

WESTERN AUSTRALIA

SUPREME COURT ACT 1935

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SUPREME COURT ACT 1935

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WESTERN AUSTRALIA

SUPREME COURT ACT 1935

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

PART I—PRELIMINARY

Short title and commencement

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.¹

Division

2. [Section 2 omitted under *Reprints Act 1984* s. 7 (4) (d).]

Repeal and savings

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 The Acts mentioned in the First Schedule are hereby repealed to the extent therein stated:

Provided that, subject as in this Act otherwise expressly provided, and to the provisions of section 16 of the *Interpretation Act 1918*:—

- (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in Council, rule, order or regulation made, commission issued, direction given, or thing done, under any enactment repealed by this Act; and every such Proclamation, Order in Council, rule, order, regulation, commission or direction shall continue in force, and shall have effect as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- (b) Any person holding office, or serving, or deemed to be serving under any Act or enactment repealed by this Act, shall continue in office or service as if he had been appointed under this Act,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(i) shall affect the operation of any enactment which is in force at the commencement of this Act, and is not expressly repealed by this Act;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- (d) All actions, matters and proceedings commenced under any Act or enactment repealed by this Act, and pending or in progress at the commencement of this Act may be continued, completed and enforced under this Act.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

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.

“Chief Justice” means the Chief Justice of Western Australia and includes a Judge appointed to act in the office of Chief Justice under section 10 (3).

“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 2 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.
- “Master” means a Master of the Supreme Court appointed under the provisions of this Act and includes a duly appointed acting Master.
- “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.³, 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 counter-claim as a defendant) against any other person by any form of proceeding, whether the proceeding is by action, suit, petition, motion, summons or otherwise.
- “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.
- “Principal Registrar” means the Principal Registrar of the Supreme Court appointed under the provisions of this Act, and includes a duly appointed acting Principal Registrar.

“Registrar” means a Registrar of the Supreme Court appointed under the provisions of this Act and includes a duly appointed acting or Deputy Registrar.

“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.

[Section 4 amended by No. 21 of 1954 s. 2; No. 67 of 1979 s. 4; No. 7 of 1982 s. 3; No. 47 of 1983 s. 13.]

Construction of other Acts and documents

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.

PART II—CONSTITUTION OF THE SUPREME COURT

The Supreme Court of Western Australia

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

7. (1) The Supreme Court shall be a superior court of record, and shall consist of—

- (a) one Judge, to be appointed by the Governor by commission under the great seal in Her Majesty’s name and to be styled the Chief Justice of Western Australia, and such other Judges not exceeding 9 in number as the Governor may, in like manner, from time to time appoint;
- (b) such acting Judges, if any, as for the time being hold office pursuant to an appointment made under section 11;
- (c) such Masters as for the time being hold office pursuant to an appointment made under section 11A; and
- (d) such acting Masters, if any, as for the time being hold office pursuant to an appointment made or deemed to have been made under section 11D.

(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.

(4) The Court shall be held by and before a Judge or more than one Judge, save that where by or under this or any other Act the jurisdiction of the Court is assigned to a Master in respect of any, or any class of, cause, matter, issue, application or proceeding the Court may be held by and before a Master.

[Section 7 amended by No. 17 of 1949 s. 2; No. 5 of 1960 s. 2; No. 57 of 1975 s. 3; No. 67 of 1979 s. 5; No. 3 of 1982 s. 2; No. 47 of 1983 ss. 2 and 13; No. 9 of 1984 s. 2.]

Qualification of Judges

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

He must either be—

- (a) a person who is or has been a barrister or solicitor of the Court of not less than 8 years' standing and practice; or
- (b) a practising barrister of the English bar, or of the High Court of Australia, of not less than 8 years' standing.

[Section 8 amended by No. 112 of 1978 s. 4.]

Tenure of Judges and oaths of office

9. (1) All the Judges of the Supreme Court shall hold their offices during good behaviour, subject to a power of removal by Her Majesty upon the address of both Houses of Parliament.⁴

(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.

Vacancy of office, absence, etc., of Chief Justice

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, then where no Judge is specifically appointed by a commission issued under subsection (3) to act in the office of Chief Justice, all the duties and powers of the Chief Justice shall during such vacancy, absence, or inability devolve upon the senior Judge.

(2) In the case of the absence or inability of the Judge upon whom the powers and duties of the Chief Justice devolve under subsection (1), such powers and duties shall during such absence or inability devolve upon the Judge who is next in seniority.

(3) Where the office of Chief Justice is vacant or the Chief Justice is, or is expected to be, absent or for any reason unable to perform the duties of his office, the Governor by commission under the great seal in Her Majesty's name may appoint a Judge to act in the office of Chief Justice for such period as the Governor thinks fit and specifies in the commission.

[Section 10 substituted by No. 7 of 1982, s. 4.]

Acting Judges

11. (1) Where a Judge is, or is expected to be, absent from duty the Governor by commission under the great seal in Her Majesty's name may appoint a person, who is qualified to be appointed a Judge, as an acting Judge for the period during which the Judge is absent from duty, and the appointment of the acting Judge authorizes him to complete the hearing and determination of any proceedings that may be pending before him at the expiration of that period so that he holds an appointment as an acting Judge during any further period while he is completing such hearing and determination.

(2) Where for any reason the conduct of the business of the Court, in the opinion of the Governor, requires the appointment of an acting Judge, the Governor by commission under the great seal in Her Majesty's name may appoint a person, who is qualified to be appointed a Judge, to be an acting Judge for such period not exceeding 6 months as is specified in the commission, and the appointment of the acting Judge authorizes him to complete the hearing and determination of any proceedings that may be pending before him at the expiration of the period so specified so that he holds an appointment as an acting Judge during any further period while he is completing such hearing and determination, but no person appointed as an acting Judge pursuant to this subsection shall hold office as such after 30 June 1976.

(3) Every acting Judge shall 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.

[Section 11 substituted by No. 57 of 1975 s. 4.]

Masters

11A. (1) The Governor by commission under the great seal in Her Majesty's name may appoint one or more persons each having the necessary qualification to be a Master of the Supreme Court.

(2) The qualification of a person for appointment as a Master of the Supreme Court shall be that he—

- (a) is or has been a practitioner as defined by the *Legal Practitioners Act 1893*, of not less than 5 years' standing and practice; or
- (b) is a person who has been admitted as a practitioner under the *Legal Practitioners Act 1893*, and who for a period of not less than 2 years has held office as the Principal Registrar or as a Registrar or Deputy Registrar of the Court.

