
s. 26 (Victoria).

169. (1.) The Judges of the Supreme Court, or a majority of them, with the concurrence of the Treasurer,—

Fees and per-
centages to be
taken in Supreme
Court,
55 Vict., No. 11,
s. 1.

- (a) may by order fix the fees and percentages to be taken in the Supreme Court, or in any office connected with the Court, or in which any business connected with the Court is conducted, or by any

officer who is attached to the Court, including the fees and poundage to be demanded, taken, and received by the sheriff and his officers in the execution of any process delivered to the sheriff; and

(b) may from time to time, with the like concurrence, by order increase, reduce, or abolish all or any of such fees and percentages, and appoint new fees and percentages to be taken as aforesaid.

(2.) Any order made in pursuance of this section shall be binding on the Court, offices and officers, to which it refers, in the same manner as if it had been enacted by Parliament.

(3.) All such fees and percentages shall be paid into the Treasury, and carried to the Consolidated Revenue Fund.

(4.) An order under this section may abolish any existing fees and percentages; but subject to the provisions of any order made in pursuance of this section, the fees and percentages already fixed and appointed by the Judges of the Supreme Court shall continue to be taken, applied, and accounted for, in the existing manner.

Rules to be
published and laid
before Parliament.
Of. 44 Vict., No. 10,
s. 26.

170. (1.) All Rules of Court, and all orders fixing the fees and percentages to be taken in the Court or in any office connected with the Court, or by any officer, made in pursuance of this Act, shall be laid before both Houses of Parliament within fourteen days next after the same are made, if Parliament is in session, and if not then within fourteen days after the commencement of the next session of Parliament.

(2.) If either House of Parliament passes a resolution disallowing any such rule or order, of which resolution notice has been given at any time within fourteen sitting days of such House after such rule or order has been laid before it, such rule or order shall thereupon cease to have effect, but without affecting the validity of any proceeding taken or of anything done thereunder in the meantime.

This subsection shall apply notwithstanding the said fourteen sitting days, or some of them, do not occur in the same session of Parliament, or during the same Parliament as that in which the rule or order is laid before such House.

(3.) Where a resolution has been passed as mentioned in subsection (2) hereof, notice of such resolution shall be published in the *Gazette*.

171. Nothing in this Act and, subject as hereinafter in this section expressly provided, nothing in the Rules of Court made under this Act, 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.
Cf. 44 Vict., No. 10, s. 23.
S. C. of J. (Consolidation) Act, 1925, s. 101 (Imp.).

Provided that nothing in this section shall—

(a) prejudice the operation of any Rules of Court made in pursuance of the express power conferred by this Act to make Rules of Court for regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given; or

(b) affect the power of the Court for special reasons to allow depositions or affidavits to be read.

172. Where for the purpose of disposing of any action or other matter which is being tried in the Supreme Court by a Judge with a jury 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.
S. C. of J. (Consolidation) Act, 1925, s. 102 (Imp.).

173. Where a Judge's order made by consent given by a defendant in an action for a liquidated demand in money, whereby the plaintiff is authorised forthwith or at a future time to sign or enter up judgment, or to issue or take out execution, whether such order is made subject to any defeasance or condition or not, the order shall, together with an affidavit of the time of such consent being given and a description of the residence and occupation of the defendant, be filed in the Bills of Sale Department of the Central Office within twenty-one days after the making of the order, otherwise the said order and any judgment signed or entered up thereon, and any execution issued or taken on such judgment, shall be void, against the defendant's creditors, but not against the defendant himself.*

Consent order for judgment to be filed.
34 Vict., No. 21, s. 21.
32 and 33 Vict., c. 62, s. 27.

174. Every person who, being an officer of the Supreme Court, is for the time being so authorised by a Judge, or by any Rule of Court, and every commissioner, referee, or other person directed to take an examination or to whom any question or issue of fact is referred, in any cause or matter

Power of officers, etc., to administer oaths.
Cf. 52, Vict., c. 10, s. 2.

* See Halsbury, Vol. 18, par. 502, and Supplement, 1934; and Annual Practice, 1935, pages 738 and 2210, 2211.

in the Supreme Court, shall have authority to administer any oath or take any affidavit required for any purpose connected with his duties.

Commissioners to
take affidavits,
etc.
35 Viet., No. 3, s. 1.

175. (1.) The Chief Justice may, by commission under the seal of the Supreme Court, appoint and empower as many persons as he thinks fit and necessary, in places either within or beyond the jurisdiction of the Court, to administer oaths, and take and receive such affidavits as any person may be willing and desirous to make before a person so appointed in or concerning any cause or matter depending in the said Court or in anywise concerning any of the proceedings in the said Court; and to take the acknowledgments of deeds executed by married women.

