

Queensland



# **SUPREME COURT ACT 1995**

**Reprinted as in force on 11 December 1997  
(includes amendments up to Act No. 82 of 1997)**

**Reprint No. 1B**

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This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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# SUPREME COURT ACT 1995

[as amended by all amendments that commenced on or before 11 December 1997]

## **An Act to make better provision for the trial of civil and criminal causes, and to consolidate certain provisions about the Supreme Court**

### **PART 1—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Supreme Court Act 1995*.

#### **Act is a consolidation**

2.(1) This Act is a consolidation of provisions of the *Supreme Court Act 1921* (the “**existing provisions**”) and provisions relocated from the following Acts (the “**relocated provisions**”)—

- *Commercial Causes Act 1910*
- *Common Law Pleading Act 1867*
- *Common Law Practice Act 1867*
- *Common Law Process Act 1867*
- *Costs Act 1867*
- *Equity Act 1867*
- *Interdict Act 1867*
- *Judicature Act 1876*
- *Sheriff’s Act 1875*
- *Supreme Court Act 1867*

*Supreme Court Act 1995*

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- *Supreme Court Act 1874*
- *Supreme Court Act 1892*
- *Supreme Court Act 1893*
- *Supreme Court Act 1895*
- *Supreme Court Act 1899*
- *Supreme Court Acts Amendment Act (No. 2) 1958*
- *Supreme Court Constitution Amendment Act 1861*
- *Writs of Dedimus Act 1871.*

(2) To remove any doubt, it is declared that the relocated provisions were not re-enacted by the *Statute Law Revision Act (No. 2) 1995*, but merely moved (without re-enactment) from the Acts in which they were enacted to this Act.

(3) Without limiting subsections (1) and (2) and to further remove any doubt, it is also declared that the relocation to this Act of the relocated provisions did not impliedly repeal or amend, or otherwise affect the operation of, the existing provisions, the relocated provisions or the provisions of any other law and, in particular, did not affect the meaning or effect that the existing or relocated provisions, or the provisions of the other law, had because of the respective times when they were enacted.

(4) In addition, it is declared that the relocation did not—

- (a) affect any jurisdiction or power of a court or judge; or
- (b) affect any principle or rule of law or equity; or
- (c) affect any right, privilege or liability; or
- (d) revive anything not existing or in force.

## **PART 2—PROVISIONS FROM SUPREME COURT CONSTITUTION AMENDMENT ACT 1861**

### **Purpose of pt 2**

3. The purpose of this part is to amend the constitution of the Supreme Court and provide for the better administration of justice.

### **Deeds etc. may be registered**

4. All Acts of the legislature Crown grants wills and other instruments affecting land cattle mortgages and liens on wool and letters of naturalisation within the State may be enrolled or registered in the office of the registrar of the Supreme Court and for all purposes of and connected with such enrolment and registration the said registrar shall have the same powers liabilities and duties in every respect as the registrar-general would have had under any Act of Parliament for the registration of deeds except for the provisions of this part.

### **As to examination of witnesses on interrogatories**

5. After the passing of the *Supreme Court Constitution Amendment Act 1861* the same powers and jurisdiction with respect to the examination of witnesses by commission or otherwise shall in every action and suit in the Supreme Court be vested in and may be exercised by the judge or judges of the said court at Brisbane and each of them (whether any such witness shall reside within the jurisdiction of any such judge or not) as are vested in the several courts at Westminster and the judges thereof respectively in actions then pending by the Act passed in the first year of His late Majesty intituled 'An Act to enable Courts of Law to order the examination of witnesses upon interrogations and otherwise'.

### **Habeas corpus**

6.(1) It shall be lawful for any prisoner to apply to the magistrate of Brisbane for the time being for a conditional rule or order to grant any such prisoner bail on an application made to the magistrate for a writ of habeas corpus and such magistrate shall have power to issue the same if the

magistrate shall think fit and the said rule or order shall have the same force and effect as if it had been granted by a judge of the Supreme Court.

(2) However, no such rule or order shall be made absolute except by a judge of the Supreme Court.

## **PART 3—PROVISIONS FROM COMMON LAW PLEADING ACT 1867**

### *Division 1—Purpose of part*

#### **Purpose of pt 3**

7. The purpose of this part is to consolidate and amend the laws about pleading in actions at law.

### *Division 2—Payment*

#### **Action of debt being brought on judgment after money paid such payment may be pleaded in bar the like in bonds**

8. When any action of debt or *scire facias* shall be brought upon any judgment if the defendant hath paid the money due upon such judgment such payment shall and may be pleaded in bar of such action or suit and where an action of debt is brought upon any bond which hath a condition or defeasance to make void the same upon payment of a lesser sum at a day or place certain if the obligor the obligor's heirs executors or administrators have before the action brought paid to the obligee the obligee's executors or administrators the principal and interest due by the defeasance or condition of such bond though such payment was not made strictly according to the condition or defeasance yet it shall and may nevertheless be pleaded in bar of such action and shall be as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeasance and had been so pleaded.