(3) Subject to the provisions of section 11B (4) and (5), a Master of the Supreme Court shall hold office during good behaviour but the Governor may, upon the address of both Houses of Parliament, remove a Master from office and revoke his commission.

(4) Every person appointed to be a Master 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.

(5) The Masters shall have seniority according to the dates of their commissions.

[Section 11A inserted by No. 67 of 1979 s. 6; amended by No. 47 of 1983 ss. 3 and 13.]

Terms of appointment of a Master

11B. (1) A Master—

- (a) subject to the provisions of this section and to the *Salaries and Allowances Act 1975*⁵, is entitled to such conditions of service as are determined by the Governor from time to time;
- (b) may hold office as such in conjunction with any other office, appointment, duty or function which the Governor shall deem not incompatible; and
- (c) except in the performance of the functions or duties of his office or with the approval of the Governor, shall not engage in the practice of a barrister or solicitor, or be directly or indirectly concerned in such practice, or engage in any other paid employment.

(2) Where a Master was, immediately before his appointment as such, an officer of the Public Service of the State—

- (a) he retains his existing and accruing rights and in particular his rights, if any, under the *Superannuation and Family Benefits Act 1938*;
- (b) for the purpose of determining those rights, his service as Master shall be taken into account as if it were service in the Public Service of the State; and

- (c) he may continue to be a contributor for the purposes of, as though he were deemed to be an employee within the meaning of, the *Superannuation and Family Benefits Act 1938* notwithstanding his appointment as Master under section 11A.

(3) The provisions of the *Judges' Salaries and Pensions Act 1950*, that relate to pensions and allowances, other than section 15, apply with such modifications as circumstances require, to and in respect of a Master, and to and in respect of his widow and children after his death, in the same manner as they apply to and in respect of a Judge to whom that Act applies, and to his widow and children after his death.

(3a) Where subsection (2) applies to and in respect of a person so that, under the *Superannuation and Family Benefits Act 1938*, a pension is payable to and in respect of him, the payment of that pension does not affect any pension that may be payable to and in respect of him under the *Judges' Salaries and Pensions Act 1950*, but the pension otherwise payable under that Act to and in respect of him shall be reduced in accordance with the provisions of that Act by the amount of the State share of the first-mentioned pension.

(3b) Where a Master is appointed a Judge of the Supreme Court or a Judge of The District Court of Western Australia, or to any other office to which the provisions of the *Judges' Salaries and Pensions Act 1950* that relate to pensions are applied, his service as Master shall be regarded for the purposes of the *Judges' Salaries and Pensions Act 1950* as service as a Judge.

(4) A Master may resign his office by an instrument in writing under his hand and delivered to the Governor, and the resignation takes effect on the day on which it is received by the Governor or on such later day as may be specified in the instrument if the Governor agrees and declares by notice published in the *Government Gazette* that the resignation has taken or shall take effect accordingly.

(5) A Master shall retire from office—

- (a) if, after attaining the age of 60 years, he signifies by writing under his hand and delivered to the Governor his desire to retire and the Governor agrees; or

(b) on the day on which he attains the age of 65 years, whichever first occurs and thereupon that Master shall cease to hold office.

[Section 11B inserted by No. 67 of 1979 s. 6; amended by No. 47 of 1983 ss. 4 and 13.]

Determination of pending proceedings

11C. Where immediately prior to the time the resignation or retirement of a Master is to take effect there remain proceedings pending before him he is, by force of this section, authorized to complete the

hearing and determination of those proceedings as though he continued to hold office as a Master while he is completing that hearing and determination.

[Section 11C inserted by No. 67 of 1979 s. 6; amended by No. 47 of 1983 s. 13.]

Vacancies, temporary appointments, and acting appointments

11D. (1) While—

- (a) there is no person holding or acting in the office of Master;
- (b) there is one person holding or acting in the office of Master but, as a consequence of absence on leave, sickness or any other reason, that person is temporarily unable to perform the duties of his office; or
- (c) there are 2 or more persons holding or acting in the office of Master but, as a consequence of absence on leave, sickness or any other reason, those persons are unable to perform the duties of their offices,

and no other person is specifically appointed to act in the office of Master by a commission issued under subsection (2), the person holding or for the time being acting in the office of Principal Registrar, if qualified to be appointed to the office of Master, is deemed to be so appointed and all the duties and powers of a Master devolve upon him and are exercisable by him in conjunction with his duties and powers as a Registrar.

(2) Where—

[(a) deleted.]

- (b) a Master is, or is expected to be, absent or for any reason unable to perform the duties of his office; or
- (c) for any reason the conduct of the business of the Court, in the opinion of the Governor, requires the appointment of an acting Master,

the Governor by commission under the great seal in Her Majesty's name may appoint a person, who is qualified to be appointed to the office of Master, to be an acting Master on such terms and conditions and for such period as the Governor thinks fit and specifies in the commission.

(3) An appointment of a person to be an acting Master pursuant to subsection (2) may be made on other than a full-time basis.

(4) Where immediately prior to the expiration of the period of an appointment made or deemed to have been made pursuant to this section there remained proceedings pending before the acting Master, the appointment of the acting Master authorizes him to complete the hearing and determination of those proceedings so that he holds an appointment as acting Master while he is completing that hearing and determination.

[Section 11D inserted by No. 67 of 1979 s. 6; amended by No. 3 of 1982 s. 3; No. 47 of 1983 ss. 5 and 13.]

References to the Master in other Acts

11E. (1) Subject to subsection (2), where by or under the provisions of any Act, being provisions in force immediately prior to the coming into operation of the *Acts Amendment (Master, Supreme Court) Act 1979*¹, it is provided that an act of a procedural, administrative, or ministerial nature shall or may be done by, or in relation to, the Master that act shall or may, as the case requires, be done by, or in relation to, the Principal Registrar.

(2) Subsection (1) does not apply to or in relation to—

- (a) the *Administration Act 1903*;
- (b) the *Companies Act 1961*⁶;
- (c) the *Mental Health Act 1962*;
- (d) this Act; or
- (e) any other Act which by Rules of Court is prescribed as an Act to which the provisions of that subsection do not apply.

(3) Where by or under any Act it is provided that costs shall or may be taxed by the Master or the Taxing Master of the Supreme Court, those costs shall or may, as the case requires, be taxed by the taxing officer of the Court.

