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(SECOND SESSION)

PARLIAMENT OF NEW SOUTH WALES

SECOND REPORT

OF THE

LAW REFORM COMMISSION

ON

SUPREME COURT PROCEDURE

L.R.C. 14

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## PREFACE

The Law Reform Commission is constituted by the Law Reform Commission Act, 1967. The Commissioners are—

The Honourable Mr Justice Reynolds, Chairman.

Mr R. D. Conacher, Deputy Chairman.

Mr C. R. Allen.

Professor D. G. Benjafield.

Mr D. Gressier.

Mr T. W. Waddell, Q.C.

The offices of the Commission are in the Goodsell Building, 8-12 Chifley Square, Sydney. The Secretary of the Commission is Mr R. J. Watt. Letters should be addressed to him.

This is the fourteenth report of the Commission on a reference from the Attorney-General. Its short citation is L.R.C. 14.

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## LAW REFORM COMMISSION

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**SECOND REPORT ON  
SUPREME COURT PROCEDURE**

To the Honourable K. M. McCaw, M.L.A.,  
Attorney-General.

1. Our terms of reference are "to keep under review the Supreme Court Act, 1970, excluding the rules in the Fourth Schedule, and to report thereon, and on incidental matters, as occasion arises".

2. You have requested us to give effect to the assurance given to the Legislative Council in the debate in committee on the Bill which became the Supreme Court Act, 1970. The assurance was given by the Honourable J. B. M. Fuller and was to the effect that this Commission would be asked to consider suggestions made in the debate (Hansard, 1970, page 5896, see also pages 5897, 5907). The references to "Hansard 1970" in this report and the notes to this report are references to the proofs of the reports of the parliamentary debates in the third session of the forty-second Parliament.

3. The Supreme Court Act, 1970, adopts in substance the recommendations of this Commission in its first report on Supreme Court procedure, made on the 8th of September, 1969 (L.R.C. 7). Part 9 of the Act (Rules of Court) commenced on the passing of the Act. The remainder of the Act is to commence on a date to be proclaimed by the Governor. This report deals with questions raised in the Legislative Council and generally with matters upon which it would be well to have legislation before the commencement of the Supreme Court Act.

4. We made a report on the 13th of October, 1971, on law and equity (L.R.C. 13). That report recommends the enactment of a Bill which would (amongst other things) repeal section 64 of the Supreme Court Act.

5. We have considered the matters raised in committee of the Legislative Council. A list of the matters follows, showing the paragraphs of the notes where we deal with each matter raised.

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6. Another question raised in committee of the Legislative Council was whether section 124 (3) of the Supreme Court Act should be retained. By that subsection rules of Court relating to the Court of Appeal must have the concurrence of the Chief Justice and the President of the Court of Appeal. This report does not deal with that question. We intend to deal with it in another report.

7. We recommend a number of amendments to the Supreme Court Act. Most do not call notice in this report. All of them are discussed in the notes. We go on to draw attention to the more important of the recommendations.

8. We recommend the omission of section 124 (1) (t) whereby rules might have been made for repealing or modifying Acts of Parliament. We recommend, however, retention of the provisions of the Act whereby the rules would, in case of inconsistency, prevail over Acts passed before the commencement of the Supreme Court Act (subject to the omission of section 126, which is unnecessary). See paragraphs 1 to 17 of the notes.

9. In cases where an Act gives a power to a Judge and provides that there shall be no appeal from his decision, we recommend that there should be an appeal to the Court of Appeal, but only by leave of the Court of Appeal. This is for two reasons. First, because commonly (although not always) in such cases there is a right of appeal (perhaps by leave or special leave) to the High Court or to the Privy Council. Such a right of appeal cannot be taken away by the State Parliament. It is wrong that there should be a possibility of an appeal from a Judge of the Court to an outside tribunal, but no appeal to the Court of Appeal. Second, even though an Act does not permit an appeal, the Court of Appeal may yet exercise a limited supervisory jurisdiction over a Judge: see paragraph 89 of the notes. We give form to this recommendation in the provisions of the draft Bill in Part 2 of this report, which would insert a new subsection (4) of section 101, and in some of the amendments to other Acts in the Second Schedule to the draft Bill.

10. We recommend a major restatement of the business of the Court of Appeal. The changes are directed towards reducing the expense and delay of litigation, towards securing the position of the Court of Appeal as a superior appellate court, and towards making it easier for litigants to decide whether they

should go to the Court of Appeal or to a Division of the Court. The effect of the recommendation would be to give to the Divisions part of the present business of the Court of Appeal. See paragraphs 120 to 148 of the notes. The recommendation has the approval in principle of the President of the Court of Appeal.

11. We recommend the removal of some obstacles to the grant of an injunction to restrain an apprehended breach of contract or other injury. The bearing of this recommendation on injunctions to restrain threatened defamation is discussed in paragraphs 156 to 159 of the notes.

12. The Second Schedule to the draft Bill takes a further step in the task of recommending consequential amendments to other Acts. There is some comment on the recommendations in paragraphs 232 to 239 of the notes.

13. The accommodation of the Mental Health Act, 1958, to the principles of the Supreme Court Act raises special problems. We intend to make another report about the Mental Health Act.

14. Part 2 of this report embodies our recommendations in the form of a draft Bill. The draft Bill does not take into account Acts subsequent to the Payroll Tax Act, 1971, but does assume the passing and commencement (before the commencement of an Act based on the draft Bill) of the Companies (Amendment) Bill at present before Parliament.

29th October, 1971.

R. D. CONACHER, Deputy Chairman.

COLIN R. ALLEN, Commissioner.

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*Section 6—Inconsistency between Acts and rules of Court*

1. This is one of a number of provisions whereby the Supreme Court Act and the rules would prevail over Acts in force before the commencement of the Supreme Court Act. Other provisions to this or a similar effect are the present section 24 (1) (a) (compare the proposed section 24 (2) (a), (3)), section 77, section 124 (1) (t) and section 126.

2. Section 124 (1) (t) and section 126 were criticised in the debate in committee of the Legislative Council. See the remarks of the Honourable C. A. Cahill and the Honourable B. B. Riley reported in Hansard 1970 at pages 5909 and 5910. The basis of the criticism was that a provision allowing delegated legislation to repeal or otherwise override an Act of Parliament was contrary to constitutional principle.

3. The principle is one of undoubted validity and importance. It has, however, been departed from on many occasions.

4. Legislation enabling rules of court made in New South Wales to override prior legislation includes the following—

- (a) The Imperial Act of 1823, 4 Geo. 4 c. 96, section 17. This is the Act under which the Supreme Court was established by the grant of the Charter of Justice of 1823. Section 17 enabled the Crown to make such rules and orders by order in Council touching and concerning a variety of matters "as to His Majesty . . . shall seem meet". The section concluded "and all Rules and Orders so to be established by any such Order or Orders in Council as aforesaid shall be of such and the like Force and Effect as if the same had been inserted in this present Act".
- (b) The Imperial Act 9 Geo. 4 c. 83, the Australian Courts Act, 1828, section 16. This Act continued the Supreme Court as established by the Charter of Justice of 1823 and still is today the basic legislation on which the Supreme Court depends. By section 16 the Judges were authorised to make such rules and orders touching and concerning a variety of matters "as to His Majesty shall seem meet". Such rules were to be of the like force and effect as if the same had been inserted in the Imperial Act. Sir Alfred Stephen remarked on the strangeness of the retention from the Act of 1823 of the words "as to His Majesty shall seem meet" and went on "it is clear, however, that their retention was undesigned; and, in practice, the mistake has passed unnoticed, or unregarded": *Supreme Court Practice* (1843-5), p. 30. This rule-making power continues today. It is, we believe, the source of power to make rules relating to the admission of solicitors.
- (c) In 1840, section 23 of the Act 4 Vic. No. 22 enabled the Judges to make and establish general rules and orders on a variety of matters. Every rule and order so made was to be "of the same force and effect as if the same had been inserted in and had respectively formed part of this present Act".

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- (d) In 1852 section 27 of the Act 16 Vic. No. 3 enabled the Judges to make general rules and orders on a variety of matters. Section 28 of the same Act provided that such rules and orders should be of like force and effect as if their provisions had been expressly enacted in the Act.
- (e) Section 174 of the Common Law Procedure Act of 1853 enabled the Judges to make general rules and orders on a variety of matters and the provisions of the Act 13 and 14 Vic. c. 16 (U.K.) as to rules and orders made under the Imperial Act by the Judges of the common law at Westminster were applied to rules and orders made under the colonial Act. By the Imperial Act, rules and orders made under the Act were to be of like force and effect as if their provisions had been expressly enacted by the Parliament at Westminster.
- (f) Section 268 of the Common Law Procedure Act, 1899, re-enacted the relevant provisions of section 174 of the Common Law Procedure Act of 1853. See paragraph (e) above. This section was considered in *Whitefield Ltd v. Starkey* ((1932) 32 S.R. 651).
- (g) Section 21K of the Supreme Court and Circuit Courts Act, 1900, (inserted in 1965) enables the Judges of Appeal to make rules and orders on a variety of matters. By subsection (2), rules and orders so made are to have effect "notwithstanding any inconsistency with any Act passed before the commencement of the Supreme Court and Circuit Courts (Amendment) Act, 1965".
- (h) Section 39 and 39A of the Supreme Court and Circuit Courts Act, 1900, enables the Judges to make rules and orders on a variety of matters. By section 40 of the same Act, rules and orders so made are to be of the same force and effect as if the same had been inserted in and formed part of the Act.
- (i) By section 94 (2) of the Equity Act, 1901, rules regulating the practice and procedure upon originating summons are to have the same force and effect as if they formed part of the fourth schedule to the Act.

5. In England the general rule-making power for the Court of Appeal and the High Court of Justice is given by section 99 of the Supreme Court of Judicature (Consolidation) Act 1925. By subsection (1) (g) of section 99, rules of Court may be made "for repealing any enactments which relate to matters with respect to which rules are made upon this section".

6. In our view the material questions are two. First, does the introduction of the Supreme Court Act present an occasion for departure from the principle that delegated legislation ought not to be allowed to repeal or otherwise override an Act of Parliament? Secondly, if so, how far ought the departure to go?

7. In our view the introduction of the Supreme Court Act does present such an occasion. In this Commission many hundreds of hours, perhaps thousands of hours, have been spent in reading the Acts of New South Wales in search

for legislation affecting procedure in the Supreme Court. We have found thousands of instances of such legislation. The second schedule to the Supreme Court Act will amend some of these Acts. We now recommend further amendments to some of the Acts listed in the second schedule and amendments to other Acts.

8. But these amendments would not by any means remove all provisions in the existing legislation which assume the existence of procedures, or prescribe procedures, which will become, or at least ought to become, obsolete on the commencement of the Supreme Court Act. We are aware of many such provisions. We do not propose remedial amendments to these provisions in the present report because the task of drafting the proposals is, by its magnitude, a task which we cannot perform in 1971. Further, there are, without doubt, statutory provisions touching procedure in the Supreme Court of which we are not aware.

9. The prospect is, therefore, that when the Supreme Court Act comes into operation it will come into operation in an environment of earlier legislation which is in many ways inconsistent with the Supreme Court Act and, in particular, inconsistent with the rules in the fourth schedule to the Act. Such inconsistency is of course a commonplace in the law and there are means for resolving the inconsistency. *Prima facie*, later legislation overrides earlier legislation. *Prima facie*, therefore, the rules in the fourth schedule to the Act would, being part of the Act, override earlier legislation.

10. The Act, including the fourth schedule, is drawn on the footing that it will, where inconsistent with earlier legislation, override the earlier legislation. If rules made by the Rule Committee must yield to earlier legislation many curious problems will arise. To take a hypothetical example, suppose an Act allows 14 days within which to take some procedural step. Suppose that the rules in the fourth schedule allow 28 days within which to take the step. Suppose further that the Rule Committee rescinds the rule in the fourth schedule and makes a new rule allowing 21 days for taking the step. What then is the time prescribed by law?

11. We think therefore that earlier legislation ought to yield, not only to the Supreme Court Act (including the rules in the fourth schedule), but also to rules made by the Rule Committee. In this paragraph and henceforward in the discussion of section 6, we use "earlier legislation" to denote legislation in force immediately before the commencement of the Supreme Court Act.

12. We come then to the second question posed in paragraph 6 above. How great a departure from constitutional principle is warranted?

13. One way of limiting the extent to which rules made by the Rule Committee might operate to displace earlier legislation would be to provide that only rules relating to specified subject matters should so operate. This would involve a dissection of section 124 (1) of the Supreme Court Act into two groups of subject matters and a provision that rules made by the Rule Committee relating to one group should prevail over earlier legislation, but other rules should not prevail. We reject this as unworkable.

14. A second way of limiting the extent to which rules might displace earlier legislation is to limit the manner of displacement. Here there is a choice between two schemes. Each scheme would involve that rules made by the Rule Committee should, while in force, prevail over earlier inconsistent legislation. Under one scheme, however, on rescission of the rules, the earlier legislation would again operate except so far as amended or repealed by Parliament. Under the other scheme, it would be competent to the Rule Committee not only to make rules prevailing over earlier inconsistent legislation, but also to repeal that legislation, so that the legislation would not come into operation again on rescission of the inconsistent rules.

15. The second scheme is tidier than the first in that it would enable the removal from the statute law of inoperative legislation. But mere tidiness does not justify an otherwise unnecessarily extensive departure from the constitutional principle under discussion.

16. It is our view, therefore, that the major reform embodied in the Supreme Court Act justifies the conferment on the Rule Committee of power to make rules (on the subjects mentioned in section 124 (1) of the Supreme Court Act) inconsistent with, and prevailing over, legislation passed before the commencement of the Supreme Court Act. We think, however, that it is not necessary that the Rule Committee should be further authorised to repeal or modify Acts of Parliament.

17. We recommend accordingly that sections 6 and 77 be retained in their present form, that the operation of section 24 in this respect be retained, and that paragraph (t) of section 124 (1) be omitted. We further recommend that section 126 be omitted, for the reason that section 6 sufficiently covers the ground of section 126.

#### *Section 10—Arrest on mesne process*

18. The following is an extract from Hansard of some remarks of the Honourable R. R. Downing in debate in committee of the Legislative Council on the 16th September, 1970 (pages 5896, 5897)—

“Clause 10 of the bill provides that no person shall be arrested under the jurisdiction of the court formerly exercised by writ of *capias ad respondendum*, which is commonly referred to as a *ca re* writ, or by writ of *ne exeat*, or otherwise on *mesne process*. The *ca re* writ is used at common law and the others are used in the equity jurisdiction. For instance, when the last British football team was in Australia a common law action was taken against a member of the team for damages for assault. A writ of *ca re* was granted by the Supreme Court in its common law jurisdiction to prevent the footballer leaving the jurisdiction of the court until the matter was dealt with.

The writ of *ne exeat* is used in the Equity jurisdiction. For example, recently a fellow involved in some company frauds was attempting to leave the country with large sums of money. A writ of *ne exeat* was issued and this man had it served on him when he was

about to board an aircraft at Sydney (Kingsford Smith) Airport, the court having been satisfied that he was likely to leave the jurisdiction and that there would be good grounds for believing that he was leaving the country to avoid the consequences of his conduct. As these two processes are to be taken out of the law, I ask the Minister what will replace them.

These writs do not involve the poor man for he has no chance of finding the fare to get himself away. They are mostly used in the case of well-to-do people. Indeed, it has been well said that the rich can run but the poor man cannot. These common law and equitable writs have been used in the past, I understand, with good effect to prevent people leaving the jurisdiction when they are attempting to avoid the results of their conduct. So far as I can see, nothing is being put in their place. Paragraph (b) of clause 16 (3), mentions:

any person held in custody on the date of commencement of this Act under any attachment or committal, (otherwise than for contempt of Court) or under any writ of *capias ad respondendum* or writ of *ne exeat* or otherwise on mesne process shall, unless there is other lawful warrant for holding him in custody be discharged from custody on the date of commencement of this Act.

I do not know what takes the place of those processes, which in the past have served a useful purpose. I do not know why they have been taken out and I should be glad if the Minister would indicate in what direction, if any, the bill provides for something to take the place of these two writs."

19. In reference to the remarks at the end of the passage quoted, under the Supreme Court Act nothing takes the place of the writ of *capias ad respondendum*, or of the writ of *ne exeat*. Further, section 98 of the Act provides that "a judgment or order of the Court for the payment of money shall not be enforceable by attachment of the person or committal" but that the section "does not affect the power of the Court to commit for contempt of court". The Act would also amend Part IV of the Judgment Creditors' Remedies Act, 1901, which deals with the writ of *capias ad satisfaciendum*, so as to leave in the Part nothing relating to the issue of that writ by the Supreme Court. Finally, the Supreme Court Act would repeal the Arrest on Mesne Process Act, 1902.

20. It was the view of this Commission that arrest on mesne process, arrest under writ of *ne exeat*, and imprisonment for debt should be abolished. Sections 10, 16 (3) (a), (b) and 98 were included for this purpose, as were the provisions for amendment of Part IV of the Judgment Creditors' Remedies Act, 1901, and the repeal of the Arrest on Mesne Process Act, 1902. Having looked at the general question again, we think that room should be left, at least at present, for the enforcement of maintenance orders by imprisonment, and we think that section 98 of the Supreme Court Act should be amended in some minor respects which we will discuss later in these notes (paragraphs 191 to 193). Otherwise, however, we adhere to the former view of this Commission. The subject is complex and we must discuss it at some length.

21. In order to justify these provisions of the Supreme Court Act, it is useful to look first at the law relating to the procedures of courts of common law for arrest on mesne process, or arrest before judgment, (by writ of *capias ad respondendum*) and for arrest in execution of a judgment (by writ of *capias ad satisfaciendum*). The writ of *ne exeat* is a process of courts of equity. It has been much influenced by the practices of courts of common law concerning arrest before judgment. We defer discussion of the writ of *ne exeat* to paragraphs 60 to 63 below.

22. The law relating to arrest on mesne process is the common law, modified by the Arrest on Mesne Process Act, 1902. The law relating to arrest in execution is the common law, modified by Part IV of the Judgment Creditors' Remedies Act, 1901.

23. "The subject of imprisonment for debt divides itself into two branches: arrest before judgment (commonly called arrest on mesne process), and arrest in execution.

24. "First,—With respect to Arrest before Judgment:

25. "By the law of England, the plaintiff in general commences his action either by serviceable process (which is in effect a mere summons), or by bailable process, that is, by writ authorizing an arrest of the person. The former course is competent to him in all cases; the latter, only in cases where a positive affidavit has been first made that the defendant is indebted to him (upon some cause of action specified) to the amount of £20 or upwards, or in cases where, upon special cause shown, (such as that of meditated flight) a judicial order for the arrest is obtained. No previous notice of the arrest is required; nor (except in the cases last mentioned) any permission from the Court, or from a Judge.

26. "The object of the arrest is to confine the debtor in prison, so that his person may be ultimately accessible to the plaintiff's execution, in the event of his obtaining judgment; but the debtor has the power of avoiding that imprisonment in the first instance, or obtaining his liberation from it after it has taken place, not only by payment of the debt, but by giving bail, or depositing money; such bail or deposit operating as a security to the plaintiff, that in the event of his obtaining judgment, the defendant's person shall be again forthcoming, and subjected to imprisonment in execution, unless the debt and costs be immediately satisfied.

27. "Secondly,—With respect to Arrest in Execution:

28. "After judgment, whether the action is founded upon a debt, or upon any other kind of demand, the successful party is entitled at his election to take out execution, either against the property or the person of his adversary, for the money for which judgment was obtained. In this case, the right of arrest does not depend upon the amount of the sum due, nor is the arrest bailable; and the effect of the proceeding is, that the party taken is confined in prison until he shall either pay the debt, or otherwise obtain the discharge of his person": Serjeant Stephen in a supplementary memorandum to the fourth report of the Common Law Commission (1832), p. 47.

29. The object of arrest on mesne process being to ensure that the body of the defendant may ultimately be accessible to the plaintiff's execution, the Arrest on Mesne Process Act, 1902, provides, as one of the conditions of the power to order arrest on mesne process, that the judge be satisfied that the action will be defeated unless the defendant is forthwith apprehended (section 5 (d)). "Defeated" means defeated because the defendant will be out of reach of arrest in execution of a judgment given against him. See *Larchin v. Willan* ((1838) 4 M. & W. 351; 150 E.R. 1463), *Pearl v. Dalldorf* ((1902) 19 W.N. 1), and compare *Jira v. Burcher* ((1960) 78 W.N. 421). Arrest on mesne process being therefore a process *quia timet* in aid of arrest in execution, the process ought not be preserved unless arrest in execution ought itself to be preserved.

30. Arrest in execution is a barbarous process. It is not designed to reach property which may be applied in satisfaction of the judgment: it is designed merely to coerce the judgment debtor (or his friends and relations), to pay the judgment debt. Such at least was the purpose of the process as it stood in its most developed form in the first decades of the nineteenth century. This purpose is manifest in section 20 of the Judgment Creditors' Remedies Act, 1901.

31. But there is another policy evident in section 21 of the Judgment Creditors' Remedies Act, 1901, by which the prohibition in section 19 of arrest in execution is made not to apply to a writ of *capias ad satisfaciendum* in an action for breach of promise of marriage, libel, slander, seduction, or any malicious injury. Section 21 is penal in character: punishment is out of place in a court of civil jurisdiction, except in cases of contempt. Further, it is quite wrong, on present day ideas, that a judgment creditor should have it in his power, without any judicial supervision, to put his judgment debtor in gaol.

32. Section 22 contains another exception to the prohibition in section 19. "Where a defendant has been arrested or has given bail upon a writ of *capias ad respondendum*, a writ of *capias ad satisfaciendum* may be issued to fix the bail or charge the defendant in execution as of course." It is not easy to speak with confidence of the intricacies of the case law which arose concerning arrest for debt and its consequences, and section 22 assumes the existence of that case law.

33. The explanation of the words "to fix the bail" seems to be as follows. "Bail" here means the sureties to the special bail-piece which might have been given as a consequence of the issue of a *capias ad respondendum*. "Fix" means "Crystallize the liability of". In order to "fix the bail" it was necessary to issue a *capias ad satisfaciendum* against the judgment debtor and to get a return of *non est inventus* (he is not found). This was because the sureties were not bound to render the judgment debtor (that is, deliver him into custody in execution of the judgment), until they knew, from the species of execution chosen by the judgment creditor, whether he intended to proceed against the person of the judgment debtor or not.

34. When a *capias ad satisfaciendum* was issued merely "to fix the bail", the sheriff returned *non est inventus* as a matter of course, without making any attempt to arrest the judgment debtor. In such a case, the *capias ad satisfaciendum* was intended merely as a notice to the sureties of the intention of the judg-



ment creditor to proceed against them. The bail (i.e., the sureties) having been thus "fixed", the judgment creditor was at liberty to recover the judgment debt from them by action or by *scire facias*. See generally Chitty's Archbold's Practice, 12th edn. (1866), Vol. 1, pp. 885-887.

35. The words in section 22 "to charge the defendant in execution" are not altogether clear. Sometimes words such as these were used to mean the imposition of a fresh ground for imprisonment in the case of judgment debtor already in custody (the existing custody being at the instance either of the judgment creditor or of a stranger). See, for example, Tidd's Practice, 9th Edn., Vol 1 (1828), pp. 363-372; Chitty's Archbold's Practice, 12th edn. (1866), Vol. 2, p. 1207. But a judgment debtor in custody by way of execution was sometimes spoken of as standing charged in execution, whether there was or was not a previous custody: the phrase was used, that is to say, to cover the case of a judgment debtor who was at liberty until taken pursuant to *capias ad satisfaciendum* issued at the instance of the judgment creditor, as well as the case of a judgment debtor already in custody. See, for example, the Imperial Act 21 Jac. 1 c. 24, and the New South Wales Act 6 Geo. 4 No. 8.

36. It is not necessary to choose between the possible meanings of the words "charge the defendant in execution", although they probably embrace a *capias ad satisfaciendum* for the taking of a judgment debtor not in existing custody as well as a *capias ad satisfaciendum* against a judgment debtor already in custody. But, whatever the meaning may be, it is wrong that a judgment debtor should be liable in any circumstances to arrest in execution "as of course". That is by itself a sufficient reason for the repeal of section 22.

37. The remaining provision by which arrest in execution may be authorised is section 20. That section requires a Judge to order the issue of a *capias ad satisfaciendum* upon being satisfied that a defendant either fraudulently conceals property from the judgment creditor or is about to leave the State without satisfying the judgment. In passing we note the oddity that the section does not apply to a judgment (e.g., for costs) against a plaintiff.

38. Arrest for debt is inherently bad, because of its oppressive effect on the debtor. This is, of course, not a new idea. For centuries the law relating to arrest in execution has been treated as a matter calling for particular strictness and has therefore become a field of peculiar technicality. Because of its technicality, and because, through its infrequent use, lawyers today are commonly ill-informed concerning its rules, process by way of arrest in execution is a trap for judgment creditors and to sheriffs and other officers charged with execution of the process. These reasons are sufficient to justify abolition of the present law relating to arrest in execution. It might be possible, if it were necessary, to frame a new code for the arrest of a judgment debtor who conceals his property or who is about to abscond.

39. The Bankruptcy Act 1966-1970, however, makes it unnecessary to frame a new code. That Act enables a judgment creditor to procure the issue of a bankruptcy notice immediately upon obtaining final judgment (ss. 40 (1) (g), 41). Thereupon there is a case for issuing a warrant for the arrest of the judgment debtor if it is shown that he is about to abscond (s. 78 (1) (a)). It is

important to bear in mind that section 78 (1) (a), relating to absconding debtors, applies where the absconding debtor has "a view towards avoiding payment of his debts" whether or not he also has a view to preventing or delaying proceedings against him under the Act.

40. It may be said that while section 78 enables a court in bankruptcy to order the arrest of a debtor, the judgment creditor does not have an effective remedy against the property of the debtor unless he is able to petition for a sequestration order. For that purpose his debt must be at least \$500 (s. 44 (1) (a)). It will be rare for a Supreme Court judgment to be in a sum of less than \$500. It would be exceedingly rare, in the case of such a judgment, that satisfaction should depend on the availability of arrest in execution. On the other hand, there are some unavoidable ill effects of arrest in execution. The first of these is the affront to principles of personal liberty involved in imprisonment for a civil debt. Secondly, there are the costs to the parties and the expenses to the State to which this process must give rise. These ill effects are, in our view, sufficient to justify acceptance of the position that there should be no provision for arrest in execution in case of a judgment of the Supreme Court for less than \$500.

41. These ill effects have been recognised in England over the centuries and arrest on mesne process (and therefore arrest in execution) were limited to cases where the amount claimed was not less than a specified amount, finally settled at £20 in 1827 by the Act 7 & 8 Geo. 4 c. 71, s. 1. See Tidd's Practice, 9th edn., (1828) Vol. 1, p. 239, Vol. 2, 1025. See also the Absconding Debtors Arrest Act 1851, s. 1 (£20) and the Debtors Act 1869, s. 6 (£50). The common law rule was that arrest in execution was not permitted unless arrest on mesne process was available.

42. Turning to New South Wales, it was perhaps an accident that, while the Arrest on Mesne Process Act, 1902, put a lower limit of £20 on cases for arrest on mesne process, no similar limit was placed on cases for arrest in execution by sections 20 and 22 of the Judgment Creditors' Remedies Act, 1901. The limit of £20 was raised to £200 in 1957 (Supreme Court Procedure Act, 1957, s. 13). The form of section 21 of the Judgment Creditors' Remedies Act, 1901, leaves room for the common law rule, so that there is probably now a lower limit of \$400 in the cases to which that section applies.

43. \$500 (the lower limit for a creditor's petition in bankruptcy) is certainly worth no more in 1971 than £200 was in 1957 or £20 was in 1827. The experience of the past therefore tends to support the view that there should be no provision for arrest in execution in cases where the judgment debt is less than \$500.

44. We are therefore of opinion that the Supreme Court Act is right in abolishing arrest for debt in execution. We would except judgments or orders for maintenance: See paragraph 192 below.

45. In England imprisonment for debt has been regulated since 1869 by sections 4 and 5 of the Debtors Act 1869. Section 4 abolishes imprisonment for debt, subject to exceptions. Some of the exceptions have no bearing on the questions now under discussion: default in payment of penalties, in payments required by orders of justices, in certain payments required of bankrupts, and in payments ordered under the Act. The other exceptions (paragraphs 3 and 4)

are in cases involving contempt of Court. Section 5 of the Debtors Act 1869 permits imprisonment for up to six weeks where a judgment debtor is able to pay the debt but refuses or neglects to do so.

46. The Payne Committee on the Enforcement of Judgment Debts recommended in 1966 that imprisonment for debt be abolished except in cases of default in payment of maintenance: (Cmnd. 3909 (1969) pages 246-261). The Parliament at Westminster has legislated to adopt the recommendation (with a further exception of certain taxes and similar liabilities): Administration of Justice Act 1970, s. 11. This section and other provisions of the Act commenced on the 2nd August, 1971.

47. Before leaving arrest in execution, we refer to one indirect effect of such an arrest, that is, the effect of coercing the judgment debtor into petitioning for his own bankruptcy. See the Judgment Creditors' Remedies Act, 1901, s. 25, and the Bankruptcy Act 1966, s. 60 (1). The significance of this is that a creditor needs a debt of \$500 to found a petition (s. 44 (1) (a)) but a debtor may petition for his own bankruptcy without any lower limit on the amount of his debts (s. 55).

48. It is enough for us to say that it is for the Federal Parliament to determine in what circumstances a debtor may be made bankrupt, and that it is not fitting that the State should, by coercive imprisonment of the debtor, aid the judgment creditor in doing indirectly that which the Bankruptcy Act prevents him from doing directly.

49. We turn now to arrest on mesne process. If arrest in execution is abolished, as we think it should be, it follows that arrest on mesne process, in the form in which we have it today, ought also to be abolished. This follows because the sole reason for which the law allows arrest on mesne process is to secure the amenability of the debtor to arrest in execution if judgment goes against him.

50. Arrest on mesne process is attractive to plaintiffs because it may coerce a defendant into paying what is claimed, that is, may induce him to abandon whatever defence he might otherwise raise, or it may coerce him into procuring security to which resort may be had for satisfaction of such judgment as the plaintiff may afterwards obtain. But these are incidental effects which leave untouched the basic object of the procedure. Further, the effect of coercing the abandonment of defences is unfair and in itself goes a long way towards justifying abandonment of the procedure.

51. We think it right, therefore, that arrest on mesne process as we know it today should be abandoned. It remains to be considered whether some other procedure should be put in its place.

52. In England arrest on mesne process was abolished by section 6 of the Debtors Act 1869 and nothing was put in its place, except as mentioned in paragraph 53 below and except as regards an action for a penalty or a sum in the nature of a penalty. In such an action, on it being shown amongst other things that there are probable grounds for believing that the defendant is about to quit England unless apprehended, the judge may order the arrest and imprisonment of the defendant for a period not exceeding six months, unless and until security is given that any sum recovered against the defendant in the action will be paid or that the defendant will be rendered to prison.

53. Section 6 of the Debtors Act 1869 also introduced a procedure designed to secure the presence in England of a defendant in any case where his absence would materially prejudice the plaintiff in the prosecution of the action. Prejudice might arise where the plaintiff required the defendant to give evidence at the trial, or to answer interrogatories: the section is not (except as regards penal actions) designed to secure the presence of the defendant for arrest in execution or to coerce him into giving security for satisfaction of the judgment.

54. The section has fallen into disuse and the former rules of Court for proceedings under the section (R.S.C. Ord. 69) were repealed in 1965 and not replaced. See generally Halsbury's Laws of England 3rd edn. Vol. 2 (1953) p. 649 and *Felton v. Callis* ([1969] 1 Q.B. 200).

55. We would not propose the introduction of legislation along the lines of section 6 of the Debtors Act 1869, because, in the first place, it is not (except as regards penal actions) a substitute for arrest on mesne process and, in the second place, its obsolescence in England shows that the legislation has not been a success.

56. In proposing the Bill which led to the Supreme Court Act, this Commission was concerned to see that imprisonment for debt was abolished. The Commission saw no need for anything to take the place of arrest in execution. Arrest on mesne process was abolished in England in 1869, subject to the exception in cases of penal actions. That exception is negligible. Although there has been some criticism in England of this situation, it does not appear that there is any prospect of reintroducing arrest on mesne process. After all, processes of execution should not be regarded as substitutes for caution in giving credit. A debtor is, and always has been, at liberty to remove his property from the State. It is incongruous that an intention to remove his person from the State should be made the occasion for his arrest, when his person cannot, in the nature of things, be applied in or towards satisfaction of the judgment.