***Division 3—Payment into court*****Principal and interest on bonds payable into court**

9. If at any time pending an action upon any such bond with a penalty the defendant shall bring into court all the principal money and interest due on such bond and also all such costs as have been expended in any suit or suits in law or equity upon such bond the said money so brought in shall be deemed and taken to be in full satisfaction and discharge of the said bond and court shall and may give judgment to discharge every such defendant of and from the same accordingly.

**Payment into court in replevin**

10. The plaintiff in replevin may in answer to an avowry pay money into court in satisfaction in like manner and subject to the same proceedings as to costs and otherwise as upon a payment into court by a defendant in other actions.

**Effect of such payment in replevin**

11. Such payment into court in replevin shall not nor shall the acceptance thereof by the defendant in satisfaction work a forfeiture of the replevin bond.

**PART 4—PROVISIONS FROM COMMON LAW  
PRACTICE ACT 1867*****Division 1—Purpose of part*****Purpose of pt 4**

12. The purpose of this part is to consolidate and amend the laws about practice at common law.

***Division 2—Interpretation*****Definitions for pt 4**

**13.** In this part—

**“child”** includes—

- (a) son or daughter; and
- (b) grandson or grand daughter; and
- (c) stepson or stepdaughter; and
- (d) a person for whom someone stands in place of a parent.

**“parent”** includes—

- (a) father or mother; and
- (b) grandfather or grandmother; and
- (c) stepfather or stepmother; and
- (d) a person standing in place of a parent.

**“prothonotary”** includes the registrar, a master in equity and other proper officer of the Supreme Court.

***Division 3—Abolition of wager of law*****Wager of law abolished**

**14.** No wager of law shall be allowed.

***Division 4—Assessment of damages*****Loss of earnings and future earnings**

**15.** Where in relation to a claim for damages for deprivation or impairment of earning capacity, for wrongful dismissal or for other personal injury it becomes material to assess such damages having regard to loss of earnings or of future probable earnings there shall be taken into



account in reduction of the sum assessed such amount as is reasonably considered to be the amount that would have been payable as income tax by reason of the receipt of such earnings by the person who has suffered loss of the same, had the person received them.

### **Compensation for future loss to be discounted**

**16.(1)** Where an award of damages is to include compensation, assessed as a lump sum, in respect of damage that is referable to deprivation or impairment of earning capacity or to a liability to incur expenditure in the future the amount of that compensation shall be the present value of that sum calculated in accordance with actuarial tables at a discount rate fixed by the Governor in Council under a regulation as at the time of making the award or, in the absence of a rate so fixed, at a discount rate of 5%.

**(2)** In fixing a discount rate for the purposes of subsection (1) the Governor in Council—

- (a) may fix a positive, zero or negative rate; and
- (b) shall have regard to the prevailing rates of inflation, the prevailing interest yields on fixed-term investment, the prevailing yields on investment in equities and such other economic factors as in the Governor in Council's opinion are relevant to the fixing of an appropriate discount rate.

### ***Division 5—Actions against and by executors***

#### **Liability for death caused wrongfully**

**17.** Whenever the death of a person shall be caused by a wrongful act neglect or default and the act neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to crime.

### **Actions how brought**

**18.(1)** Every such action shall be for the benefit of the spouse, parent and child of the person whose death shall have been so caused and shall be brought by and in the name of the executor or administrator of the person deceased and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought and the amount so recovered after deducting the costs not recovered from the defendant shall be divided amongst the before mentioned parties in such shares as the jury by their verdict shall find and direct.

**(2)** In this section—

**“spouse”**, of a deceased person, includes a person who, although not legally married to the deceased person, lived with the person as the person’s husband or wife—

- (a) for a continuous period of at least 1 year immediately before the death; or
- (b) if the deceased person left a dependant who is a child of the relationship—immediately before the death.

**(3)** For subsection (2)—

**“child of the relationship”** means a child of the deceased person and the other person, and includes a child born after the death.

**“dependant”**, of a deceased person, includes a child born after the death happens who would have been wholly or partially dependant on the deceased person’s earnings after the child’s birth if the person had not died.

### **Limitation of actions**

**19.** However, not more than 1 action shall lie for and in respect of the same subject matter of complaint.

### **Particulars of demand**

**20.** In every such action the plaintiff on the record shall be required together with the declaration to deliver to the defendant or the defendant’s

attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought and of the nature of the claim in respect of which damages shall be sought to be recovered.