(4) Unless the context otherwise requires, a reference in any other Act or in any regulation, rule, by-law, notice, proclamation or other statutory instrument made, published or in force under this Act or any other Act to the Master shall be read and construed as a reference to a Master.

[Section 11E inserted by No. 67 of 1979 s. 6; amended by No. 47 of 1983 s. 6.]

Powers of a Judge or Master to act in cases of rates and taxes

12. (1) A Judge or a Master 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.

(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.

[Section 12 amended by No. 67 of 1979 s. 7; No. 47 of 1983 s. 13.]

[13., 14. Sections 13 and 14 repealed by No. 35 of 1950 s. 4.]

Seal of Supreme Court

15. (1) 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", and such other seals as are recommended by the Chief Justice and approved by the Attorney General.

(2) The Judges of the Supreme Court may make Rules of Court providing for the custody and use of any seal referred to in subsection (1) and the purposes for or occasions on which a seal so referred to may be used.

[Section 15 amended by No. 63 of 1957 s. 2.]

PART III—JURISDICTION AND LAW

(1) Jurisdiction

General jurisdiction

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
- (c) is authorized, empowered, and required to take cognizance 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
- (d) shall be a court of equity, with power and authority within Western Australia and its dependencies—
 - (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 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.

(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.

(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.

[Section 16 amended by No. 73 of 1948 s. 3.]

[17. Section 17 repealed by No. 39 of 1971 s. 3.]

Probate jurisdiction

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*, 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.

[19. Section 19 repealed by No. 73 of 1948 s. 3.]

Jurisdiction with respect to appeals from inferior courts

20. Subject to the provisions of the *Local Courts Act 1904*, the *Justices Act 1902*, the *Courts of Session Act 1921*⁷ and the *Mining Act 1904*⁸, the Supreme Court shall have jurisdiction to hear and determine—

- (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

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.

(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.

(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 exercised 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).

Saving of former procedure

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.

(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.

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

23. Where any Act of Parliament in force in England on 1 June 1829, and applicable to Western Australia, or any Act of Parliament adopted and directed to be applied in Western Australia, authorizes and directs any proceeding, act, matter, or thing to be had, done, performed, or executed by or before Her 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 authorized 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 authorized and directed to be had, done, executed, and performed by the said Supreme Court or the Judges thereof.

(2) *Law and Equity*

Law and equity to be concurrently administered

24. (1) 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:—

- (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.
- (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 by 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—
 - (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 recognize 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 recognized and taken notice of the same in any suit or proceeding duly instituted therein before the commencement of the *Supreme Court Act 1880*.
- (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 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 recognize 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 recognized 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 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*

Rules of law upon certain points

25⁹. 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:—

[(1) *deleted.*]

- (2) Except as provided by the *Trustees Act 1962*, 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.

[(3), (4) and (5) *deleted.*]

- (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.

[(7) and (8) *deleted.*]

- (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.

- (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 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.

- (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.
- (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.

[Section 25 amended by No. 32 of 1969 s. 4; No. 10 of 1982 s. 28; No. 72 of 1984 s. 10.]

Rules as to division of loss on collision of ships

26. (1) Where by fault of 2 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 3 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 2 or more other vessels, to recover his damage or loss from the owners of the vessels in fault jointly or severally.

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

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.

(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.

Right of contribution in case of collision between vessels

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:

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) 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 case of collision between vessels

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 2 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 the Navigation Act 1912 (Commonwealth)

30. The provisions of the last preceding 4 sections shall be read and construed subject to the *Navigation Act 1912*.

[Section 30 amended by No. 56 of 1974 s. 3.]

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

31. (1) Subject to the provisions of the *Credit Act 1984*, 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 proceedings above the rate of \$6 for interest or forbearance of \$100 for a year, and so after that rate for a greater or lesser sum or for a longer or shorter time.

[Section 31 amended by No. 113 of 1965 s. 8; No. 102 of 1984 s. 17.]

Court may order pre-judgment interest

32. (1) In any proceedings for the recovery of any money (including any debt or damages or the value of any goods), the Court may order that there shall be included, in the sum for which judgment is given, interest at such rate as it thinks fit on the whole or any part of the money for the whole or any part of the period between the date when the cause of action arose and the date when the judgment takes effect.

(2) This section does not—

- (a) authorize the giving of interest upon interest;
- (b) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
- (c) affect the damages recoverable for the dishonour of a bill of exchange.

(3) This section applies to proceedings in a Local Court, except where the sum for which judgment is given does not exceed \$750.

[Section 32: Ss. 32 and 33 repealed and s. 32 substituted by No. 47 of 1982 s. 3.]

[33. Sections 32 and 33 repealed and s. 32 substituted by No. 47 of 1982 s. 3.]

Rules of law to apply to inferior courts

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 cognizable by such courts.

Execution of instruments by order of Court

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.

Quo warranto

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

Costs

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 administration of estates and trusts, shall be in the discretion or 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

Time and place of sittings of the Court

38. The Supreme Court and 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.

[Section 38 amended by No. 39 of 1971 s. 4.]

Civil sittings in Perth

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.

Criminal sittings in Perth

40. Criminal sittings of the Court shall be held in Perth in each month.

[Section 40 substituted by No. 39 of 1971 s. 5; amended by No. 110 of 1976 s. 2.]

Causes and matters to be brought before a single Judge

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 58 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 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.

Trial with or without jury

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—

- (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 *Juries Act 1957*, 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 to such charge or claim as aforesaid.

Reservation by Judge of cases and questions for determination by Full Court

43. (1) Any Judge, whether sitting in court or in chambers, may, in the exercise of civil or criminal jurisdiction, 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 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.

[Section 43 amended by No. 57 of 1975 s. 5.]

Vacations

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

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 heard.

[Section 45 amended by No. 39 of 1971 s. 6.]

(2) *Circuit Towns*

Circuit towns, and sittings of the Supreme Court thereat

46. (1) The Governor may, from time to time, by proclamation declare that such places in Western Australia as he thinks fit are circuit towns.

(2) The Governor may, by subsequent proclamation, cancel or alter circuit towns.

(3) Sittings of the Supreme Court in a circuit town shall be held on such days and at such times as the Chief Justice, from time to time, appoints.

(4) Notice of the days on which and the times at which a circuit court is to be held shall be published in the *Government Gazette*; and the notice shall be exhibited in a conspicuous place in the Court House of the circuit town and in the office of the Registrar of the District Court at that circuit town, and no other notice thereof is required, unless a Judge otherwise directs.