57. The one possible alternative to arrest on mesne process which occurs to us is a scheme whereby a plaintiff might obtain an order for the attachment of the property in New South Wales of the defendant where it is shown that the defendant proposes to remove his property out of the State with a view to defeating the plaintiff's action. The defendant would have an alternative of giving security to the extent of the value of his property or the amount of the plaintiff's claim (plus something for costs), whichever was the less. The Absconding Debtors Act, R.S.O. 1960, c. 2 (Ontario) would provide some guidance.

58. A similar scheme was recommended in England in 1968 by the Payne Committee on the Enforcement of Judgment Debts (Cmnd. 3909) at pages 322 to 326. The scheme was not adopted by the Administration of Justice Act 1970, which did adopt other recommendations of the Committee. However the scheme has merit and we think that future developments in England should be watched.

59. We have substantial doubts whether a plaintiff or intending plaintiff would find such a scheme worth while. Since the attachment might be the source of serious harm to the defendant, and would operate before the plaintiff estab-

lished his claim by judgment, it would be right to make the plaintiff liable for any damage suffered by the defendant in case the plaintiff failed in his action and furnish security for that liability (see paragraph 61 below). We think that such a liability put upon the plaintiff would be likely to render the scheme unattractive to plaintiffs. We therefore do not propose its adoption at present.

60. We turn to the writ of *ne exeat*. This writ is a prerogative writ. It was originally used for political purposes (*Parsons v. Burk* [1971] N.Z.L.R. 244), but that use ceased long ago. Its present use is analogous to the order for arrest of a defendant at law under section 6 of the Debtors Act 1869. It is available in proceedings for equitable debts. The writ is addressed to the Sheriff, requiring him to cause the defendant to come before him and give sufficient bail or security, in a specified sum, that the defendant will not go or attempt to go beyond the State without leave of the Court. In case the defendant refuses to give the bail or security, the Sheriff is required to commit the defendant to prison, there to be kept in custody until he does so.

61. By analogy to arrest under section 6 of the Debtors Act, *ne exeat* is now available only if it appears that the absence of the defendant will prejudice the plaintiff in the prosecution of the action (see paragraph 53 above). It seems, pursuing the analogy of the Debtors Act, that *ne exeat* is no longer available in aid of enforcement of a decree in equity and that, upon a decree being pronounced against the debtor, he would be entitled, if in custody, to be released or, if he had given bail or other security, the bail or security would be discharged. Where the plaintiff seeks a writ of *ne exeat*, he is generally required to give an undertaking as to damages. See rule 32 of the Consolidated Equity Rules of 1902, *Glover v. Walters* ((1950) 80 C.L.R. 172), *Matthews v. Funston* (No. 2) ((1907) 7 S.R. 170), *Felton v. Callis* ([1969] 1. Q.B. 200), *Yorkshire Engine Co. (Ltd.) v. Wright* ((1872) 21 W.R. 15), *Hume v. Druyff* ((1873) L.R. 8 Exch. 214), Halsbury's Laws of England 3rd edn. Vol. 2 (1953) p. 649, Vol. 14 (1956) pp. 517, 518, Daniell's Chancery Practice 8th edn. Vol. 2 (1914) pp. 1441-1448.

62. *Ne exeat*, in its present form, appears therefore not to be a procedure for securing the payment of debts by absconding debtors. The limited circumstances in which it is available render its retention unnecessary. It is noteworthy that the Australian Digest notes only one case where the writ has been issued in New South Wales. In that case (*Matthews v. Funston* (No. 2) (1907) 7 S.R. 170), it was held that the writ was wrongly issued and the Court directed an inquiry as to the damage suffered by the defendant.

63. In short, the writ of *ne exeat* is dead wood which ought to be got rid of. The reasons which prompt us to reject alternatives to arrest on mesne process prompt us also to refrain from proposing some substitute for the writ of *ne exeat*.

#### Section 16—Pending Proceedings

64. As a consequence of our proposals for the abolition of imprisonment for debt, section 16 (3) (b) should be extended to cover any person held in custody under writ of *capias ad satisfaciendum*. See paragraphs 18 to 48 above.

*Section 17—Criminal Proceedings*

65. The present rule-making power in relation to criminal proceedings is to be found in Acts dealing with specific proceedings, for example the Criminal Appeal Act, 1912, s. 28, and, in more general terms, in the Australian Courts Act 1828, s. 16, the Supreme Court and Circuit Courts Act, 1900, s. 39, and the Supreme Court Procedure Act, 1900, s. 14. See also the Crimes Act, 1900, s. 567.

66. The Supreme Court Act, 1970, will repeal the Supreme Court and Circuit Courts Act, 1900, and the Supreme Court Procedure Act, 1900.

67. The rule-making power in section 16 of the Australian Courts Act 1828 has four defects. First, it is limited to "such rules and orders . . . as to His Majesty shall seem meet". Although the limitation has been disregarded (see paragraph 603 of these notes), it is nonetheless an embarrassment and gives ground for challenge to the validity of rules made under the section, unless the limitation is satisfied. The second defect is the power of disallowance given to the Imperial Crown. The third defect is the absence of the usual provisions for gazettal, tabling in Parliament, and disallowance. The fourth defect is that, on the repeal of section 17 of the Supreme Court and Circuits Courts Act, 1900, the power will only be exercisable by all the Judges acting together. This fourth defect would be cured in relation to civil proceedings by the amendments which we propose to paragraphs (e) and (f) of section 124 (1) of the Supreme Court Act, but the defect will remain in relation to the proceedings to which section 17 applies.

68. Thus the Supreme Court Act would, if left in its present terms, take away the effective rule-making powers in relation to criminal proceedings generally. Although hitherto few rules have been made dealing particularly with criminal proceedings (but note Order 16 rule 12 of the General Rules of the Court) clearly there ought to be a general power to make rules regulating the practice and procedure of the Court in criminal proceedings.

69. It seems to us convenient that the Rule Committee should be the body to exercise this power. We therefore recommend that an amendment be made to section 17, giving such a power to the Rule Committee.

70. We have also reconsidered the present section 17 (2). If a rule-making power is introduced into section 17 as we recommend in paragraph 69, it is convenient that the Rule Committee should have in relation to criminal proceedings a power similar to the Committee's general power under paragraph (g) of section 124 (1). We recommend, therefore, the introduction into the new rule-making power in section 17 of a paragraph similar to the new paragraph (g) which we recommend for insertion in section 124 (1). This new paragraph would take the place of the present subsection (2) of section 17: we recommend, therefore that the present subsection (2) be omitted.

71. The rule-making power under the new section 17 (2) would enable rules to be made which prevail over Acts passed before the commencement of the Supreme Court Act. This maintains the substance of the present position as regards rules made under section 16 of the Australian Courts Act 1828 or under section 39 of the Supreme Court and Circuit Courts Act, 1900.

*Section 19—Interpretation*

72. In the definition of “common law claim”, “delivery” is a slip. It should be “detention”. Compare section 93. We recommend a corrective amendment.

73. We recommend that “minor” be defined as meaning a person under the age of 18 years. Similar definitions were added to many Acts by the Minors (Property and Contracts) Act, 1970.

74. We recommend an expanded definition of the word “rules” so as to preclude any doubt that the word embraces not only the rules in the Fourth Schedule but also rules made from time to time by the Rule Committee and other rules, for example, those listed in Schedule B to the fourth schedule.

75. In paragraph (a) of the definition of “stated case”, the word “special” should be omitted. See the amendment to section 9 of the Arbitration Act, 1902, in the second schedule to the Supreme Court Act.

76. We recommend the addition to section 19 of a new subsection (2) defining what is, and what is not, an appeal for the purposes of the Act and the rules. It is necessary to distinguish between appeals and other proceedings in the Court because of the special provisions in the Act relating to appeals. See the present section 109 and the new section 75A which we recommend.

*Section 24—Court to have powers of Judges*

77. We have been led to reconsider this section because it is a better place than the present sections 48 (2), 49 (2) and 50 to confer on the Court as reconstituted by the Act the powers of the Judges collectively and of any Judge. We have met a number of problems which we recommend should be dealt with by the substitution of a new section 24.

78. The proposed new section 24 (1) coins and gives a meaning to the phrase “special office”. The new subsection (1) concludes with the general words “any other special judicial office in the Court”. The general words would (with the aid of the new subsection (4) (a)) pick up, for example, an obsolete statutory provision referring to the Primary Judge in Equity. The new subsection (1) also enables a shortening of the expression of the rest of the section.

79. The proposed new section 24 (2) is intended to do the work of the present section 24 (1), but is more extensive. First, the new subsection is not confined to powers under Acts: it would extend to powers under Imperial Acts and to powers established by practice. Secondly, the new subsection is somewhat extended (or at least clarified) by the use of “Judge in special office” rather than the short series of descriptions in the present section 24 (1). Thirdly, the new subsection extends to the powers of the Judges collectively or of any two or more Judges: compare the present sections 48 (2), 49 (2) and 50. Fourthly, the new subsection does some of the work of the present subsection (2), namely, the grant to the Court of powers vested by an Act in a Judge.

80. The new section drops the references in the present section to the Court of Appeal or to a Judge of Appeal. The Court of Appeal and the office of Judge of Appeal was created by the Supreme Court and Circuit Courts (Amendment) Act, 1965. Our further consideration of Acts passed in and after 1965 leads us to think that, having regard to the amendments to, and repeals of, other Acts by the Supreme Court Act, and having regard to the further amendments which we now recommend, it is not necessary that section 24 should refer to the Court of Appeal or to the Judges of Appeal.

81. The new subsection (3) does the remainder of the work of the present subsection (2): it gives to the Court as reconstituted the powers of the Court under the present law. Here again, under the new subsection the powers are not limited to powers vested under Acts. The subsection is expanded so as to apply expressly to a power vested in the Court in any specified jurisdiction.

82. The new subsection (4) (a) is new: its purpose is self-evident. The new subsection (4) (b) would take the place of the first limb of the present section 24 (3), down to "any matter". The new subsection (4) (c) would take the place of the second limb of the present subsection (24) (3), down to "without appeal". The remainder of the present section 24 (3) would, on our present proposals, be replaced by a provision to a different effect in a new subsection (4) of section 101. See paragraph 200 below.

83. The new subsection (5) calls for some explanation. It is convenient to deal first with the second limb of the subsection, "but otherwise" and so on. Both the present section 24 (1) and the new section 24 (2) are based to some extent on section 17 of the Supreme Court and Circuits Courts Act, 1900. Section 17 of the Act of 1900 has its best known operation in enabling the Court of Appeal (Supreme Court and Circuit Courts Act, 1900, s. 21F (1)) to exercise the powers of the Judges collectively in litigious proceedings. But section 17 appears to have the further operation that it enables two or more Judges to exercise a rule-making power vested in the Judges collectively. An example of such a power is that given by section 16 of the Australian Courts Act 1828. In the absence of the second limb of the new subsection (5), there would be a conflict between section 24 and section 124 (1) (e), (7). The conflict would no doubt be resolved by construction in favour of section 124, but it seems better to avoid the conflict by inserting the new subsection (5).

84. The first limb of the new subsection (5) is occasioned by the current use of "rule" or "rule of Court" to mean quite different things. Section 24 should apply to a rule of the Court of Appeal in the nature of an order or direction in the proceedings, but should not apply to a rule of Court in the nature of a regulation of the procedure of the Court.

85. Paragraph (a) of the new subsection (6) excludes from the section powers vested in the Chief Justice as Chief Justice. The Chief Justice has a number of statutory functions to which section 24 ought not to apply. These include—

- (a) functions relating to the appointment and resignation of members of the Solicitors' Statutory Committee under section 75 of the Legal Practitioners Act, 1898;



- (b) the appointment of commissioners for affidavits under section 27 of the Oaths Act, 1900;
- (c) the appointment of a Judge for the trial of proceedings under section 101 of the Navigation Act, 1901;
- (d) functions as an official trustee under the Australian Museum Act, 1902;
- (e) the giving of directions for the constitution of the Court of Criminal Appeal under section 3 of the Criminal Appeal Act, 1912;
- (f) the appointment of persons to act in relation to the attestation of instruments outside the State under section 168 of the Conveyancing Act, 1919; and
- (g) functions in relation to the making of general orders under Part 24, Division 1, of the Conveyancing Act, 1919.

We are not aware of any powers of a judicial character vested in the Chief Justice as such. We therefore think it right that the section should not apply to powers vested in the Chief Justice.

86. Paragraph (b) of the new subsection (6) would exclude from the section powers of a non-judicial character vested in the Chief Judge in Equity. Paragraphs (c) and (d) of the new subsection (6) would exclude true cases of powers given to a Judge as a designated person in statutory contexts which require separation of the powers in question from the powers of the Court.

87. Paragraph (e) of the new subsection (6) would exclude powers of a non-judicial character and may exclude some powers of a judicial character. For example, were it not for the new subsection (6) (d), the new subsection 6 (e) would exclude the powers of the chairman of the Crown Employees Appeal Board. Such powers ought to be excluded, not because of any non-judicial character, but because the fact that they are shared by persons who are not Judges would put the powers outside what could on any view be regarded as powers of the Court. Paragraph (e) may be too wide or too narrow: this is a risk which must be taken when attempting to frame a transitional provision to operate on extraneous legislation which may or may not exist, the terms of which are in the nature of things unknown to the draftsman. The operation of paragraph (c) will in any event be small.

88. Subsections (7) to (10) of the new section 24 are a further safeguard in case it turns out that the section goes too far in giving to the Court some power of a Judge which has escaped our notice.

89. One object of section 24 is to do away with problems which arise when power of a judicial character is given by statute to a Judge of the Court. If the construction of the statute is that the power is given to the Judge, but not to the Court, and a right of appeal is not granted by statute, there is, as a general rule, no right of appeal from the Judge to the Court of Appeal. The Court of Appeal has, however, a jurisdiction, in substance supervisory, in cases of actual or constructive refusal by a Judge to exercise the power, or in case a Judge exceeds

his power. As an exception to the general rule excluding an appeal, an appeal lies to the Court of Appeal from a decision of a Judge on a matter of practice or procedure. See *Collins v. Neilsen* ((1941) 41 S.R. 42, 44) and *Nassar v. Kays Holdings Pty Ltd* ((1967) 85 W.N. (Pt. 1) 727, 728, 729). See also *Australian Trust Co. v. Berry* ((1857) 2 Legge 992); *Marsh v. Patten* ((1868) 7 S.C.R. Eq. 18) and *Ex parte Groot* ((1958) 75 W.N. 496).

90. Notwithstanding that an appeal from a Judge to the Court of Appeal may thus be excluded, there may yet be an appeal from the Judge to the High Court: *Medical Board of Victoria v. Meyer* ((1937) 58 C.L.R. 62); *Nassar v. Kays Holdings Pty Ltd* ((1967) 85 W.N. (Pt. 1) 727, 729). It is outside the competence of the State Parliament to exclude a right of appeal given by the Judiciary Act 1903-1969.

91. The rules mentioned in paragraph 89 are difficult to apply. They raise problems remote from any question of the merits of the dispute between the parties. Further, the need for their application often seems unrelated to any deliberate intention of the Parliament.

92. We think that the objectives should be as follows. First, a power given to a Judge should be exercisable by the Court, unless the statutory context makes it quite clear that Parliament has adverted to the question and has determined that the Judge when acting in exercise of the power is to act as, or as part of, a tribunal separate from the Court. The powers of a Judge as Judge of the Land and Valuation Court or as chairman of the Crown Employees Appeal Board are examples of powers in respect of which Parliament has so adverted and determined. Second, if the power is made exercisable by the Court, there should in general be an appeal to the Court of Appeal. Third, where Parliament has directed that there shall be no appeal, Parliament should now permit an appeal by leave of the Court of Appeal. In this way there is an escape from the anomalous situation where an appeal lies (perhaps by leave or special leave) to the Privy Council or to the High Court, but not to the Court of Appeal. Section 24 and the proposed new section 101 (4) are directed to these objectives.

#### *Section 26—Appointment and qualifications: Chief Justice and other Judges*

93. Under section 26 a barrister or solicitor is not qualified for appointment as a Judge unless he is of a specified number of years standing. This requirement looks to the time during which he has had the status of barrister or solicitor, not to the time (if any) during which he has practised *McCawley v. The King* ((1918) 26 C.L.R. 9). In the debate in committee of the Legislative Council on the Supreme Court Bill Mr Cedric Cahill raised the question whether the law ought not require that the barrister or solicitor should have practised as such for the specified period (Hansard 1970 page 5897).

94. In recommending the provision which became section 26, this Commission was concerned merely to continue the present law, appearing, on this point, in section 9 (3) of the Supreme Court and Circuit Courts Act, 1900. We do not think that we should, in this report, recommend any change. The question was before Parliament as recently as 1968 when the Administration of Justice Act, 1968, amended section 9 of the Supreme Court and Circuit Courts Act, 1900. We think that we ought not to deal with the question without either your specific request under our present terms of reference or specific terms of reference.

95. Another question has been raised on section 26. The question is whether a Judge is qualified for appointment as Chief Justice. At present the appointee must be either a barrister in England or Ireland or a barrister admitted by the Court, and must be of not less than five years standing as a barrister: Charter of Justice, 1823, cl. 2; Supreme Court and Circuit Courts Act, 1900, s. 5. On several occasions a Judge has been appointed Chief Justice. In each case he was no doubt, at least before appointment as a Judge, a barrister of five years standing. If so, we do not think that there could be any doubt that he held a sufficient qualification. But the provisions of section 25 (1), (2) (b), on the face of it to a similar effect as the present law as regards a barrister admitted by the Court, are nonetheless in a new context.

96. For the avoidance of doubt, we think that the Act ought to be amended so as to say expressly that a Judge may be appointed Chief Justice. We take section 31 (1), (2), (3), (5) and (6) as a model for the new section 26A. The amendment would have the further consequence of putting all the Judges on the same footing as regards qualification for appointment as Chief Justice. Under the Supreme Court Act as it is at present, a Judge who was not a barrister of five years' standing (as he might not be if he had his qualification under paragraph (a), (c) or (d) of section 26 (2)) would not be eligible for appointment as Chief Justice.

#### *Section 29—Salaries of Judges*

97. Judicial salaries have been changed since the Supreme Court Act was passed. We recommend the substitution of a new subsection (1) of section 29.

#### *Section 33—Seniority of Judges of Appeal*

98. In the debate in committee of the Legislative Council on the Supreme Court Bill Dr the Honourable R.A.A.F. De Byron-Faes and Mr Cedric Cahill suggested changes in the rules of seniority amongst the Judges (Hansard 1970 pages 5898, 5899). This is a matter which was before Parliament in 1965: see the Supreme Court and Circuit Courts (Amendment) Act, 1965, s. 2 (d) (ii). Again, as in the case of the qualifications for appointment as Judge (paragraph 94 above), we think that we ought not to deal with the question without either your specific request under our present terms of reference or specific terms of reference.

#### *Section 34—Absence etc. of President of Court of Appeal*

99. Section 34 (1) does not allow for the case where a Judge of Appeal (other than the Chief Justice and the President) is unwilling to act as President by reason, for example, of illness, absence from the State, or pressure of other duties. We recommend a substituted subsection (1) which does so allow.

100. The substitution of a new subsection (1) gives an opportunity to adopt the short reference in section 35 (1) to absence from duties in place of the longer statement in the present section 34 (1).

### Section 36—Additional Judges of Appeal

101. If the Chief Justice is absent and the President of the Court of Appeal is appointed Acting Chief Justice, there is a reduction in the number of the available Judges of Appeal yet section 36 (1) does not enable the appointment of an additional Judge of Appeal. This is an anomaly and we recommend that the words in brackets be omitted. The amendment would go beyond curing the anomaly in case a Judge other than the President were appointed Acting Chief Justice, but we think it better not to put on the power a further limitation by reference to some specified number of Judges of Appeal. Such a reference would be troublesome because it would get out of date.

### Section 41—Judges in the Divisions

102. Section 41 (1) identifies the Judges who are to act in the Divisions, but does not mention the Admiralty Division. The question has been raised whether the subsection should be amended so as to fill this omission. We think not.

103. The legislative power of Parliament as regards procedure in the civil jurisdiction in admiralty of the Supreme Court is not satisfactorily established. The Colonial Courts of Admiralty Act 1890 was brought into force here by Order in Council in 1911 (cf. Zelling A.J. in (1969) Law Council Newsletter, Vol. 4 No. 4, at p. 11). But there is room for the view that the Commonwealth Parliament, not the Parliament of New South Wales, is authorized to legislate for the exercise by the Supreme Court of its jurisdiction under the Act: see section 3 (a), and see *McIlwraith McEacharn Ltd v. Shell Co. of Australia Ltd* ((1945) 70 C.L.R. 175) on the meaning of "British possession" in the Act.

104. The Act does, however, appear to give a rule-making power in terms applicable to the Rule Committee under the Supreme Court Act and the power seems adequate in extent (section 7. See *Swift & Co. Ltd v. The Ship "Heranger"* (1965) 82 W.N. (Pt. 1) 540). It is thus better to leave to the Rule Committee the task of providing rules for the identification of the Judge or Judges to exercise the jurisdiction of the Court under the Colonial Courts of Admiralty Act 1890.

105. Federal jurisdiction in any matter of admiralty and maritime jurisdiction is vested in the Supreme Court by the Judiciary Act 1903-1969, s. 39 (2). Although a rule-making power is given to the Justices of the High Court by section 86 (especially paragraph (h)), it is presumably competent to the New South Wales Parliament to define by legislation the means within the Supreme Court whereby the federal jurisdiction will be exercised or to confer on the Rule Committee power to do so. But, having regard to the difficulties under the Colonial Courts of Admiralty Act 1890, we think that provision for the exercise of Imperial or federal jurisdiction in admiralty is best left to the Rule Committee. We think it best, therefore, that the rules of Court should identify the Judge or Judges to exercise the jurisdiction in admiralty of the Court.

106. Section 41 (4) was criticised in the debate in committee in the Legislative Council by Messrs. Downing and Cahill and others, particularly on the ground that it would tend to inhibit the despatch by one Judge of all business which might conveniently be dealt with at towns in the country (Hansard 1970 pages 5899, 5900). We think that any difficulty in disposing of, say, divorce or

equity cases in the country ought to be met by administrative means within the Court rather than by legislative direction to the Judges. Section 41 (2), of course, enables any Judge to exercise the jurisdiction of the Court in any Division, and the Act does not restrict the places in New South Wales where a Judge may sit. It is true that section 41 (2) is merely enabling: it does not enable the Chief Justice or any one else to direct a Judge to sit in any Division to which he is not appointed or nominated. But we think that a mandatory provision would be little different in operation and, since it would lack sanction, may be productive rather of embarrassment than of efficiency.

107. We have, however, reconsidered section 41 (4) in the light of the criticisms which have been made. We think that it is too rigid, depending as it does on the consent of the Judge concerned. There is no problem about nominating a Judge to sit in a Division in addition to the Division or Divisions to which he has previously been nominated. Section 41 (3) deals with that case. The special case with which section 41 (4) is concerned is that of removal of a Judge from one Division to another, so that he is no longer appointed or nominated to his former Division.

108. We think that in the case of Judges appointed to special offices by the Governor, such as the Chief Judge in Equity, the present position ought to be continued. That is, as we understand it, that the Judge is not removable from the special office without his consent, unless indeed he is removed from the office of Judge. On this view, the Supreme Court Act may remain silent on the question of removal from these special offices.

109. Where a Judge is nominated to a Division by the Chief Justice there is not, as we see it, an installation in a permanent office comparable with, say, appointment to the office of Chief Judge in Equity. In the case of these nominations, while it is right that *prima facie* a Judge ought not to be removed without his consent, we think that there ought to be a reserve power to do so. We recommend that the Chief Justice should be empowered to do so, but if consent is withheld then only with the concurrence of the Governor.

110. The word "transferred" in the present section 41 (4) is no related to words used elsewhere in the section. The proposed new subsection avoids the use of this word.

#### *Section 43—Sittings of the Court of Appeal*

111. It is possible that there will be a sufficient number of Judges of Appeal available to constitute three separate Courts of Appeal. We recommend, therefore, that section 43 (5) be amended so that it reads "More than one Court of Appeal, each of three or more Judges of Appeal, may sit at the same time".

#### *Section 46—Powers of Judge of Appeal*

112. The following is an extract from Hansard (1970 page 5901) of some comments by Mr Downing in committee of the Legislative Council—

“Clause 46 deals with the judges of the Court of Appeal. The bill now has provision for nine judges of appeal. That is the maximum. I should like to see a provision that would enable judges in appeal, when the appeal list is up to date or the delay is only short, to be directed to deal with common law, nisi prius, divorce or equitable matters. Why cannot the Chief Justice so arrange that one of the judges of appeal, or two judges of appeal, could quickly be diverted to other jurisdictions where delay exists? For example, the delay in common law, divorce or equity might be eighteen months but the time lag in the Court of Appeal might be only two months. As a rule, no one expects Court of Appeal matters to be heard earlier than three or four months after the lodging of the appeal. What would be wrong with the Chief Justice arranging the work of the appellate court so that Mr Justice X and Mr Justice Y will take their turn in the jurisdictions that are lagging behind?”

Such a procedure would have the added advantage that the appeal court judges would be involved in ordinary, everyday litigation. They would not be as far removed from these matters as they tend to be after a number of years in the appellate jurisdiction. I suggest that this is a matter of common sense. As far as I can see, when judges are appointed to the Court of Appeal they are appellate judges only. What would be the circumstances when the appeal work is up to date? Do they continue to sit in that jurisdiction when their services could in many cases properly be used in a division that was lagging in time?”

113. By section 31 (3), a Judge of Appeal is to continue to be a Judge and may from time to time sit as or exercise any of the powers of a Judge. This subsection is not mandatory, and does not enable the Chief Justice or anyone else to direct a Judge of Appeal to sit as a Judge in a Division. We do not think that a provision enabling the Chief Justice so to direct is appropriate to the office of Judge of Appeal.

114. We recommend the omission of section 46 and the insertion of a new section in its place. The present section 46 (1) (a), concerning *habeas corpus*, is unnecessary in the context of the proposed new sections 48 and 49. Under the latter sections proceedings for *habeas corpus* would be assigned to the Divisions. The powers of the Court would therefore be exercisable by any of the Judges, including any of the Judges of Appeal, in term or in vacation.

115. The present section 46 (1) (b) is good so far as it goes, but it need not be confined to vacation. Further this paragraph and the present section 46 (3) (b) overlap. We think that a Judge of Appeal ought to be able to exercise the powers of the Court of Appeal in preliminary matters and generally in matters not involving the decision of the appeal on other proceedings. A provision to that effect, which we embody in the proposed new section 46 (2), would take the place of the present section 46 (1) (b), (3).

116. It is possible that the proposed new section 46 (2) (a) might be read as authorising a Judge of Appeal to grant or refuse leave to appeal. We think that leave to appeal to the Court of Appeal should be a matter for a Court of three or more Judges of Appeal. We therefore propose the new section 44 (3).

117. The present section 46 (2) is, we think, inappropriate to the proposed new sections 48 and 49. Proceedings for prohibition, mandamus or certiorari to a person or body other than a "specified tribunal" (see the proposed new section 48 (1)) could be dealt with by the Court in a Division and such proceedings would not present any special problem if brought in vacation. Proceedings for similar orders to a "specified tribunal" could be commenced in the Court of Appeal and dealt with as regards interlocutory matters by a Judge of Appeal under the proposed new section 46 (2). We do not think it appropriate that final orders for prohibition, mandamus or certiorari to a "specified tribunal" should be made by a single Judge of Appeal even in vacation. In cases of urgency a Court of Appeal can be assembled in vacation. We propose that the present section 46 (2) be omitted and that nothing similar be inserted.

118. The proposed new subsection (2) (a) needs explanation. Suppose for example a person proposing to institute an appeal from another court to the Court of Appeal is in doubt on some point of procedure for the institution. It is open to him to apply for directions under Part 1 rule 13 of the rules in the fourth schedule to the Act. If he does so before the institution of the substantive appeal, that application will itself be "proceedings" and the directions would "involve the decision of the . . . proceedings", and would therefore be outside the powers of a single Judge of Appeal. See the closing words of the present section 46 (3). The proposed new subsection (2) (a) would put such directions within his powers.

119. The proposed new subsections (3) and (4) take the substance of the present subsections (5) and (6) but are more explicit in expression. The proposed new subsections drop the restriction of the present subsections to things done by a Judge of Appeal "under this section". The present subsection (5) might have the curious effect of enabling the Court of Appeal to vary or discharge an order made by a single Judge of Appeal within powers granted to him, but disabling the Court of Appeal from varying or discharging an order made without power. So too, under the present subsection (6) the validity of an order made by a single Judge of Appeal might be challenged (elsewhere than in the Court of Appeal) on the ground that the order was outside the powers given by the section. We think that the sole means of challenge (other than appeal to the Privy Council or to the High Court) should be an application under the proposed new subsection (4).

#### *Sections 47 to 51—Distribution of business: Court of Appeal and Divisions*

120. In the debate in committee in the Legislative Council Mr Downing questioned the provision in section 48 (3) (1) whereby proceedings on a stated case under section 124 of the Stamp Duties Act, 1920, are made part of the business of the Court of Appeal (Hansard 1970, pages 5901, 5902). These proceedings are today part of the business of the Court of Appeal, but Mr Downing's point was that it would be better if they were heard and determined at first instance by a single Judge. We agree.

121. The suggestion has led us to review this group of sections. We have done so with three objectives. The first objective has been to see that the parties to litigation are enabled to get a decision of their case with the least possible trouble and expense to themselves and without unnecessary expense to the State. The second objective has been to secure the position of the Court of Appeal as a

superior appellate court. The third objective has been to avoid defining the business of the Court of Appeal and of the Divisions by reference to divisions of jurisdiction, or to the course of practice, existing before the commencement of the Supreme Court Act.

122. In pursuit of the first objective, we take it that proceedings heard and determined by a single Judge are likely to be disposed of more speedily and with less expense, to the parties and to the State, than proceedings heard and determined by the Court of Appeal. Especially is this so where issues of fact have to be determined. We take from these considerations the guide that proceedings ought to be assigned to the Divisions unless there are reasons why they should be assigned to the Court of Appeal. The main class of case in which there is such a reason is that in which the case has already been considered by a Judge of the Court or by some other holder of superior judicial office, for example, a judge of a district court.

123. The criteria which we apply in pursuit of the first objective also apply in the promotion of the second objective, to secure the position of the Court of Appeal as a superior appellate court.

124. The present sections 48, 49 and 50 were designed to continue the substance of the present distribution of business between the Court of Appeal on the one hand and the several original jurisdictions of the Court on the other hand. That distribution was based on the legislation of 1965 under which the Court of Appeal was established, and part of its effect was to continue in the Court of Appeal a variety of business formerly despatched by the Full Court. This former business of the Full Court was the result of a history of upwards of 140 years. Some account of the history is given in *A. & V. Bence Pty Ltd v. Voets Investments Pty Ltd* ([1963] S.R. 1016). The Full Court was not in origin an appellate court and, although by 1965 much of its business was appellate in character, much also of its business was in the exercise of original jurisdiction. The original jurisdiction was various and the variety was more susceptible to historical apology than to utilitarian justification.

125. The third objective of our revision of these sections is to avoid defining business by reference to divisions of jurisdiction, or to the course of practice, existing before the commencement of the Supreme Court Act. See the present sections 48 (1) and 49 (1). These references are inherently difficult to apply and would become more difficult to apply with the passage of time.

126. We have discussed with the President of the Court of Appeal the general nature of our proposals on sections 47 to 51 and are authorised to say that the proposals have his approval in principle.

127. We go on to comment on the particular sections affected by our proposals.

### *Section 47—Preliminary*

128. We propose the omission of this section. The scheme of the proposed new sections in this Division enables a more specific treatment of the extent to which particular provisions of the Division should have effect subject to other provisions of the Act or subject to the rules.



*Section 48—Business of the Court of Appeal*

129. We propose the omission of this section and the insertion of a new section in its place.

130. In proposing a re-definition of the business of the Court of Appeal in order to confine the business so far as practicable to business of a high appellate character, we have used the expression "specified tribunal". We have used this expression to denote tribunals constituted by a holder of a superior judicial office and tribunals of plural membership having such a holder amongst their members. We use "superior" here, not in any technical sense, but simply to mean comparatively high. The line drawn by the definition includes district court judges and holders of judicial office of similar or higher status. It seems to us that the review by the Supreme Court of the decisions of these tribunals is properly assigned to the Court of Appeal, the parties having already had their cases investigated by at least one holder of a superior judicial office. On the other hand, we think it right that, as a rule, the review of the decisions of other tribunals, not "superior" in the sense in which we now use the word, should be, at first instance at least, part of the business committed to a single Judge of the Supreme Court.