**Where no action brought within 6 months by executor, then action may be brought by persons beneficially interested**

**21.(1)** If it happens in any case intended and provided for by sections 17 to 20 that there is no personal representative of such deceased person, or if, although there is such personal representative, no such action is brought by and in the name of the personal representative within 6 months after the death of such deceased person, then such action may be brought by and in the name or names of all or any of the persons (if more than 1) for whose benefit such action would have been, if it had been brought by and in the name of the personal representative.

**(2)** Every such action so brought shall be for the benefit of the same person or persons, and shall be subject to the same rules and procedure, as nearly as may be, as if it were brought by and in the name of the personal representative.

**(3)** In this section—

**“personal representative”** means the executor or administrator of the deceased person.

**Payment into court in one sum**

**22.(1)** It shall be sufficient, if the defendant is advised to pay money into court, that the defendant pays it as a compensation in one sum to all persons entitled under sections 17 to 21 for the defendant’s wrongful act, neglect, or default, without specifying the shares into which it is to be divided by the jury.

**(2)** If the said sum is not accepted, and an issue is raised by the plaintiff as to its sufficiency, and the jury think the same sufficient, the defendant shall be entitled to the verdict upon that issue.

**Exclusion of certain payments in assessment of damages**

**23.** In assessing damages in respect of a person's death in any such action, there shall not be taken into account—

- (a) a sum paid or payable on the death under any contract of assurance or insurance; or
- (b) a sum paid or payable on the death under a contract made with a friendly or other benefit society, or association or trade union that is not a contract of insurance or assurance; or
- (c) a sum paid or payable on the death out of any superannuation, provident or like fund; or
- (d) a sum paid or payable on the death by way of pension, benefit or allowance under any law of the Commonwealth or of any State or Territory or of any other country; or
- (e) a gratuity in whatever form received or receivable on the death;

whether any such sum or gratuity is paid or payable to or is received or receivable by the estate of the deceased person or by any person for whose benefit the action is brought.

***Division 6—Specific delivery of chattels*****Procedure after verdict for recovery of specific goods**

**24.** When the action shall have been brought to recover specific goods and the plaintiff shall have claimed a return of such goods or their value and damages for their detention and shall have recovered a verdict and judgment in such action it shall be lawful for the sheriff if so required by the plaintiff to demand and seize the specific goods claimed if they can be found by the sheriff and to deliver them to the plaintiff and if the sheriff shall not find and seize the said goods it shall be lawful for the court or a judge if the said court or judge shall see fit on the application of the plaintiff to order the actual return thereof and to enforce such order by process of attachment and if such application be refused or if such order be not obeyed the plaintiff may by leave of a judge procure a separate writ of fieri-facias to be issued for the value of the goods without prejudice to the plaintiff's right to issue

execution either before or after or concurrently therewith for the plaintiff's costs of suit and the damages awarded for the detention of the goods.

### **Specific delivery of chattels**

**25.(1)** The court or a judge shall have power if they or the judge see fit to do so upon the application of the plaintiff in any action for the detention of any chattel to order that execution shall issue for the return of the chattel detained without giving the defendant the option of retaining such chattel upon paying the value assessed and if the said chattel can not be found and unless the court or a judge shall otherwise order the sheriff shall distrain the defendant by all the defendant's lands and chattels in the said sheriff's bailiwick till the defendant render such chattel or at the option of the plaintiff that the defendant cause to be made of the defendant's goods the assessed value of such chattel.

**(2)** However, the plaintiff shall either by the same or a separate writ of execution be entitled to have made of the defendant's goods the damages costs and interest in such action.

**(3)** Also, the plaintiff may proceed under section 24 anything this section contained notwithstanding.

### ***Division 7—Execution on decrees and orders***

#### **Decrees and orders of courts of equity etc. to have effect of judgments**

**26.** All remedies hereby given to judgment creditors are likewise given to any persons to whom any moneys or costs charges or expenses are by any decree or order in equity or any rule or order at common law by the Supreme Court or any decree rule or order of the said court in its ecclesiastical or matrimonial jurisdiction respectively directed to be paid.

***Division 8—Execution on foreign judgment*****Memorial of judgment etc. under seal of Supreme Court of any other Australasian colony filed in Supreme Court at Brisbane shall be a record thereof and execution may issue**

27. It shall be lawful for any person in whose favour any judgment decree rule or order whereby any sum of money is made payable shall have been obtained in the Supreme Court of any of Her Majesty's Australasian colonies (including the islands and colonies of New Zealand) to cause a memorial of the same containing the particulars hereinafter mentioned and authenticated by the seal of the court wherein such judgment decree rule or order was obtained to be filed in the office of the Supreme Court at Brisbane and such memorial being so filed shall thenceforth be a record of such judgment decree rule or order and execution may issue thereon as hereinafter provided.