(5) The Chief Justice may, from time to time, alter the days and times for the holding of a circuit court and when any such day is so altered notice of the intended alteration and the time it is to take effect shall be exhibited in a conspicuous place in the Court House in the circuit town and in the office of Registrar of the District Court at that circuit town.

(6) When a Judge who is to hold a circuit court does not attend at the time appointed for any sitting thereof the Registrar of the District Court at the circuit town may open the circuit court and adjourn it to the following day or such other day or the next sitting of the circuit court as he is directed by a Judge or by a Master or a Registrar of the Supreme Court.

(7) Where a circuit court is to be held the Registrar of the District Court at the circuit town shall deliver or cause to be delivered to the Judge on the first day of the sitting a calender of all prisoners in custody for trial or sentence at the circuit court (wherever the prisoners are confined) and shall bring up or cause to be brought up every such prisoner to the circuit court, there to be dealt with according to law.

(8) Nothing in this section limits the powers conferred on the Supreme Court and Judges thereof by section 38.

(9) In this section—

“District Court” means The District Court of Western Australia; and

“Registrar” has the meaning assigned to it in section 6 of the *District Court of Western Australia Act 1969*.

[Section 46 substituted by No. 57 of 1975 s. 6; amended by No. 67 of 1979 s. 8; No. 47 of 1983 s. 13.]

[47. Section 47 repealed by No. 50 of 1957 s. 2.]

Interpretation

48. The expression “circuit court” shall mean any sitting of the Supreme Court in a circuit town.

[Section 48 amended by No. 57 of 1975 s. 7.]

*(3) Jurisdiction of a Commissioner***Jurisdiction of a commissioner**

49. (1) The Governor, by commission either general or special, may assign to a Master, a Judge of The District Court of Western Australia, any practitioner of the Supreme Court of at least 7 years' standing, or to a stipendiary 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.

(2) Any commission so granted shall be of the same validity as if it were enacted in the body of this Act, and any person to whom it is given is thereby authorized to complete the hearing and determination of any proceedings that may be duly pending before him at the time when the commission would normally have determined.

(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.

(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 (1), 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 abovementioned, shall in that respect be good, valid, and effective.

[Section 49 amended by No. 39 of 1971 s. 8; No. 67 of 1979 s. 9; No. 47 of 1983 ss. 7 and 13.]

(4) Inquiries and Trials by Referees

Reference for report

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 a Master or a Registrar 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, Registrar 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.

[Section 50 amended by No. 67 of 1979 s. 10; No. 47 of 1983 s. 13.]

Reference for trial

51. (1) 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 a Master, a Registrar, or a special referee or arbitrator agreed on by the parties.

(2) The Court or a Judge may at any time order that any assessment of damages be tried before a Master on such conditions and under such circumstances, if any, as may be specified in the order.

[Section 51 amended by No. 39 of 1971 s. 9; No. 67 of 1979 s. 11; No. 47 of 1983 s. 13.]

Powers and remuneration of referees

52. (1) In all cases of reference to a Master, a Registrar, or to a special referee or arbitrator, the Master, Registrar, 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.

(2) The report or award of the Master, Registrar, 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.

[Section 52 amended by No. 67 of 1979 s. 12; No. 47 of 1983 s. 8.]

Court to have powers as to references by consent

53. The Court or a Judge shall, in relation to references, have all such powers as are conferred by the *Commercial Arbitration Act 1985*, on the Court or a Judge in relation to references by consent out of Court.

[Section 53 amended by No. 109 of 1985 s. 3.]

Statement of case pending arbitration

54. A Master, Registrar, 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.

[Section 54 amended by No. 67 of 1979 s. 13; No. 47 of 1983 s. 9.]

Power of Court to impose terms as to costs, etc.

55. An order made under the provisions of this Part 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.

(5) Assessors

Trial with 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.

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

(6) The Full Court

Quorum of Full Court

57. (1) Except as hereinafter provided a Full Court may be constituted by any 2 or more Judges of the Supreme Court sitting together:

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

(2) The Full Court may sit in 2 divisions at the same time.

[Section 57 amended by No. 39 of 1971 s. 10.]

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

58. (1) Subject as otherwise provided in this Act and to the Rules of Court, the Full Court shall have and shall be deemed since the coming into operation of this Act always to have had jurisdiction to 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 and from a Master 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*;¹⁰
- (g) appeals to the Court of Criminal Appeal under and subject to Chapter LXIX of the *Criminal Code*;
- (h) appeals by way of order to review under the *Justices Act 1902*, 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 section 265 (3) of the *Mining Act 1904*;⁸
- (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
 - (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.

(2) Any appeal, application, cause, matter or proceedings referred to in subsection (1) shall lie or may be made to, or may be brought before, the Full Court which, subject as aforesaid, shall hear and determine the same, and questions incidental thereto.

[Section 58 amended by No. 63 of 1957 s. 3; No. 3 of 1982 s. 4; No. 47 of 1983 s. 13.]

Applications for new trial, or to set aside verdict, etc.

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 Master, 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.

(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.

(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 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.

(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 authorized by this Act or the Rules of Court.

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

[Section 59 amended by No. 3 of 1982, s. 5; No. 47 of 1983 s. 13.]

Restriction on appeals

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

- (a) from an order of a Judge or a Master allowing an extension of time for appealing from a judgment or order;
- (b) from an order of a Judge or a Master giving unconditional leave to defend an action;
- (c) from a decision of a Judge or a Master 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 or the Master making the order, from the order of a Judge or a Master made with the consent of the parties, or as to costs only which by law are left to the discretion of the Judge or the Master;
- (f) without the leave of the Judge or the Master or of the Full Court, from any interlocutory order or interlocutory judgment made or given by a Judge or a Master, 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*⁶, 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*¹¹; 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 Master or the Full Court otherwise directs.

[Section 60 amended by No. 3 of 1982 s. 6; No. 47 of 1983 ss. 10 and 13.]

Power of single Judge

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.

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

Decision in case of difference of opinion

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.

(2) Subject as hereinafter provided, if an appeal is heard before a Full Court constituted by 2 Judges and they differ in opinion, either party to the appeal may within one month after the delivery of the judgments of the said 2 Judges serve upon the Principal 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 3 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 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 2 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 3 Judges, and thereafter the appeal shall be reheard accordingly.

(3) If an appeal is heard before the Full Court consisting of more than 3 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.

[Section 62 amended by No. 67 of 1979 s. 14.]