131. Paragraph 130 will be a sufficient comment on the proposed new section 48 (1) (a), subparagraphs (i) to (v). Subparagraph (vi) should be read with the proposed new section 48 (1) (b). It is intended to meet the case of, say, a judge of a district court acting, not as such a judge, but as a designated person under an Act. See for example section 20 of the Gaming and Betting Act, 1912, and *Nassar v. Kays Holdings Pty Ltd* ((1967) 85 W.N. (Pt 1) 727).

132. Subparagraph (vii) of the proposed new section 48 (1) (a) should also be read with the proposed new section 48 (1) (b). It is intended to meet the case where the tribunal whose decision is under review is one of plural membership and has amongst its number a holder of superior judicial office. See for example section 28 of the Medical Practitioners Act, 1938.

133. Subparagraph (viii) of the proposed new section 48 (1) (a) includes amongst the specified tribunals the Solicitors' Statutory Committee. The nature of the membership of the Committee appears to us to justify the assignment to the Court of Appeal of proceedings for the review of decisions of the Committee.

134. We pass on to the proposed new section 48 (2). Paragraph (a) deals with proceedings in the Court under the Supreme Court (Summary Jurisdiction) Act, 1967. The Supreme Court Act, 1970, will apply to proceedings under the Act of 1967 to only a limited extent. See section 17 (1), (4), of the Supreme Court Act and the Third Schedule paragraph (k).

135. Paragraphs (b), (c) and (d) of the proposed new section 48 (2) embrace, as regards specified tribunals, the judgments or orders which will, under section 69 (1), take the place of the prerogative writs of mandamus, prohibition and certiorari. Proceedings for such judgments and orders against other tribunals or persons would, under the present proposals, be assigned to the Divisions by the proposed new section 49.

136. Paragraphs (b), (c) and (d) should not be confined to what may now be done by prerogative writ. They would embrace some statutory proceedings, for example, proceedings under section 147 of the District Courts Act, 1912, for a mandatory order to a judge of a district court. The paragraphs may also embrace some proceedings for an injunction.

137. Paragraph (d) of the proposed new section 48 (2) would, if unqualified, be too extensive. It would, for example, assign to the Court of Appeal an application under section 47 of the District Courts Act, 1912, for removal of a plaint into the Supreme Court. Such an application does not as a rule involve or contemplate any review of a decision of a district court judge. Today the application may be made to the Court of Appeal or to a Judge, but as a rule a Judge, rather than the Court of Appeal, should deal with these applications. See *Ex parte Jurd* ((1966) 84 W.N. (Pt 1) 22). The proposed new section 48 (3) would enable the rules to assign this sort of business to the Divisions.

138. Paragraph (e), assigning to the Court of Appeal proceedings for determining, by declaration or otherwise, any matter concerning the powers of a specified tribunal, recognizes the situation that sometimes a party aggrieved by a decision of an inferior tribunal may complain of excess of jurisdiction in proceedings for a declaration rather than for a prerogative writ. See for example *Anisimic Ltd v. Foreign Compensation Commission* ([1969] 2 A.C. 147), cf. *Toowoomba Foundry Pty Ltd v. The Commonwealth* (1945) 71 C.L.R. 545).

139. Paragraphs (f), (g) and (h) will embrace many of the proceedings mentioned in the present section 48 (3).

140. Paragraph (i) deals with contempt of the Court of Appeal. Contempt in the course of proceedings in the Court of Appeal will be punishable by the Court of Appeal under section 44. Paragraph (i) is necessary for cases outside section 44, for example, a disturbance of the business of the Court by persons not concerned in proceedings before the Court.

141. Paragraph (j) gives a general incidental power which might otherwise be lacking. It is impossible to foresee what may be needed in order to enable the Court of Appeal to discharge its functions and the paragraph should be useful in reserve.

142. Paragraph (k) will enable further business to be assigned to the Court of Appeal by rule of Court. The present section 47 would give to the Rule Committee not only power to add to the business assigned to the Court of Appeal, but also power to subtract from that business. The latter power does, we believe, go beyond what is appropriate and is dropped in the present proposals, except to the limited extent allowed by the proposed new section 48 (3).

#### *Section 49—Concurrent business*

143. We propose the omission of this section and the insertion of a new section 49 assigning to the Divisions all proceedings in the Court not assigned to the Court of Appeal. The present proposals drop the idea of concurrent business, that is, proceedings which may properly be commenced either in the Court of Appeal or in a Division.

#### *Section 50—Business of the Divisions*

144. We propose that this section be omitted. Compare the proposed new section 49.

## Section 51—Removal and remission

145. We propose the omission of subsection (3). This is consequential on the dropping of the idea of concurrent business. Otherwise, we propose some minor changes in the section for the sake of conformity with the proposed new sections 48 and 49.

146. The table below shows the effect of the proposed new sections 48 and 49 on the proceedings specified in the present sections 48 (1), (3), and 49 (2).

Present section etc.	Description	Proposed section etc. for assignment to—	
		Court of Appeal	Divisions
48 (1)	Prohibition, mandamus or certiorari to "specified tribunal".	48 (2) (b), (c), (d)	..
48 (1)	Prohibition, mandamus or certiorari to other tribunals or persons.	....	49
48 (3) (a)	Ouster of office ( <i>cf. quo warranto</i> ).	....	49
48 (3) (b)	Contempt of the Court of Appeal.	48 (2) (i)	..
48 (3) (b)	Contempt in other cases.	....	49
48 (3) (c)	Admission of barristers and solicitors.	....	49
48 (3) (d)	Discipline of barristers and solicitors.	....	49
48 (3) (e)	Appeal under the Legal Practitioners Act, 1898, s. 40G.	....	49
48 (3) (e)	Appeal under the Legal Practitioners Act, 1898, ss. 40j, 40k, 78.	48 (1) (a) (viii), (2) (f)	..
48 (3) (f)	Case stated by a chairman of quarter sessions under the Justices Act, 1902, s. 131A.	48 (1) (a) (iv), (2) (h)	..
48 (3) (g)	Appeal from a mining appeal court under the Mining Act, 1906, s. 167.	48 (1) (a) (vi), (2) (f)	..
48 (3) (h)	Case stated by a mining warden under the Mining Act, 1906, ss. 168 and following.	....	49
48 (3) (i)	Appeal from a District Court under the District Courts Act, 1912, Part VI.	48 (1) (a) (iv), (2) (f)	..
48 (3) (j)	Mandatory order to a District Court judge under the District Courts Act, 1912, s. 147.	48 (1) (a) (iv), (2) (b)	..
48 (3) (k)	Appeal from a District Court under the Local Government Act, 1919, s. 46.	48 (1) (a) (iv), (2) (f)	..
48 (3) (l)	Case stated by the Commissioner of Stamp Duties under the Stamp Duties Act, 1920, s. 124.	....	49
48 (3) (m)	Case stated under section 17 of the Land and Valuation Court Act, 1921.	48 (1) (a) (i), (2) (g)	..
48 (3) (n)	Case stated under the Workers' Compensation Act, 1926, s. 37 (4).	48 (1) (a) (v), (2) (h)	..
48 (3) (o)	Application by person dissatisfied with decision of the New South Wales Medical Board under the Medical Practitioners Act, 1938, s. 19.	....	49
48 (3) (p)	Appeal from the New South Wales Medical Board under the Medical Practitioners Act, 1938, s. 26 (3).	....	49
48 (3) (p)	Appeal from the disciplinary tribunal under the Medical Practitioners Act, 1938, s. 29 (4).	48 (1) (a) (vii), (2) (f)	..
48 (3) (q)	Case stated under the Supreme Court (Summary Jurisdiction) Act, 1967, s. 18.	48 (2) (a) (i)	..
48 (3) (r)	Application under the Supreme Court (Summary Jurisdiction) Act, 1967, s. 21.	48 (2) (a) (ii)	..
48 (3) (s)	Appeal under the Supreme Court (Summary Jurisdiction) Act, 1967, s. 24.	48 (2) (a) (iii)	..

Present section etc.	Description	Proposed section etc. for assignment to—	
		Court of Appeal	Divisions
49 (2) (a)	Application for <i>habeas corpus ad subjiciendum</i> .	....	49
49 (2) (b)	Appeal from the Council of the Law Society on cancellation or refusal of practising certificate under the Legal Practitioners Act, 1898, s. 72.	....	49
49 (2) (c)	Case stated under the Real Property Act, 1900, ss. 27, 122, 123.	....	49
49 (2) (d)	Case stated, statutory prohibition and other proceedings under the Justices Act, 1902 (except s. 131A).	....	49
49 (2) (e)	Mandatory order to a justice under the Justices Act, 1902, s. 134.	....	49
49 (2) (f)	Case stated under the Arbitration Act, 1902, ss. 9, 19.	....	49
49 (2) (g)	Certiorari to remove district court plaint into the Supreme Court under the District Courts Act, 1912, s. 47.	48 (2) (d), cf. s. 48 (3)	..
49 (2) (h)	Mandatory order to an officer of a district court under the District Courts Act, 1912, s. 147.	....	49
49 (2) (i)	Proceedings for ouster of office under the Local Government Act, 1919, ss. 44, 45.	....	49
49 (2) (j)	Appeal from a court of petty sessions under the Local Government Act, 1919, s. 46.	....	49
49 (2) (k)	Appeal concerning approval as authorised insurer under the Motor Vehicles (Third Party Insurance) Act, 1942, s. 14 (8).	....	49

147. It will be noted that the admission of barristers and solicitors, now part of the business of the Court of Appeal, would be assigned to the Divisions. Subject to future rules of Court, section 53 (4) would assign this business to the Common Law Division. This business is largely of a formal and ceremonial character and would, as it seems to us, be appropriately done by, for example, the Chief Justice or by some other Judge of high seniority. The Chief Justice or other Judge dealing with the applications might be accompanied on the bench by other Judges.

148. The proposed new sections would also assign to the Divisions the discipline of barristers and solicitors. We think that this is properly a matter of original jurisdiction not requiring the attention of three judges at first instance. It is clearly inappropriate that issues of fact should come before a bench of three Judges at first instance. In years gone by there was some apprehension that a barrister or solicitor accused of misconduct might, if the matter were dealt with by a single Judge, suffer by reason of an animosity arising out of previous professional contracts. It hardly needs to be said that a Judge who saw that past events might suggest the existence of such an animosity would not deal with the case unless there was a necessity in that there was no other Judge who could deal with the case. Now that there are upwards of thirty Judges it is quite unlikely that such a necessity would arise. In the nature of things, a difficulty such as this would not be escaped by requiring the case to be heard by three Judges. There would be room, we suggest, for a practice or convention that disciplinary cases against barristers or solicitors should be heard by the Chief Justice or by some other Judge of high seniority.

*Section 61—Defence or stay instead of injunction*

149. We recommend the substitution of a new subsection (1) of section 61. Occasions arise for restraining the commencement of proceedings, for example where the commencement is threatened and would be an abuse of the process of the Court. See *Charles Forte Investments Ltd v. Amanda* ([1964] 1 Ch. 240); see also section 84 of the Supreme Court Act. Section 61 (1) is directed, we think, not to this sort of case but rather to cases where, under the present law, the Court in equity would, in protection of some equitable right or title, restrain the prosecution of an action at law. The history of the section, the use of the words "by injunction", and the context provided by subsections (2) and (3) support this view.

150. However, the terms of section 61 (1) are wide and the competence of the Court to restrain the commencement of proceedings should not depend on history and context. We therefore recommend that there be a substituted section 61 (1), that the Court shall not restrain by injunction any proceedings pending in the Court.

*Section 64—Equity to prevail*

151. In our report on law and equity (L.R.C. 13) we have recommended the enactment of a Law Reform (Law and Equity) Bill, which would repeal section 64.

*Section 66—Injunction*

152. We recommend that subsections (1), (2) and (3) of section 66 be omitted and that three new subsections be inserted.

153. Subsection (1) is based on sections 176, 178 and 179 of the Common Law Procedure Act, 1899, which sections are in turn derived (through the Common Law Procedure Act of 1857) from sections 79, 80 and 81 of the Common Law Procedure Act 1854 (U.K.). The Act of 1854 was repealed in 1883, subject to a saving of jurisdiction (Statute Law Revision and Civil Procedure Act, 1883, ss. 3, 5, 6, 7). These provisions are important because they enable the Court to restrain breaches of contract and tortious injuries in cases where an injunction is not available on equitable principles. See *White v. Mellin* ([1895] A.C. 154) (injurious falsehood).

154. The sections of the Common Law Procedure Acts, and section 66 (1), are defective in two ways. First, the party complaining must wait until he has suffered an injury before he can seek the aid of the Court in preventing the repetition or continuance of the injury. Second, the plaintiff is required to bring proceedings for damages, which he may not wish to claim, as a condition of his right to claim an injunction. The second defect is merely absurd, but the first defect is substantial and will bear further discussion.

155. It will seem to many that a country cannot claim to have a civilized system of judicature if that system is left powerless to forbid the commission of a wrongful act, however clear is the proof of a threat to commit the act, and however serious the harm which will ensue on its commission, unless some similar wrongful act has already been committed. Yet that is the law both here and in

England in cases where equity will not interfere. See Day's Common Law Procedure Acts 2nd edn. (1863), pages xiii, xiv. No doubt the law has been left in this state because the cases where equity will interfere have grown in number, and this state of the law therefore does not often cause trouble.

156. But there is a residue of cases where neither in equity nor under the Common Law Procedure Act is an injunction available to restrain the commission of a threatened wrongful act unless some similar wrongful act has already been committed. This residue of cases includes cases of threatened defamation and some cases of threatened injurious falsehood. See *Saxby v. Easterbrook* ((1878) 3 C.P.D. 339); *White v. Mellin* ([1895] A.C. 154); *Royal Baking Powder Co. v. Wright, Crossley & Co.* ((1900) 18 R.P.C. 95); Gatley on Libel and Slander, 6th edn. (1967) pages 608–611. Where, as in cases of injurious falsehood, damage is the gist of the cause of action, not only must there have been a wrongful act, but also damage must have been suffered: *White v. Mellin* ([1895] A.C. 154).

157. We add a few more words on injunctions to restrain defamation. Suppose A, a newspaper owner, tells B that A intends to publish matter defamatory of B, and states the defamatory matter. If these are all the facts, B does not have a case for an injunction: communication to B is not publication in the law of defamation, so that B cannot complain of a threatened repetition of an injury, or of a threat to commit an injury of the like kind to an injury already committed. But if C is present and hears what A says to B, B does have a case for an injunction under sections 176 to 179 of the Common Law Procedure Act, 1899.

158. The Court will not readily grant an injunction to restrain threatened defamation. The following propositions were drawn from the authorities by Walsh, J. in *Stocker v. McElhinney* (No. 2) ( (1961) 79 W.N. 541, 543, 544)—

- “(1) Although it was one time suggested that there was no power in the court, under provisions similar to those contained in the Common Law Procedure Act, ss. 176 to 179, to grant an interlocutory injunction, in cases of defamation, it is settled that the power exists in such cases.
- (2) In such cases, the power is exercised with great caution, and only in very clear cases.
- (3) If there is any real room for debate as to whether the statements complained of are defamatory, the injunction will be refused. Indeed, it is only where on this point, the position is so clear that, in the judge's view a subsequent finding by a jury to the contrary would be set aside as unreasonable, that the injunction will go.
- (4) If, on the evidence before the judge, there is any real ground for supposing that the defendant may succeed upon any such ground as privilege, or of truth and public benefit, or even that the plaintiff, if successful, will recover nominal damages only, the injunction will be refused.”

159. The effect of the present recommendation, as regards defamation, would be to do away with anomalies such as that mentioned in paragraph 157 above, but our recommendation would not disturb the principles mentioned in paragraph 158.

160. We therefore propose that new subsections (1), (2) and (3) be substituted for the present subsections.

161. We should have preferred to recommend the omission of section 66 (3) without any replacement. However we have come to the conclusion that it is not safe to do so. The matter is complicated, but some indication of the difficulties to which the section is addressed can be gathered from *Lowndes v. Bettle* ((1864) 33 L.J. Ch. 451), *Fletcher v. Rodgers* ((1878) 27 W.R. 97), and *Want v. Moss* ((1891) 12 N.S.W.L.R. Eq. 101).

#### *Section 71—Habeas corpus*

162. We recommend the insertion of new subsections (3A) and (3B) in section 71. The purpose of the new subsection (3A) is to facilitate the enforcement of a writ of *habeas corpus*. The new subsection (3B) would preserve the law as to punishment as if for contempt. See the Habeas Corpus Act, 1816, ss. 2, 6, and the Imperial Acts Application Act, 1969, s. 6.

#### *Section 72—Production of person confined*

163. Section 72, though broad in its terms, allows orders to be made for the production of a confined person for one purpose only, that is, for the purpose of his examination as a witness. The common law and other Acts deal with the production of a person to answer a charge and for other purposes. See, for brief references to the common law, Grady & Scotland on Crown Practice (1844) pp. 202, 203; Blackstone's Commentaries 4th edn (by Kerr) Vol. 3, (1876), p. 123; Halsbury's Laws of England 3rd edn Vol. 11 (1955), pp. 51, 52. For other statutory provisions in New South Wales, see the Crimes Act, 1900, s. 565; the Arbitration Act, 1902, s. 18 (2); the District Courts Act, 1912, s. 80; the Prisons Act, 1952, s. 44; and the Imperial Acts Application Act, 1969, s. 42.

164. The common law is obscure, especially in relation to attendance before tribunals and authorities which are not "courts" in a strict sense. Section 565 of the Crimes Act, 1900, is limited to a "trial or prosecution", and it is only for production before a Court, Judge or Justice that an order can be made. Section 44 of the Prisons Act, 1952, is quite wide in its terms, but it is limited to a "prisoner" as defined in the Act and it is limited to courts of record, any judge or person constituting a court of record, or a coroner. It is not always easy to say whether some tribunal is or is not a court of record (cf. *Ex parte Power* ((1956) 57 S.R. 253). Further, section 72 is of limited use in the case of an ephemeral court such as a court of quarter sessions.

165. We think it right that the Supreme Court should be authorized to make orders for the production of confined persons before any court or person authorized to examine witnesses or conduct any inquiry, whether for the purpose of being examined as a witness, to answer a charge, or for any other purpose. We therefore recommend the substitution of a new section 72. The new section 72 would do all the work of section 42 of the Imperial Acts Application Act, 1969. We recommend the repeal of the latter section.

*Section 75A—Powers on appeal*

166. We recommend that a new section 75A be inserted and that section 109 be omitted. The new section 75A differs from section 109 in that the new section would apply to an appeal, whether heard by the Court of Appeal or by the Court in a Division. Subsection (2) of the new section 75A is more specific and avoids some problems posed by the present section 109 (1). There also is in the new section 75A some re-arrangement with a view to greater clarity and some changes in wording with a view to cutting out words capable of a restrictive interpretation.

*Section 77—Procedures under other Act superseded*

167. See paragraphs 1 to 17 above.

*Section 82—Informal proof: admissions*

168. We recommend that "minor" be substituted for infant in section 82 (1) (b). An amendment which we recommend to section 19 would insert a definition of "minor".

*Section 83—Examination on oath*

169. A question has been raised whether the use by section 83 of the word "witness", and the confinement of section 83 (2) to false "evidence", make the section inapplicable to examinations under, for example, Part 24 rule 8 (1) (b) or Part 43 of the rules in the fourth schedule. We recommend a substituted section in which the word "witness" does not occur and, in subsection (2), making a false statement is added to giving false evidence.

170. A question has been raised whether section 83 (2) serves any useful purpose. The legislation relating to perjury and cognate offences is in a confused state, but we think that section 83 (2) has some utility and should be kept. The subsection (and its predecessor, section 9 (2) of the Witnesses Examination Act, 1900) appears to have some operation in cases where there is an affirmation instead of an oath.

171. The common law misdemeanour of perjury has as one of its elements that the statement charged was material to something in issue in the proceedings in which it was made: *R v. Swift* ((1877) Knox 325). Suppose a person wilfully and corruptly gives false evidence on affirmation, the evidence not being material to an issue in the proceedings. None of sections 327, 328 or 330 of the Crimes Act, 1900, fits the case directly, because there was no oath. Section 13 (2) of the Oaths Act, 1900, does not by itself sufficiently aid the Crimes Act, because the evidence, not being "material", would not have been perjury if on oath. But section 83 (2) of the Supreme Court Act would make the evidence perjury, if it were on oath. In this way sections 327 and 328 of the Crimes Act, 1900, are applied to the supposed facts. We therefore recommend that the substance of section 83 (2) be retained.



Section 84—*Vexatious litigant*

172. In the debate in committee of the Legislative Council Mr Downing said (Hansard 1970 page 5902)—

“The right of application is limited to the Attorney-General. I do not know why a person who is plagued by a vexatious litigant who issues summonses and writs without any substance in them cannot apply to the court if he so desires.

Any person who feels that he is being persecuted by a person who is taking out against him a continuous series of writs and summonses should not be required to go to the Attorney-General and satisfy him that the actions of this person are those of a vexatious litigant. The Attorney-General has to consider the substance of complaints like this and he has to be fair to the person about whom a request is being made for a declaration as a vexatious litigant. He must go into the whole merits of the application before deciding to seek such a declaration. Therefore, I suggest that consideration be given to amending the law to provide that either the Attorney-General or any person may approach the court for the purpose of having a vexatious litigant so declared and have the restrictions placed on him that are involved in such a declaration.”

173. There is a practice of long standing in New South Wales whereby, in reliance on the inherent jurisdiction of the Court, a Judge of the Supreme Court will, on application by a person aggrieved, order that a vexatious litigant be not allowed to commence or continue proceedings against the applicant except by leave of a Judge. Commonly, an application for such an order is made as an interlocutory application in some pending action or other proceeding and is coupled with an application for particular relief in respect of that action or proceeding, for example an order that a declaration be struck out or that proceedings be stayed. Sometimes, however, the order is made on an application made by summons not in any pending proceedings.

174. Commonly, also, the order is confined to the restraint of proceedings in the Supreme Court. We understand, however, that orders have been made in respect of proceedings in inferior courts.

175. There does not appear to be any reported decision establishing the regularity of this practice, although there are reported cases asserting a jurisdiction to restrain interlocutory applications in some pending proceeding, except by leave of the Court. These cases include *Grepe v. Loam* ((1887) 37 Ch.D. 168) and *Kinnaird v. Field* ([1905] 2 Ch. 306). And the Court will restrain the commencement of particular proceedings where the nature of the proceedings, the intention to commence them, and their vexatious character are sufficiently established. *Charles Forte Investments Ltd v. Amanda* ([1964] 1 Ch. 240). It has, however, recently been said that “the court has no power, even under its inherent jurisdiction, to prevent a person from commencing proceedings which may turn out to be vexatious”: Master Jacob in *Current Legal Problems* Vol. 23 (1970) p. 43. Further, there is no mention of such a practice as exists in New South Wales in Winfield’s *Present Law of Abuse of Legal Procedure* (1921): see especially pages 238, 239.

176. The practice mentioned above thus rests upon slender foundations. Should the practice be preserved? If so, should it be given a firm statutory foundation? We answer both questions in the affirmative. As to the first question, we respectfully adopt the views expressed by Mr Downing in the Legislative Council. Further, we think that the existence of the practice for many years in New South Wales without complaint is evidence of its utility. It was our intention that section 84 (5) should leave room for the continuance of this practice.

177. The debate in the Legislative Council has, however, led us to re-examine the foundation for this practice, with the results expressed above. We think that the foundation is so insecure in law as to justify a grant of an appropriate power by Parliament.

178. Section 84 is based on section 51 of the Supreme Court of Judicature (Consolidation) Act 1925, which in turn is based on the Vexatious Actions Act 1896. These provisions extend to cases not covered by the practice mentioned above, namely, to cases where the vexatious litigant has commenced proceedings against numerous persons, and the provisions enable the restraint of proceedings generally, not merely the restraint of proceedings against a particular person. The section gives a valuable power to protect the community generally from a vexatious litigant and its effect should be preserved. Further, we think that such a power is rightly made exercisable on the application of the Attorney-General and on his application alone.

179. We recommend, therefore, that section 84 should embody a statutory grant of power similar to that which is assumed by the practice which we have mentioned.

180. Subsection (3) of section 84 is based upon the assistance which is traditionally given by the Bar to poor persons at the request of the Court. However, the Court is not authorized by the subsection to assign a solicitor to act for the person concerned. This limits the legal assistance which the Court can provide for him. Since subsection (3) was drafted, legal aid has become available on a wider scale than previously. The Legal Practitioners (Legal Aid) Act, 1970, now provides a scheme of legal aid for persons who do not come within the means test provisions of the Legal Assistance Act, 1943, but come within its own more generous provisions. Legal aid or assistance given under each of these Acts is more satisfactory than the Court assigning counsel because the person assisted has the benefit of a solicitor and, where necessary, is represented by counsel. We think that subsection (3) should now be deleted.

181. However, under these Acts, legal assistance or aid may not be granted to a person against whom proceedings are brought unless it is considered that he has reasonable grounds for defending the proceedings (Legal Assistance Act, 1943, s. 6 (4) (a); Legal Practitioners (Legal Aid) Act, 1970, s. 8 (2)). The making of an order under section 84 is a drastic restriction upon the ordinary right of access to the courts. Where the applicant for such an order is the Attorney-General, we think that there should be a discretion to grant legal assistance or legal aid under these Acts even if it is not considered that there are reasonable grounds for defending the proceeding.

182. Accordingly, we propose that subsection (3) of section 84 should be deleted and that amendments should be made to the Acts mentioned to enable legal assistance or aid to be granted to a person defending an application under subsection (1) of section 84 although it is not considered he has reasonable grounds for defending it.

183. On further consideration, we think that section 84 (3) is unnecessary and we recommend its omission.

#### 87—*Trial of running down cases*

184. In the debate in committee of the Legislative Council Mr Cedric Cahill raised the question whether section 87 (2) (b) would take away an existing right to trial by jury in contribution cases under Part III of the Law Reform (Miscellaneous Provisions) Act, 1946 (*Hansard*, 1970, page 5903). We think that section 87 (2) (b) continues the substance of the present law under sections 4 (1) (b) and 5 of the Law Reform (Miscellaneous Provisions) Act, 1965.

#### Section 89—*Trial of common law claims: special exceptions*

185. In the debate in committee of the Legislative Council Mr Cedric Cahill suggested that section 89 (1) (a) took away a present right to trial by jury (*Hansard*, 1970, pages 5904–5907). The case to which the provision applies is, however, a case in which the Court or a Judge may today order that the whole cause or matter or any question or issue of fact arising therein be tried before arbitrators or a referee: Arbitration Act, 1902, s. 15 (b).

186. Section 15 (b) of the Arbitration Act has its origin in section 57 of the Supreme Court of Judicature Act 1873 and came by way of the Arbitration Act 1889 (U.K.) s. 14 and the Arbitration Act, 1892 (N.S.W.) s. 12. The English section 14 of the 1889 Act was replaced by section 89 of the Supreme Court of Judicature (Consolidation) Act 1925 which was repealed by the Administration of Justice Act 1956. Its place is now taken by part of section 6 (1) of the Administration of Justices (Miscellaneous Provisions) Act 1933 (U.K.), on which is based section 89 (1) (a) of the Supreme Court Act.

187. Provisions similar to section 89 (1) (a) have been considered in *Ward v. Pilley* ((1880) 5 Q.B.D. 427), *Ormerod v. Todmorden Mill Co.* ((1882) 8 Q.B.D. 664), *Hamilton v. Merchants' Marine Insurance Co.* ((1889) 58 L.J.Q.B. 544) and *Spencer v. Rough and Hooper* ([1927] N.Z.L.R. 345). We do not know of any significant use of such provisions in personal injury cases, but there is a suggestion by Rich J. in *Hocking v. Bell* ((1945) 71 C.L.R. 430, 469) that a personal injury case involving highly technical medical evidence might have been referred under section 15 (b) of the Arbitration Act, 1902.

188. We think that section 89 (1) (a) is unlikely to have any significant operation in personal injury cases, but is likely to have occasional, and useful, operation in other cases. We recommend its retention.

*Section 94—Interest up to judgment*

189. In the debate in committee of the Legislative Council Mr Cedric Cahill raised a question of the adequacy of this section to enable interest to be awarded in common law claims for money other than damages (*Hansard*, 1970, page 5907). We have reconsidered the section and have formed the view that its terms are adequate for the purpose mentioned.

*Section 96—Effect of judgment or order*

190. Section 96 (3) contains a minor departure from usage: "judgment for the possession of land" should be "judgment for possession of land". We recommend the omission of the intrusive "the".

*Section 98—Arrest in execution*

191. The purpose of section 98 is to abolish arrest for debt (see paragraphs 18 to 48 above). The section prohibits "attachment of the person or committal" as a means of enforcement of a judgment or order for the payment of money. On reviewing the section, we think that it is open to doubt whether it achieves its main objective, namely, abolition of arrest under writ of *capias ad satisfaciendum*.

192. In its present form section 98 might prevent the enforcement in a children's court of a foreign order for maintenance registered in the Supreme Court under the Maintenance Orders (Facilities for Enforcement) Act, 1923. See the Matrimonial Causes Act 1899, s. 90A and *James v. James* ((1964) 82 W.N. (Pt 1) 95). We do not think that the Supreme Court Act should have the incidental effect of preventing the enforcement of a foreign order for maintenance in this way, and we think that section 98 will achieve its object if it is confined to the processes of the Supreme Court for the enforcement of judgments and orders. We think that the operation of the section should be so confined. We also propose an amendment to section 90 of the Matrimonial Causes Act 1899 so as to preserve, notwithstanding section 98, what operation it still has in the face of the Matrimonial Causes Act 1959-1966 of the Commonwealth (see *James v. James* (above)).

193. For the foregoing reasons, and so as to break up the section as an aid to understanding, we propose the substitution of a new section 98.

*Section 101—Appeal in proceedings in the Court*

194. In the debate in committee of the Legislative Council Mr Cedric Cahill raised the question whether this section was not too restrictive of rights of appeal (*Hansard*, 1970, pages 5907, 5908). The restrictive parts of the section are subsections (2) and (3).

195. Section 101 (2) (a) prevents an appeal from an order for correcting a clerical mistake or an accidental slip or omission. The proper course for a person aggrieved by such an order is to appeal from the judgment or order corrected, if necessary applying for an extension of time for appeal.

196. Section 101 (2) (b) prevents an appeal where the parties have agreed that the decision in question is to be final. This is the present law: *In re West Devon Great Consols Mine* ((1888) 38 Ch.D. 51). However, having regard to the proposal in paragraph 198 below, we think that this case should be omitted from the section.

197. Section 101 (2) (c) prevents an appeal from an order for entry of proceedings in the commercial list. This is the present law: Commercial Causes Act, 1903, s. 5.

198. There is, however, a consideration which leads us to propose that in the cases to which section 102 (2) applies there ought to be an appeal by leave of the Court of Appeal. That consideration is that there is an appeal to the Privy Council or to the High Court from any judgment of the Court, at least by special leave: Judicial Committee Rules, 1957, r. 2; Commonwealth Constitution s. 73 Judiciary Act 1903–1969, s. 35. These appeals cannot be excluded by the law of New South Wales: *Peterswald v. Bartley* ((1904) 1 C.L.R. 497). It is wrong in principle that an appeal from a decision of the Court in a Division should lie to the Privy Council or the High Court yet not to the Court of Appeal. We recommend, therefore, that section 101 be so amended as to allow an appeal, by leave of the Court of Appeal, in cases to which section 101 (2) applies.

199. Section 101 (3) specifies cases in which there is to be no appeal except by leave of the Court of Appeal. These are cases where there seems to be some need for supervision of appeals, having regard either to the nature of the judgment or order or to a restriction under the present law. Compare section 101 (3) (f) with the Justices Act, 1902, sections 107A (1), 116 (1) (a).

200. The closing words of the present section 24 (3) prevent an appeal to the Court of Appeal in the circumstances mentioned in the subsection. In point of arrangement this restriction would be better if it were in section 101. For the reasons given in paragraph 198 above, there ought not to be an absolute exclusion of an appeal: there should rather be no appeal except by leave of the Court of Appeal.