**Particulars of memorial**

28. Every such memorial shall be on parchment and signed by the party in whose favour such judgment decree rule or order was obtained or the party's attorney and shall contain the following particulars all of which shall be fairly written without interlineations or erasures and (with the exception of dates) in words at length (that is to say) the names and additions of the parties the form or nature of the action or suit or other proceeding and when commenced the date of the signing or entering up of the judgment or of passing the decree or of making the rule or order and the amount recovered or the decree pronounced or rule or order made and if there was a trial the date of such trial and the amount of verdict given.

**Mode of obtaining execution**

29.(1) It shall be lawful for any judge of the Supreme Court upon the application of the person in whose favour such judgment decree rule or order was obtained or the person's attorney to issue a summons calling upon the person against whom such judgment decree rule or order was obtained to show cause within such time after personal or other service of the summons as such judge shall direct why execution should not issue

upon such judgment decree rule or order and such summons shall give notice that in default of appearance execution may issue accordingly.

(2) If the person so summoned does not appear or does not show sufficient cause against such summons it shall be lawful for any judge of the Supreme Court or the said court on due proof of such service as aforesaid to order execution to issue as upon a judgment decree rule or order of the Supreme Court subject to such terms and conditions (if any) as to such judge or court may seem fit.

(3) Thereupon and subject thereto the person entitled to such execution shall have and be entitled to all such process and to all such rights and remedies for the enforcement thereof and the person against whom such execution is ordered shall in like manner be entitled to all such protective rights and advantages as they would respectively have been entitled to had such judgment decree rule or order been obtained in the Supreme Court and all such proceedings may be had or taken for the revival of such judgment decree rule or order or the enforcement thereof by and against persons not parties to such judgment decree rule or order as may be had for the like purposes upon any judgment decree rule or order of the Supreme Court.

### *Division 9—Description of parties*

#### **Initials of names may be used in some cases**

30. In all actions upon bills of exchange or promissory notes or other written instruments any of the parties to which are designated by the initial letter or letters or some contraction of the christian or first name or names it shall be sufficient in every affidavit to hold to bail and in the process or declaration to designate such persons by the same initial letter or letters or contraction of the christian or first name or names instead of stating the christian or first name or names in full.

#### **Misnomer not to be pleaded in abatement**

31. No plea in abatement for a misnomer shall be allowed in any personal action but in all cases in which a misnomer would apart from this part have been by law pleadable in abatement in such actions the defendant shall be at liberty to cause the declaration to be amended at the costs of the

plaintiff by inserting the right name upon a judge's summons founded on an affidavit of the right name and in case such summons shall be discharged the costs of such application shall be paid by the party applying if the judge shall think fit.

### *Division 10—Style of defendant*

#### **Copartnerships all of whose members are not known**

**32.(1)** And whereas in some cases business is carried on in the State by persons in copartnership or by 1 individual or more assuming the style of a copartnership or acting as agent or agents for a copartnership and in some of those cases the names of the actual members of such copartnership or of some of them are or may be unknown in order to prevent any failure of justice in such cases be it enacted.

**(2)** That every such copartnership and the several members thereof or the persons or person having carried on business under the style of any such copartnership may be sued in any action at law in the name or names of any 1 or more of the members of such copartnership on behalf of all the members composing the same or in the name or names of any such agent or agents for and on behalf of such copartnership so as that in all cases wherein it would have been necessary if this part had not been passed to mention the names of all the members composing any such copartnership it shall be sufficient to mention only the name or names of such 1 or more member or members or of such agent or agents on behalf of such copartnership.

**(3)** Every judgment obtained in any such action shall have the same effect and operation upon the property both real and personal of such copartnership and also upon the property and persons of the several members thereof when discovered whether such property be joint or separate as if every member of such copartnership had been actually and in fact a defendant in the action.

#### **Proviso**

**33.(1)** In every summons and other writ issued and declaration or other pleading filed on behalf of the plaintiff in any action brought under the



provisions of section 32 the style or firm of the copartnership shall be specified and it shall distinctly appear that the defendant sued is so sued either as a member or as agent for and on behalf of a copartnership

(2) However, no agent sued on behalf of a copartnership shall by reason only of the agent being so sued be liable in person or in property to any judgment obtained in such action.

### *Division 11—Refusal to make affidavit*

#### **Examination of person who refuses to make an affidavit**

34. Any party to any civil proceeding or motion for a criminal information in the Supreme Court requiring the affidavit of a person who refuses to make an affidavit may apply by summons for an order to such person to appear and be examined upon oath before a judge or any commissioner for taking affidavits to whom it may be most convenient to refer such examination as to the matters concerning which the person has refused to make an affidavit and a judge may if the judge thinks fit make such order for the attendance of such person before the person therein appointed to take such examination for the purpose of being examined as aforesaid and for the production of any writings or documents to be mentioned in such order and may therein impose such terms as to such examination and costs of the application and proceedings thereon as the judge shall think fit.