PART V—ARREST IN PENDING ACTIONS

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

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 \$100 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.

[Section 63 amended by No. 113 of 1965 s. 8.]

Security

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 2 sufficient sureties (or with the leave of a Judge, one surety), or with the plaintiff's consent any other form of security.

(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 a Master or a Registrar, 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 4 days after giving notice of objection, the security shall be deemed sufficient.

[Section 64 amended by No. 67 of 1979 s. 15; No. 47 of 1983 s. 13.]

Control of the Court

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.

Costs

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

Discharge of defendants

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

68. The sheriff or other officer named in the order shall, within 2 days after the arrest, indorse on the order the true date of such arrest.

[PART VI: Part VI repealed by No. 73 of 1948 s. 3.]

PART VII—ENFORCEMENT OF JUDGMENTS AND ORDERS

(1) *For Recovery or Payment of Money*

Enforcement of judgments 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—

- (a) by a writ of *fieri 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 an 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;

(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 subsection (1) (e) and (g), 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.

[Section 117 amended by No. 50 of 1946 s. 4; No. 39 of 1971 s. 11.]

(2) Writ of *fieri facias***Writ of *fieri facias***

118. Under a writ of *fieri 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 realize a sum sufficient to satisfy the judgment or order under which the writ of *fieri facias* was issued, and the costs, fees, and expenses of seizure and sale.

Provided that the following goods shall be protected from seizure—

Wearing apparel of such defendant or other person to the value of \$150 and of his wife to the value of \$150 and of his family to the value of \$75 for each member thereof dependent on him; furniture and effects (including beds and bedding) used for domestic purposes to a value not exceeding in the aggregate \$750; implements of trade to the value of \$150; family photographs and portraits.

[Section 118 amended by No. 39 of 1964 s. 2; No. 39 of 1971 s. 12.]

Lands, etc., subject to process of Court

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 Her Majesty or any of her 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.

Seizure of land unnecessary before sale under execution

120. (1) It shall not be necessary for the sheriff or other officer having the execution of a writ of *fieri 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.

(1a) (a) The sale of any land, or right, title or interest of a person in the land under a writ of *fiери facias* or other like process shall be made by public auction, of which at least 7 days' notice of the auction, the time when and the place where it is to be held, has been published in a newspaper circulating in the neighbourhood where the land is situated.

(b) Where the land or any part of it or any right, title or interest in the land remains unsold at the auction, it may, by leave of a Judge, be sold by public tender and on such conditions, if any, as the Judge deems fit.

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

[Section 120 amended by No. 21 of 1954 s. 4.]

Conveyance or transfer to be executed by the sheriff

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 *fiери 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.

Sheriff may seize money, notes, etc.

122. (1) By virtue of any writ of *fiери 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 *fiери facias* or other like process is sued out; and
- (b) may seize and retain for not exceeding 48 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 *fiери 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.

(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 of 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.

Parties indebted not to pay debt except to sheriff

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.

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.

Sale of goods under execution to be by public auction

124. On the sale of goods by the sheriff under a writ of execution for a sum exceeding \$40 (including legal incidental expenses) the sale shall, unless the Court from which the process issued otherwise orders, be made by public auction.

[Section 124 amended by No. 113 of 1965 s. 8.]

Effect of writ of *fieri facias* in binding goods of the debtor

125. (1) 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:

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.

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

(3) Attachment of Debts

Attachment of debts

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:

Provided that no order shall be made for the attachment—

- (a) of any weekly payment under the *Workers' Compensation and Assistance Act 1981*, or a sum payable in redemption thereof;
- (b) of the wages of any servant, labourer or workman; or of any seaman or apprentice to the sea service:

Provided also that nothing herein shall affect the provisions of section 6 of the *Workmen's Wages Act 1898*.

(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.

(3) An order may be made under subsection (1) 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.

(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.

(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 a Master.

(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.

(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 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.

(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.

(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.

(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.

[Section 126 amended by No. 47 of 1983 s. 13.]

(4) Charging Stocks and Shares

Stocks and shares may be charged

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 respectively 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 6 months from the date of such order.

Order to charge

128. (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 authorized to be charged—

- (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 authorized 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

129. (1) The last 2 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

Enforcement of judgment or order for possession

130. A judgment or order for possession of land, and the payment of any money adjudged or ordered to be paid by the judgment or order, may be enforced in such manner as the Rules of Court prescribe.

[Section 130 substituted by No. 56 of 1974 s. 4.]

Writ of delivery

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

(a) subject to subsection (2), 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 *fieri facias* for the recovery of the assessed value, damages, and costs.

(6) Sequestration

Writ of sequestration

132. (1) Subject to subsection (3), where a person is by any judgment or order directed to do any 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.

(3) Where a judgment or order adjudges or orders payment of a sum of money into Court, it is not necessary to issue a writ of sequestration to enforce obedience to the order but the party entitled to enforce the order may issue a writ of *fieri facias* to recover the amount of the judgment or order and the sheriff after deducting the costs, fees and expenses of seizure and sale, shall pay into Court all sums of money recovered under the writ to answer the judgment or order.

[Section 132 amended by No. 21 of 1954 s. 5.]

(7) *Attachment*

Effect of writ of attachment

133. Subject to the provisions of section 117 (1) (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.

Application for leave to issue writ

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.

Enforcement of judgment to do or abstain from any act

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:

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 authorized by section 117 (1)(g).

(8) *Miscellaneous*

Orders enforceable like judgments

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.

Enforcing judgment against corporation

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

(2) Any judgment or order against a corporation wilfully 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

138. Where property belongs to a judgment debtor jointly or in common with some other persons such property may be seized under a writ of *fieri 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

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 28 of the *Partnership Act 1895*.

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

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 6 years

141. (1) As between the original parties to a judgment or order, execution may issue at any time within 6 years from the recovery of the judgment or the date of the order.

(2) In the following cases, namely:

- (a) where 6 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.

Interest on judgment

142. (1) Every judgment debt shall carry interest at such rate for every \$100 by the year as the Treasurer from time to time by notice published in the *Government Gazette*¹² determines from the time of entering up the judgment until the judgment is satisfied, and the interest may be levied under a writ or warrant of execution on the judgment.

(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 \$750.

[Section 142 substituted by No. 39 of 1971 s. 13.]

Poundage fees, etc.

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.

Saving of pre-existing mode of process

144. This part is subject to Rules of Court, and nothing in this Part 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.