#### *Section 109—Powers on Appeal*

201. Section 109 would be replaced by the new section 75A which we have recommended. We therefore recommend the omission of section 109.

#### *Section 116—Assignment of masters*

202. It has been put to us that the assignment of a master to the Court of Appeal may enable the Judges of Appeal to be relieved of work of a procedural or non-contentious nature and thus allow the Judges of Appeal more time to devote to their appellate and other major judicial functions. We think that the Supreme Court Act should enable the appropriate assignment to be made and enable powers to be granted to a master assigned to the Court of Appeal. We therefore recommend the substitution of a new section 116, amendments to section 117, and the substitution of new sections 117A and 118 for the present section 118. It will be for the Government to say whether a master should be so assigned.

*Section 117—Seniority amongst masters*

203. We recommend amendments to section 117 consequential to those which we recommend to section 116.

*Section 117A—Powers: master in the Court of Appeal*

204. For the sake of convenience in expression, we recommend that provisions relating to the powers of a master in the Court of Appeal be separated from provisions relating to the powers of a master in a Division. The former provisions are in the proposed new section 117A, the latter in the proposed new section 118.

205. Subsections (3) and (4) of the new section 117A are based on subsections (4) and (5) of the new section 46 (Powers of Judge of Appeal) which we have recommended.

*Section 118—Powers: divisional master*

206. We recommend the substitution of a new section 118. The new section is proposed for conformity in expression and effect with the new section 117A.

*Section 121—Powers: registrars and other officers*

207. We recommend the substitution of a new section 121, for conformity with the new sections 117A and 118 which we have recommended.

*Section 123—Rule Committee*

208. In the debate in committee of the Legislative Council Mr Cedric Cahill suggested that the Rule Committee be differently constituted (Hansard 1970 page 5909). The arrangements in section 123 were reached after discussions with interested persons. The Rule Committee has now been functioning for some months. We do not think it would be right for us to recommend changes in its constitution at this stage.

209. We recommend the addition of a new subsection (8) to section 123, enabling the Rule Committee to regulate its own procedure. In our view this is a proper provision which would help to prevent successful challenge to the validity of a rule of Court on the ground of some departure by resolution of the Committee from the general law as to the conduct of meetings.

*Section 124—Rule-making power*

210. In several places in the section we recommend the addition, after references to Acts, of references to Imperial Acts and Commonwealth Acts so that, so far as it lies within the power of Parliament, the Rule Committee will be authorized to make rules relating to statutory proceedings, or exercise rule-making powers given to the Judges by statute, whether the statute is an Act, an Imperial Act or a Commonwealth Act.

211. We recommend the omission of paragraph (g) of section 124 (1) and the insertion of a new paragraph in its place. First, to get rid of a minor point, we think that the words "and for the hearing of proceedings in vacation" are unnecessary in view of the presence of paragraph (a). We therefore do not propose their continuance in the substituted paragraph.

212. The main difficulty about paragraph (g) is that it may require the full rule-making procedure, including gazettal and tabling in Parliament, for an essentially administrative act which the Rule Committee may think ought to be a function of the Judges or of the Chief Justice. Compare Order 1 rule 1 of the present General Rules of the Court. A rule in similar terms made by the Rule Committee may be challenged as an invalid attempt at sub-delegation.

213. We have recommended the substitution of new sections for the present sections 118 and 121. In conformity with the expression of those new sections, we recommend that paragraph (h) of section 124 (1) be amended by omitting ", functions and jurisdiction".

214. In the debate in committee of the Legislative Council Mr Cedric Cahill referred to paragraph (i) of section 124 (1), which relates to the issue of subpoenas and originating process in the country. He suggested that the registrar of any district court in the State should be authorized to issue these documents (*Hansard*, 1970, page 5910).

215. The paragraph is based on section 3 of the Legal Process Facilitation Act, 1904. There is, if we may say so, merit in Mr Cahill's suggestion. But we do not think it is necessary or appropriate to have legislation on the subject. Indeed, looking at the matter again in the light of the suggestion, we think that paragraph (i) is unnecessary and ought to be omitted. As we see it, there is nothing to stop arrangements being made administratively for any work ordinarily done in a registry of the Court to be done anywhere in the State. Any necessary regulation can conveniently be left to the Rule Committee under its more general rule-making powers. We therefore recommend that paragraph (i) be omitted. Subsection (2) should also be omitted.

216. Paragraph (m) of section 124 (1) enables the Rule Committee to make rules for (amongst other things) "regulating the means by which particular facts may be proved". The paragraph was criticized by Mr Downing and Mr Cedric Cahill in the debate in committee of the Legislative Council (*Hansard*, 1970, pages 5908, 5909). The power was said to be one which would have to be watched most carefully, it was not limited to formal matters and, when read with paragraph (t) of section 124 (1) (see paragraphs 1 to 17 above), would, for example, enable the Rule Committee to repeal or modify provisions of the Evidence Act, 1898, relating to the proof of particular facts.

217. In England a similar power is given by section 99 (1) (i) of the Supreme Court of Judicature (Consolidation) Act 1925. The Justices of the High Court of Australia have a similar power under section 86 (ba) of the Judiciary Act 1903-1969; see also section 20 of the High Court Procedure Act 1903-1966.

218. In New South Wales section 57 (2) of the Equity Act, 1901, enables the Court at the hearing of a suit in equity to "use affidavits by particular witnesses or receive proof by affidavit of such particular matters as in the opinion of the Court may properly be so proved". Section 43B (1) of the Evidence Act, 1898,

enables rules to be made "providing for orders being made at any stage of any action at law directing that specified facts may be proved at the trial by affidavit with or without the attendance of the deponent at the trial for cross-examination". The subsection goes on—"Any rules so made shall contain a provision that an order shall not be made dispensing with the attendance of the deponent for cross-examination if any party desires his attendance for cross-examination."

219. Rule-making powers in other jurisdictions in terms similar to those of section 124 (1) (m) have not, so far as we are aware, been abused, nor have they attracted adverse comment. We are not aware of reasons which would justify our recommending that Parliament should have less confidence in the Rule Committee than other legislatures have shown for many years in the rule-making authorities for superior courts.

220. On the other hand, it is not satisfactory to exclude all matters of evidence from the competence of a Rule Committee responsible generally for matters of procedure. Indeed, there are ground for regarding the law of evidence as one aspect of the procedure by which facts may be established in litigation. Another aspect is that by which facts are treated as established without proof, for example by admission on the pleadings. This aspect has long been treated as part of the procedure of a court within the proper competence of a rule-making authority.

221. We think that such facts as that the *Sydney Morning Herald* is a newspaper published in Sydney might properly be made provable by affidavit but that quite different considerations would apply to proof of the major issues on a charge of fraud. To enable rules to allow special means of proof as to "formal" matters only would be to invite repeated arguments, going to the validity of rules of Court, on the question whether some matter was "formal" or not.

222. We recommend that section 124 (1) (m) be retained.

223. We recommend that, in paragraph (s) of section 124 (1), "acting masters," be inserted after "masters".

224. We recommend that paragraph (t) of section 124 (1) be omitted. See paragraphs 1 to 17 of these notes.

225. In the debate in committee of the Legislative Council Mr Cedric Cahill suggested that subsection (3) of section 124 be omitted (Hansard, 1970, pages 5909, 5910). This subsection requires the concurrence of the Chief Justice and the President of the Court of Appeal in the making of certain rules. We intend to make a separate report on this question.

226. We recommend the insertion of a new subsection (9) in section 124, excluding from the Rule Committee powers relating to the qualifications for admission as barrister or solicitor. The proposal calls for explanation.

227. At present there are three sets of rules concerned with qualification for admission as barrister or solicitor. They are—

- (a) the Barristers Admission Rules, made by the Barristers Admission Board under section 6 of the Legal Practitioners Act, 1898;
- (b) the Barristers and Solicitors Joint Examination Board Rules and the Barristers and Solicitors New Examination Rules, made jointly by—



- (i) the Barristers Admission Board under section 6 of the Legal Practitioners Act; and
- (ii) a number of Judges under section 16 of the Australian Courts Act 1828 (see also clause 10 of the Charter of Justice of 1823, and paragraph 4 (b) of these notes) aided by section 17 of the Supreme Court and Circuit Courts Act, 1900; and
- (c) the Solicitors Admission Rules and the Shortening of Articles Rules, made by a number of Judges under the legislation mentioned in sub-paragraph (b) (ii) above.

228. Amongst our recommendations is one that the words "or Imperial Act" be inserted after "any Act" in paragraphs (e) and (f) of section 124 (1). One result of the adoption of this recommendation would be that the rule-making power mentioned in sub-paragraph (b) (ii) of paragraph 227 above would go to the Rule Committee. At least that result would ensue in the absence of the proposed new subsection (9) of section 124 and in the absence of the amendments which we recommend to the Legal Practitioners Act, 1898.

229. But there are special considerations which make it questionable whether these rule-making powers ought to go to the Rule Committee. The question is not one with which we should deal under our present terms of reference. We therefore propose, as no more than a temporary preservation of the substance of the present position, that the new subsection (9) be inserted in section 124 and that amendments be made to the Legal Practitioners Act, 1898. Our proposal does not involve that we think that the present arrangements concerning qualification for admission to legal practice are suited to present day needs.

#### *Section 126—Rules to prevail over Acts*

230. We recommend that this section be omitted. See paragraphs 1 to 17 of these notes.

#### *Sections 127, 128—Judicial notice: conditions precedent*

231. We recommend the addition of these two sections. They are based on provisions inserted in the Interpretation Act, 1897, in 1969. The provisions in the Interpretation Act, however, do not apply to rules unless they are made, approved or confirmed by the Governor.

#### *New Part X—Supplemental*

232. We recommend the addition to the Act of a new Part X, headed "Supplemental", containing a new section, section 129, and that section 4 (Division of Act) be amended consequentially. The proposed new section would relieve the Government Printer of the obligation which otherwise he would have, under the Amendments Incorporation Act, 1906, of including in any print or reprint of the Supreme Court Act, 1970, the First and Second Schedules to that Act. The First Schedule lists Acts, or provisions of Acts, repealed. The Second Schedule contains the amendments made to other Acts. All these amendments are such that they can

be incorporated in the Acts amended. It would be convenient, however, for there to be at least one printing of the Supreme Court Act, 1970, as amended, containing the First and Second Schedules. We therefore propose that the relief from the obligation to include the Schedules apply only in respect of any print or reprint issued after the expiry of six months after the commencement of the Act.

### *First Schedule*

233. We recommend formal corrections.

### *Second Schedule*

234. We recommend substantial amendments to the Second Schedule. In the main these amendments would amend many Acts, not already dealt with in that Schedule, so as to adjust the language and provisions of them to the Supreme Court Act, 1970. These further Acts dealt with include all those specifically referred to in paragraph 22 of our first report.

235. Apart from formal corrections, the remainder of the amendments proposed to the Second Schedule are necessary because of legislation subsequent to the enactment of the Supreme Court Act, 1970.

236. The amendments to the Companies Act, 1961, are drafted on the assumption that the Companies (Amendment) Bill presently before Parliament will be enacted in the form in which it was introduced and that it will be proclaimed to commence on a date prior to the date of commencement of the Supreme Court Act, 1970. If this assumption proves to be false, the amendments will require reconsideration, and amendments to the Public Accountants Registration Act, 1945, could be necessary.

237. In our first report we commented (at page 23) that the Government might think that the pecuniary limits of the jurisdiction of the District Court ought to be reviewed in the light of the amendments proposed to the Workers' Compensation Act, 1926, the Government Railways Act, 1912, and the Transport Act, 1930. Such a review is outside our terms of reference. We note, however, that Cabinet has approved preparation of a Bill to modernize the jurisdiction and procedures of the District Court (Press statement, 19th October, 1971).

238. Although we do not propose any further amendments to the District Courts Act, 1912, the amendments which we recommend to the Second Schedule to the Supreme Court Act, 1970, do amend provisions of some other Acts referring to the District Court. These amendments are consequential upon the amendments to the District Courts Act, 1912, made by the Second Schedule in its present form.

239. The Oaths Act, 1900, section three, refers to authority to administer certain formal oaths, such as the oath of allegiance, being conferred upon persons "by writ of *dedimus potestatem*" issued out of the Supreme Court. We have refrained from amending the language of this provision because we consider that a more fundamental change is desirable. It is not appropriate that the Supreme Court should be concerned with this administrative function. We suggest that the Government consider amending the Act so as to take this function from the Court and to confer it elsewhere.

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NEW SOUTH WALES

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SECOND REPORT

OF THE

LAW REFORM COMMISSION

ON

SUPREME COURT PROCEDURE

---

PART TWO

---

L.R.C. 14

This Part contains the draft Supreme Court (Amendment) Bill referred to in the report of the Commission.

**PART 2**

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**A BILL**

To make further provisions relating to the administration of justice and the procedure and practice of the Supreme Court; for these and other purposes to amend the Supreme Court Act, 1970, and certain other Acts; and for purposes connected therewith.

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**BE**





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*Supreme Court Amendment.*

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- 5 (b) without limiting the generality of paragraph (a) of this subsection, for providing for the regulation of the sittings and order of business of the Court and the regulation of the vacations and holidays to be observed by the Court and in the offices of the Court—
- 10 in relation to any of the proceedings in the Court which are specified in the Third Schedule to this Act.
- (ii) by inserting next after subsection two of the same section the following new subsection :—
- 15 (2A) The provisions of this Act, including Part IX (subsections one and four of section one hundred and twenty-four excepted), apply in relation to rules made pursuant to subsection two of this section as they apply to other rules.
- 20 (d) (i) by omitting from section nineteen in the definition of “common law claim” the word “delivery” and by inserting in lieu thereof the word “detention”;
- 25 (ii) by inserting in the same section next after the definition of “land” the following new definition :—
- “minor” means a person under the age of eighteen years.
- 30 (iii) by omitting from the same section the definition of “rules” and by inserting in lieu thereof the following definition :—
- “rules” means rules of the Court from time to time in force, whether in force as rules in the Fourth Schedule to this Act, or as rules made by the Rule Committee, or otherwise in force, and includes any schedule to rules of the Court.

(iv)

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*Supreme Court Amendment.*

---

(iv) by omitting from the same section in paragraph (a) of the definition of "stated case" the word "special";

5 (v) by inserting at the end of the same section the following new subsection :—

(2) For the purposes of this Act and the rules, proceedings in the Court under an Act—

10 (a) are an appeal if described in the Act or in any regulation made under the Act as an appeal; and

(b) subject to the rules, are not an appeal if not so described.

4. Part II of the Principal Act is amended—

Further amendment of Act No. 52, 1970. (Part II.—The Court.)

15 (a) by omitting section twenty-four and by inserting in lieu thereof the following section :—

Subst. sec. 24.

20 (1) In this section "special office" means the office of Chief Judge in Equity, Chief Judge in Divorce, Probate Judge, and any other special judicial office in the Court. Court to have powers of Judges etc.

25 (2) Where, under the law in force immediately before the commencement of this Act, any power is vested in the Judges collectively, or in any two or more Judges, or in any Judge in special office, or in any Judge—

30 (a) that power shall be exercised by the Court in all respects as those Judges or that Judge might have exercised the power immediately before the commencement of this Act, but in accordance with this Act and the rules;

(b)

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*Supreme Court Amendment.*

---

(b) the Court shall have power co-ordinate with the power of those Judges or that Judge; and

5 (c) subject to paragraphs (a) and (b) of this subsection, that power shall not be exercised by those Judges or that Judge.

10 (3) Where, under the law in force immediately before the commencement of this Act, any power is vested in the Court, whether generally or in any jurisdiction of the Court, that power shall be exercised by the Court in all respects as the Court might have exercised the power immediately before the commencement of this Act, but in accordance with this Act and the rules.

15 (4) This section has effect even though—

(a) in the case of a power vested in a Judge in special office, the special office has been abolished, whether before or after the commencement of this Act, or the special office is vacant;

20 (b) the power in question is vested in the Court as a designated Court, in the Judges collectively or any two or more Judges as designated persons, or in any Judge in special office or any Judge as a designated person; or

25 (c) any determination made in exercise of the power is expressed to be final or without appeal.

30 (5) This section applies to a power which, immediately before the commencement of this Act, is exercisable by rule nisi or rule absolute in any proceedings or by other rule in the nature of an order or direction in any proceedings, but otherwise does not apply to a power to make rules.

35 (6) This section does not apply to a power—

(a)

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*Supreme Court Amendment.*

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- (a) vested in the Chief Justice as Chief Justice;
- 5 (b) vested in the Chief Judge in Equity in relation to the making of general orders under Division One of Part XXIV of the Conveyancing Act, 1919;
- (c) vested in a Judge as judge, or additional or deputy judge, of the Land and Valuation Court;
- 10 (d) vested in a Judge as chairman, or additional temporary chairman, of the Crown Employees Appeal Board;
- 15 (e) vested in a Judge in special office or other Judge as member (whether chairman or otherwise) of a board, committee or other body of persons not composed wholly of Judges.

20 (7) The Governor may direct by proclamation that this section shall not apply to any power specified in the proclamation, being a power arising under any Act or Imperial Act in force immediately before the commencement of this Act, and the proclamation shall have effect accordingly, but subject to subsection nine of this section.

25 (8) A proclamation under subsection seven of this section shall—

- (a) be published in the Gazette;
- (b) take effect on and from the date of publication or a later date specified in the proclamation; and
- 30 (c) be laid before each House of Parliament within fourteen sitting days of that House after the date of publication.

35 (9) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation

under

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*Supreme Court Amendment.*

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under subsection seven of this section has been laid before it, disallowing the proclamation or any part of it, the proclamation or part shall thereupon cease to have effect.

5           (10) For the purposes of subsections eight and nine of this section, sitting days shall be counted, whether or not they occur during the same session.

(b) by omitting section twenty-six and by inserting in lieu thereof the following section :— Subst.  
sec. 26.

10           26. (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to be a Judge. Appointment  
and  
qualification  
of Judges.

(2) To be qualified for appointment as a Judge, a person must be, at the time of his appointment— Act No. 35,  
1900,s. 9.

15           (a) a member of the Industrial Commission of New South Wales;

(b) a barrister of not less than five years' standing;

20           (c) a solicitor of not less than seven years' standing; or

(d) a barrister or solicitor of less than five years' or seven years' standing respectively, where at all times during a continuous period of not less than seven years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors.

30           (c) by inserting next after section twenty-six the following new section :— New sec.  
26A.

26A. (1) The Governor may, by commission under the public seal of the State, appoint any Judge to be Chief Justice. Appointment  
and tenure  
of Chief  
Justice.

(2)

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*Supreme Court Amendment.*

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(2) A Judge may be appointed to be Chief Justice either at the time of his appointment as a Judge or at any time afterwards.

5 (3) The Chief Justice shall continue to be a Judge and may from time to time sit as or exercise any of the powers of a Judge.

(4) The Chief Justice shall hold office as Chief Justice so long as he holds office as a Judge.

10 (5) With the approval of the Governor, the Chief Justice may resign his office as Chief Justice without resigning his office as a Judge.

(d) by omitting subsection one of section twenty-nine Sec. 29. and by inserting in lieu thereof the following sub- (Salaries.) section :—

15 (1) The annual salaries of the Judges shall be as follows—

(a) of the Chief Justice—Twenty-eight thousand five hundred and nine dollars;

20 (b) of the President of the Court of Appeal—Twenty-six thousand nine hundred and thirty-three dollars; and

(c) of the other Judges—Twenty-six thousand two hundred and six dollars.

25 (e) by omitting subsection one of section thirty-four Sec. 34. and by inserting in lieu thereof the following sub- (Vacancies.) section :—

30 (1) Where there is a vacancy in the office of President of the Court of Appeal, or the President is absent from his duties, the senior of the other Judges of Appeal (except the Chief Justice) willing to act as President shall act as President, shall execute the duties of that office, and may exercise all the powers which may lawfully be exercised by the President.

(f)

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*Supreme Court Amendment.*

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- (f) by omitting from subsection one of section thirty-six the words “(other than the Chief Justice)”; Sec. 36.  
(Additional Judges of Appeal.)
- 5 (g) by omitting subsection four of section forty-one and by inserting in lieu thereof the following subsection :— Sec. 41.  
(Judges in the Divisions.)
- (4) The Chief Justice may revoke the nomination of a Judge to act in a Division, but only with the consent of the Judge concerned, or with the concurrence of the Governor.
- 10 (h) by omitting from subsection five of section forty-three the words “Two Courts” and by inserting in lieu thereof the words “More than one Court”; Sec. 43.  
(Sittings.)
- (i) by omitting section forty-six and by inserting in lieu thereof the following section :— Subst.  
sec. 46.
- 15       46. (1) A Judge of Appeal may exercise the powers of the Court of Appeal— Powers of Judge of Appeal.
- (a) to direct the entry of any judgment by consent or make any order by consent;
- 20       (b) to dismiss an appeal or other proceedings for want of prosecution or for other cause specified in the rules;
- (c) to dismiss an appeal or other proceedings on the application of the appellant or plaintiff; or
- 25       (d) to deal with costs and other matters incidental to the matters mentioned in paragraphs (a), (b) and (c) of this subsection.
- 30       (2) A Judge of Appeal may exercise the powers of the Court of Appeal— 15 & 16  
Geo. 5,  
c. 49,  
s. 69 (1).
- (a) to make any order or give any direction concerning the institution of an appeal or other proceedings in the Court of Appeal;  
or
- (b)



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*Supreme Court Amendment.*

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5 (b) to make any order or give any direction in any appeal or other proceedings, but not an order or direction involving the determination or decision of the appeal or other proceedings.

(3) Subsection two of this section does not authorise a Judge of Appeal to grant or refuse leave to appeal to the Court of Appeal.

10 (4) The Court of Appeal may discharge or vary a judgment entered by direction of a Judge of Appeal, or an order made or direction given by a Judge of Appeal.

15 & 16  
Geo. 5,  
c. 49,  
s. 69 (2);  
Act No. 21,  
1899, s. 254A  
(3); Act No.  
35, 1900,  
s. 20 (3);  
Court of  
Appeal  
Rules, r. 23.

15 (5) Subject to subsection three of this section, a judgment entered by direction of a Judge of Appeal, or an order made or direction given by a Judge of Appeal shall have effect as a judgment or order or direction of the Court of Appeal, whether or not the direction or order is within the powers of the Judge of Appeal under this section.

20 5. Part III of the Principal Act is amended—

Further  
amendment  
of Act  
No. 52,  
1970.  
(Part III.—  
Distribu-  
tion of  
Business.)  
Sec. 47.  
(Prelim-  
inary.)

(a) by omitting section forty-seven;

(b) by omitting section forty-eight and by inserting the following section :—

Subst.  
sec. 48.

25 48. (1) (a) In this section "specified tribunal" means—

Assignment  
to the  
Court of  
Appeal.

(i)

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*Supreme Court Amendment.*

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(i) the judge or an additional or deputy judge of the Land and Valuation Court;

(ii) the Industrial Commission of New South Wales or a member of the Commission;

5 (iii) the Crown Employees Appeal Board or a member of the Board who is chairman or additional temporary chairman of the Board;

10 (iv) a district court, a judge of a district court, or a chairman of quarter sessions;

(v) the Workers' Compensation Commission of New South Wales or a member of the Commission;

15 (vi) a judge or member functioning or purporting to function under any Act giving power to a judge or member, whether as judge or member or as a designated person;

20 (vii) a body of persons having amongst its number a judge or member, being a body functioning or purporting to function under any Act giving power to a body having amongst its number a judge or member, whether as judge or member or as a designated person; or

25 (viii) the Solicitors' Statutory Committee.

(b) in subparagraphs six and seven of paragraph (a) of this subsection "judge or member" means a judge or member mentioned in any of subparagraphs one to five inclusive of that paragraph.

30 (2) There are assigned to the Court of Appeal proceedings in the Court—

(a) under the Supreme Court (Summary Jurisdiction) Act, 1967, on—

(i)

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*Supreme Court Amendment.*

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- (i) a case stated under section eighteen of that Act;
- (ii) an application under section twenty-one of that Act; or
- 5 (iii) an appeal under section twenty-four of that Act;
- (b) for commanding or otherwise requiring a specified tribunal to perform a public duty;
- 10 (c) for prohibiting or otherwise restraining a specified tribunal from proceeding in any matter before the tribunal;
- 15 (d) for commanding or otherwise requiring the removal into the Court of any matter before a specified tribunal, whether for the purpose of quashing or otherwise, but this subparagraph has effect subject to subsection three of this section;
- 20 (e) for determining, by declaration or otherwise, any matter concerning the powers of a specified tribunal;
- (f) on an appeal from a specified tribunal;
- (g) for otherwise reviewing a decision of a specified tribunal;
- (h) on a case stated by a specified tribunal;
- 25 (i) for the punishment of contempt of the Court of Appeal;
- (j) for such matters as are necessary or convenient for the discharge of the functions of the Court of Appeal; and
- 30 (k) for such matters as are prescribed by the rules.

(3)

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*Supreme Court Amendment.*

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(3) Notwithstanding paragraph (d) of subsection two of this section, the rules may provide for the assignment to the Divisions of the Court proceedings in the Court for commanding or otherwise requiring the removal into the Court of any matter before a specified tribunal in cases not involving a review of a decision of a specified tribunal.

(c) by omitting section forty-nine and by inserting in lieu thereof the following section :— Subst.  
sec. 49.

49. Subject to Part VII of this Act, proceedings in the Court which are not assigned to the Court of Appeal are assigned to the Divisions of the Court. Assignment  
to the  
Divisions.

(d) by omitting section fifty; Sec. 50  
(Business  
of  
Divisions.)

(e) (i) by omitting from subsection one of section fifty-one the words "but ought" and by inserting in lieu thereof the words "but are"; Sec. 51.  
(Removal  
and  
remission.)

(ii) by omitting from the same subsection of the same section the words "to have been commenced in" and by inserting in lieu thereof the words "assigned to";

(iii) by omitting from paragraph (a) of the same subsection of the same section the words "ought to have been commenced in" and by inserting in lieu thereof the words "are assigned to";

(iv) by omitting from subsection two of the same section the words "but ought" and by inserting in lieu thereof the words "but are";

(v) by omitting from the same subsection of the same section the words "to have been commenced in" and by inserting in lieu thereof the words "assigned to";

(vi)

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*Supreme Court Amendment.*

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- 5 (vi) by omitting from paragraph (a) of the same subsection of the same section the words "ought to have been commence in" and by inserting in lieu thereof the words "are assigned to";
- (vii) by omitting subsection three of the same section.
6. Part IV of the Principal Act is amended by omitting subsection one of section sixty-one and by inserting in lieu thereof the following subsection :—
- Further amendment of Act No. 52, 1970. (Part IV.—Law and Equity.)
- (1) The Court shall not restrain by injunction any proceedings pending in the Court.
- Sec. 61. (Defence or stay instead of injunction.)
7. Part V of the Principal Act is amended—
- Further amendment of Act No. 52, 1970. (Part V.—Powers Generally.)
- 15 (a) (i) by omitting subsection one of section sixty-six and by inserting in lieu thereof the following subsection :—
- Sec. 66. (Injunction.)
- (1) The Court may, at any stage of proceedings, by interlocutory or other injunction, restrain any threatened or apprehended breach of contract or other injury.
- 20 (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection :—
- (2) Subsection one of this section applies as well in a case where an injury is not actionable unless it causes damage as in other cases.
- 25 (iii)

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*Supreme Court Amendment.*

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(iii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—

5           (3) The Court may restrain any threatened or apprehended waste or trespass pursuant to this section—

10           (a) whether the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and

15           (b) whether the estate claimed by any party is legal or equitable.

(b) by inserting next after subsection three of section seventy-one the following new subsections :— Sec. 71.  
(Habeas corpus.)

20           (3A) Subject to the rules, a writ of habeas corpus may be enforced in the ways in which a judgment or order of the Court may be enforced.

            (3B) Subsection (3A) of this section does not affect the power of the Court to punish for contempt.

25           (c) by omitting section seventy-two and by inserting in lieu thereof the following section :— Subst.  
sec. 72.

30           72. (1) In this section “tribunal or authority” means any court, judge, justice or other judicature, or any referee, arbitrator or umpire, or any person authorised to take the examination of any witness or to conduct any inquiry, whether so authorised for the purpose of proceedings in the Court or for any other purpose. Produ-  
tion of  
person  
confined.  
16 & 17  
Vict.  
c. 30,  
s. 9;  
Act No.  
29, 1902,  
s. 18 (2);  
Act No.  
30, 1969,  
s. 42.

(2)

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*Supreme Court Amendment.*

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(2) Where any prisoner or person is confined in any prison or place, under any sentence or under commitment for trial or otherwise, the Court may make orders for bringing him before any tribunal or authority, for the purpose of answering any charge or otherwise taking part in any proceedings or matter before the tribunal or authority, or for the purpose of being examined as a witness, and for returning him to confinement.

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(d) by inserting next after section seventy-five the following new section :— New sec.  
75A.

75A. (1) Subject to subsections two and three of this section, this section applies to an appeal to the Court and to an appeal in proceedings in the Court. Appeal.  
Act No.  
49, 1900,  
s. 5;  
Act No.  
24, 1901,  
ss. 82, 84;  
Act No.  
32, 1965,  
s. 5.

15

(2) This section does not apply to so much of an appeal as relates to a claim in the appeal—

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(a) for a new trial on a cause of action for debt, damages, or other money or for possession of land, or for detention of goods; or

(b) for the setting aside of a verdict, finding, assessment or judgment on a cause of action of any of those kinds—

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being an appeal arising out of—

(c) a trial with a jury in the Court; or

(d) a trial with or without a jury in a District Court.

30

(3) This section does not apply to proceedings in the Court on a stated case.

(4) This section has effect subject to any Act.

(5)

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*Supreme Court Amendment.*

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(5) Where the decision or other matter under appeal has been given after a hearing, the appeal shall be by way of rehearing.

5 (6) The Court shall have the powers and duties of the court, body or other person from whom the appeal is brought, including powers and duties concerning—

(a) amendment;

10 (b) the drawing of inferences and the making of findings of fact; and

(c) the assessment of damages and other money sums.

(7) The Court may receive further evidence.

15 (8) Notwithstanding subsection seven of this section, where the appeal is from a judgment after a trial or hearing on the merits, the Court shall not receive further evidence except on special grounds.

20 (9) Subsection eight of this section does not apply to evidence concerning matters occurring after the trial or hearing.

25 (10) The Court may make any finding or assessment, make any direction for entry of judgment, or make any order, which ought to have been made or which the nature of the case requires.

8. Part VI of the Principal Act is amended—

Further  
amendment  
of Act  
No. 52,  
1970.  
(Part VI.—  
Procedure.)  
Sec. 82.  
(Informal  
proof;  
admissions.)

(a)



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*Supreme Court Amendment.*

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(a) by omitting from paragraph (b) of subsection one of section eighty-two the words "an infant" and by inserting in lieu thereof the words "a minor";

5 (b) by omitting section eighty-three and by inserting in lieu thereof the following section :— Subst.  
sec. 83.

83. (1) Where a person is authorised by this Act or by the rules or by order of the Court to take the examination of any person— Examina-  
tion on  
oath.  
Act No.  
34, 1900,  
s. 9.

(a) the examination shall be taken on oath; and

10 (b) the oath shall be administered by the person taking the examination or by a Judge.

(2) Any person who, upon an oath administered under subsection one of this section, wilfully and corruptly gives any false evidence or makes any false statement shall be deemed to be guilty of perjury.

15

(c) by omitting section eighty-four and by inserting in lieu thereof the following section :— Subst.  
sec. 84.

20 84. (1) Where any person (in this subsection called the vexatious litigant) habitually and persistently and without any reasonable ground institutes vexatious legal proceedings, whether in the Court or in any inferior court, and whether against the same person or against different persons, the Court may, on application by the Attorney-General, order that the vexatious litigant shall not, without leave of the Court, institute any legal proceedings in any court and that any legal proceedings instituted by the vexatious litigant in any court before the making of the order shall not be continued by him without leave of the Court. Vexatious  
litigant.  
15 & 16  
Geo. 5,  
c. 49,  
s. 51.

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(2) Where any person (in this subsection called the vexatious litigant) habitually and persistently and without any reasonable ground institutes vexatious legal proceedings against any person (in this subsection called the person aggrieved),

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whether

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*Supreme Court Amendment.*

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whether in the Court or in any inferior court, the Court may, on application by the person aggrieved, order that the vexatious litigant shall not, without leave of the Court, institute any legal proceedings against the person aggrieved in any court and that any legal proceedings instituted by the vexatious litigant against the person aggrieved in any court before the making of the order shall not be continued by him without leave of the Court.