#### **Proceedings upon order for examination**

35. Such order shall be proceeded upon in like manner as an order for a commission made under the rules of the Supreme Court for the time being and the examination thereon shall be conducted and the depositions taken down and returned as nearly as may be in the mode used on viva voce examinations under such a commission.

***Division 12—No new trial about stamp rulings*****No new trial for ruling as to stamp**

**36.** No new trial shall be granted by reason of the ruling of any judge that the stamp upon any document is sufficient or that the document does not require a stamp.

***Division 13—Execution*****Securities not realised to be relinquished if the person be taken in execution**

**37.** If any judgment creditor who under the powers of section 38, 39 or 98 shall have obtained any such charge or be entitled to the benefit of any security whatsoever shall afterwards and before the property so charged or secured shall have been converted into money or realised and the produce thereof applied towards payment of the judgment debt cause the person of the judgment debtor to be taken or charged in execution upon such judgment then and in such case such judgment creditor shall be deemed and taken to have relinquished all right and title to the benefit of such charge or security and shall forfeit the same accordingly.

***Division 14—Distringas*****Stock and shares in public companies belonging to the debtor and standing in the debtor's own name to be charged by order of a judge**

**38.(1)** If any person against whom any judgment shall have been entered up in the Supreme Court shall have any annuities funds stock or shares of or in any public company (whether incorporated or not) or any deposit in any bank in Queensland standing in the person's name or in the person's own right or in the name of any person in trust for the person or shall have or be entitled to any equity of redemption or other equitable interest which at law can not be taken in execution it shall be lawful for a judge of the said court on the application of any judgment creditor to order that such annuities funds stock shares or deposits or any such equity of redemption or

equitable interest or such of them or such part thereof respectively as the judge shall think fit shall stand charged with the payment of the amount for which judgment shall have been so recovered and interest thereon and such order shall entitle the judgment creditor to all such remedies as the judgment creditor would have been entitled to if such charge had been made in the judgment creditor's favour by the judgment debtor.

(2) However, no proceedings shall be taken to have the benefit of such charge until after the expiration of 3 calendar months from the date of such order.

**Order of judge to be made in the first instance ex parte and on notice to the bank or company etc. to operate as a distringas**

**39.(1)** And in order to prevent any person against whom judgment shall have been obtained from transferring receiving or disposing of any annuities funds stock shares or deposits hereby authorised to be charged for the benefit of the judgment creditor under an order of a judge as aforesaid every order of a judge charging any annuities funds stock or shares in any such public company or any deposit in any such bank under this part may be made in the first instance ex parte and without any notice to the judgment debtor and shall be an order to show cause only and such order if any annuities funds stock shares or deposits standing in the name of the judgment debtor in the judgment debtor's own right or in the name of any person in trust for the person is to be affected by such order shall restrain such public company and the accountant and cashier of every such bank from permitting the transfer or disposal thereof and if after notice of such order to the person or persons to be restrained thereby or in case of corporations to any authorised agent of such corporation and before the same order shall be discharged or made absolute such corporation or person or persons shall permit any such transfer or disposal to be made then and in such case the corporation or person or persons so permitting such transfer or disposal shall be liable to the judgment creditor for the value or amount of the property so charged or so transferred or disposed of or such part thereof as may be sufficient to satisfy the judgment and no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor and further unless the judgment debtor shall within a time to be mentioned in such order show to a judge of the said court sufficient cause to the contrary the said order shall after proof of notice

thereof to the judgment debtor the judgment debtor's attorney or agent be made absolute.

(2) However, any such judge shall upon application of the judgment debtor or any person interested have full power to discharge or vary such order and to award such costs upon such application as the judge may think fit.

### *Division 15—Garnishment*

#### **Judge may refuse to interfere in proceeding to attach debts**

40. In proceedings to obtain an attachment of debts under this part the judge may in the judge's discretion refuse to interfere where from the smallness of the amount to be recovered or of the debt sought to be attached or otherwise the remedy sought would be worthless or vexatious.

### *Division 16—View*

#### **View by rule without writ**

41. A writ of view shall not be necessary or used but whether the view is to be had by a common or special jury it shall be sufficient to obtain a rule of the court or judge's order directing a view to be had and the sheriff upon request shall deliver to either party the names of the viewers and shall also return their names to the associate for the purpose of their being called as jurors upon the trial.