Application of 8 Anne, c. 18, the *Bankruptcy Act (Com)* and *Companies (Western Australia) Code*

145. (1) Divisions (2) and (6) are subject to the *Landlord and Tenant Act 1709* (8 Anne, c. 18).

(2) Divisions (2) and (3) are subject to sections 118 to 128, both inclusive, of the *Bankruptcy Act 1966*, as amended and in force from time to time, of the Parliament of the Commonwealth.

(3) This Part is subject to section 368 (3) of the *Companies (Western Australia) Code*.

[Section 145 amended by No. 39 of 1971 s. 14; No. 10 of 1982 s. 28.]

[PART VIII: Part VIII repealed by No. 12 of 1963 s. 4.]

PART IX—OFFICERS AND OFFICES

The Attorney General

154. (1) Her 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.

(3) During any vacancy in the office of Attorney General and during any period for which the Attorney General is, by reason of his absence from the State, illness, incapacity or other sufficient cause, unable to discharge the functions of his office, the Minister for Justice or, if there is no Minister for Justice, such other Minister of the Crown as is designated by the Governor by Order in Council, may exercise all or any of the powers that would be exercisable by the Attorney General, whether by statute or otherwise.

(4) Where under any statute or otherwise any act is required or permitted to be done by, to, or with reference to the Attorney General, then, during any vacancy in the office of Attorney General and during any period for which the Attorney General is, by reason of his absence from the State, illness, incapacity or other sufficient cause, unable to discharge the functions of his office, the act may be done by, to, or with reference to the Minister for Justice or if there is no Minister for Justice, such other Minister of the Crown as is designated by the Governor by Order in Council.

(5) Notwithstanding the provisions of subsections (3) and (4), the Governor may, by Order in Council—

- (a) delegate to the Minister for Justice or such other Minister as he specifies in the Order in Council any power, function or duty vested or imposed by any other law of the State in or on the Attorney General; and
- (b) from time to time vary or revoke any delegation made under paragraph (a),

and while any delegation so made remains in force the Minister for Justice or other Minister of the Crown, as the case requires, may exercise and perform the powers, functions and duties specified in the delegation as validly and effectively as if he were the Attorney General.

(6) Nothing in this section shall be deemed to give any Minister of the Crown not being the Attorney General the right of audience in any court of law.

[Section 154 amended by No. 20 of 1976 s. 2.]

Registrars and other officers

155. (1) There shall be appointed under and subject to the *Public Service Act 1978*, a Principal Registrar and such Registrars and other officers as may be necessary for the administration of justice and the execution of all the powers and authorities of the Court.

(2) The Registrars shall be the taxing officers of the Court, and shall perform such other duties as may be conferred upon them by or under this or any other Act.

(3) A person who, immediately prior to the coming into operation of the *Acts Amendment (Master, Supreme Court) Act 1979*,¹ held an appointment as a Deputy Master or as a Deputy Registrar of the Court, or both such appointments, is deemed to have been appointed a Registrar pursuant to subsection (1).

(4) Notwithstanding subsection (1), the Attorney General on the recommendation of the Chief Justice shall appoint as officers of the Court such Associates and Ushers as he considers necessary; and such persons shall not be appointed under and subject to the *Public Service Act 1978*.

[Section 155 substituted by No. 67 of 1979 s. 16; amended by No. 3 of 1982 s. 7.]

The sheriff

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.

Sheriff's officers

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 may appoint deputies

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.

(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 execution without notice of claim by third party

159. (1) 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 the other officer without any claim having been made to the goods—

- (a) the purchaser of the goods so sold acquires a good title to them; and
- (b) no person is entitled to recover against the sheriff, the other officer or any person lawfully acting under the authority of the sheriff by reason of the sale of those goods unless it is proved that the sheriff, the other officer or person so acting, had notice or might by making reasonable inquiry have ascertained that the goods were not the property of the execution debtor.

(2) Nothing contained in subsection (1) affects the right of any claimant to any remedy to which he is entitled against any person other than the sheriff, such other officer or such person so acting or the purchaser of the goods if the claimant proves that at the time of such sale he had a title to the goods so seized and sold.

[Section 159 substituted by No. 39 of 1971 s. 15.]

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.

[161. Section 161 repealed by No. 39 of 1971 s. 16.]

Sheriff may sell property without an auctioneer's licence

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 licence, or to sell liquor taken in execution without any licence under the *Liquor Act 1970*, 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.

If sheriff incompetent to act, the Court may award process to some other person

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.

Saving

165. (1) Except as expressly provided nothing in this Part 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.

(2) Any fees or poundage authorized 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.

The Central Office

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.

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

[Section 166 amended by No. 47 of 1983 s. 11.]

PART X — RULES OF COURT, ETC.

Rules of Court

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

- (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 or appeals 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 conferring on a Master or on an officer of the Court either generally or in particular cases and under such circumstances and on such conditions as are prescribed, power to do such things, to transact such business and to exercise such authority and jurisdiction as a Judge may by virtue of a statute, custom or rule or practice of the Court, do, transact or exercise.
- (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, or in relation to the Master by any other Act in force prior to the coming into operation of the *Acts Amendment (Master, Supreme Court) Act 1979*¹, and for prescribing the Acts to which section 11E (1) does not apply.
- (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 Public Trustee of any money under the control, or subject to any order of the Court.
- (l) 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.
- (m) For the custody, preservation or disposal of all or any exhibits in the custody of the Court which are not claimed by the owner thereof within the period prescribed and of all or any records of the Court or of its proceedings or of any division or special jurisdiction of the Court, including records relating to the exercise of any federal jurisdiction or any jurisdiction conferred by any Act enacted by the Parliament of the Commonwealth, or for the custody, preservation or disposal of any portion of those records and of any documents filed or deposited in connection therewith, or under any statute or law of the State or the Commonwealth, and whether the person to be entrusted for the time being and from time to time with the custody of those records or documents is an officer in the Public Service of the Commonwealth or the State or otherwise.
- (n) For prescribing the manner in which a judgment or order for possession of land, and the payment of any money adjudged or ordered to be paid by the judgment or order, may be enforced.
- (o) For prescribing matters relating to expert evidence, including the disclosure, by the furnishing of copies of reports or otherwise, of the nature and substance of the expert evidence to be given, and including the exclusion of expert evidence in case of non-compliance with the rules relating to expert evidence or with any order for the disclosure of the nature and substance of expert evidence, and in relation thereto—
 - (i) for the imposition of differing requirements depending on different classes of cases, different classes of matters, or other different circumstances; and
 - (ii) for the conferring of a discretionary authority.