(2.) All affidavits taken or made by any commissioner appointed as aforesaid may be read and made use of in the Supreme Court, to all intents and purposes as such affidavits taken or made in the said Court now are, or by the practice of the Court at any time hereafter may be.

(3.) Any acknowledgment to be made by a married woman, whether within or out of this State, of any deed or instrument under the provisions of any Act, may be taken by a commissioner appointed as aforesaid.

Affidavits may be
taken by a Justice
of the peace in
absence of a com-
missioner, No. 34
of 1930.

176. Any affidavit required for use in any cause or matter depending in or before the Supreme Court, or before any Judge or officer of the Court, and any bond or recognisance required to be filed in the Court, may be sworn or executed before a justice of the peace for Western Australia, or for any part or district of Western Australia, in every instance where at the time of swearing such affidavit or executing such bond or recognisance there is not a commissioner for taking affidavits for use in the Supreme Court resident and present, and qualified to take the affidavit or attest the execution of the bond or recognisance, within a distance of three miles from the place where such affidavit, bond, or recognisance, is sworn or executed; and a certificate signed by the justice of the peace at the foot of or endorsed on any such affidavit, bond, or recognisance that no such commissioner is resident and present within the distance aforesaid shall be conclusive evidence of that fact; and every such affidavit, bond, or recognisance shall be admissible in evidence in any cause or matter as aforesaid, and may be read and made use of to all intents and purposes as any affidavit, bond, or recognisance sworn or executed before such commissioner.

177. (1.) Affidavits for use in the Supreme Court, or in any other court, or for any purpose or in any way whatsoever authorised by law, may be sworn and taken in any place out of Western Australia—

Affidavits taken out of Western Australia.
Cf. 52 Vict., c. 10 ss. 3, 6.
Evidence Act, 1923 (Victoria), s. 118.

- (a) before a commissioner of the Supreme Court for taking affidavits empowered and authorised to act in that place;
- (b) before a British ambassador, envoy, minister, charge d'affaires, secretary or embassy of legation, consul-general, consul, vice-consul, acting consul, pro-consul, or consular agent, exercising his function in such place;
- (c) before any person having authority to administer an oath in that place.

(2.) In the case of a person purporting to have such authority, otherwise than by the law of a foreign country not under the dominion of His Majesty, all courts and persons acting judicially or officially shall take judicial and official notice of the signature or seal of any such person attached to any such affidavit, and for the purpose of this section judicial and official notice may also be taken as to what places are and what places are not under the dominion of His Majesty.

(3.) In the case of a person purporting to have such authority by the law of a foreign country not under the dominion of His Majesty, such authority may be verified by any of the persons mentioned in paragraph (a) or (b) of subsection (1) of this section, or by the certificate of the superior court of such place; and if such authority purports so to be verified, such affidavit shall be admissible for all purposes without further proof of the signature or seal, or of the judicial, official, or other character of such first mentioned person.

(4.) The provisions mentioned in the preceding subsections of this section shall apply notwithstanding that any person or persons is or are named, specified, or indicated as the person or persons before whom such affidavit shall or may be sworn or taken.

(5.) Where by or under any Act any person or persons is or are named, specified, or indicated as the person or persons before whom such affidavit shall or may be sworn or

taken, all courts and persons acting judicially or officially shall take judicial and official notice of the seal or signature of any such person attached to any such affidavit.

(6.) In this and the three last preceding sections—

“Oath” includes affirmation and declaration:

“Affidavit” includes affirmation, statutory or other declaration, acknowledgment, examination, and attestation:

“Swear” includes affirm and declare.

FIRST SCHEDULE.
ENACTMENTS REPEALED.

Section 8.