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(3) The Court may from time to time rescind or vary any order made by it under subsection one or subsection two of this section.

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(4) Where the Court has made an order under subsection one or subsection two of this section against any person, the Court shall not give him leave to institute or continue any proceedings unless the Court is satisfied that the proceedings are not an abuse of process and that there is prima facie ground for the proceedings.

20

(d) by omitting from subsection three of section ninety-six the words "the possession" and by inserting in lieu thereof the word "possession"; Sec. 96.  
(Effect of judgment or order.)

(e) by omitting section ninety-eight and by inserting in lieu thereof the following section :— Subst.  
sec. 98.

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98. (1) A judgment or order of the Court for the payment of money shall not be enforceable— Arrest in execution.

(a) by process of the Court for attachment of the person or for committal; or

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(b) by the issue of a writ of *capias ad satisfaciendum*.

(2) This section does not affect the power of the Court to punish for contempt.

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*Supreme Court Amendment.*

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9. Part VII of the Principal Act is amended—

Further amendment of Act No. 52, 1970. (Part VII.—Appeal to the Court of Appeal.)

- (a) by omitting section one hundred and one and by inserting in lieu thereof the following section :—

Subst. sec. 101.

5 101. (1) Subject to this and any other Act and subject to the rules, an appeal shall lie to the Court of Appeal from—

Appeal in proceedings in the Court. 15 & 16 Geo. 5, c. 49, s. 27 (1).

(a) any judgment or order of the Court in a Division; and

(b) without limiting the generality of paragraph

10 (a) of this subsection—

(i) any opinion, decision, direction or determination of the Court in a Division on a stated case; and

15 (ii) any determination of the Court in a Division in proceedings remitted under subsection four of section fifty-one of this Act.

20 (2) An appeal shall not lie to the Court of Appeal, except by leave of the Court of Appeal, from—

25 (a) an order in proceedings in the Court directing an amendment of a judgment or order correcting a clerical mistake in the judgment or order or an error arising from an accidental slip or omission;

(b) an order that proceedings be entered in the commercial list;

Act No. 19, 1903, s. 5.

(c)

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*Supreme Court Amendment.*

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- (c) a judgment given or order made in proceedings in the Court with the consent of the parties or as to costs only which are in the discretion of the Court; 15 & 16  
Geo. 5,  
c. 49, s. 31  
(1) (h).
- 5 (d) an order made in proceedings in the Court on an application for review of taxation of costs;
- (e) an interlocutory judgment or order in proceedings in the Court; 15 & 16  
Geo. 5,  
c. 49, s. 31  
(1) (i).
- 10 (f) a judgment or order in proceedings in the Court or an interpleader issued decided in a summary way pursuant to the rules; R.S.C. (Rev.)  
1965,  
O. 58, r. 8.
- 15 (g) an order refusing leave for the institution or continuance of legal proceedings by a person who is the subject of an order for the time being in force under section eighty-four of this Act; or 15 & 16  
Geo. 5,  
c. 49, s. 31  
(1) (1).
- 20 (h) an opinion, decision, direction or determination of the Court in a Division pursuant to section one hundred and six or section one hundred and twelve of the Justices Act, 1902. Act No. 27,  
1902, ss.  
107A (1),  
116 (1) (a).
- 25 (3) Subsection two of this section does not apply to a judgment given or order made on an application for a writ of habeas corpus ad subjiciendum or to an order for the committal or arrest of any person. Act No.  
21, 1899,  
s. 254B;  
15 & 16  
Geo. 5,  
c. 49, s. 31  
(1) (i) (i).
- 30 (4) Where the Court in a Division makes any determination pursuant to a power to which section twenty-four of this Act applies and the determination is expressed by any provision of an Act or Imperial Act in force immediately before the commencement of this Act to be final or without appeal, an appeal from that determination shall lie to the Court of Appeal notwithstanding that provision, but only by leave of the Court of Appeal.
- 35 (b) by omitting section one hundred and nine. Sec. 109.  
(Powers  
generally.)

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*Supreme Court Amendment.*

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**10.** Part VIII of the Principal Act is amended—

Further  
amendment  
of Act  
No. 52,  
1970.  
(Part-VIII.—  
Officers.)

- (a) by omitting section one hundred and sixteen and by inserting in lieu thereof the following section :—

Subst.  
sec. 116.

116. The Governor may—

Assignment.

- 5 (a) assign a master or an acting master—
- (i) to the Court of Appeal;
- (ii) to the Court of Appeal and any one or more Divisions; or
- (iii) to any one or more Divisions; and
- 15 (b) revoke an assignment of a master or acting master to the Court of Appeal or to any Division.

- (b) (i) by omitting from section one hundred and seventeen the word “assigned” and by inserting in lieu thereof the words “assigned to the Court of Appeal or”;

Sec. 117.  
(Seniority.)

- 20 (ii) by omitting from the same section the words “that Division” and by inserting in lieu thereof the words “the Court of Appeal or to that Division, as the case may be”;
- 25

- (c) by inserting next after section one hundred and seventeen the following new section :—

New sec.  
117A.

117A. (1) In this section “master in the Court of Appeal” means a master or acting master assigned to the Court of Appeal or a master or acting master directed by the Chief Justice to act in the Court of Appeal.

Powers:  
master  
in the  
Court of  
Appeal.

(2) A master in the Court of Appeal may exercise such powers of the Court of Appeal as are exercisable by a Judge of Appeal under section forty-six of this Act and

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*Supreme Court Amendment.*

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and are, by or under this or any other Act, conferred upon a master assigned to the Court of Appeal.

5 (3) A judgment directed to be entered or an order made by a master in the Court of Appeal may be discharged or varied by the Court of Appeal.

10 (4) Subject to subsection three of this section, a judgment directed to be entered or an order made or direction given by a master in the Court of Appeal shall have effect as a judgment or order or direction of the Court of Appeal, whether or not the direction or order is within the powers mentioned in this section of a master in the Court of Appeal.

15 (5) A master in the Court of Appeal shall constitute the Court of Appeal for the purpose of the exercise of the powers mentioned in subsection two of this section.

20 (d) by omitting section one hundred and eighteen and by inserting in lieu thereof the following section :— Subst. sec. 118.

25 118. (1) In this section, "divisional master" means, in relation to any Division, a master or acting master assigned to the Division or a master or acting master directed by the Chief Justice to act in the Division. Powers: divisional master.

30 (2) A divisional master may exercise such powers of the Court in the Division as are, by or under this or any other Act, conferred upon a master assigned to the Division.

(3) A judgment directed to be entered or an order made by a divisional master in any Division may be set aside or varied by the Court in the Division.

(4)

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*Supreme Court Amendment.*

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5 (4) Subject to subsection three of this section, a judgment directed to be entered or an order made or direction given by a divisional master in any Division shall have effect as a judgment or order or direction of the Court in the Division, whether or not the direction or order is within the powers mentioned in this section of the divisional master.

10 (5) A divisional master in any Division shall constitute the Court in that Division for the purpose of the exercise of the powers mentioned in subsection two of this section.

15 (e) by omitting section one hundred and twenty-one and by inserting in lieu thereof the following section :— Subst. sec. 121.

121. (1) In this section "officer" means a registrar, taxing officer, or other officer of the Court. Powers.

20 (2) An officer may exercise such powers of the Court as are, by or under this or any other Act, conferred upon him.

(3) A judgment directed to be entered or an order made by an officer may be set aside or varied by the Court.

25 (4) Subject to subsection three of this section, a judgment directed to be entered or an order made or direction given by an officer shall have effect as a judgment or order or direction of the Court, whether or not the direction or order is within the powers mentioned in this section of the officer.

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(5) An officer shall constitute the Court for the purpose of the exercise of the powers mentioned in subsection two of this section.

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*Supreme Court Amendment.*


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**11. Part IX of the Principal Act is amended—**

Further  
amendment  
of Act No.  
52, 1970.  
(Part IX.—  
Rules of  
Court.)

- (a) by inserting at the end of section one hundred and twenty-three the following new subsection :—

Sec.123.  
(Rule  
Com-  
mittee.)

5                   (8) Subject to this section, the Rule Committee may regulate its own procedure.

Tas. Act  
23 Geo. 5,  
No. 58,  
s. 202 (4).

- 10           (b) (i) by omitting from paragraph (a) of subsection one of section one hundred and twenty-four the word "Act" and by inserting in lieu thereof the words "Act, or under any Imperial Act or Commonwealth Act,";

Sec.124.  
(Rule-  
making  
power.)

- (ii) by omitting from paragraph (e) of the same subsection of the same section the word "Act" and by inserting in lieu thereof the words "Act or Imperial Act";

- 15           (iii) by omitting from paragraph (f) of the same subsection of the same section the words "any Act" and by inserting in lieu thereof the words "any Act or Imperial Act";

- 20           (iv) by omitting paragraph (g) of the same subsection of the same section and by inserting in lieu thereof the following paragraph :—

- 25                   (g) for providing for the regulation of the sittings and order of business of the Court and the regulation of the vacations and holidays to be observed by the Court and in the offices of the Court;

- 30           (v) by omitting from paragraph (h) of the same subsection of the same section the words "functions and jurisdiction";

(vi)



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*Supreme Court Amendment.*

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- (vi) by omitting paragraph (i) of the same subsection of the same section;
- 5 (vii) by omitting from paragraph (s) of the same subsection of the same section the word "masters," and by inserting in lieu thereof the words "masters, acting masters,";
- (viii) by omitting paragraph (t) of the same subsection of the same section;
- 10 (ix) by omitting subsection two of the same section;
- (x) by omitting from subsection seven of the same section the words "any Act" and by inserting in lieu thereof the words "any Act or Imperial Act";
- 15 (xi) by omitting from subsection eight of the same section the words "other Act" and by inserting in lieu thereof the words "other Act or under any Imperial Act";
- 20 (xii) by inserting at the end of the same section the following new subsection :—
- (9) This section does not give power to make rules with respect to any matter with respect to which rules may be made under section six or section 12A of the Legal Practitioners Act, 1898.
- 25 (c) by omitting section one hundred and twenty-six; Sec. 126.  
(Rules to prevail over Acts.)
- (d) by inserting next after section one hundred and twenty-six the following new sections :— New secs. 127 and 128.
127. Judicial notice shall be taken— Judicial notice.
- 30 (a) of a rule made or purporting to have been made under this Act and published in the Gazette; and Act No. 4, 1897, s. 34 (II).

(b)

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*Supreme Court Amendment.*

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(b) of the date of its publication.

128. It shall be presumed, in the absence of Conditions precedent. evidence to the contrary, that all conditions and Act No. 4, 1897, steps precedent to the making of a rule under this s. 42 (1). Act have been complied with and performed.

5 **12.** The Principal Act is further amended by inserting Further amendment of Act No. 52, 1970. New Part X. next after Part IX the following new Part :—

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**PART X.**

**SUPPLEMENTAL.**

10 129. Notwithstanding anything contained in the Printing. Amendments Incorporation Act, 1906, it shall not be necessary, in any print or reprint of this Act issued by the Government Printer after the expiry of six months after the commencement of this Act, to print 15 the First Schedule or the Second Schedule to this Act.

**13.** The First Schedule to the Principal Act is amended in the manner set forth in the First Schedule to this Act. Further amendment of Act No. 52, 1970. (First Schedule.)

**14.** The Second Schedule to the Principal Act is amended in the manner set forth in the Second Schedule to this Act. Further amendment of Act No. 52, 1970. (Second Schedule.)

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*Supreme Court Amendment.*


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## FIRST SCHEDULE.

Sec. 13.

The First Schedule to the Supreme Court Act, 1970, is amended—

- 5 (a) by omitting from the column headed "Subject" the matter relating to Act No. 49, 1930, and by inserting in lieu thereof the following matter:—

Landlord and Tenant Amendment (Distress Abolition).

- (b) by omitting from the same column the matter relating to Act No. 49, 1932, and by inserting in lieu thereof the following matter:—

10 Wills Probate and Administration (Amendment).

- (c) by inserting next after the matter relating to Act No. 5, 1969. the following new matter:—

No. 30, 1969

Imperial Acts Application

Section 42.

**SECOND**

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*Supreme Court Amendment.*


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## SECOND SCHEDULE.

Sec. 14.

The Second Schedule to the Supreme Court Act, 1970, is amended—

- 5 (a) by inserting next before the matter relating to the Act passed in the fifty-fifth year of the reign of Queen Victoria, number twelve, the following new matter:—

45	Vic. No. 12	Trade Union	Section 9 ..	Omit "of law or equity" wherever occurring.
10			Section 12 ..	Omit "summons"; insert "summons or other originating process". Omit "and in such action the said Trustees shall be entitled to recover their full costs of suit to be taxed as between attorney and client".
15				

- 20 (b) (i) by omitting from the sub-column headed "Amendment." of the Second Column in the matter relating to subsection (II) of section twenty-three of the Act passed in the fifty-fifth year of the reign of Queen Victoria, number twelve, "or by a Judge thereof" and by inserting in lieu thereof "or by a Judge thereof,"

- 25 (ii) by omitting from the same sub-column the matter relating to section forty of the same Act and by inserting in lieu thereof the following matter:—

Omit "as" where secondly occurring; insert "has".

- 30 (c) by inserting in the Second Column next after the matter relating to subsection one of section 40A of Act No. 13, 1898, the following new matter relating to the same Act:—

Act No. 13,  
1898.  
(Wills,  
Probate and  
Adminis-  
tration.)

Subsection (2) of section 40A | Omit "court"; insert "Court".

SECOND

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*Supreme Court Amendment.*

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SECOND SCHEDULE—*continued.*

(d) by inserting next after the matter relating to Act No. 13, 1898, the following new matter:—

5	No. 17, 1898 Conveyancing and Law of Property.	Section 8 ..	Omit "suit or action"; insert "proceedings".	
		Subsection (1) of section 21.	Omit "appear before"; insert "attend".	
10		Section 22 ..	Omit the section; insert the following section: 22. Part III of the Offences Royal Commissions Act, 1923, has effect as if the Commissioners were a commission within the meaning of that Act.	
15		Subsection (8) of section 37.	Omit "in its equitable jurisdiction".	
		Subsection (2) of section 48.	Omit "a decree"; insert "an order".	
20		Section 54 ..	Omit the section; insert the following section: 54. Any person entitled Application to the possession or to the to exercise receipt of the rents and powers profits of any settled estates conferred for a term of years deter- by this Act. minable on his death or for an estate for life or any greater estate, and also any person entitled to the possession or to the receipt of the rents and profits of any settled estates as the assignee of any person who, but for such assignment, would be entitled to such settled estate for a term of years determinable with any life, or for an estate for any life, or any greater estate may apply to the Court to exercise the powers conferred by this part of this Act. <i>Ibid. s. 19.</i>	
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45		Section 58 ..	Omit the section; insert the following section: 58. (1) Where, on an Court may application under this part dispense of this Act, the concurrence with notice or consent of any person as under aforesaid has not been certain obtained, and in case such circum- person cannot be found, or stances. in case it is uncertain whether he be living or 50 Vic. No. dead, or in case it appears 20, s. 23. to the Court that such notice as aforesaid cannot be given to such person	
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SECOND

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 Supreme Court Amendment.
 

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SECOND SCHEDULE—*continued.*

No. 17, 1898 — <i>cont.</i>	Conveyancing and Law of Property— <i>cont.</i>	Section 58— <i>cont.</i>	without expense disproportionate to the value of the subject matter of the application, then and in any such case the Court may, on the ground of the rights or interests of such person being small or remote, or being similar to the rights or interests of any other person, or on any other ground, by order dispense with notice to such person, and such person shall thereupon be deemed to have submitted his rights and interests to be dealt with by the Court.
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20			(2) The Court may determine who are the persons having right to assent or dissent, or submit as herein provided, and the determination of the Court shall be conclusive for the purposes of such application, and any other person having any interest, who does not make claim to the Court before the order on such application has been made, shall be deemed to have submitted his rights and interests to be dealt with by the Court.
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35		Section 60 ..	Omit the section; insert the following section:
40			60. The Court may nevertheless give effect to any application subject to and so as not to affect the rights, estate, or interest of any person whose concurrence or consent has been refused, or who has not submitted or is not deemed to have submitted his rights or interests to be dealt with by the Court, or whose rights, estate, or interest ought in the opinion of the Court to be excepted.
45			Application may be granted without consent, saving rights of non-consenting parties.
50			50 Vic. No. 20, s. 25.
55		Section 62 ..	Omit "by motion".
		Section 63 ..	Omit " <i>ex parte</i> the applicant in the matter of this part of this Act"; insert "as prescribed by rules of the Court".
		Section 65 ..	Omit "petition"; insert "application".

SECOND

*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

No. 17, 1898 — <i>cont.</i>	Conveyancing and Law of Property— <i>cont.</i>	Section 67 ..	Omit "petition"; insert "application".
5		Section 81 ..	Omit the section; insert the following section: 81. (1) Rules of Court Rules of may be made under the Court. Supreme Court Act, 1970, for carrying into effect the purposes of this part of this Act and for regulating the fees and allowances to all officers and solicitors of the Court in respect to such matters. (2) Subsection one of this section does not limit the rule-making powers conferred by the Supreme Court Act, 1970.
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15			
20		Section 86 ..	Omit the section; insert the following section: 86. (1) Where any If persons person who, in pursuance bound to of any covenant or agree- renew are ment in writing, might, if out of the within the jurisdiction and jurisdiction amenable to the process of of the Court the Supreme Court, be the renewals compelled to execute any may be lease by way of renewal, is made by not within the jurisdiction a person or not amenable to the appointed process of the said Court, by the Court the said Court may, by an in the order to be made upon the name of application of any of the the person persons entitled to such who ought renewal (whether such to have person be or be not under renewed. any disability), direct such person as the said Court 11 Geo. IV thinks proper to appoint & 1 Wm. IV, for that purpose, to accept c. 65, s. 15. a surrender of the sub- sisting lease, and make and execute a new lease in the name of the person who ought to have renewed the same. (2) Such deed, executed by the person appointed as aforesaid, shall be as valid as if the person in whose name the same is made had executed the same, and had been alive and not under any disability.
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60		Section 106 ..	Omit the section.
		Section 107 ..	Omit the section.

SECOND





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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

Part III . . . . . Insert next before section 13 the following new section:—

- 5 12A. (1) Subject to this Part, the Judges, or any three of them, may make rules— Rules about admission and so on.
- 10 (a) with respect to the qualifications for entry into articles of clerkship and the entry into articles of clerkship, including the circumstances in which a solicitor may take a clerk under articles of clerkship;
- 15 (b) with respect to the qualifications for admission as solicitor;
- 20 (c) without limiting the generality of paragraphs (a) and (b) of this subsection, with respect to the examination in such branches of knowledge as the Judges think fit of candidates for entry into articles of clerkship or for admission as solicitor;
- 25 (d) with respect to the establishment and conduct of boards or other bodies with functions concerning the examination of candidates for entry into articles of clerkship or for admission as solicitor or concerning the approval of properly qualified persons to be admitted as solicitors.
- 30
- 35 (2) In the exercise of their powers under paragraph (d) of subsection one of this section the Judges may act jointly with the Barristers Admission Board acting under section six of this Act in matters concerning the establishment and conduct of boards or other bodies having amongst their functions the examination of candidates for admission as solicitor.
- 40 (3) Rules made under this section shall not limit the powers of the Court to admit a person as solicitor.
- 45 (4) Rules made under this section shall—
- 50 (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules;
- 55 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

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*Supreme Court Amendment.*


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- 5 (5) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before that House disallowing any rule or part of a rule, that rule or part shall thereupon cease to have effect.
- 10 (6) Judicial notice shall be taken—  
 (a) of a rule made or purporting to have been made under this section and published in the Gazette; and  
 (b) of the date of its publication. Act No. 4, 1897, s. 34 (II).
- 15 (7) It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule under this section have been complied with and performed. Act No. 4, 1897, s. 42 (I).
- 20 Subsection (2) of section 14. | Omit “under the rules of Court”; insert “by the rules of Court or by regulations made under this Act”.
- (iii) by inserting in the Second Column next after the matter relating to paragraph (b) of subsection two of section fifty-six of the same Act the following new matter:—
- 25 Paragraph (c) of subsection (2A) of section 56. | Omit “or a judge thereof”.
- (iv) by omitting from the Second Column the matter relating to subsection three of the same section of the same Act and by inserting in lieu thereof the following matter:—
- 30 Paragraph (b) of subsection (3) of section 56. | Omit “or a judge thereof”.  
 Omit “or judge”.
- 35 (v) by omitting from the sub-column headed “Amendment.” of the Second Column the matter relating to section seventy-two of the same Act and by inserting in lieu thereof the following matter:—
- 40 Omit “or to a judge in chambers, who”; insert “and the Court”.
- Omit “or judge”.
- Omit “or a judge thereof”.
- 45 (vi) by omitting from the same sub-column of the Second Column the matter relating to section eighty-one of the same Act and by inserting in lieu thereof the following matter:—
- Omit the section; insert the following section:—

SECOND

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*Supreme Court Amendment.*

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SECOND SCHEDULE—*continued.*

81. (1) Rules of Court may be made under the Supreme Court Act, 1970, for regulating the taxation of costs awarded by the Statutory Committee and the recovery of the same by execution or otherwise. Rules of Court.

(2) Subsection one of this section does not limit the rule-making powers conferred by the Supreme Court Act, 1970.

(vii) by inserting in the Second Column next after the matter relating to section eighty-one of the same Act the following new matter relating to the same Act:—

Part X . . . By inserting next after section 81 the following new section:—

81A. (1) Subject to section eighty-one, the Judges of the Supreme Court, or any three of them, may from time to time on the recommendation of the council make rules—

- (a) for regulating the practice and proceedings of the Statutory Committee, including the awarding of costs by such Committee;
- (b) for conferring upon the Statutory Committee any further powers necessary or convenient for the due fulfilment of its functions;
- (c) for carrying into effect the provisions of this Act relating to the Statutory Committee and its functions, except the provisions of section seventy-eight of the Act; and may in like manner amend or rescind such rules.

(2) A rule made under this section shall—

- (a) be published in the Gazette;
- (b) take effect on and from the date of publication or a later date to be specified in the rule; and
- (c) be laid before each House of Parliament within fourteen sitting days of that House after the date of publication.

(3) If either House of Parliament passes a resolution, of which notice has been given at any time within fifteen sitting days of that House after a rule referred to in subsection one of this section has been laid before it, disallowing the rule or any part thereof, the rule or part thereupon ceases to have effect.

SECOND

*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

5 (4) For the purposes of subsections one and two of this section, sitting days shall be counted, whether or not they occur during the same sessions.

10 (5) Judicial notice shall be taken—  
 (a) of a rule made or purporting to have been made under this section and published in the Gazette; and  
 (b) of the date of its publication.

15 (6) It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule under this section have been complied with and performed.

Subsection (1) of section 86. Omit "make regulations"; insert "make regulations (other than as to practice or procedure in the Court)";

20 (f) by inserting next after the matter relating to Act No. 22, 1898, the following new matter:—

No. 14, 1899	Matrimonial Causes.	Section 90 ..	Insert next after subsection (2) the following new subsection:— (3) This section has effect notwithstanding section ninety-eight of the Supreme Court Act, 1970.
No. 17, 1899	Registration of Births, Deaths, and Marriages.	Section 12 ..	Omit "a judge of".
		Subsection (1) of section 22.	Omit "an order by a judge of the Supreme Court or of a district court"; insert "a copy certified by a registrar of the Supreme Court of a minute of an order made by that Court or an order of a judge of a district court. Omit "Registrar-General or judge"; insert "Registrar-General, Court or judge". Omit "application for"; insert "application to a judge of a district court for".
		Section 22 ..	Insert next after subsection one the following new subsections:— (1A) Rules of Court may be made under the Supreme Court Act, 1970, for prescribing the form of application to the Supreme Court for an order under subsection one of this section and the procedure thereon.

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

5	No. 17, 1899 — <i>cont.</i>	Registration of Births, Deaths, and Marriages— <i>cont.</i>	Section 22— <i>cont.</i>	(1B) Subsection (1A) of this section does not limit the rule-making powers conferred by the Supreme Court Act, 1970.
10			Subsection (2) of section 22.	Omit "a judge of".  Omit "or of"; insert "or a judge of".

(g) by inserting next after the matter relating to Act No. 18, 1899, the following new matter:—

15	No. 20, 1899	Police Regulation.	Subsection (1) of section 26.	Omit "may plead"; insert "may, except in the Supreme Court, plead".
20			Subsection (2) of section 26.	Omit "and give"; insert "and may give".
25				Omit "the jury who try the said issue shall find a verdict for such member of the police force, and he shall recover his costs of suit"; insert "a verdict shall be found for such member of the police force".

(h) by inserting next after the matter relating to Act No. 24, 1899, the following new matter:—

30	No. 39, 1899	Infants' Custody and Settlements.	Section 3 ..	In the definition of the "Court" omit "and includes any Judge thereof sitting in chambers".
35			Subsection (1) of section 4.	Omit "The Judges of the Supreme Court, or any three of them, may make such general rules and orders"; insert "Rules may be made under the Supreme Court Act, 1970".
40			Section 4 ..	Insert next after subsection one the following new subsection:—
45				(1A) Subsection one of this section does not limit the rule-making powers conferred by the Supreme Court Act, 1970.
50			Subsection (4) of section 4.	Omit the subsection; insert the following subsections:—
				(4) A rule made under subsection two or subsection three of this section shall—

SECOND

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 39, 1899 — <i>cont.</i>	Infants' Custody and Settlements— <i>cont.</i>	Subsection (4) of section 4— <i>cont.</i>	(a) be published in the Gazette; (b) take effect on and from the date of publication or a later date specified in the rule; and (c) be laid before each House of Parli- ament within four- teen sitting days of that House after the date of publication.
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15			(5) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a rule referred to in subsection four of this section has been laid before it, disallowing the rule or any part thereof, the rule or part thereupon ceases to have effect.
20			
25			
30			(6) For the purposes of subsections four and five of this section, sitting days shall be counted, whether or not they occur during the same session.
35		Subsection (1) of section 5.	Omit "in its equitable jurisdiction".
		Subsection (5) of section 5.	Omit the subsection.
		Subsection (9) of section 5.	Omit "in its matrimonial causes jurisdiction" where firstly occurring; insert "in proceedings instituted under the Matrimonial Causes Act, 1899,".
40			Omit "an application has already been filed in that Court and is then pending in respect of such matter:"; insert "proceedings have already been instituted under the Matrimonial Causes Act, 1899, and are then pending in the Court in respect of such matter.".
45			Omit "Provided also that orders made under this Act may be subsequently varied by the Supreme Court in its matrimonial causes juris- diction where the same
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45			

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 39, 1899 — <i>cont.</i>	Infants' Custody and Settlements— <i>cont.</i>	Subsection (9) of section 5— <i>cont.</i>	subject matter arises in any proceedings within its jurisdiction instituted in that Court."
5		Subsection (1) of section 10A.	Omit "in its equitable jurisdiction".
10		Subsection (2) of section 10A.	Omit "or police". Omit "in its equitable jurisdiction in the manner prescribed by the rules of that Court".
15			Omit "in its equitable jurisdiction" wherever occurring.
20		Section 10B ..	Omit "in its equitable jurisdiction" wherever occurring.
		Subsection (1) of section 16.	Omit "action or"; insert "action or other proceedings for".

- (i) (i) by omitting from the Second Column the matter relating to section twenty-eight of Act No. 25, 1900; Act No. 25,  
1900.  
(Real  
Property.)
- 25 (ii) by omitting from the Second Column the matter relating to subsection one of section forty of the same Act;
- (iii) by omitting from the Second Column the matter relating to subsection four of section sixty-nine of the same Act;
- 30 (iv) by omitting from the sub-column headed "Amendment." of the Second Column the matter relating to section eighty-four of the same Act and by inserting in lieu thereof the following matter:—
- Omit "or a Judge thereof".
- 35 (v) by omitting from the same sub-column of the Second Column the matter relating to subsection one of section eighty-five of the same Act and by inserting in lieu thereof the following matter:—
- Omit "or Judge" wherever occurring.
- 40 (vi) by omitting from the Second Column the matter relating to subsection one of section eighty-six of the same Act;
- (vii) by omitting from the sub-column headed "Amendment." of the Second Column the matter relating to section one hundred and twenty-one of the same Act and by inserting in lieu thereof the following matter:—

SECOND

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*Supreme Court Amendment.*

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SECOND SCHEDULE—*continued.*

5 121. (1) If upon the application of any proprietor to have land brought under the provisions of this Act, or to have any dealing registered or recorded, or to have any certificate of title, order for foreclosure or other instrument issued, or to have any act or duty done or performed which, by this Act, is prescribed to be done or performed by the Registrar-General, the Registrar-General refuses so to do, or if such proprietor is dissatisfied with the direction upon his application given by the Registrar-General as hereinbefore provided, such proprietor may require the Registrar-General to set forth in writing under his hand the grounds of his refusal or the grounds upon which such direction was given, and such proprietor may, if he thinks fit, commence proceedings in the Supreme Court for relief under this section.

Supreme Court may grant relief against refusal or direction by Registrar-General.

(2) The Court may—

- 20 (a) order that public notice, by advertisement or otherwise, be given of the proceedings;
- (b) order, of its own motion or on the application of any person, that a person be added as a party to the proceedings and make orders ancillary thereto as to service or otherwise;
- 25 (c) order, in respect of any defendant, that service upon him of the originating process and of all other documents in the proceedings be dispensed with.

30 (3) Subject to the Supreme Court Act, 1970, the Court shall not, in respect of any defendant, order that service upon him be dispensed with unless the Court is satisfied that—

- (a) the defendant cannot be found in New South Wales;
- 35 (b) it is uncertain whether the defendant is living; or
- (c) service cannot be effected upon the defendant without expense disproportionate to the value of his interest.

40 (4) Where service upon a defendant is dispensed with under this section, the defendant shall be taken to have submitted to all orders made by the Court in the proceedings.

SECOND



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*Supreme Court Amendment.*

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SECOND SCHEDULE—*continued.*

(5) The Court shall, if any question of fact is involved, decide that question.

5 (6) The Registrar-General may, with the leave of the Court, rely upon grounds other than those set forth by him under subsection one of this section.

(7) The Court—

(a) shall either—

10 (i) uphold the refusal or direction of the Registrar-General; or

(ii) order the Registrar-General to take action to give effect wholly or partly to the application of the proprietor or order that such direction as the Court thinks fit be substituted for the direction of the Registrar-General; and

(b) make such further other order as the Court thinks fit.

20 (viii) by omitting from the same sub-column of the Second Column the matter relating to section one hundred and twenty-four of the same Act and by inserting in lieu thereof the following matter:—

25 Omit "action of ejectment or other action"; insert "proceedings in the Supreme Court for possession, or action of ejectment in a District Court, or other proceedings or action".

Omit "of law or equity" where firstly occurring.

Omit "such action"; insert "such proceedings or action".

30 (ix) by omitting from the same sub-column of the Second Column the matter relating to section one hundred and thirty-six of the same Act and by inserting in lieu thereof the following matter:—

35 136. (1) Where the Registrar-General is satisfied that—

(a) a certificate of title or grant has been issued in error or contains any misdescription of land or of boundaries;

40 (b) a recording has been made in error in the Register;

Proceedings for delivery up of instrument of title for cancellation or correction.  
26 Vic. No. 9, s. 126.

SECOND

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

(c) a grant, certificate of title or recording in the Register has been fraudulently or wrongfully obtained; or

5 (d) a grant, certificate of title or duplicate registered dealing is fraudulently or wrongfully retained—

he may by notice in writing to the person to whom the grant, certificate of title or duplicate registered dealing, as the case may be, has been issued, or by whom it has been so obtained or is retained, require such person to deliver up the grant, certificate of title or duplicate registered dealing, as the case may be, for the purpose of it being cancelled or corrected, as the case may require.

15 (2) If such person—

(a) cannot be found for the giving to him of such notice of requirement; or

(b) having been given such notice does not comply with the requirement—

20 the Registrar-General may, if he thinks fit, commence proceedings against such person in the Supreme Court for an order that such person deliver up the grant, certificate of title or duplicate registered dealing, as the case may be, for the purpose of it being cancelled or corrected, as the case may require.

25 (3) The Court may order that service upon the defendant of the originating process and of all other documents in the proceedings be dispensed with.

30 (4) Subject to the Supreme Court Act, 1970, the Court shall not order that service upon the defendant be dispensed with unless the Court is satisfied that—

(a) the defendant cannot be found in New South Wales; or

35 (b) it is uncertain whether the defendant is living.