The power given by the preceding paragraphs 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.

[Section 167 amended by No. 63 of 1957 s. 4; No. 39 of 1971 s. 17; No. 56 of 1974 s. 5; No. 111 of 1976 s. 5; No. 67 of 1979 s. 17; No. 47 of 1983 s. 13.]

Manner of making rules

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.

Fees and percentages to be taken in Supreme Court

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

- (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

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 14 days next after the same are made, if Parliament is in session, and if not then within 14 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 14 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 14 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), notice of such resolution shall be published in the *Gazette*.

Act not to affect rules of evidence or juries

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:

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.

Questions of foreign law to be decided by Judge

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.

Consent order for judgment to be filed

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 authorized 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 21 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 himself¹³.

Power of officers, etc., to administer oaths

174. Every person who, being an officer of the Supreme Court, is for the time being so authorized by a Judge, or a Master, 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 in the Supreme Court, shall have authority to administer any oath or take any affidavit required for any purpose connected with his duties.

[Section 174 amended by No. 67 of 1979 s. 18; No. 47 of 1983 s. 13.]

Commissioners to take affidavits, etc.

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 commissioner

176. Any affidavit required for use in any cause or matter depending in or before the Court or before any Judge or officer of the Court, and any bond or recognizance required to be filed in the Court, may be sworn or executed within the State before a commissioner, appointed under section 175, a justice of the peace for the State or for any part or district thereof, or such other person as may be prescribed by Rules of Court.

[Section 176 substituted by No. 39 of 1971 s. 18.]

Affidavits taken out of Western Australia

177. (1) Affidavits for use in the Court or in any other court, or for any purpose or in any way authorized by law, may be sworn and taken in any place out of the State in accordance with Rules of Court.

[(2), (3) and (4) repealed.]

(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 3 last preceding sections—

“Oath” includes affirmation and declaration:

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

“Swear” includes affirm and declare.

[Section 177 amended by No. 39 of 1971 s. 19.]

**FIRST SCHEDULE
ENACTMENTS REPEALED**

Section 3

<i>Session and Number</i>	<i>Title or Short Title</i>	<i>Extent of Repeal</i>
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. (<i>The Judgments Act 1838</i>)	The whole except sections 9, 10, 13, and 19.

<i>Session and Number</i>	<i>Title or Short Title</i>	<i>Extent of Repeal</i>
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 2 Vict., c. 93 (adopted by 31 Vict., No. 8)	<i>Legitimacy Declaration Act 1838</i>	The whole.
24 Vict., No. 15.....	<i>The Supreme Court Ordinance 1861</i>	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.....	<i>The Debtors Act 1871</i>	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.
44 Vict., No. 10.....	<i>The Supreme Court Act 1880</i>	The whole.
50 Vict., No. 28.....	An Act to amend the <i>Supreme Court Act 1880</i>	The whole.
53 Vict., No. 15.....	An Act to amend the <i>Supreme Court Act 1880</i>	The whole.
55 Vict., No. 11.....	An Act to amend the <i>Supreme Court Act 1880</i>	The whole.
55 Vict., No. 32.....	<i>Bankruptcy Act 1892</i>	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.....	<i>Arbitration Act 1895</i>	Sections 16 to 19, and so far as may refer to references under an order of the Supreme Court, sections 20, 21 and 24.

<i>Session and Number</i>	<i>Title or Short Title</i>	<i>Extent of Repeal</i>
60 Vict., No. 24.....	<i>The Judges' Pensions Act 1898</i>	The whole.
61 Vict., No. 28.....	<i>Circuit Courts Act 1897</i>	The whole.
63 Vict., No. 7.....	An Act for the more speedy trial of accused person	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. VI., 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	<i>Judges' Salaries Act 1902</i>	The whole.
No. 10 of 1903.....	<i>Supreme Court Act Amendment Act 1903</i>	The whole.
No. 4 of 1912.....	<i>Appellate Jurisdiction Act 1911</i>	The whole.
No. 7 of 1912.....	<i>Divorce Amendment Act 1911</i>	The whole.
No. 33 of 1919.....	<i>Divorce Amendment Act 1919</i>	The whole.
No. 52 of 1920.....	<i>Divorce Act Amendment Act 1920</i>	The whole.
No. 20 of 1921.....	<i>Reciprocal Enforcement of Judgments Act 1921</i>	The whole.
No. 24 of 1922.....	<i>Attorney General (Vacancy in Office) Act 1922</i>	The whole.
No. 23 of 1925.....	<i>Divorce Amendment Act 1925</i>	The whole.
No. 4 of 1927.....	<i>Judges' Salaries Act Amendment Act 1927</i>	The whole.
No. 7 of 1929.....	<i>Divorce Act Amendment Act 1929</i>	The whole.

SECOND SCHEDULE.

Section 9

JUDICIAL OATH.

I, _____, do swear that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second, Her 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 or a Master 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!

[Second Schedule amended by No. 67 of 1979 s. 19; No. 47 of 1983 s. 12.]