### *Division 17—Inquiry before prothonotary*

#### **Inquiry of damages may be directed to take place before the prothonotary**

42.(1) In actions in which it shall appear to the court or a judge that the amount of damages sought to be recovered by the plaintiff is substantially a matter of calculation it shall not be necessary to issue a writ of inquiry but the court or a judge may direct that the amount for which final judgment is

to be signed shall be ascertained by the prothonotary of the said court and the attendance of witnesses and the production of documents before such prothonotary may be compelled by subpoena in the same manner as before a jury upon a writ of inquiry and it shall be lawful for such prothonotary to receive affidavits and depositions as evidence upon the inquiry and to adjourn the inquiry from time to time as occasion may require.

(2) The prothonotary shall endorse upon the rule or order for referring the amount of damages to the prothonotary the amount found by the prothonotary and shall deliver the rule or order with such endorsement to the plaintiff and such and the like proceedings may thereupon be had as to taxation of costs signing judgment and otherwise as upon the finding of a jury upon a writ of inquiry.

### *Division 18—Writs of trial and inquiry*

#### **No rule to compute**

**43.** No rule to compute shall be necessary or used.

#### **Proceedings on return of writs of inquiry or trial**

**44.** On the return of every writ of inquiry or writ of trial issued or to be issued in any of the cases contemplated by this part for the more effectual administration of justice in that behalf the party succeeding may tax the party's costs and sign judgment and issue execution forthwith unless the sheriff commissioner judge or chairperson to whom such writ shall have been directed shall certify to the court that in his or her opinion an opportunity should be afforded to the unsuccessful party to move for a new trial or assessment (as the case may be) or unless a judge shall stay judgment or execution therein.

#### **Commissioner's notes of evidence etc.**

**45.(1)** Every such person shall together with the writ and the endorsement of the verdict thereon return to the Supreme Court the person's notes of the evidence on such inquiry or trial and it shall be lawful for the said court or any judge thereof to permit any amendment of the said

endorsement in accordance with such notes and not being repugnant to the verdict but so as to give effect to the same.

(2) However, where justice shall appear to have been done by such verdict on the merits the same shall not in any case be set aside or impeached for any mere omission to find any issue or for any technical defect or error whatsoever.

(3) Also, where any application shall be made to the court or a judge either to set aside such verdict or to amend the endorsement thereof on the writ such reasonable terms may be imposed on the parties and such order made respecting the costs as to such court or judge shall seem meet.

### *Division 19—Precepts*

#### **Rule or order for summoning jury**

46. The court or any judge thereof may make all such rules or orders upon the sheriff or other person as may be necessary to procure the attendance of a special or common jury for the trial of any cause or matter depending in such court at such time and place and in such manner as they or the judge may think fit.

### *Division 20—Practice at the trial*

#### **Interest up to judgment**

47.(1) In any proceedings in respect of a cause of action that arises after the commencement of the *Common Law Practice Act Amendment Act 1972* in a court of record for the recovery of money (including proceedings for debt, damages or the value of goods) the court may order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of that sum for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

(2) The powers conferred on a court of record by subsection (1) may be exercised by an arbitrator or umpire.

**(3)** This section—

- (a) does not authorise the giving of interest upon interest;
- (b) does not apply in respect of any debt on which interest is payable as of right whether by virtue of an agreement or otherwise;
- (c) does not affect damages recoverable for the dishonour of a bill of exchange.

**Interest on debt under judgment or order**

**48.(1)** Where judgment is given or an order is made by a court of record for the payment of money in a cause of action that arose after the commencement of the *Common Law Practice Act Amendment Act 1972*, interest shall, unless the court otherwise orders, be payable at the rate prescribed under a regulation from the date of the judgment or order on so much of the money as is from time to time unpaid.

**(2)** Notwithstanding anything contained in subsection (1)—

- (a) where the court directs the entry of judgment for damages and the damages are paid within 21 days after the date of the direction—interest on the damages shall not be payable unless the court otherwise orders;
- (b) where the court makes an order for the payment of costs and the costs are paid within 21 days after the ascertainment thereof by taxation or otherwise—interest on the costs shall not be payable unless the court otherwise orders.

**Persons may be examined without a subpoena**

**49.** Any person present at any trial or other proceeding wherein the person might have been compellable to give evidence and produce documents by virtue of a subpoena or other summons or order duly issued and served for that purpose shall be compellable to give evidence and produce documents then in the person's possession and power in the same manner and in case of refusal shall be subject to the same penalties and liabilities as if the person had been duly subpoenaed or summoned for that purpose.

**Witnesses failing to attend**

**50.(1)** Where, in any proceeding in or before the court or a judge, whether in civil or criminal jurisdiction, a person fails to attend as a witness, or to produce any books, deeds, papers or writings, in accordance with a recognisance or subpoena thereunto binding or requiring the person, the court or judge may issue a warrant to bring and have that person at the time and place therein specified before the court or judge therein named.