Session and Number.	Title or Short Title.	Extent of Repeal.
2 Will. IV., No. 3 ...	An Act for regulating the constitution of juries and the office of sheriff	The whole.
3 and 4 Will. IV., c. 42 (adopted by 6 Will. IV., No. 4)	An Act for the further amendment of the law, and the better advancement of justice	The whole, except sections 2 to 7, and sections 31, 37 and 38.
6 Will. IV., No. 3 ...	An Act for attaching debts, money goods, or effects in the hands of third parties	The whole.
1 and 2 Vict., c. 110 (adopted by 31 Vict., No. 8)	An Act for abolishing arrest on mesne process in civil actions, etc. (The Judgments Act, 1838)	The whole, except sections 9, 10, 13, and 19.
3 and 4 Vict., c. 82 (adopted by 31 Vict., No. 8)	An Act for further amending the Act for abolishing arrest on mesne process in civil actions	Section 1.
6 Vict., No. 4 ...	An Act to facilitate actions against persons absent from the colony, and against persons sued as joint contractors	The whole.
6 Vict., No. 15 ...	An Act to extend the remedies of creditors against the property of debtors	The whole
8 Vict., No. 10 ...	An Act to extend the remedies of creditors against debtors about to leave the colony	The whole.
10 Vict., No. 4 ...	An Act to make the Act 6 Vict., No. 4, perpetual	The whole.
19 Vict., No. 13 ...	An Ordinance for the Relief of Creditors against persons removing from one Australasian colony to another	The whole.
21 and 22, Vict., c. 93 (adopted by 31 Vict., No. 8)	Legitimacy Declaration Act, 1858 ...	The whole.
24 Vict., No. 15 ...	The Supreme Court Ordinance, 1861 ...	The whole.
25 Vict., No. 8 ...	An Ordinance to facilitate the recovery of debts	Section 2.
27 Vict., No. 19 ...	An Ordinance to regulate divorce and matrimonial causes	The whole, except section 13.
30 Vict., No. 1 ...	An Ordinance to prevent doubts as to the application of the statutes of usury, etc.	The whole.
34 Vict., No. 7 ...	An Act to amend the procedure and powers of the Court in divorce and matrimonial causes	The whole.
34 Vict., No. 21 ...	The Debtors Act, 1871	Sections 4, 21.
35 Vict., No. 3 ...	An Act to empower the Chief Justice to grant commissions for taking affidavits, etc.	The whole.
43 Vict., No. 9 ...	An Act to amend the Ordinance to regulate divorce and matrimonial causes	The whole.

FIRST SCHEDULE—*continued.*

Session and Number.	Title or Short Title.	Extent of Repeal.
44 Vict., No. 10 ...	The Supreme Court Act, 1880	The whole.
50 Vict., No. 28 ...	An Act to amend the Supreme Court Act, 1880	The whole.
53 Vict., No. 15 ...	An Act to amend the Supreme Court Act, 1880	The whole.
55 Vict., No. 11 ...	An Act to amend the Supreme Court Act, 1880	The whole.
55 Vict., No. 32 ...	Bankruptcy Act, 1892	Sections 43, 46, 129 and 130.
57 Vict., No. 8 ...	An Act to amend the Law relating to appeals in criminal cases.	The whole.
59 Vict., No. 13 ...	Arbitration Act, 1895	Sections 16 to 19, and so far as may refer to references under an order of the Supreme Court, sections 20, 21, and 24.
60 Vict., No. 24 ...	The Judges' Pensions Act, 1898 ...	The whole.
61 Vict., No. 28 ...	Circuit Courts Act, 1897	The whole.
63 Vict., No. 7 ...	An Act for the more speedy trial of accused persons	The whole.
64 Vict., No. 27 ...	An Act to amend the Act of the Sixth Year of Her Majesty numbered fifteen, as to interest on judgments	The whole.
1 and 2 Edw. VII., No. 16	An Act to apply out of the consolidated revenue the annual sum of fourteen hundred pounds for the salary of an additional Judge of the Supreme Court	The whole.
2 Edw. VII., No. 37 ...	Judges' Salaries Act, 1902	The whole.
No. 10 of 1903 ...	Supreme Court Act Amendment Act, 1903	The whole.
No. 4 of 1912 ...	Appellate Jurisdiction Act, 1911 ...	The whole.
No. 7 of 1912 ...	Divorce Amendment Act, 1911 ...	The whole.
No. 33 of 1919 ...	Divorce Amendment Act, 1919 ...	The whole.
No. 52 of 1920 ...	Divorce Act Amendment Act, 1920 ...	The whole.
No. 20 of 1921 ...	Reciprocal Enforcement of Judgments Act 1921.	The whole.
No. 24 of 1922 ...	Attorney General (vacancy in office) Act, 1922	The whole.
No. 23 of 1925 ...	Divorce Amendment Act, 1925 ...	The whole.
No. 4 of 1927 ...	Judges' Salaries Act Amendment Act, 1927	The whole.
No. 7 of 1929 ...	Divorce Act Amendment Act, 1929 ...	The whole.

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SECOND SCHEDULE.

Section 9.

JUDICIAL OATH.

I, _____, do swear that I will well and truly
serve our Sovereign Lord King George the Fifth, His Heirs and successors, according
to law, in the office of the Chief Justice of Western Australia. [or a judge of the
Supreme Court of Western Australia], and I will do right to all manner of people
after the laws and usages of this State, without fear or favour, affection, or illwill—
So help me God!

Cf. 31 and 32 Vict.
c. 72.
N.S.W. No. 20 of
1900.
S.A. No. 1037
(1911).