NOTES

¹ This reprint is a compilation as at 25 July 1986 of the *Supreme Court Act 1935*^{14,15,16} and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Supreme Court Act 1935</i>	36 of 1935	3 March 1936 (See <i>Gazette</i> 3 April 1936 p. 484)	1 May 1936 (See <i>Gazette</i> 9 April 1936 p. 527)	
<i>Judges Retirement Act 1937</i>	8 of 1937	8 December 1937	8 December 1937	
<i>Supreme Court Act Amendment Act 1945</i>	10 of 1945	13 December 1945	13 December 1945	
<i>Supreme Court Act Amendment Act 1945</i>	35 of 1945	27 March 1946 (See <i>Gazette</i> 17 May 1946 p. 491)	17 May 1946 (See <i>Gazette</i> 17 May 1946 p. 491)	Repealed by Act No. 68 of 1967
<i>Supreme Court Act Amendment Act 1946</i>	50 of 1946	24 January 1947	24 January 1947	
<i>Supreme Court Act Amendment Act 1947</i>	9 of 1947	10 October 1947	10 October 1947	
<i>Matrimonial Causes and Personal Status Code 1948</i> Amendments in section 3	73 of 1948	4 March 1949	1 January 1950 (See <i>Gazette</i> 19 October 1949 p. 2499)	
<i>Act Amendment (Increase in Number of Judges of The Supreme Court) Act 1949</i>	17 of 1949	24 September 1949	24 September 1949	Amended by Act No. 35 of 1950 in The Schedule
<i>Judges Salaries and Pensions Act 1950</i> Amendments in The Schedule	35 of 1950	16 December 1950	16 December 1950	
<i>Supreme Court Act Amendment Act 1954</i>	21 of 1954	7 October 1954	7 October 1954	
<i>Limitation Act Amendment Act 1954</i> Amendments in section 5	73 of 1954	14 January 1955	1 March 1955. (See <i>Gazette</i> 18 February 1955 p. 343)	
<i>Juries Act 1957</i> Amendments in First Schedule	50 of 1957	9 December 1957	1 July 1960 (See <i>Gazette</i> 6 March 1959 p. 539)	
<i>Supreme Court Act Amendment Act 1957</i>	63 of 1957	6 December 1957	6 December 1957	
<i>Supreme Court Act Amendment Act 1960</i>	5 of 1960	6 October 1960	6 October 1960	
<i>Foreign Judgments (Reciprocal Enforcement) Act 1963</i> Amendments in Section 4	12 of 1963	5 November 1963	1 September 1969 (See <i>Gazette</i> 22 August 1969 p. 2379)	
<i>Supreme Court Act Amendment Act 1964</i>	39 of 1964	12 November 1964	12 November 1964	
<i>Decimal Currency Act 1965</i>	113 of 1965	21 December 1965	Sections 4 to 9: 14 February 1966 (See s. 2 (2)). Balance on assent	

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Property Law Act 1969</i> Amendments in Second Schedule	32 of 1969	19 May 1969	1 August 1969 (See <i>Gazette</i> 27 June 1969 p. 1873)	
<i>Supreme Court Act Amendment Act 1971</i>	39 of 1971	10 December 1971	10 December 1971	
<i>Supreme Court Act Amendment Act 1974</i>	56 of 1974	3 December 1974	3 December 1974	
<i>Supreme Court Act Amendment Act 1975</i>	57 of 1975	24 October 1975	Sections 6 and 7: 1 January 1976 (See <i>Gazette</i> 7 November 1975 p. 4123). Balance on assent	
<i>Supreme Court Act Amendment Act 1976</i>	20 of 1976	3 June 1976	3 June 1976	
<i>Supreme Court Act Amendment Act (No. 2) 1976</i>	110 of 1976	25 November 1976	25 November 1976	
<i>Acts Amendment (Expert Evidence) Act 1976</i> Amendments in Part II	111 of 1976	25 November 1976	25 November 1976	
<i>Acts Amendment (Supreme Court and District Court) Act 1978</i> Amendments in Part II	112 of 1978	12 December 1978	1 April 1970 (See s. 2)	
<i>Acts Amendment (Master Supreme Court) Act 1979</i> Amendments in Part I	67 of 1979	21 November 1979	11 February 1980 (See <i>Gazette</i> 8 February 1980 p. 383)	
<i>Supreme Court Amendment Act 1982</i>	3 of 1982	6 May 1982	6 May 1982	
<i>Acts Amendment (Judicial Appointments) Act 1982</i> Amendments in Part I	7 of 1982	6 May 1982	6 May 1982	
<i>Companies (Consequential Amendments) Act 1982</i> Amendments in section 28	10 of 1982	14 May 1982	Section 28: 1 July 1982	
<i>Supreme Court Amendment Act (No. 2) 1982</i>	47 of 1982	6 September 1982	20 June 1983 (See <i>Gazette</i> 3 June 1983 P. 1675)	
<i>Supreme Court Amendment Act 1983</i>	47 of 1983	1 December 1983	1 December 1983	
<i>Supreme Court Amendment Act 1984</i>	9 of 1984	18 May 1984	18 May 1984	
<i>Acts Amendment (Insolvent Estates) Act 1984</i> Amendments in Part IV	72 of 1984	26 November 1984	24 December 1984	Section 11 transitional ²
<i>Acts Amendment and Repeal (Credit) Act 1984</i> Amendments in Part VIII	102 of 1984	19 December 1984	31 March 1985 (See <i>Gazette</i> 8 March 1985 p. 867)	Part X savings and transitional
<i>Commercial Arbitration Act 1985</i> Amendments in Schedule I	109 of 1985	7 January 1986	1 April 1986 (See <i>Gazette</i> 28 February 1986 p. 605)	Section 3 transitional

² Repealed by the *Interpretation Act 1984*.

³ Part VI repealed by Act No. 73 of 1948 s. 3.

⁴ See *Judges Retirement Act 1937* and *Judges Salaries and Pensions Act 1950*.

⁵ Under the *Reprints Act 1984* s. 7 (3) (h) this short title was substituted for "*Salaries and Allowances Tribunal Act 1975*" which was changed by Act No. 34 of 1980.

⁶ Now see *Companies (Application of Laws) Act 1981* and the *Companies (Western Australia) Code*.

⁷ Repealed by the *District Court of Western Australia Act 1969*.

⁸ Now see the *Mining Act 1978*.

⁹ Section 11 of Act No. 72 of 1984 reads as follows—

" Transitional. 11. Notwithstanding the repeal of paragraph (1) of section 25 of the *Supreme Court Act 1935* by section 10 of this Act, that paragraph shall continue to apply for the purpose of the administration by the Court of the assets of any person who has died before the coming into operation of the *Acts Amendment (Insolvent Estates) Act 1984* and whose estate has proved or proves to be insufficient for the payment in full of his debts and liabilities. "

¹⁰ Now see the *Mental Health Act 1962*.

¹¹ Repealed by the *Commercial Arbitration Act 1985*.

¹² At the time of reprinting interest is at rate of 14% see *Gazette* 3 January 1986 p. 11.

¹³ See Halsbury, Vol. 18 para. 502 and supplement 1934; and Annual Practice 1935 pages 738, 2210 and 2211.

¹⁴ Marginal notes in the *Supreme Court Act 1935* referring to legislation of other jurisdictions have been omitted from this reprint.

¹⁵ The *Supreme Court Act 1935* is affected by the *Juries Act 1957*; *Foreign Judgments (Reciprocal Enforcement) Act 1963*; *Suitors Fund Act 1964*; *Inheritance (Family and Dependents Provisions) Act 1972*.

¹⁶ As at 25 July 1986 the *Acts Amendment (Mental Health) Act 1981* which, if it were in operation would amend the *Supreme Court Act 1935*, was not in operation.