(5) The Court may order the personal attendance before it of the defendant.

40 (6) Upon the personal appearance before the Court of the defendant the Court may examine him upon oath.

SECOND

*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

(7) The Court may order the defendant to deliver up to the Registrar-General, within such time as the Court may fix, the grant, certificate of title or duplicate registered dealing, as the case may be.

- (x) by omitting from the same sub-column of the Second Column the matter relating to section one hundred and thirty-seven of the same Act and by inserting in lieu thereof the following matter:—

137. Where the Supreme Court has ordered, under section one hundred and thirty-six of this Act, a person to deliver up to the Registrar-General a grant, certificate of title, or duplicate registered dealing and the grant, certificate of title or duplicate registered dealing, as the case may be, is not delivered up to the Registrar-General within the time fixed by the order, the Registrar-General shall, if the circumstances of the case require it, take action under the authority conferred upon him by subsection three of section thirty-eight, or by section one hundred and eleven of this Act.

- (j) (i) by omitting from the sub-column headed "Amendment." of the Second Column in the matter relating to section one hundred and seventy-two of Act No. 40, 1900, "or a Judge thereof," and by inserting in lieu thereof ", or a Judge thereof,"

Act No. 40,  
1900.  
(Crimes.)

- (ii) by omitting from the same sub-column of the Second Column in the matter relating to subsection one of section four hundred and fifty-seven of the same Act "at his"; and by inserting in lieu thereof "in his".
- (iii) by omitting from the same sub-column of the Second Column in the matter relating to subsection one of section four hundred and seventy-five of the same Act "judge" and by inserting in lieu thereof "Judge";
- (iv) by omitting from the same sub-column of the Second Column the matter relating to subsection one of section five hundred and sixty-three of the same Act and by inserting in lieu thereof the following matter:—

After "in any such action"; insert "other than an action in the Supreme Court".

- (v) by omitting from the same sub-column of the Second Column the matter relating to section five hundred and sixty-seven of the same Act and by inserting in lieu thereof the following matter:—

SECOND

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

Omit "The Judges of the Supreme Court, or any two of them, may from time to time frame and prescribe"; insert "Without limiting the rule-making powers conferred by the Supreme Court Act, 1970, rules may from time to time be made under that Act framing and prescribing".

(k) by inserting next after the matter relating to Act No. 33, 1901, the following new matter:—

10	No. 45, 1901	Married Persons (Property and Torts).	Subsection (1) of section 22.	Omit "by summons or otherwise in a summary way,".
15				Omit "any Judge of" wherever occurring.
				Omit "Judge may"; insert "court may".
20				Omit "he thinks" wherever occurring; insert "the court thinks".
			Subsection (2) of section 22.	Omit the subsection.
			Subsection (3) of section 22.	Omit the subsection; insert the following subsection:—
25				(3) Any such application to a District Court shall be an action in a District Court within the meaning of section one hundred and forty-two of the District Courts Act, 1912.
30			Subsection (4) of section 22.	Omit "Judge of the".
35				Omit "his private room"; insert "the absence of the public".
	No. 60, 1901	Navigation	Section 23	Omit "Inquiry."; insert "Inquiry; and no appeal shall lie from a District Court exercising such jurisdiction."
40			Subsection (1) of section 101	Omit "an action"; insert "proceedings in the Supreme Court".
45			Subsection (2) of section 101	Omit the subsection.
			Subsection (3) of section 101	Omit the subsection.
	No. 17, 1902	Building and Co-operative Societies.	Subsection (1) of section 25.	Omit "of law or equity" wherever occurring.
50			Subsection (3) of section 27.	Omit "summons"; insert "summons or other originating process".

SECOND

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 17, 1902 — <i>cont.</i>	Building and Co-operative Societies — <i>cont.</i>	Subsection (4) of section 29.	Omit “, and in such action the said trustees shall be entitled to recover their full costs of suit to be taxed as between solicitor and client”.
5		Subsection (1) of section 60.	Omit “by <i>certiorari</i> or other writ or process before”; insert “into”.
10		Subsection (2) of section 60.	Omit the subsection; insert the following subsections:— (2) A majority of <b>Rules</b> the Judges of District Courts may make rules for regulating the practice and procedure in proceedings under this Act before the Judges of District Courts.
15			(3) A rule so made shall— (a) be published in the Gazette;
20			(b) take effect on and from the date of publication or a later date specified in the rule;
25			(c) be laid before each House of Parliament within fourteen sitting days of that House after the publication.
30			(4) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a rule referred to in subsection one of this section has been laid before it, disallowing the rule or any part thereof, the rule or part thereupon ceases to have effect.
35			(5) For the purposes of subsections three and four of this section, sitting days shall be counted, whether or not they occur during the same session.
40			(6) Subject to the rules, the Judges of the District Courts may regulate the proceedings before them respectively so as to render them as inexpensive and summary as conveniently may be.
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*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

5 (l) by omitting from the sub-column headed "Amendment." of Act No. 27, the Second Column the matter relating to section one hundred and seven of Act No. 27, 1902, and by inserting in lieu thereof the following matter:—  
(Justices.)

Omit the section; insert the following section:—

10 107. Subject to this Act, the practice and proceedings in reference to the stating of cases as herein provided shall be as provided by rules of the Supreme Court made under the Supreme Court Act, 1970.

(m) by omitting the matter relating to Act No. 74, 1902; Act No. 74, 1902. (Vagrancy.)

15 (n) by omitting from the sub-column headed "Amendment." of the Second Column the material relating to subsection two of section one hundred and seventy-six of Act No. 49, 1906, and by inserting in lieu thereof the following matter:—  
(Mining.)

Omit "a writ"; insert "an order".

(o) by inserting next after the matter relating to Act No. 49, 1906, the following new matter:—

20	No. 14, 1908	Private Hospitals.	Section 16c ..	Next after subsection (3) insert the following new subsection:— (4) The decision of the district court on any such appeal shall be final and without appeal.
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(p) by omitting from the Second Column the matter relating to section forty-seven of Act No. 9, 1909, and by inserting in lieu thereof the following matter:—  
(Fire Brigades.)

30	Subsection (1) of section 47.	Omit "plea"; insert "defence to the action". Omit "amends, and may give this Act and the special matter in evidence"; insert "amends".
35	Subsection (2) of section 47.	Omit "a judge of". Omit "in accordance with rules of court". Omit "judge, if he"; insert "Court, if it".

SECOND

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

(q) by inserting next after the matter relating to Act No. 9, 1909, the following new matter:—

5	No. 16, 1912	Criminal Appeal.	Subsection (1) of section 28.	Omit the subsection; insert the following subsection:— (1) Rules of court for the purposes of this Act may be made under the Supreme Court Act, 1970.
10			Section 28	Insert next after subsection (1) the following new subsection:— (1A) Subsection one of this section does not limit the rule-making powers conferred by the Supreme Court Act, 1970.
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20			Subsection (3) of section 28.	Omit the subsection.
			Subsection (4) of section 28.	Omit the subsection.

25 (r) (i) by omitting from the sub-column headed "Amendment." Act No. 31, of the Second Column in the matter relating to section 1912. thirty of Act No. 31, 1912, "any"; (Jury.)

(ii) by omitting from the same sub-column of the Second Column the matter relating to subsection three of section fifty of the same Act and by inserting in lieu thereof the following matter:—

30 Omit "the judges of the Supreme Court"; insert "rules made under the Supreme Court Act, 1970".

35 (iii) by omitting from the same sub-column of the Second Column in the matter relating to section seventy-seven of the same Act "1970" and by inserting in lieu thereof "1970,";

(s) by omitting the matter relating to Act No. 33, 1912;

Act No. 33,  
1912.  
(Small  
Debts  
Recovery.)

SECOND

*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

(t) by inserting next after the matter relating to Act No. 33, 1912, the following new matter:—

5	No. 41, 1912 Parliamentary Electorates and Elections.	Section 169 ..	Insert at the end of the section the following new subsections:— (2) No appeal shall lie to the Court of Appeal from any decisions of the court. (3) Subsection two of this section does not limit the generality of subsection one of this section.	
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15			Subsection (1) of section 175A.	Omit "The judges of the Supreme Court, or a majority of them, may make rules of court not inconsistent with this Act"; insert "Rules not inconsistent with this Act may be made under the Supreme Court Act, 1970."
20				
25			Subsection (2) of section 175A.	Omit the subsection; insert the following subsection:— (2) Subsection one of this section does not limit the rule-making powers conferred by the Supreme Court Act, 1970.
30			Section 175A	Insert next after subsection (2) the following new subsection:— (3) Notwithstanding the Supreme Court Act, 1970, any provision of that Act and any provision of any rule made by or pursuant to that Act which is inconsistent with this Act shall, to the extent of such inconsistency and while such inconsistency continues to exist, not apply to or in respect of any proceedings under this Part of this Act.
35	No. 45, 1912 Public Works			
40		Section 3 ..	Insert next after the definition of "Constructing Authority" the following new definition:— "Court" means the Supreme Court of New South Wales.	
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50		Section 54 ..	Omit the section; insert the following section:—	
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SECOND



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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 45, 1912 — <i>cont.</i>	Public Works — <i>cont.</i>	Section 54— <i>cont.</i>	
5			54. (1) If the purchase money or compensation payable in respect of any lands or any interest therein purchased or taken by the Constructing Authority from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor, administrator or person having a partial or qualified interest only in such lands and not entitled to sell or convey the same, except under the provisions of this Act, or the compensation to be paid for any permanent damage to such lands, amounts to or exceeds the sum of four hundred dollars, the same shall be paid into Court as prescribed by rules of the Court.
10			Purchase money payable to parties under disability amounting to \$400 to be paid into Court. Act No. 26, 1900, s. 47.
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30			(2) Such money shall remain so paid into Court until the same is applied to some one or more of the following purposes (that is to say)—
35			Applications of money paid into Court.
40			(a) in the redemption of the quit rent, or the discharge of any debt or incumbrance affecting the land in respect of which such money has been paid, or affecting other lands settled therewith to the same or the like uses, trusts, and purposes;
45			or
50			(b) in the purchase of other lands or of Government debentures or other stock, to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner as the lands, in respect of which such money has been paid, were settled; or
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*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

No. 45, 1912 — <i>cont.</i>	Public Works <i>cont.</i>	Section <i>cont.</i>	54—
5			(c) if such money has been paid in respect of any buildings taken under the authority of this Act, or injured by the proximity of any authorised work,—
10			in removing or replacing such buildings or substituting others in their stead, in such manner as the Court shall direct; or
15			(d) in payment to any party becoming absolutely entitled to such money.
20		Subsection (1) of section 55.	Omit "said Court or Judge"; insert "Court".
25		Subsection (2) of section 55.	Omit "petition"; insert "application".
30		Subsection (1) of section 56.	Omit "by the Master in Equity".
35			Omit the subsection; insert the following subsection:— (1) If such purchase money or compensation does not amount to the sum of four hundred dollars, and exceeds the sum of forty dollars, either—
40			(a) the same shall be paid into Court as prescribed by rules of the Court, to be applied in the manner hereinbefore directed with respect to sums amounting to or exceeding four hundred dollars; or
45			(b) the same shall be paid to two trustees.
50		Subsection (4)	Omit "deposited to the account of the Master in Equity"; insert "paid into Court".
		Section 58 ..	Omit the section; insert the following section:—

SECOND

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 45, 1912 — <i>cont.</i>	Public Works — <i>cont.</i>	Section 58— <i>cont.</i>
5		<p>58. (1) All sums of All sums money exceeding forty payable dollars payable by the under con- Constructing Authority in tract with respect of the taking, using persons not or interfering with any absolutely lands under a contract or entitled to agreement with any person be paid into who is not entitled to Court or dispose of such lands, or of to trustees. the interest therein con- <i>Ibid.</i> s. 51. tracted to be sold by him, absolutely for his own benefit, shall be paid into Court or to trustees, in manner aforesaid.</p>
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20		<p>(2) No such person shall retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the taking of such lands; but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy.</p>
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40		<p>Provided that it shall be in the discretion of the Court, or the said trustees, as the case may be, to allot to any tenant for life or for any other partial or qualified estate, for his own use, a portion of the sum so deposited or so paid to such trustees as aforesaid, as compensation for any injury, inconvenience or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken and of the damage occasioned to the lands held therewith by reason of the taking of such lands and the making of the works.</p>
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SECOND

Supreme Court Amendment.

SECOND SCHEDULE—continued.

No. 45, 1912 —cont.	Public Works —cont.	Section 59 ..	Omit "to the Master in Equity or other"; insert "into Court or paid to any".
5			
		Section 60 ..	<p>Omit the section; insert the following section:—</p> <p>60. Where any purchase Court may money or compensation direct paid or deposited pursuant application to this Act has been paid in of money in respect of— respect of</p> <p>(a) any lease for a life or leases or lives or years, or for reversions. a life or lives and <i>Ibid.</i> s. 53. years; or</p> <p>(b) any estate in lands less than the whole fee-simple thereof; or</p> <p>(c) any reversion dependent on any such lease or estate, the Court may, on the application of any party interested in such money, order that the same shall be laid out, invested, accumulated and paid, in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might have had from the lease, estate, or reversion, in respect of which such money has been paid, or deposited, or as near thereto as may be.</p>
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		Section 61 ..	<p>Omit the section; insert the following section:—</p> <p>61. (1) If the owner of Purchase any lands taken or money or purchased under the compensa- authority of this Act, or of tion may any interest therein, on in certain tender of the purchase cases be money or compensation paid into either agreed or awarded Court. to be paid in respect Act No. 26, thereof— 1900, s. 54.</p> <p>(a) refuses to accept the same; or</p> <p>(b) neglects or fails to make out a title to such lands or to the interest therein</p>
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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 45, 1912 — <i>cont.</i>	Public Works — <i>cont.</i>	Section 61— <i>cont.</i>	
5			claimed by him, to the satisfaction of the Constructing Authority; or
10			(c) refuses to convey or release such lands as directed by the Constructing Authority; or
15			(d) is absent from New South Wales, or cannot after diligent inquiry be found,
20			the Constructing Authority may, if he thinks fit, pay the purchase money or compensation payable in respect of such lands or any interest therein into Court as prescribed by rules of the Court.
25			(2) Money paid into Court under this section shall be subject to the control and disposition of the Court.
30		Section 62 ..	Omit the section; insert the following section:—
35			62. Upon application of any party making claim to the money so paid into Court as last aforesaid or any part thereof, or to the lands in respect whereof the same was so paid into Court, or any part of such lands, or any interest in the same, the said Court may order such money to be laid out or invested in the purchase of Government debentures or real securities; or may order distribution thereof or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands or any part thereof, and may make such other order in the premises as to the Court seems fit.
40			<i>Ibid.</i> s. 55.
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55		Section 63 ..	Omit "or deposited". Omit "so deposited"; insert "so paid into Court".

Supreme Court Amendment.

SECOND SCHEDULE—continued.

No. 45, 1912 —cont.	Public Works —cont.	Section 64	.. Omit the section; insert the following section:—
5			<p>64. In all cases of moneys paid into Court under the provisions of this Act, except where such moneys were so paid into Court by reason of the wilful refusal of any party entitled thereto to receive the same or to convey or release the lands in respect whereof the same are payable, or by reason of the neglect of any party to make out a good title to the land required, the Court may order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Constructing Authority, that is to say, the costs—</p>
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30			<p>(a) of the purchase or taking of the lands or which were incurred in consequence thereof, other than such costs as are herein otherwise provided for; and</p>
35			<p>(b) of the investment of such moneys in Government debentures or real securities and of the re-investment thereof in the purchase of other lands; and</p>
40			<p>(c) of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys are invested, and for the payment out of court of the principal of such moneys or of the securities whereon the same are invested; and</p>
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Costs in case of money paid into Court. *Ibid.* s. 57.

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*Supreme Court Amendment.*


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 SECOND SCHEDULE—*continued.*

No. 45, 1912 — <i>cont.</i>	Public Works — <i>cont.</i>	Section 64— <i>cont.</i>	(d) of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants.
5			<p>Provided that the costs of one application only for re-investment in land shall be allowed, unless it appears to the Court that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands, in different sums and at different times; in which case the Court may, if it thinks fit, order the costs of any such investments to be paid by the Constructing Authority.</p>
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25		Section 67	Omit the section; insert the following section:—
30			<p>67. If, in either of the cases aforesaid, upon such payment or tender, any mortgagee fails to convey or release his interest in such mortgage as directed by the Constructing Authority, or if he fails to adduce a good title thereto to his satisfaction, then the Constructing Authority may pay into Court as prescribed by rules of Court, to be dealt with in the manner provided by this Act in the case of moneys required to be paid into Court, the principal and interest, together with the costs, if any, due on such mortgage; and if such payment is made before the expiration of six months' notice as aforesaid, such further interest as would at the time become due; and the Constructing Authority may also, if he thinks fit, execute a deed-poll, containing a description of the lands in respect whereof such payment into Court was made, and describing the circum-</p>
35			<p>Payment into Court of mortgage money on refusal to accept. Act No. 26, 1900, s. 60.</p>
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SECOND

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 45, 1912 — <i>cont.</i>	Public Works — <i>cont.</i>	Section 67— <i>cont.</i>	stances under which and the names of the parties to whose credit such payment into Court was made, and such deed-poll shall be duly registered by the Constructing Authority. And thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee and of all persons in trust for him or for whom he may be a trustee in such lands shall vest in the Constructing Authority, and the Constructing Authority shall be entitled to immediate possession thereof, in case such mortgagee were himself entitled to such possession.
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25		Section 69 ..	Omit the section; insert the following section:—
30			69. If, upon such payment or tender as aforesaid, any such mortgagee fails so to convey his interest in such mortgage or to adduce a good title thereto to the satisfaction of the Constructing Authority, the Constructing Authority may pay the amount of such value or compensation into Court as prescribed by rules of Court, to be dealt with in the manner provided by this Act in case of moneys required to be paid into Court.
35			Payment into Court of money when refused on tender. Act No. 26, 1900, s. 62.
40			
45			Every such payment shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and the Constructing Authority may, if he thinks fit, execute a deed-poll in manner hereinbefore provided. And thereupon such lands, as to all such estate and interest as were
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SECOND



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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 45, 1912 — <i>cont.</i>	Public Works — <i>cont.</i>	Section 69— <i>cont.</i>	then vested in the mort- gagee or any person in trust for him, shall become absolutely vested in the Constructing Authority, and the Constructing Authority shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.
5			Provided that all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force, in respect of so much of the mortgage debt as was not satisfied by such payment.
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25		Section 71 ..	Omit the section; insert the following section:—
30			71. If, upon any pay- ment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or deter- mined, such mortgagee fails to convey or release to the Constructing Authority or as he shall direct, his interest in the lands, in respect of which such com- pensation has been so paid or tendered, or if he fails to adduce a good title thereto to the satisfaction of the Constructing Authority, the Constructing Authority may pay the amount of such value or compensation into Court as prescribed by rules of Court, to be dealt with in the manner provided by this Act in the case of moneys required to be paid into Court; and such payment shall be accepted by such mortgagee in satis- faction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and also if he
35			Payment into Court of money when refused on tender.
40			Act No. 26, 1900, s. 64.
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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 45, 1912 — <i>cont.</i>	Public Works — <i>cont.</i>	Section 71— <i>cont.</i>	
5			thinks fit, may execute a deed-poll in the manner hereinbefore provided. And thereupon such lands shall become absolutely vested in the Constructing Authority, as to all such estate and interest as were then vested in the mortgagee or any person in trust for him, and in case such mortgagee were himself entitled to such possession he shall be entitled to immediate possession thereof.
10			Provided that every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money or the residue thereof (as the case may be) and the interest thereof respectively, upon and out of the residue of such mortgaged lands or the portion thereof not required for the purposes of this Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof, upon or out of the whole of the lands originally comprised in such mortgage.
15			Omit "the hands of the Master in Equity to be dealt with by him in the manner hereinbefore provided in the case of moneys required to be paid to the Master in Equity"; insert "Court as prescribed by rules of Court, to be dealt with in the manner provided by this Act in the case of moneys required to be paid into Court".
20			Omit "deposit with the Master in Equity, in manner aforesaid"; insert "pay into Court as prescribed by rules of Court".
25			Omit " , with costs, by action".
30			Omit "a Judge of the Supreme Court"; insert "the Court".
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40		Subsection (2) of section 74.	
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50		Paragraph (c) of section 84.	
55		Section 88 ..	
60		Section 102 ..	

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*Supreme Court Amendment.*


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**SECOND SCHEDULE—continued.**

No. 45, 1912 —cont.	Public Works —cont.	Section 104 ..	Omit the section; insert the following section:—
5			104. If within ninety days after the service of notice of claim the claimant and the Constructing Authority do not agree as to the amount of compensation, the claimant may institute proceedings for compensation in the Court against the Constructing Authority as nominal defendant.
10			Provided that with the consent in writing of the Constructing Authority and the claimant any such action may be so tried at any time (to be mentioned in such consent) before the expiration of ninety days from service of the notice of claim for compensation, but not within fourteen days from service of the notice of valuation on such claimant.
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30		Section 106 ..	Omit the section; insert the following section:—
35			106. If the compensation determined in the proceedings under the provisions of this Division of this Act is an amount exceeding the amount of the valuation last notified to the claimant, and less than the amount of the claim of the claimant, the Constructing Authority shall pay to the claimant the proportion of his costs which the excess of the amount so determined over such valuation bears to the excess of the claim over such valuation.
40			If the amount so determined is equal to or greater than the amount of such claim, the Constructing Authority shall pay the costs of the proceedings.
45			If the amount so determined is equal to or less than the amount of such valuation, the claimant shall pay the costs of the proceedings.
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*Supreme Court Amendment.*

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SECOND SCHEDULE—*continued.*

No. 45, 1912 — <i>cont.</i>	Public Works — <i>cont.</i>		
5		Section 112 ..	Omit "any Judge of the Supreme Court"; insert "the Court".
10		Subsection (3) of section 118.	Omit the subsection; insert the following subsection:— (3) If either party is dissatisfied with the costs allowed by the arbitrators as aforesaid, proceedings for taxation may be brought in the Court, and the amount determined on taxation shall be the amount to be paid. <span style="float: right;">Taxation.</span>
15		Section 120 ..	Omit the section; insert the following section:— 120. The submission to any such arbitration may, on the application of either of the parties, be made an order of the Court. <span style="float: right;">Submission may be made an order of the Court.</span>
20			<i>Ibid.</i> s. 113.
25		Section 122 ..	Omit "Supreme Court or a Judge thereof"; insert "the Court". Omit "said Court or Judge"; insert "Court".
30		Section 123 ..	Omit the section; insert the following section:— 123. (1) If the compensation awarded by the arbitrators exceeds the sum of six hundred dollars, and either party is dissatisfied with the award and, within fourteen days after the making of the award and notice thereof, signifies such dissatisfaction by notice in writing to the other party, then no steps shall be taken to enforce performance of the award, but the party claiming compensation shall take proceedings in the Court, in the usual manner, to recover from the Constructing Authority the compensation to which he may be entitled under the provisions of this Act. <span style="float: right;">Court proceedings for compensation.</span>
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55			(2) In the said proceedings, both the costs thereof and the costs of and incidental to the arbitration shall be determined and allocated by <span style="float: right;">Costs on appeal from arbitrators.</span>

SECOND

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 45, 1912 — <i>cont.</i>	Public Works — <i>cont.</i>	Section 123— <i>cont.</i>	a comparison of the respective amounts of the claim, the valuation, and the amount of compensation determined in the proceedings, in the manner directed by section one hundred and six of this Act.
5			
10		Section 124 ..	Omit the section; insert the following section:—
15			<p>124. For the purpose of ascertaining the purchase money or compensation to be paid, regard shall in every case be had not only to the value of the land to be purchased or taken, but also to the damage (if any) caused by the severing of the lands taken from other lands of the owner, or by the exercise of any statutory powers by the Constructing Authority otherwise injuriously affecting such other lands; and the same shall be assessed according to what is found to have been the value of such lands, estate or interest at the time notice was given, or notification published, as the case may be, and without the amount of the valuation notified to such claimant being binding in any way in relation to the assessment, and without reference to any alteration in such value arising from the establishment of railway or other public works upon or for which such land was resumed.</p>
20			<p>Compensation generally. Act No. 26, 1900, s. 117.</p>
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50			<p>Provided that in ascertaining such purchase money or compensation any enhancement in the value of the interest of any such owner in any land adjoining the land taken or severed therefrom by the construction of the authorised work shall be taken into consideration and given effect to by way of set-off or abatement. But in no case shall this proviso operate so as to</p>
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*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

No. 45, 1912 — <i>cont.</i>	Public Works — <i>cont.</i>		
5		Section 112 ..	Omit "any Judge of the Supreme Court"; insert "the Court".
10		Subsection (3) of section 118.	Omit the subsection; insert the following subsection:— (3) If either party is dissatisfied with the costs allowed by the arbitrators as aforesaid, proceedings for taxation may be brought in the Court, and the amount determined on taxation shall be the amount to be paid. <span style="float: right;">Taxation.</span>
15		Section 120 ..	Omit the section; insert the following section:— 120. The submission to any such arbitration may, on the application of either of the parties, be made an order of the Court. <span style="float: right;">Submission may be made an order of the Court.</span>
20			<i>Ibid.</i> s. 113.
25		Section 122 ..	Omit "Supreme Court or a Judge thereof"; insert "the Court". Omit "said Court or Judge"; insert "Court".
30		Section 123 ..	Omit the section; insert the following section:— 123. (1) If the compensation awarded by the arbitrators exceeds the sum of six hundred dollars, and either party is dissatisfied with the award and, within fourteen days after the making of the award and notice thereof, signifies such dissatisfaction by notice in writing to the other party, then no steps shall be taken to enforce performance of the award, but the party claiming compensation shall take proceedings in the Court, in the usual manner, to recover from the Constructing Authority the compensation to which he may be entitled under the provisions of this Act. <span style="float: right;">Court proceedings for compensation.</span>
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55			(2) In the said proceedings, both the costs thereof and the costs of and incidental to the arbitration shall be determined and allocated by <span style="float: right;">Costs on appeal from arbitrators.</span>

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*Supreme Court Amendment.*


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 SECOND SCHEDULE—*continued.*

No. 45, 1912 — <i>cont.</i>	Public Works — <i>cont.</i>	Section 123— <i>cont.</i>	a comparison of the respective amounts of the claim, the valuation, and the amount of compensa- tion determined in the proceedings, in the manner directed by section one hundred and six of this Act.
5			
10		Section 124 . .	Omit the section; insert the following section:—
15			<p>124. For the purpose of ascertaining the purchase money or compensation to be paid, regard shall in every case be had not only to the value of the land to be purchased or taken, but also to the damage (if any) caused by the severing of the lands taken from other lands of the owner, or by the exercise of any statutory powers by the Constructing Authority otherwise injuriously affecting such other lands; and the same shall be assessed according to what is found to have been the value of such lands, estate or interest at the time notice was given, or notification published, as the case may be, and without the amount of the valuation notified to such claimant being binding in any way in relation to the assessment, and without reference to any alteration in such value arising from the establishment of railway or other public works upon or for which such land was resumed.</p>
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50			<p>Provided that in ascertaining such purchase money or compensation any enhancement in the value of the interest of any such owner in any land adjoining the land taken or severed therefrom by the construction of the authorised work shall be taken into consideration and given effect to by way of set-off or abatement. But in no case shall this proviso operate so as to</p>
60			

*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

No. 45, 1912 — <i>cont.</i>	Public Works — <i>cont.</i>	Section 124— <i>cont.</i>	
5			require any payment to be made by such owner to the Constructing Authority in consideration of such enhancement of value as aforesaid.
10			Provided also that in the case of land under the surface taken or acquired by notification in the Gazette for the purpose of constructing a subterranean tunnel for water supply or sewerage or railway transit, no compensation shall be allowed or awarded unless—
15			Proviso as to underground land resumed by Gazette notice for tunnel purposes.
20			(a) the surface of the overlying soil is disturbed; or
25			(b) the support to such surface is destroyed or injuriously affected by the construction of such tunnel; or
30			(c) any mines or underground workings in or adjacent to such land are thereby rendered unworkable or are so affected as aforesaid.
35		Subsection (1) of section 136.	Omit "such costs shall be taxed by the Master in Equity or other proper officer of the Supreme Court"; insert "the amount shall be determined by taxation in the Court".
40		Subsection (2) of section 136.	Omit the subsection; insert the following subsection:—
45			(2) The Court may make Payment. orders for payment of the amount so determined by the Constructing Authority to the party entitled.
50		Subsection (3) of section 136.	Omit "taxing such costs"; insert "the proceedings for taxation".
55			Omit "taxed; and the amount of such costs of taxation shall be ascertained by the said Master or other officer, and be deducted by him in his certificate of taxation."; insert "taxed."
60			

SECOND



*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

No. 45, 1912 — <i>cont.</i>	Public Works — <i>cont.</i>	Subsection (2) of section 140.	Omit "jury"; insert "Court". Omit "ascertain by their award or verdict"; insert "determine".
5		Subsection (3) of section 143.	Omit "action in the Supreme Court"; insert "proceedings in the Court".
10		Subsection (2) of section 149.	Omit "action in the Supreme Court"; insert "proceedings in the Court".
		Eighth Schedule.	Omit "the hands of the Master in Equity of".
(u) by inserting next after the matter relating to Act No. 7, 1913, the following new matter:—			
15	No. 19, 1913	Public Trustee	Section 1 . . . Omit "(hereinafter called the Principal Act)".
20		Section 4A . . .	Omit the section; insert the following section:— 4A. In this Act, except so far as the context otherwise indicates or requires— Interpre- tation.
25			"Adult" means a person who has attained the age of eighteen years.
30			"Court" means the Supreme Court of New South Wales.
35			"Minor" means a person under the age of eighteen years.
40			"Prescribed registry" means such registry of the Court as may be prescribed by rule of Court.
45			"Principal Act" means the Wills, Probate, and Administration Act, 1898.
50			"Protected person" means a protected person within the meaning of the Men- tal Health Act, 1958.
55		Subparagraph (vi) of para- graph (a) of subsection (3) of section 5.	Omit the subparagraph; insert the following sub- paragraph:— (vi) becomes a protected person or incapable person within the meaning of the Men- tal Health Act, 1958, or a patient within the meaning of Part XI of that Act.

## Supreme Court Amendment.

## SECOND SCHEDULE—continued.

No. 19, 1913 —cont.	Public Trustee —cont.	Paragraph (v) of subsection (1) of section 12.	Omit the paragraph; insert the following paragraph:— (v) as manager of the estate of a protected person;
5		Subsection (1) of section 16. Section 17 ..	Omit "the said Court"; insert "the Court". Omit "Supreme Court in its equitable jurisdiction"; insert "Court".
10			Omit "Provided that where any such person whose consent is so requisite is an insane patient, insane person, or incapable person as defined by the Lunacy Act, 1898, then the Master in Lunacy shall be deemed to be the person whose consent is so requisite in the place and stead of such insane patient, insane per- son, or incapable person."
15			
20			
25		Subsection (1) of section 18.	Omit "The court"; insert "The Court".
30		Paragraph (a) of subsection (1A) of section 18.	Omit "An application by the public trustee for letters of administration of any such deceased person's estate shall, subject to this sub- section, be made in accordance with the pro- visions of the Principal Act and the rules of court made thereunder."
35			
40		Subparagraph (ii) of para- graph (b) of subsection (1A) of section 18.	Omit "court" wherever occurring; insert "Court".
45		Paragraph (c) of subsection (1A) of section 18.	Omit "court"; insert "Court".
50		Subsection (2) of section 18.	Omit "court"; insert "Court".
		Subsection (3) of section 18.	Omit the subsection.
55		Subsection (1) of section 18A.	Omit "office of the Supreme Court"; insert "prescribed registry".
		Subsection (2) of section 18A.	Omit "office of the Supreme Court"; insert "prescribed registry".
60		Paragraph (a) of subsection (3A) of section 18A.	Omit "office of the Supreme Court"; insert "prescribed registry".