**(2)** So far as relates to securing the attendance and punishing the nonattendance of witnesses and to rights and remedies had by parties against witnesses for failure to attend, this section applies in aid of and not in derogation from the jurisdiction had by a court or judge otherwise than under this section, and so that a warrant under this section shall not prejudice or affect in any way any such other jurisdiction or the aforesaid rights and remedies.

***Division 21—Trial without jury*****Judge may by consent try questions of fact**

**51.(1)** The parties to any cause may by consent in writing signed by them or their attorneys as the case may be leave the decision of any issue of fact to the court.

**(2)** However, the court upon a rule to show cause or a judge on summons shall in their, his or her discretion think fit to allow such trial and such issue of fact may thereupon be tried and determined and damages assessed where necessary in open court either in term or vacation by any judge who might otherwise have presided at the trial thereof by jury either with or without the assistance of any other judge or judges of the said Supreme Court and the verdict of such judge or judges shall be of the same effect as the verdict of a jury save that it shall not be questioned upon the ground of being against the weight of evidence and the proceedings upon and after such trial as to the power of the court or judge the evidence and otherwise shall be the same as in case of trial by jury.



**Power to judge to direct arbitration at time of trial when issues of fact left to the judge's decision**

52. If upon the trial of any issue of fact by a judge under this part it shall appear to the judge that the questions arising thereon involve matter of account which can not conveniently be tried before the judge it shall be lawful for the judge at the judge's discretion to order that such matter of account be referred to an arbitrator appointed by the parties or to an officer of the court or an associate or in country cases to a judge of any District Court or a commissioner of the Supreme Court upon such terms as to costs and otherwise as such judge shall think reasonable and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial and it shall be competent for the judge to proceed to try and dispose of any other matters in question not referred in like manner as if no reference had been made.

***Division 22—Amendment*****Amendment**

53. It shall be lawful for the Supreme Court and every judge thereof and any judge sitting at *nisi prius* and for every Circuit Court at all times to amend all defects and errors in any proceeding in civil causes whether there is anything in writing to amend by or not and whether the defect or error be that of the party applying to amend or not and all such amendments may be made with or without costs and upon such terms as to the court or judge may seem fit and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made.

**In cases where a variance shall appear between written or printed evidence and the record the court may order the record to be amended**

54. It shall and may be lawful for every court of record holding plea in civil actions any judge sitting at *nisi prius* if such court or judge shall see fit so to do to cause the record writ or document on which any trial may be pending before any such judge or court in any civil action when any variance shall appear between any matter in writing or in print produced in

evidence and the recital or setting forth thereof upon the record writ or document whereon the trial is pending to be forthwith amended in such particular by some officer of the court on payment of such costs (if any) to the other party as such judge or court shall think reasonable and thereupon the trial shall proceed as if no such variance had appeared and in case such trial shall be had at *nisi prius* the order for the amendment shall be endorsed on the postea and returned together with the record and thereupon the papers rolls and other records of the court from which such record issued shall be amended accordingly.

### **Amendments to be made in the record in certain cases**

**55.(1)** It shall be lawful for any court of record holding plea in civil actions and any judge sitting at *nisi prius* and any judge or other officer presiding at the trial of any writ if such court or judge or officer shall see fit so to do to cause the record writ or document on which any trial may be pending before any such court or judge in any civil action or in any information in the nature of a *quo warranto* or proceedings on a mandamus when any variance shall appear between the proof and the recital or setting forth on the record writ or document on which the trial is proceeding of any contract custom prescription name or other matter in any particular or particulars in the judgment of such court or judge or officer not material to the merits of the case and by which the opposite party can not have been prejudiced in the conduct of the opposite party's action prosecution or defence to be forthwith amended by some officer of the court or otherwise both in the part of the pleadings where such variance occurs and in every other part of the pleadings which may become necessary to amend on such terms as to payment of costs to the other party or postponing the trial to be had before the same or another jury or both payment of costs and postponement as such court or judge or officer shall think reasonable.

**(2)** In case such variance shall be in some particular or particulars in the judgment of the court or judge or officer not material to the merits of the case but such as that the opposite party may have been prejudiced thereby in the conduct of the opposite party's action prosecution or defence then such court or judge or officer shall have power to cause the same to be amended upon payment of costs to the other party and withdrawing the record or postponing the trial as aforesaid as such court or judge or officer shall think reasonable.

(3) After any such amendment the trial shall proceed in case the same shall be proceeded with in the same manner in all respects both with respect to the liability of witnesses to be indicted for perjury and otherwise as if no such variance had appeared.

(4) In case such trial shall be had at *nisi prius* or by virtue of such writ as aforesaid the order for the amendment shall be endorsed on the postea or the writ as the case may be and returned together with the record or writ and thereupon such papers rolls and other records of the court from which such record or writ issued as it may be necessary to amend shall be amended accordingly.