*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

No. 19, 1913 — <i>cont.</i>	Public Trustee — <i>cont.</i>	Subsection (5) of section 18A.	Omit "said office of the Supreme Court"; insert "prescribed registry".
5		Subsection (5A) of section 18A.	Omit "said office of the Supreme Court"; insert "prescribed registry".
		Subsection (5B) of section 18A.	Omit the subsection.
10		Section 23 ..	Omit "court" wherever occurring; insert "Court".
		Section 34 ..	Omit "request a judge of the Supreme Court to give him"; insert "apply to the Court for".
15			Omit "the judge"; insert "the Court".
		Subsection (1) of section 34A.	Omit "probate office of the Supreme Court in the same manner as is provided by"; insert "prescribed registry and shall be dealt with in accordance with".
20			
25		Subsection (2) of section 35.	Omit "a judge of the Supreme Court"; insert "the Court". Omit "the judge"; insert "the Court".
		Subsection (3) of section 35A.	Omit the subsection.
30		Subsection (3) of section 36A.	Omit "court" wherever occurring; insert "Court".
35		Subsection (2) of section 53.	Omit "court" wherever occurring; insert "Court". Omit ", on petition,". Omit "the petition"; insert "the proceedings for pay- ment".
40			
		Subsection (3) of section 53.	Omit "court"; insert "Court".
45		Section 57 ..	Omit "Supreme Court in its equitable jurisdiction"; insert "Court". Omit "said Court"; insert "Court".
50	River Murray Waters.	Section 10 ..	Omit "writ"; insert "writ or order".
		Section 11 ..	Omit "may be made a rule or order of the Supreme Court and shall be enforce- able accordingly"; insert "shall be enforceable by order of the Supreme Court".
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*Supreme Court Amendment.*


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**SECOND SCHEDULE—continued.**

No. 8, 1915 —cont.	River Murray Waters— cont.	Section 21 ..	Omit "any judge of".
5			Omit "made without action, and either by summons or by motion upon notice to the claimant for compensa- tion,".
10			Omit "the judge"; insert "the court".
No. 29, 1915	City and Sub- urban Electric Railways.	Subsection (1) of section 12.	Omit "Public Works Act, 1912"; insert "District Courts Act, 1912, Public Works Act, 1912, or Supreme Court Act, 1970". Omit "a Judge of".
15			
No. 6, 1919	Conveyancing	Subsection (1) of section 7.	In the definition of "Court" omit "in its equitable jurisdiction". In the definition of "Order" omit "decree and rule of court"; insert "judgment".
20			
25		Subsection (1) of section 54A.	Omit "suit" wherever occur- ring; insert "proceedings".
30		Subsection (2A) of section 55. Subsection (4) of section 63.	Omit "suit or". Omit "direct an inquiry respecting the amount of damages, and order pay- ment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application or any other matter connected with the application"; insert "assess damages accordingly and order payment thereof by the person liable".
35			
40		Subsection (2) of section 89.	Omit "by suit or otherwise".
45		Subsection (4) of section 89.	Omit "as the court, either generally or in a particular instance, may order"; insert "as may be prescribed by rules of court or as the court may order".
50		Subsection (1) of section 100.	Omit "a decree"; insert "an order". Omit "such decree"; insert "the order".
55		Subsection (2) of section 100. Section 101 ..	Omit "decree"; insert "order". Omit the section, insert the following section:—

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*Supreme Court Amendment.*


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**SECOND SCHEDULE—continued.**

No. 6, 1919 —cont.	Conveyancing —cont.	Section 101 —cont.	101. (1) Where mortgage Order for moneys are secured partly foreclosure, by an instrument under the &c., in Real Property Act, 1900, respect and partly by other of lands securities an order for mortgaged foreclosure, redemption, or by instru- sale, in respect of the land ments under the subject of such instru the Real ment, may notwithstanding Property anything contained in that Act, 1900, Act, be made by the Court and in the same manner as if otherwise. such lands were not subject to the provisions of that Act.
5			
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20			(2) In cases where an order absolute for fore- closure is made by the Court under this section, the Registrar-General shall, on the prescribed application, register as proprietor the person in whose favour the order is made.
25			
30		Section 103 . .	Omit the section; insert the following section:—
35			103. (1) Any person en- Sale of titled to redeem mortgaged mortgaged property may have an property order for sale instead of in proceed- for redemption in any proceed- ceedings instituted by him foreclosures, either for redemption alone redemption, or for sale alone, or for &c. sale or redemption, in the alternative. See 44 & 45 Vic. c. 41, s. 25, See 1901, No. 24, s. 12.
40			
45			(2) In any proceed- ings, whether for fore- closure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and notwith- standing the dissent of any other person, and notwith- standing that the mortgagee or any person so interested
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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 6, 1919 — <i>cont.</i>	Conveyancing — <i>cont.</i>	Section 103 .. — <i>cont.</i>	
5			does not appear in the proceedings, and without allowing any time for redemption or for payment of any mortgage money, may direct a sale of the mortgaged property on such terms as to the Court may seem just, including, if the Court thinks fit, the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of sale and to secure performance of the terms.
10			(3) In any proceedings instituted by a person interested in the right of redemption and seeking a sale, the Court may, on the application of any defendant, direct the plaintiff to give such security for costs as the Court thinks fit, and may give the conduct of the sale to any party or other person, and may give such directions as to the Court may seem just respecting the costs of the defendants or any of them.
15			(4) In any case within this section the Court may direct a sale without previously determining the priority of incumbrancee or mortgagees and may direct a sale out of Court.
20			(5) Section twelve of the Equity Act, 1901, is hereby repealed.
25			(6) This section applies to proceedings instituted either before or after the commencement of this Act.
30			Omit the subsection; insert the following subsection:—
35		Subsection (2) of section 130.	(2) Any such order may be made in proceedings brought for the purpose by the person claiming as under-lessee or, where the proceedings brought by the lessor are in the Court, may be made in the latter proceedings.
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SECOND

*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

No. 6, 1919 — <i>cont.</i>	Conveyancing — <i>cont.</i>		
		Subsection (2) of section 153.	Omit "Supreme Court in its probate jurisdiction"; insert "court".
5		Subsection (2B) of section 153.	Omit "The Registrar of Probates shall embody in or endorse"; insert "The court shall cause to be embodied in or endorsed". Omit "such court"; insert "the court".
10			
		Subsection (4) of section 153.	Omit "such Court" wherever occurring; insert "the court". Omit "and for that purpose shall have all the powers of the Supreme Court in its equitable jurisdiction".
15			
		Section 171 ..	Omit the section; insert the following section:— 171. Payment of money into court under the provisions of this or any other Act shall effectually exonerate therefrom the person making the payment. <span style="float: right;">Effect of payment into Court.</span>
20			
		Section 172 ..	Omit the section.
		Proviso (b) to section 173.	Omit "a suit"; insert "proceedings".
25		Proviso (c) to section 173.	Omit "a suit"; insert "proceedings".
		Subsection (3) of section 180.	Omit "shall"; insert "shall, unless the Court otherwise orders,".
30			
		Subsection (1) of section 183.	Omit "an action"; insert "proceedings".
35			
		Subsection (1) of section 200.	Omit "in any of its jurisdictions or of any judge thereof".
40			
		Section 201 ..	Omit "in any of its jurisdictions or of any judge thereof".
45			
		Section 205 ..	In the definition of "Taxing Officer" omit "any jurisdiction of".
50			
		Section 206 ..	Omit "action or"; insert "proceedings in any court or other business". Omit "in the chambers of"; insert "before".

SECOND

*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

No. 6, 1919 — <i>cont.</i>	Conveyancing — <i>cont.</i>	Subsection (4) of section 212.	Omit "the taxing officer may inquire into the facts and certify the same to the Supreme Court, and if, upon such certificate, it shall appear to such Court or a judge thereof"; insert "it shall appear to the Court". Omit "or judge" wherever occurring.
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15			(v) by omitting from the sub-column headed "Amendment." of the Second Column in the matter relating to subsection six of section five hundred and eighty of Act No. 41, 1919, "Omit 'in accordance with rules of court'." and by inserting in lieu thereof "Omit 'in accordance with rules of court' where firstly occurring";
20			(w) by omitting from the sub-column headed "Amendment." of the Second Column in the material relating to subsection one of section thirteen of Act No. 47, 1920, "for any offence referred to in the provisions of subsection three of section ninety-one of this Act may be recovered with costs by any person whomsoever in a summary way before any two justices of the peace and any other fine incurred";
25			(x) (i) by omitting from the sub-column headed "Amendment." of the Second Column the matter relating to paragraph (a) of subsection six of section four of Act No. 10, 1921, and by inserting in lieu thereof the following matter:—
30			Omit the paragraph; insert the following paragraph:—
35			(a) Where a practising barrister is appointed a judge under this section he shall, by virtue of such appointment, become a judge of the Supreme Court for all purposes and in all respects as if at the date of such appointment he had been appointed a judge of the Supreme Court in accordance with the law for the time being in force relating to the appointment of judges of the Supreme Court.
40			
45			(ii) by inserting in the Second Column next after the matter relating to paragraph (b) of subsection six of section four of the same Act the following new matter relating to the same Act:—
		Subsection (1) of section 9.	Omit "or Police".



*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

(y) by inserting next after the matter relating to Act No. 10, 1921, the following new matter:—

5	No. 1, 1924	Co-operation	Paragraph (b) of subsection (9) of section 89.	Omit "in its equitable jurisdiction".  Omit "that Court"; insert "the Court".
10			Subsection (5A) of section 91. Section 122 ..	Omit "or a Judge thereof".  Omit the section; insert the following section:— 122. (1) Where the Registrar refuses to register a society or any of its rules, or refuses to register or directs a change of its name, the Registrar shall, if so required by the society, set forth in writing under his hand the grounds of his refusal or the grounds upon which the direction was given.
15				Review of decisions of Registrar. W.A. 1920, s. 33.
20				(2) The society may apply to the Supreme Court for review of the refusal or direction.
25				(3) On the review, the Supreme Court may make such orders as may be proper in the circumstances.
30				Omit the paragraph; insert the following paragraph:—
35	No. 24, 1924	Main Roads	Paragraph (a) of subsection (3) of section 42G.	(a) it has been established to the satisfaction of the Supreme Court that the debenture has been lost or destroyed before it has been paid off;
40				
45			Paragraph (b) of subsection (3) of section 42G.	Omit "judge"; insert "Court".
50			Subsection (1) of section 42H.	Omit "in its equitable jurisdiction, in accordance with rules of court,".
			Subsection (1) of section 63. Subsection (2) of section 63.	Omit "debt"; insert "debt or liquidated demand". Omit the subsection.

SECOND

*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

5	(z)	(i)	by omitting from the sub-column headed "Amendment." of the Second Schedule in the matter relating to PART III of Act No. 42, 1924, "3. <i>Supreme</i> " and by inserting in lieu thereof "3.— <i>Supreme</i> ";	Act No. 42, 1924. (Administration of Justice.)
10		(ii)	by omitting from the same sub-column of the Second Schedule in the matter relating to PART III of the same Act " <i>Interpleader Act, 1901</i> " and by inserting in lieu thereof " <i>Interpleader Act, 1901.</i> ";	
10	(aa)	by inserting next after the matter relating to Act No. 42, 1924, the following new matter:—		
15	No. 50, 1924	Metropolitan Water, Sewerage and Drainage.	Subsection (3) of section 70.	Omit "in its equitable jurisdiction".
20			Paragraph (a) of subsection (3) of section 79.	Omit the paragraph; insert the following paragraph:— (a) it has been established to the satisfaction of the Supreme Court that the debenture has been lost or destroyed before it has been paid off;
25			Paragraph (b) of subsection (3) of section 79.	Omit "judge"; insert "court".
30			Subsection (1) of section 80.	Omit "in its equitable jurisdiction, in accordance with rules of court,".
35			Paragraph (b) of subsection (3) of section 132.	Omit "a judge of". Omit "in accordance with rules of court".
40				Omit "judge may, if he"; insert "court may, if it". Omit "Any person who is dissatisfied with the decision of the judge on any such application may appeal to the Supreme Court and that court may on the appeal make any order which ought to have been made in the first instance. Every such appeal shall be made in accordance with rules of court.".
45				Omit "debt"; insert "debt or liquidated demand".
50			Subsection (1) of section 134.	Omit the subsection.
55			Subsection (2) of section 134.	

SECOND

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*Supreme Court Amendment.*


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**SECOND SCHEDULE—continued.**

No. 14, 1925	Trustee	Section 5	
5			In the definition of "Court" omit "in its equitable jurisdiction". Omit " "Decree" includes order." Omit " "Judge" means the Chief Judge in Equity, or any other judge of the Supreme Court exercising jurisdiction power or authority in equity." In the definition of "Order" omit "decree"; insert "judgment".
10			
15			
20		Subsection (2a) of section 10.	Omit "the Supreme Court or a Judge thereof, sitting in its probate or equity jurisdiction,"; insert "the Court". Omit "the court"; insert "the Court".
25		Subsection (5) of section 16.	Omit " , or on any reference to the Master in Equity, the Master".
30		Subsection (11) of section 28.	Omit " , or on any reference to the Master in Equity, the Master".
35		Subsection (1) of section 63.	Omit "Judge or the Master in Equity for his"; insert "Court for an".
40		Subsection (3) of section 63.	Omit the subsection; insert the following subsection:— (3) Rules of court may provide for the use, on an application under this section, of a written statement signed by the trustee or his counsel or solicitor, or for the use of other material, instead of evidence.
45		Subsection (4) of section 63.	Omit the subsection; insert the following subsection:— (4) Unless the rules of court otherwise provide, or the Court otherwise directs, it shall not be necessary to serve notice of the application on any person, or to adduce evidence by affidavit or otherwise in support of the application.
50			
55		Subsection (5) of section 63.	Omit the subsection.
		Subsection (6) of section 63.	Omit the subsection.
		Subsection (7) of section 63.	Omit the subsection.

## Supreme Court Amendment.

## SECOND SCHEDULE—continued.

No. 14, 1925 —cont.	Trustee—cont.	Subsection (8) of section 63. Subsection (10) of section 63. Subsection (11) of section 63.	Omit "Judge or Master"; insert "Court". Omit "Judge or Master"; insert "Court". Omit the subsection; insert the following subsection:—
5			(11) Subject to subsection ten of this section, and subject to any appeal, any person on whom notice of any application under this section is served, or to whom notice is given in accordance with subsection eight of this section, shall be bound by any opinion advice direction or order given or made under this section as if the opinion advice direction or order had been given or made in proceedings to which he was a party.
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15			
20			
25		Subsection (7) of section 70.	Omit the subsection.
30		Subsection (1) of section 76. Subsection (2) of section 76.	Omit "a decree"; insert "an order". Omit "suit or other proceeding"; insert "proceedings". Omit "decree" wherever occurring; insert "order".
35		Subsection (1) of section 77. Paragraph (b) of subsection (2) of section 77.	Omit "a decree"; insert "an order". Omit "suit or other proceeding"; insert "proceedings". Omit "decree"; insert "order".
40		Section 80 ..	Omit "upon suit or other proceeding"; insert "in proceedings".
45		Subsection (1) of section 83. Subsection (2) of section 83.	Omit "Judge or Probate Judge"; insert "Court". Omit "Judge or Probate Judge"; insert "Court".
50		Subsection (3) of section 83. Subsection (4) of section 83. Subsection (5) of section 83.	Omit "Judge or Probate Judge"; insert "Court". Omit "Judge or Probate Judge"; insert "Court". Omit "Judge or Probate Judge"; insert "Court".
55		Subsection (1) of section 84. Subsection (2) of section 84. Subsection (3) of section 84.	Omit "Judge or Probate Judge"; insert "Court". Omit "Judge or Probate Judge" insert "Court". Omit "Judge or Probate Judge"; insert "Court".
60		Subsection (3) of section 85.	Omit the subsection.

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 14, 1925 — <i>cont.</i>	Trustee— <i>cont.</i>	Section 88	.. Omit the section; insert the following section:—
5			88. Where in any Order in proceedings the Court is absence of satisfied that diligent search a trustee.
10			has been made for any 56 & 57 person who, in the Vic., c. 53, character of a trustee, s. 43, is made a defendant thereto 1898, No. 4, to serve him with a process, s. 57. of the Court and that he cannot be found, the Court may hear and determine the proceedings and make an order therein against that person in his character of a trustee as if he had been duly served or had entered an appearance in the proceedings, and had also appeared by his counsel or solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the proceedings in any other character.
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25			
30		Section 89	.. Omit "Supreme Court, in its lunacy jurisdiction"; insert "Court under the Mental Health Act, 1958".
		Section 90	.. Omit the section.
35		Section 91	.. Omit the section; insert the following section:— 91. (1) In proceedings (Defendants) in the Court under this Act, the plaintiff shall join as defendants such persons, if any, as the Court thinks fit.
40			(2) If in proceedings in the Court under this Act any person who has been or ought to be made a defendant cannot be found in New South Wales, or if it is uncertain whether he is living or dead, or if service cannot be effected on him without expense disproportionate to the value of his interest, the Court may direct that he be removed as a defendant or may dispense with service on him, and may order that
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*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

5	No. 14, 1925 — <i>cont.</i>	Trustee— <i>cont.</i>	Section 91 — <i>cont.</i>	he be deemed to have submitted his rights and interests to be dealt with by the Court.
10			Subsection (1) of section 93. Subsection (3) of section 93.	Omit the subsection. Omit "suit or proceeding" wherever occurring; insert "proceedings".
15			Section 94 .. Subsection (2) of section 98.	Omit the section Omit "the Master in Equity"; insert "a registrar of the Court".
20			Section 102 ..	Omit the section; insert the following section:— 102. Where any guardian, manager, receiver, trustee or other fiduciary appointed by the Court has been or is (whether by Act, by rule of court or by order in any proceedings) directed to account from time to time to the Court, or to file any report or account in any registry of the Court, the Court may order compliance with the direction, on the application of any party interested or of its own motion.
25				Account by fiduciary. 1898, No. 4, s. 68.
30			Section 104 ..	Omit the section; insert the following section:— 104. (1) Rules of court may be made under the Supreme Court Act, 1970, for better carrying the provisions and objects of this Act into effect. (2) Subsection one of this section does not limit the rule-making powers conferred by the Supreme Court Act, 1970.
35				Rules of court.
40				
45				

(ab) by inserting next after the matter relating to Act No. 18, 1930, the following new matter:—

50	No. 37, 1930	Reclamation	Subsection (3) of section 18.	Omit "by summons in chambers in the Supreme Court in its equitable jurisdiction"; insert "to the Supreme Court". Omit " , and with regard to the costs of the application,".
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SECOND

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

(ac) by omitting from the sub-column headed "Amendment." of the Second Column in the matter relating to subsection one of section forty of Act No. 47, 1935, "Omit 'in accordance with rules of court'." and by inserting in lieu thereof "Omit 'in accordance with rules of court' where firstly occurring;"

(ad) by inserting next after the matter relating to Act No. 47, 1935, the following new matter:—

10	No. 11, 1938	Hunter District Water, Sewerage and Drainage.	Paragraph (a) of subsection (3) of section 81.	Omit the paragraph; insert the following paragraph:— (a) it has been established to the satisfaction of the Supreme Court that the debenture has been lost or destroyed before it has been paid off;	Act No. 47, 1935. (Maritime Services.)
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20			Paragraph (b) of subsection (3) of section 81.	Omit "judge"; insert "Court".	
25			Subsection (1) of section 82.	Omit "in its equitable jurisdiction in accordance with rules of court,".	
30			Subsection (3) of section 135.	Omit the subsection; insert the following subsections:— (3) Proceedings shall not be commenced against the board or any member thereof or any officer of the board or any person acting in its or his aid for anything done or intended to be done or omitted to be done under the provisions of this Act, until the expiration of one month after notice in writing has been served on the board or such member, officer or person, as provided in this section.	Notice of action.
35				(4) The notice shall clearly state— (a) the cause of action; and (b) the name and place of abode of the intended plaintiff and of his solicitor or agent, if any, in the case.	
40				(5) At the trial of any such action the plaintiff shall not be permitted to go into evidence on any cause of action that is not	
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SECOND

## Supreme Court Amendment.

SECOND SCHEDULE—*continued.*

No. 11, 1938 — <i>cont.</i>	Hunter District Water, Sewerage, and Drainage — <i>cont.</i>	Subsection (3) of section 135 — <i>cont.</i>	stated in the notice served and, unless the notice has been served, the plaintiff shall not be entitled to maintain the action.
5			(6) Subject to subsection seven of this section, every such action shall be com- menced within the period (in subsection seven of this section referred to as the “prescribed period”) of twelve months next occurring after the cause of action.
10			(7) Where application is made to the Supreme Court for an extension of the prescribed period the court may, if it is satisfied that sufficient cause has been shown, or that having regard to all the circum- stances of the case, it would be reasonable so to do, make an order for extension of the prescribed period for such further period and subject to such terms and conditions, if any, as may be set out in the order.
15			An application under this subsection may be made either within the prescribed period or at any time within twelve months there- after.
20			Omit “debt in”; insert “debt or liquidated demand in”.
25		Subsection (1) of section 137.	Omit the subsection.
30		Subsection (2) of section 137.	
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No. 20, 1938	Broken Hill Water and Sewerage.	Paragraph (a) of subsection (3) of section 67.	Omit the paragraph; insert the following paragraph:— (a) it has been estab- lished to the satis- faction of the Supreme Court that the debenture has been lost or des- troyed before it has been paid off;
50			Omit “judge”; insert “Court”.
55		Paragraph (b) of subsection (3) of section 67.	

SECOND



*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

No. 20, 1938 — <i>cont.</i>	Broken Hill Water and Sewerage— <i>cont.</i>	Subsection (1) of section 68.	Omit "in its equitable jurisdiction, in accordance with rules of court,".
5		Subsection (1) of section 128.	Omit "debt"; insert "debt or liquidated demand".
10		Subsection (2) of section 128.	Omit the subsection.
(ae) by inserting next after the matter relating to Act No. 11, 1940, the following new matter:—			
No. 28, 1941	Auctioneers and Agents.	Paragraph (a) of subsection (4) of section 31.	Omit "either by special case or upon notice of motion".
15			
20		Paragraph (b) of subsection (4) of section 31.	Omit "The provisions of Part VI of the District Courts Act, 1912-1936, shall, mutatis mutandis, extend to and in respect of any such appeal. For the purposes of such extension the word "party" where used in that Part"; insert "For the purposes of any such appeal the parties to the appeal to the District Court".
25			
30		Subsection (1) of section 42A.	Omit "suit"; insert "other proceedings".
35		Subsection (2) of section 42A.	Omit the subsection.
40		Section 50D.	Omit "no action"; insert "no action or other proceedings". Omit "action is"; insert "action is or proceedings are".
45		Paragraph (a) of subsection (4) of section 61.	Omit "either by special case or upon notice of motion".
50		Paragraph (b) of subsection (4) of section 61.	Omit "The provisions of Part VI of the District Courts Act, 1912-1936, shall, mutatis mutandis, extend to and in respect of any such appeal. For the purposes of such extension the word "party" where used in that Part"; insert "For the purposes of such appeal the parties to the appeal to the District Court".
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*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

No. 28, 1941 — <i>cont.</i>	Auctioneers and Agents— <i>cont.</i>	Subsection (4) of section 74.	Omit "or a judge thereof". Omit "court, judge,"; insert "court".
5		Subsection (1) of section 78.	Omit "by action at law".
10		Subsection (2) of section 78.	Omit "actions"; insert "proceedings". Omit "such action"; insert "such proceedings". Omit "or the presiding judge"; insert "or, where the proceedings are tried with a jury, the judge presiding at the trial".
15		Subsection (3) of section 78.	Omit "an order for the recovery of money under the Small Debts Recovery Act, 1912, as amended by subsequent Acts"; insert "a judgment debt under the Courts of Petty Sessions (Civil Claims) Act, 1970". Omit "Act, as so amended"; insert "Act".
20		Subsection (1) of section 83c.	Omit the subsection; insert the following subsection:— (1) The Court may dis- pense with service of the originating process of an application under this Division for the appoint- ment of a receiver.
25		Subsection (2) of section 83c.	Omit the subsection; insert the following subsection:— (2) Unless the Court otherwise orders the originating process shall be served upon the licensee not less than forty-eight hours before the hearing of the application.
30		Subsection (3) of section 83c.	Omit "Upon and during the hearing of any such application or any sub- sequent proceeding of any kind relating to the order or the conduct of the receiver- ship thereunder, no person shall be or be permitted to be present in Court, or if the proceedings are heard in chambers, in chambers"; insert "No person shall be or be permitted to be present at the hearing of any such application or any part of such hearing or at the hearing of any sub-
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## Supreme Court Amendment.

## SECOND SCHEDULE—continued.

5	No. 28, 1941 —cont.	Auctioneers and Agents— cont.	Subsection (3) of section 83c—cont.	sequent proceeding of any kind relating to the order or the conduct of the receiver- ship thereunder or any part of the hearing of any such subsequent proceeding”.
10			Paragraph (a) of subsection (3) of section 83c. Section 83j ..	Omit “to whom the application is being made”; insert “who constitutes the Court for the hearing”. Omit the section; insert the following section:—
15				83j. The receiver, the <b>Application</b> licensee, any member of the for direc- firm of which the licensee is tions. or was a partner or the cf. Act No. personal representative of a 22, 1898. deceased licensee, or any person who has submitted to the receiver a claim in respect of any property may apply to the Court for directions as to the manner in which the receiver shall exercise or perform the powers or duties conferred or imposed upon him by this Division either gener- ally or in respect of any particular matter specified in the application, where- upon the Court may make such order as to the Court seems fit.
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35	No. 67, 1941	Money-lenders and Infants Loans.	Subsection (7) of section 5.	Omit “rehearing.”; insert “rehearing, and the decision of the District Court shall be final and without appeal.”.
40			Subsection (4) of section 12.	Omit “rehearing.”; insert “rehearing, and the decision of the District Court shall be final and without appeal.”.
45			Subsection (6) of section 12.	Omit “an action”; insert “any proceedings”. Omit “the action”; insert “the proceedings”.
50	No. 15, 1942	Motor Vehicles (Third Party Insurance).	Paragraph (a) of subsection (4) of section 13.	Omit “either by way of special case or upon notice of motion”.
55				Omit “The provisions of Part VI of the District Courts Act, 1912, as amended by subsequent Acts shall, mutatis mutandis, apply to and in respect of any such appeal.”.
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*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

5	No. 15, 1942 — <i>cont.</i>  Motor Vehicles (Third Party Insurance)— <i>cont.</i>	Subsection (8) of section 14.	Omit "The jurisdiction of the Supreme Court in any appeal under this section may be exercised by any judge of that court. The decision of the Court on any such appeal shall be final, and the Minister shall give effect to the same. Rules of court of the Supreme Court may be made"; insert "Without limiting the rule-making powers conferred by the Supreme Court Act, 1970, rules may be made under that Act".	
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20			Paragraph (a) of subsection (1) of section 15.	Omit "the court or any judge of the court (or, where the judgment was obtained under the Small Debts Recovery Act, 1912-1933, a stipendiary or police magistrate)"; insert "the Supreme Court, where the judgment was obtained in that court, or any District Court judge, where the judgment was obtained in a District Court, or any stipendiary magistrate, where the judgment was obtained under the Courts of Petty Sessions (Civil Claims) Act, 1970,".
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40			Subsection (5) of section 31.	Omit "an order for the payment of money under the Small Debts Recovery Act, 1912, as amended by subsequent Acts"; insert "a judgment debt under the Courts of Petty Sessions (Civil Claims) Act, 1970".
45				Omit "Small Debts Court"; insert "court of petty sessions".
50			Paragraph (c) of section 37.	Omit "Companies Act, 1936,"; insert "Companies Act, 1961".
55	No. 17, 1943  Legal Assistance.	Section 6	Omit "a judge of" wherever occurring. Insert next after subsection (4b) the following new subsection:— (4c) Where the application is made in respect of proceedings for an order under subsection one of section eighty-four of the	
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*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

No. 17, 1943 — <i>cont.</i>	Legal Assist- ance— <i>cont.</i>	Section 6— <i>cont.</i>	
5			Supreme Court Act, 1970, the Public Solicitor may grant to the applicant a certificate that the applicant is entitled to legal assistance under this Act if he is satisfied on the matters mentioned in paragraphs (b) and (c) of subsection four of this section.
10			Insert next after subsection (6) the following new subsection:—
15			(6A) An order mentioned in paragraph (c) of subsection five of this section or in subsection six of this section may, in the case of litigation pending in a court other than the Supreme Court, be made by a judge of the court.
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25		Section 11 ..	Omit "or judge" wherever occurring.
30			Insert next after subsection (2) the following new subsection:—
35			(2A) In the case of proceedings in a court other than the Supreme Court, the powers of the court under subsection one and subsection two of this section may be exercised by a judge of the court.
40		Section 15 ..	Omit "a judge of" wherever occurring.
45			Omit "such judge"; insert "such court".
50			Insert next after subsection (3) the following new subsection:—
55			(4) An order mentioned in subsection two or subsection three of this section may, in the case of litigation pending in a court other than the Supreme Court, be made by a judge of the court.
60		Section 18 ..	Insert next after subsection (1) the following new subsection:
			(1A) Subsection one of this section does not apply to the Supreme Court, but this section does not limit the rule-making powers conferred by the Supreme Court Act, 1970.

SECOND

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

- (af) (i) by omitting from the sub-column headed "Amendment." of the Second Column in the matter relating to subsection one of section two of Act No. 33, 1946, "Any" and by inserting in lieu thereof "any";
- (ii) by omitting from the same sub-column of the Second Column in the matter relating to subsection one of section three of the same Act "any" and by inserting in lieu thereof "Any";
- (iii) by omitting from the same sub-column of the Second Column in the matter relating to subsection three of section four of the same Act "Small Debts Recovery Act, 1912" and by inserting in lieu thereof "Courts of Petty Sessions (Civil Claims) Act, 1970";
- (ag) by inserting next after the matter relating to Act No. 33, 1946, the following new matter:—
- |              |  |                                  |  |
|--------------|--|----------------------------------|--|
| No. 10, 1947 | New South Wales—<br>—Queensland<br>Border<br>Rivers. | Section 10 ..                    | Omit "writ"; insert "writ or order".   |
| 20           |  | Section 11 ..                    | Omit "may be made a rule or order of the Supreme Court and shall be enforceable accordingly"; insert "shall be enforceable by order of the Supreme Court". |
| 25           |  | Section 19 ..                    | Omit "any judge of".   |
| 30           |  |                                  | Omit "made without action, and either by summons or by motion upon notice to the claimant for compensation,".  |
| 35           |  |                                  | Omit "the judge"; insert "the Court".  |
| No. 11, 1949 | Technical<br>Education.                              | Subsection (5)<br>of section 10. | Omit "and shall be made in accordance with rules of court".<br>Omit "shall be final, and".   |
- (ah) by omitting from the sub-column headed "Amendment." of the Second Column in the matter relating to subsection five of section one hundred of Act No. 22, 1950, "Omit 'in accordance with rules of the court.'" and by inserting in lieu thereof "Omit 'in accordance with rules of Court' where firstly occurring.";

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

(ai) by inserting next after the matter relating to Act No. 22, 1950, the following new matter:—

5	No. 7, 1951 ..	Traffic Safety (Lights and Hoardings).	Section 3 ..	Next after subsection (1) insert the following new subsection:— (1A) The decision of the District Court upon any appeal under this section shall be final.
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(aj) (i) by omitting from the sub-column headed "Amendment." of the Second Column in the matter relating to subsection five of section thirty-four of Act No. 11, 1951, "Omit 'in accordance with rules of court.'" and by inserting in lieu thereof "Omit 'in accordance with rules of court' where firstly occurring."; Act No. 11,  
1951.  
(Sydney  
Harbour  
Transport.)

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(ii) by omitting from the same sub-column in the Second Column in the matter relating to subsection seven of section thirty-four of the same Act "than action" and by inserting in lieu thereof "than an action";

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(ak) by omitting from the sub-column headed "Amendment." of the Second Column in the matter relating to subsection five of section fifty-six of Act No. 36, 1954, "Omit 'in accordance with rules of court.'" and by inserting in lieu thereof "Omit 'in accordance with rules of court' where firstly occurring."; Act No. 36,  
1954.  
(Grain  
Elevators.)

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(al) by inserting next after the matter relating to Act No. 36, 1954, the following new matter:—

30	No. 71, 1961	Companies ..	Section 5 ..	In the definition of "Court" omit "in its equitable jurisdiction".
35			Subsection (16) of section 9.	Omit "in accordance with rules of Court".
40			Paragraph (c) of subsection (2) of section 20.	Omit "petition"; insert "proceedings".
45			Paragraph (b) of subsection (2) of section 64.	Omit "an affidavit".
50			Subsection (4) of section 65.	Omit "and the decision of the Court shall be final".
			Section 65 ..	Insert next after subsection (4) the following new sub section:— (4A) An appeal shall not lie to the Court of Appeal from a decision of the Court under subsection four of this section, except by leave of the Court of Appeal.

SECOND

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 71, 1961 — <i>cont.</i>	Companies— <i>cont.</i>	Subsection (3) of section 96	Omit the subsection; insert the following subsection:—
5			(3) If any person refuses or neglects to comply with a notice given under subsection two of this section the Court may, on application by the transferor, order that person to deliver up the documents mentioned in the notice to the company upon such terms or conditions as to the Court seem fit.
10			
15		Subsection (4) of section 96.	Omit the subsection.
20		Subsection (3) of section 99.	Omit “, and the order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company in default in such proportions as the Court thinks fit”.
25			
30		Section 117 ..	Insert next after subsection (2) the following new subsection:—
35			(3) Service on the Commission of originating process in proceedings for leave under this section shall be sufficient service on it of notice of intention to apply therefor for the purposes of subsection two of this section.
40		Section 122 ..	Insert next after subsection (2) the following new subsection:—
45			(2A) Service on the Commission of originating process in proceedings for leave under this section shall, if the hearing is not less than ten days after the day of service be sufficient compliance with subsection two of this section.
50			
55		Subsection (2) of section 155.	Omit the subsection.
		Subsection (1) of section 181.	Omit “in a summary way”.
60		Subsection (9) of section 181.	Omit “in a summary way”.



## Supreme Court Amendment.

## SECOND SCHEDULE—continued.

No. 71, 1961 —cont.	Companies— cont.	Subsection (9) of section 181.	Omit “restrain”; insert “stay or restrain”.
5		Subsection (3) of section 186.	Omit “upon a petition duly presented to the Court”; insert “in proceedings in the Court commenced”.
10		Subsection (3) of section 216.	Omit the subsection.
15		Subsection (4) of section 216.	Omit the subsection.
15		Subsection (5) of section 216.	Omit the subsection.
20		Subsection (6) of section 216.	Omit the subsection.
20		Subsection (1) of section 221.	Omit “petition”; insert “application”.
25		Paragraph (a) of subsection of section 221.	Omit “present the petition”; insert “commence proceed- ings for winding up”.
30		Paragraph (b) of subsection (2) of section 221.	Omit “presentation of the petition”; insert “commencement of the proceedings”. Omit the paragraph; insert the following paragraph:—
35			(b) proceedings for winding up on the ground of default in lodging the statutory report or in holding the statutory meeting shall not be commenced by any person except a contributory nor before the expiration of fourteen days after the last day on which the meeting ought to have been held;
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50		Paragraph (c) of subsection (2) of section 221.	Omit “petition if presented”; insert “proceedings if commenced”.
55		Section 223 ..	Omit “presentation of the petition” wherever occurring; insert “commencement of the proceedings”.

SECOND

*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

No. 71, 1961 — <i>cont.</i>	Companies— <i>cont.</i>	Section 224 ..	Omit "petition" wherever occurring; insert "application".
5			Omit "petitioner" wherever occurring; insert "applicant".
10		Subsection (1) of section 225.	Omit "On hearing a winding up petition the Court may dismiss it with or without costs"; insert "On hearing proceedings for winding up the Court may dismiss the proceedings".
15		Subsection (2) of section 225.	Omit "petition coming on for hearing or at any time on the application of the petitioner"; insert "hearing of the proceedings or at any time on motion of the applicant".
20			Omit "on the hearing of the petition"; insert "on the hearing".
25		Paragraph (a) of subsection (2) of section 225.	Omit "hearing of the petition;"; insert "hearing; and".
30		Paragraph (b) of subsection (2) of section 225.	Omit "Court;"; insert "Court.".
35		Paragraph (c) of subsection (2) of section 225.	Omit the paragraph.
40		Paragraph (d) of subsection (2) of section 225.	Omit the paragraph.
45		Paragraph (e) of subsection (2) of section 225.	Omit the paragraph.
50		Paragraph (f) of subsection (2) of section 225.	Omit the paragraph.
55		Subsection (3) of section 225.	Omit "petition is presented"; insert "proceedings are commenced".
			Omit "petitioners" wherever occurring; insert "applicants".
		Subsection (4) of section 225.	Omit "petition is presented"; insert "proceedings re commenced".

*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

No. 71, 1961 — <i>cont.</i>	Companies— <i>cont.</i>	Section 226 ..	Omit "presentation of a winding up petition"; insert "commencement of proceedings for winding up".
5		Section 229 ..	Omit "petition"; insert "proceedings".
10		Subsection (1) of section 230.	Omit "petitioner"; insert "applicant".
15		Subsection (2) of section 230.	Omit "On the passing and entering of the winding up order the petitioner shall within seven days"; insert "The applicant shall within the time prescribed by the rules".
20		Paragraph (a) of subsection (2) of section 230.	Omit "order"; insert "winding up order".
25		Subsection (4) of section 230.	Omit "petition"; insert "application".
30		Subsection (5) of section 230.	Omit "petitioner"; insert "applicant".
35		Subsection (1) of section 249.	Omit "summon before it"; insert "make orders for the attendance before it of".
40		Subsection (4) of section 249.	Omit the subsection.
45		Subsection (5) of section 249.	Omit "summoned"; insert "ordered to attend".
50		Subsection (6) of section 249.	Omit "or the Master or other officer of the Court".
55		Subsection (6) of section 250.	Omit "or the Master or other officer, as the case may be,".
60		Subsection (6) of section 249.	Omit the subsection.
		Subsection (6) of section 250.	Omit "and if the Court, after hearing any evidence given or witnesses called by the liquidator, grants the application the Court may allow the applicant such costs as in its discretion it thinks fit".
		Subsection (8) of section 250.	Omit the subsection.
		Section 267 ..	Omit the section; insert the following section:— 267. (1) Any member or Review of creditor or the liquidator liquidator's may at any time before the remuneration of the company apply to the Court to N.S.W. s. review the amount of the 31. remuneration of the Vic. s. 206. liquidator. Tas. s. 217.

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 71, 1961 — <i>cont.</i>	Companies— <i>cont.</i>	Section 267— <i>cont.</i>	(2) An appeal shall not lie to the Court of Appeal from a decision of the Court under subsection one of this section, except by leave of the Court of Appeal.
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10		Section 276 ..	Omit "a petition has been presented to the Court to wind up"; insert "proceedings in the Court have been commenced for the winding up of".
15		Subsection (2) of section 282.	Omit the subsection.
20		Section 290 .. Paragraph (a) of subsection (2) of section 293.	Omit the section. Omit "presentation of the petition" wherever occurring; insert "commencement of the proceedings".
25		Subsection (2) of section 363.	Omit the subsection.
25		Subsection (1) of section 365.	Omit "Court"; insert "court".
30		Section 366 ..	Insert next after subsection (4) the following new subsection:— (5) This section does not limit the operation of section eighty-one of the Supreme Court Act, 1970, or the operation of any rules relating to the enlargement or abridgement of time.
35			
40		Subsection (1) of section 368.	Omit "an application made to a judge of the Court in chambers"; insert "application to the Court".
45		Subsection (2) of section 368.	Omit the subsection; insert the following subsection:— (2) An appeal shall not lie to the Court of Appeal from any order or decision of the Court on or in relation to an application under this section, except by leave of the Court of Appeal.
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SECOND

*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

No. 71, 1961 — <i>cont.</i>	Companies— <i>cont.</i>	Section 384 . .	<p>Omit the section; insert the following section:—</p> <p>384. (1) Rules of Court Rules. may be made under the N.S.W. s Supreme Court Act, 1970— 380 (2).</p> <p>(a) with respect to any Vic. s. 10. matter or thing Qld. s. 384. which is by this Act S.A. s. 372. required or permit- W.A. s. 407. ted to be prescribed Tas. s. 323. by rules or which is necessary or convenient to be prescribed under the provisions of any of the enactments of this Act; and</p> <p>(b) without limiting the generality of the provisions of this section, with respect to meetings ordered by the Court.</p> <p>(2) Subsection one of this section does not limit the rule-making powers conferred by the Supreme Court Act, 1970.</p>
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30		Subsection (3) of section 385.	<p>Omit the subsection; insert the following subsection:—</p> <p>(3) Regulations made under any provision of this Act shall—</p> <p>(a) be published in the Gazette;</p> <p>(b) take effect from the date of publication, or from a later date specified in the regulations.</p>
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No. 11, 1962	Business Names.	Section 5A . .	<p>Insert next after subsection (4) the following new subsection:</p> <p>(4A) No appeal shall lie from the decision of the District Court on an application made under subsection three of this section.</p>
45			
50		Subsection (1) of section 14.	<p>Omit "any suit or action"; insert "any proceedings".</p> <p>Omit "suit or action is"; insert "proceedings are".</p> <p>Omit "all proceedings in the suit or action"; insert "the proceedings".</p>
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60		Subsection (2) of section 14.	<p>Omit "in the case of the Supreme Court by a Judge thereof in chambers".</p>

SECOND

*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

5	No. 11, 1962 — <i>cont.</i>	Business Names— <i>cont.</i>	Subsection (3) of section 14.	Omit "Proceedings may"; insert "Subject to the Supreme Court Act, 1970, proceedings may".
10	No. 4, 1963	Commercial Agents and Private Inquiry Agents.	Subsection (3) of section 19. Section 14 ..	Omit "in its equitable jurisdiction". Omit "rehearing."; insert "rehearing, and the decision of the District Court thereon shall be final and without appeal."
15			Subsection (3) of section 30.	Omit "an order for the payment of money under the Small Debts Recovery Act, 1912"; insert "a judgment debt under the Courts of Petty Sessions (Civil Claims) Act, 1970".
20	No. 44, 1963	Cobar Water Supply.	Subsection (3) of section 37. Paragraph (a) of subsection (3) of section 33.	Omit "action"; insert "proceedings". Omit the paragraph; insert the following paragraph: (a) it has been estab- lished to the satisfaction of the Supreme Court that the debenture has been lost or destroyed before it has been paid off;
25			Paragraph (b) of subsection (3) of section 33.	Omit "judge"; insert "Court".
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40				(am) by omitting from the sub-column headed "Amendment." of Act No. 59, 1963, "Omit 'in accordance with rules of court.'" and by inserting in lieu thereof "Omit 'in accordance with rules of court' where firstly occurring."; (State Planning Authority.)
				(an) by inserting next after the matter relating to Act No. 59, 1963, the following new matter:—
45	No. 23, 1965	Adoption of Children.	Section 6 ..	In the definition of "Court" omit "in its equitable jurisdiction". Insert next after the definition of "Interim order" the following new definition:— "Nominated officer" means such registrar or other officer of the Court as is speci- fied by rules of Court to be the nomin- ated officer for the purposes of this Act.
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*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

No. 23, 1965 — <i>cont.</i>	Adoption of Children— <i>cont.</i>	Section 7 ..	Omit the section.
5		Subsection (2) of section 14.	Omit the subsection; insert the following subsection: (2) Subject to rules of Court an appeal under subsection one of this section may, where the organisation is unincorporate, be brought and continued by one or more of the persons comprising the organisation as representing all persons comprising the organisation.
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20		Subsection (3) of section 22.	Omit “may, in accordance with rules of Court, dispense”; insert “may dispense”.
25		Section 28 ..	Omit “Master in Equity” wherever occurring; insert “nominated officer”.
25		Subsection (1) of section 32.	Omit “a request”; insert “application”.
30		Subsection (1A) of section 32.	Omit “a request”; insert “application”.
30		Subsection (4) of section 32.	Omit “request” wherever occurring; insert “application”.
35		Paragraph (a) of subsection (5) of section 32.	Omit “request” wherever occurring; insert “application”.
40		Paragraph (b) of subsection (5) of section 32.	Omit “requesting” wherever occurring; insert “applying for”.
40			Omit “request” wherever occurring; insert “application”.
45		Subsection (6) of section 32.	Omit the subsection.
45		Subsection (6) of section 47.	Omit “Master in Equity”; insert “nominated officer”.
50		Section 61 ..	Omit “Master in Equity”; insert “nominated officer”.
		Section 62 ..	Omit “Master in Equity”; insert “nominated officer”.
		Section 63 ..	Omit “Master in Equity”; insert “nominated officer”.
		Section 72 ..	Omit the section; insert the following section:

SECOND

Supreme Court Amendment.

SECOND SCHEDULE—continued.

<p>No. 23, 1965 —cont.</p> <p>5</p> <p>10</p>	<p>Adoption of Children— cont.</p>	<p>Section 72— cont.</p>	<p>72. (1) Rules of Court may be made under the Supreme Court Act, 1970, regulating practice and procedure in respect of proceedings under this Act. (2) Subsection one of this section does not limit the rule-making powers conferred by the Supreme Court Act, 1970.</p>	<p>Rules of court.</p>
<p>15</p>	<p>(ao) by omitting from the sub-column headed "Amendment." of the Second Column in the matter relating to section three of Act No. 32, 1965, "POWER TO ENTER SUBSTITUTED" and by inserting in lieu thereof "POWER TO ENTER SUBSTITUTED";</p>			<p>Act No. 32, 1965. (Law Reform (Miscellaneous Provisions).)</p>
<p>20</p>	<p>(ap) by inserting next after the matter relating to Act No. 32, 1965, the following new matter:—</p>			
<p>No. 10, 1966</p> <p>25</p> <p>30</p>	<p>State Development and Country Industries Assistance.</p>	<p>Paragraph (a) of subsection (3) of section 17.</p> <p>Paragraph (b) of subsection (3) of section 17.</p>	<p>Omit the paragraph; insert the following paragraph:— (a) it has been established to the satisfaction of the Supreme Court that the debenture has been lost or destroyed before it has been paid off; Omit "judge"; insert "Court".</p>	
<p>No. 18, 1967</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p>	<p>Permanent Building Societies.</p>	<p>Section 38 ..</p>	<p>Omit the section; insert the following section:— 38. (1) Where the registrar refuses to register a society or any of its rules, or any alteration of its rules or directs a change of its name, the registrar shall, if so required by the society, set forth in writing under his hand the grounds of his refusal or the grounds upon which the direction was given. (2) The society may, unless the grounds of the registrar's refusal or direction are that the society would be, or is, registered by a name, or a name of a kind, that the Minister has</p>	<p>Review of decisions of registrar. cf. Act No. 1, 1924, s. 122.</p>



*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

5	No. 18, 1967 — <i>cont.</i>	Permanent Building Societies— <i>cont.</i>	Section 38— — <i>cont.</i>	directed the registrar not to accept for registration, apply to the Supreme Court for review of the refusal or direction. (3) On the review, the Supreme Court may make such orders as may be proper in the circumstances. Omit "in its equitable jurisdiction".
10			Paragraph (b) of subsection (9) of section 81.	Omit "that court"; insert "the Court".
15			Paragraph (c) of subsection (9) of section 81.	Omit "by a judge". Omit "the judge" where firstly occurring; insert "the presiding judge at the trial".
20			Subsection (6) of section 85.	Omit "or a Judge thereof".
25	(aq) (i)	by omitting from the sub-column headed "Amendment." of the Second Column the matter relating to section two of Act No. 72, 1967, and by inserting in lieu thereof the following matter:—		Act No. 72, 1967. (Supreme Court (Summary Jurisdiction).)
Insert next after the definition of "Judge" the following new definition:—				
30		"Rules" mean rules made under the Supreme Court Act, 1970.		
	(ii)	by inserting in the Second Column next after the matter relating to section two of the same Act the following new matter relating to the same Act:—		
35		Subsection (1) of Section 4.		Omit "of court".
40	(iii)	by omitting from the sub-column headed "Amendment." of the Second Column the matter relating to section eight of the same Act and by inserting in lieu thereof the following matter:—		
		Omit "of court".		
45	(iv)	by omitting from the same sub-column of the Second Column the matter relating to section ten of the same Act and by inserting in lieu thereof the following matter:—		
		Omit "of court".		

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

- 5 (v) by omitting from the same sub-column of the Second Column the matter relating to subsection two of section sixteen of the same Act and by inserting in lieu thereof the following matter:—  
Omit “of court”.
- 10 (vi) by omitting from the same sub-column of the Second Column the matter relating to subsection three of section eighteen of the same Act and by inserting in lieu thereof the following matter:—  
Omit “rules of the Court of Appeal”; insert “the rules”.
- 15 (vii) by omitting from the same sub-column of the Second Column the matter relating to subsection one of section nineteen of the same Act and by inserting in lieu thereof the following matter:—  
Omit “special”; insert “stated”.  
Omit “that Court”; insert “the Court of Appeal”.  
Omit “rules of the Court of Appeal”; insert “rules”.
- 20 (viii) by omitting from the same sub-column of the Second Column the matter relating to subsection one of section twenty-four of the same Act and by inserting in lieu thereof the following matter:—  
25 Omit “of this Act”; insert “ of this Act has been made,”.  
Omit “, within twenty-one days after the conviction or order,”.
- 30 (ix) by omitting from the same sub-column of the Second Column in the matter relating to subsection three of section twenty-four of the same Act “the Appeal” and by inserting in lieu thereof “the appeal”;
- 35 (x) by omitting from the Second Column the matter relating to subsection one of section twenty-nine of the same Act, the matter relating to subsection two of the same section of the same Act, and the matter relating to paragraph (f) of subsection two of the same section

SECOND

*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

of the same Act and by inserting in lieu thereof the following matter:—

5	Subsection (1) of section 29.	Omit "The Judges or any five of them may make general rules"; insert "Rules may be made under the Supreme Court Act, 1970,".
10	Subsection (2) of section 29. Paragraph (f) of subsection (2) of section 29.	Omit "made under that subsection". Omit "of the Court" where firstly occurring.
15	Subsection (3) of section 29.	Omit the subsection; insert the following subsection:— (3) Subsections one and two of this section do not limit the rule-making powers conferred by the Supreme Court Act, 1970.
20	Subsection (4) of section 29.	Omit the subsection.

(ar) by inserting next after the matter relating to Act No. 72, 1967, the following new matter:—

25	No. 90, 1967	Pipelines ..	Subsection (4) of section 33.	Omit "an action"; insert "proceedings".
30			Subsection (5) of section 33.	Omit "action"; insert "proceedings".
35			Subsection (7) of section 33.	Omit the subsection.
40			Section 52 ..	Omit the section; insert the following section: 52. (1) The Supreme Court may, on the application of a person aggrieved by—
45				(a) the omission of an entry from the register;
50				(b) an entry made in the register without sufficient cause;
55				(c) an entry wrongly existing in the register; or
				(d) an error or defect in an entry in the register,
				make such order as it thinks fit directing the rectification of the register.
				(2) Notice of an application under this section shall be given to the Minister, who may appear and be heard and who shall appear if so directed by the Supreme Court.

Rectification of register.

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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 90, 1967 <i>cont.</i>	Pipelines— <i>cont.</i>	Section 52— <i>cont.</i>	(3) An office copy of an order made by the Supreme Court may be served on the Minister, and the Minister shall, upon receipt of the order, rectify the register accordingly.
5			
10	(as) (i)	by omitting from the sub-column headed "Subject." of the First Column in the matter relating to Act No. 11, 1968, "Marketing" wherever occurring and by inserting in lieu thereof "Market";	Act No. 11, 1968. (Sydney Farm Produce Market Authority.)
15	(ii)	by omitting from the sub-column headed "Amendment." of the Second Column in the matter relating to subsection five of section forty-four of the same Act "Omit 'in accordance with rules of court.'" and by inserting in lieu thereof "Omit 'in accordance with rules of court' where firstly occurring.";	
20	(at)	by inserting next after the matter relating to Act No. 11, 1968, the following new matter:—	
No. 15, 1968	Companies (Transfer of Domicile).	Section 28	<p>Omit the section; insert the following section:</p> <p>28. The power to make Rules.</p> <p>rules conferred by section three hundred and eighty-four of the Companies Act with respect to the matters and things mentioned in that section shall include power to make rules with respect to the like matters and things arising under this Act.</p> <p>Subsection (4) of section 29. Omit the subsection.</p>
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35			
40	(au) (i)	by omitting from the sub-column headed "Amendment." of the Second Column in the matter relating to subsection seven of section fifty-three of Act No. 56, 1968, "Omit 'in accordance with rules of court.'" and by inserting in lieu thereof "Omit 'in accordance with rules of court' where firstly occurring.";	Act No. 56, 1968. (Sydney Cove Re-development Authority.)
45	(ii)	by omitting from the same sub-column of the Second Column in the matter relating to the same subsection of the same section of the same Act "court, if" and by inserting in lieu thereof "court may, if";	

SECOND

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*Supreme Court Amendment.*

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SECOND SCHEDULE—*continued.*

- (av) (i) by omitting from the Second Column the matter relating to subsection three of section thirty-two of Act No. 8, 1969, and the matter relating to subsection four of the same section of the same Act and by inserting in lieu thereof:—

Section 32 . . . Omit the section; insert the following section:—

32. (1) Where the registrar refuses to register a proposed credit union, or a proposed association, or any of its proposed rules, or any proposed alteration of the rules of a credit union or an association, or directs a change of its name, the registrar shall, if so required by the applicant for registration or, as the case may be, the credit union or association, set forth in writing under his hand within two months of the date of receipt of the requisition, the grounds of his refusal or, in the case of a direction, the grounds upon which the direction was given.

(2) The applicant for registration or, as the case may be, the credit union or association may, unless the grounds of the registrar's refusal or direction are that the credit union or association would be, or is, registered by a name, or a name of a kind, that the Minister has directed the registrar not to accept for registration, apply to the Supreme Court for review of the refusal or direction.

(3) On the review the Supreme Court may make such orders as may be proper in the circumstances.

Act No. 8,  
1969.  
(Credit  
Union.)

Review of  
decisions of  
registrar.  
Act No. 1,  
1924, s. 72.  
Act No. 18,  
1967, s. 36.

- (ii) by omitting from the sub-column headed "Amendment." of the Second Column the matter relating to subsection twelve of section sixty-six of the same Act and by inserting in lieu thereof the following matter:—

Omit "in its equitable jurisdiction".

Omit "that Court"; insert "the Court".

- (iii) by omitting from the same sub-column of the Second Column the matter relating to subsection thirteen of the same Act and by inserting in lieu thereof the following matter:—

Omit "by a judge".

Omit "the judge" where firstly occurring; insert "the presiding judge at the trial";

SECOND

*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

(aw) (i) by omitting from the sub-column headed "Amendment." of the Second Column the matter relating to subsection one of section forty of Act No. 30, 1969, and by inserting in lieu thereof the following matter:—  
 Omit "sheriff, bailiff, "; insert "bailiff";

Act No. 30, 1969. (Imperial Acts Application.)

(ii) by omitting from the same sub-column of the Second Column the matter relating to subsection two of the same section of the same Act and by inserting in lieu thereof the following matter:—  
 Omit "sheriff, bailiff, "; insert "bailiff".

(ax) by omitting from the sub-column headed "Amendment." of the Second Column in the matter relating to subsection one of section seventy-seven of Act No. 31, 1969, "Small Debts Recovery Act, 1912" and by inserting in lieu thereof "Courts of Petty Sessions (Civil Claims) Act, 1970";

Act No. 31, 1969. (Limitation.)

(ay) by inserting next after the matter relating to Act No. 53, 1969, the following new matter:—

20	No. 11, 1970	Courts of Petty Sessions (Civil Claims)	Section 21 ..	Omit "twenty-one"; insert "eighteen".
			Subsection (3) of section 41.	Omit "duces tecum"; insert "for production".
25			Subsection (3) of section 69.	Omit "117A"; insert "one hundred and fifteen".
				Omit "by way of special case".
30			Subsection (2) of section 72.	Omit "duces tecum"; insert "for production".
			Section 74 ..	Omit "a plaint filed in a court or any order or proceedings thereon under this Act, shall not be removed out of a court by writ of certiorari or otherwise"; insert "no order of removal out of a court into the Supreme Court shall be made of a plaint filed in a court or of any order or proceedings thereon under this Act".
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40				
45	No. 22, 1970	Land Development Contribution Management	Section 62 ..	Omit "at the suit of"; insert "by".

## Supreme Court Amendment.

## SECOND SCHEDULE—continued.

No. 29, 1970	Dairy Industry Authority.	Section 31 ..	Omit "action, suit"; insert "action or other proceedings".
5		Subsection (3) of section 32.	Omit the subsection; insert the following subsection:— (3) In any proceedings (whether at law or in equity) by any dairyman, transferee, or party aforesaid in respect of any such milk or chose in action or part, the Authority may plead this section as a defence to the proceedings.
10			
15		Paragraph (a) of subsection (3) of section 73.	Omit the paragraph; insert the following paragraph:— (a) it has been established to the satisfaction of the Supreme Court that the debenture or bond has been lost or destroyed before it has been paid off.
20			
25		Paragraph (b) of subsection (3) of section 73.	Omit "judge"; insert "Court".
30		Section 77 ..	Omit the section; insert the following section:— 77. Any charge, fee or money due to the authority under the provisions of this Act may be recovered as a debt or liquidated demand in a court of competent jurisdiction.
35			Recovery of charges, &c.
40		Subsection (1) of section 81.	Omit "A writ or other process"; insert "Proceedings". Omit "sued out or served upon"; insert "commenced against".
45		Subsection (4) of section 81.	Omit "or any judge of the court". Omit "or judge" wherever occurring.
50		Subsection (5) of section 81.	Omit "a judge of". Omit "in accordance with rules of court".
55		Subsection (7) of section 81.	Omit "judge may, if he"; insert "Court may, if it".
		Subsection (8) of section 81.	Omit the subsection.
		Subsection (9) of section 81.	Omit "in bar"; insert "as a defence to the action". After "action" insert "other than an action in the Supreme Court".
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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 35, 1970	Securities Industry.	Subsection (1) of section 4.	In the definition of "Court" omit "has the meaning ascribed thereto in the Companies Act, 1961"; insert "means the Supreme Court of New South Wales".
5			
10		Subsection (2) of section 60.	Omit "within twenty-eight days after receipt of notice thereof appeal to the Court in accordance with rules of court"; insert "within the time prescribed by rules of court appeal to the Court".
15			
20		Subsection (3) of section 60.	Omit the subsection; insert the following subsection:—  (3) An appellant shall, on the day on which he commences proceedings in the Court by way of appeal, lodge a copy of the originating process in the proceedings with the secretary of the committee against whose opinion he is appealing.
25			
30		Subsection (4) of section 60.	Omit "The Court shall inquire into and decide upon the appeal which shall be in the nature of a re-hearing and, if"; insert "If".
35		Subsection (3) of section 61.	Omit "lie"; insert "lie nor shall proceedings for damages be taken".
40		Subsection (3) of section 62.	Omit " , in accordance with rules of court,".
45		Subsection (2) of section 63.	Omit "action at law"; insert "proceedings". Omit "such action"; insert "such proceedings". Omit " , and all questions of costs shall be in the discretion of the Court".
		Subsection (3) of section 68.	Omit "lie"; insert "lie nor shall proceedings be taken."
		Section 69 ..	Omit "action"; insert "action or claim".

SECOND



*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

5	No. 37, 1970	Legal Practitioners (Legal Aid).	Section 8 ..	Insert next after subsection (2) the following new subsection:— (2A) Subsection two of this section does not apply to the issue of a certificate in respect of proceedings for an order against the applicant under subsection one of section eighty-four of the Supreme Court Act, 1970.
10				
15	No. 60, 1970	Minors (Property and Contracts).	Section 51 ..	Omit the section; insert the following section:— 51 (1) The practice and Rules of procedure in proceedings court. under this Act in the Supreme Court shall be as prescribed by rules of court made under the Supreme Court Act, 1970. (2) Rules of court not inconsistent with this Act may be made by a majority of the District Court judges for the regulation of the practice and procedure in proceedings under this Act in the District Courts. (3) A rule made in the exercise of the power to make rules given by subsection two of the section shall:— (a) be published in the Gazette; (b) take effect on and from the date of publication or a later date specified in the rule; and (c) be laid before each House of Parliament within fourteen sitting days of that House after the date of publication. (4) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a rule referred to in subsection three of this section has been laid before
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SECOND

*Supreme Court Amendment.*

SECOND SCHEDULE—*continued.*

5	No. 60, 1970 — <i>cont.</i>	Minors (Property and Contracts)— <i>cont.</i>	Section 51— — <i>cont.</i>	it, disallowing the rule or any part thereof, the rule or part thereupon ceases to have effect. (5) For the purposes of subsections three and four of this section, sitting days shall be counted whether or not they occur during the same session. (6) Rules of court not inconsistent with this Act may be made by the Governor for the regulation of the practice and procedure in proceedings under this Act in courts of petty sessions.
10				
15				
20	No. 66, 1970	Wheat Quotas	Subsection (1) of section 31.	Omit "writ of injunction or mandamus"; insert "proceeding for an injunction or for a judgment or order commanding the doing of an act".
25	No. 95, 1970	State Pollution Control Commission.	Subsection (1) of section 30.	Omit "A writ or other process"; insert "Proceedings".
30				Omit "sued out or served upon"; insert "commenced against".
35			Subsection (4) of section 30.	Omit "or any judge of the court".
40				Omit "or judge" wherever occurring.
45			Subsection (5) of section 30.	Omit "a judge of".
50	No. 96, 1970	Summary Offences.	Section 62 ..	Omit "in accordance with rules of court".
55				Omit "judge may, if he"; insert "Court may, if it".
60			Subsection (7) of section 30.	Omit the subsection.
			Subsection (8) of section 30.	Omit "in bar"; insert "as a defence to the action".
			Subsection (9) of section 30.	After "action" insert "other than an action in the Supreme Court".
				Omit "liable, at the suit of the person who laid the information for the offence, to any civil proceedings in respect of the cause for which he was convicted"; insert "liable to any civil proceedings in respect of the cause for which he was convicted brought by the person who laid the information for the offence".

SECOND

## Supreme Court Amendment.

## SECOND SCHEDULE—continued.

5	No. 60, 1970 —cont.	Minors (Property and Contracts)— cont.	Section 51— —cont.	it, disallowing the rule or any part thereof, the rule or part thereupon ceases to have effect. (5) For the purposes of subsections three and four of this section, sitting days shall be counted whether or not they occur during the same session. (6) Rules of court not inconsistent with this Act may be made by the Governor for the regulation of the practice and procedure in proceedings under this Act in courts of petty sessions.
10				
15				
20	No. 66, 1970	Wheat Quotas	Subsection (1) of section 31.	Omit "writ of injunction or mandamus"; insert "proceeding for an injunction or for a judgment or order commanding the doing of an act".
25	No. 95, 1970	State Pollution Control Commission.	Subsection (1) of section 30.	Omit "A writ or other process"; insert "Proceedings".
30			Subsection (4) of section 30.	Omit "sued out or served upon"; insert "commenced against".
35			Subsection (5) of section 30.	Omit "or any judge of the court". Omit "or judge" wherever occurring. Omit "a judge of".
40			Subsection (7) of section 30.	Omit "in accordance with rules of court".
45			Subsection (8) of section 30.	Omit "judge may, if he"; insert "Court may, if it".
			Subsection (9) of section 30.	Omit the subsection.
50	No. 96, 1970	Summary Offences.	Section 62 ..	Omit "in bar"; insert "as a defence to the action". After "action" insert "other than an action in the Supreme Court". Omit "liable, at the suit of the person who laid the information for the offence, to any civil proceedings in respect of the cause for which he was convicted"; insert "liable to any civil proceedings in respect of the cause for which he was convicted brought by the person who laid the information for the offence".
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*Supreme Court Amendment.*


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SECOND SCHEDULE—*continued.*

No. 18, 1971	Land Aggregation Tax Management.	Subsection (5) of section 35.	Omit "in writing request the Commissioner to treat his objection as an appeal and to forward it to the Supreme Court, and the Commissioner shall, within thirty days of the receipt by him of the request, forward it accordingly"; insert "appeal to the Supreme Court from the assessment".	
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10				
15			Subsection (1) of section 37. Subsection (2) of section 37.	Omit the subsection. Omit "the appeal"; insert "an appeal to the Supreme Court under section thirty-five of this Act".
20			Subsection (5) of section 37. Subsection (6) of section 37.	Omit the subsection. Omit the subsection.
25			Subsection (7) of section 37. Subsection (8) of section 37.	Omit the subsection. Omit the subsection.
			Subsection (9) of section 37.	Omit the subsection.
			Section 38 ..	Omit the section.
30 No. 22, 1971		Pay-roll Tax	Subsection (1) of section 33.	Omit "by a request in writing accompanied by a fee of five dollars, request the Commissioner to treat his objection as an appeal and to forward it to the Supreme Court and the Commissioner shall, as soon as practicable, forward it accordingly"; insert "appeal to the Supreme Court".
35				
40			Subsection (2) of section 33.	Omit the subsection.

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