(5) In case the trial shall be had in any court of record then the order for amendment shall be entered on the roll or other document upon which the trial shall be had.

(6) However, it shall be lawful for any party who is dissatisfied with the decision of such judge or other officer respecting his or her allowance of any such amendment to apply to the court from which such record or writ issued for a new trial upon that ground and in case any such court shall think such amendment improper a new trial shall be granted accordingly on such terms as the court shall think fit or the court shall make such other order as to it may seem meet.

### **Amendments at trial**

**56.** In all cases of variance between the proof and the record in any action at law now or hereafter depending in the Supreme Court it shall be lawful for the said court or the judge before whom the trial is had if such court or judge shall think fit instead of causing the record or document on which such trial is proceeding to be amended at such trial as by the rules and course of practice of the said court is provided in that behalf to direct the jury to find the fact or facts according to the evidence and thereupon such finding shall be stated on the said record or document and notwithstanding the finding on the issue or issues joined the said Supreme Court shall thereafter if it shall appear to the said court that the variance was immaterial to the merits of the case and such as could not have prejudiced the opposite party in the conduct of the action or defence give judgment according to the right and justice of the case.

**Division 23—Warrants of attorney****Warrants of attorney and cognovit actionem to be executed in the presence of an attorney on behalf of the person**

**57.** No warrant of attorney to confess judgment in any personal action or *cognovit actionem* given by any person shall be of any force unless there shall be present some attorney of the Supreme Court on behalf of such person expressly named by the person and attending at the person's request to inform the person of the nature and effect of such warrant or cognovit before the same is executed which attorney shall subscribe the attorney's name as a witness to the due execution thereof and thereby declare himself or herself to be attorney for the person executing the same and state that the attorney subscribes as such attorney.

**Warrant etc. not formally executed invalid**

**58.** A warrant of attorney to confess judgment or *cognovit actionem* not executed in manner aforesaid shall not be rendered valid by proof that the person executing the same did in fact understand the nature and effect thereof or was fully informed of the same.

**Warrants of attorney in personal actions to be filed within 21 days**

**59.** If the holder thereof shall think fit every warrant of attorney to confess judgment in any personal action or a true copy thereof and of the attestation thereof and the defeasance and endorsements thereon in case such warrant of attorney shall be given to confess judgment in the Supreme Court or such a true copy thereof as aforesaid in case such warrant of attorney shall be given to confess judgment in any other court shall within 21 days after the execution of such warrant of attorney be filed together with an affidavit of the time of the execution thereof with the prothonotary of the Supreme Court.

**In what case warrant of attorney deemed fraudulent**

**60.** If at any time after the expiration of 21 days next after the execution of such warrant of attorney an adjudication of insolvency shall be issued

against the person who shall have given such warrant of attorney under which the person shall be duly found and declared an insolvent then and in such case unless such warrant of attorney or a copy thereof shall have been filed as aforesaid within the said space of 21 days from the execution thereof or unless judgment shall have been signed or execution issued on such warrant of attorney within the same period such warrant of attorney and the judgment and execution thereon shall be deemed fraudulent and void against the assignees under such adjudication and such assignees shall be entitled to recover back and receive for the use of the creditors of such insolvent at large all and every the moneys levied or effects seized under and by virtue of such judgment and execution.

#### *Division 24—Cognovit*

##### **Cognovit actionem to be filed in like manner or void against creditors**

**61.** Every *cognovit actionem* given by any defendant in any personal action in case the action in which such *cognovit actionem* shall be given shall be in the said Supreme Court or a true copy of such *cognovit actionem* in case the action wherein the same is given shall be in any other court shall together with an affidavit of the time of the execution thereof be filed with the said prothonotary in like manner as such warrants of attorney or copies thereof and affidavits within the space of 21 days after such *cognovit actionem* shall have been executed otherwise such cognovit actionem and any judgment entered up thereon and any execution taken out on such judgment shall be deemed fraudulent and void against the assignees of the person giving such *cognovit actionem* under an adjudication of insolvency issued against the person after the expiration of the 21 days in like manner as warrants of attorney and judgments and executions thereon are deemed and taken to be fraudulent and void by this part.

#### *Division 25—Warrants and cognovits*

##### **Defeasance of warrant of attorney etc. to be written on same paper**

**62.** If such warrant of attorney or cognovit shall be given subject to any defeasance or condition such defeasance or condition shall be written on the

same paper or parchment on which such warrant of attorney or *cognovit actionem* shall be written before the time when the same or a copy thereof respectively shall be filed otherwise such warrant of attorney or *cognovit actionem* shall be null and void to all intents and purposes.

### **Officer of court to keep a book containing list and particulars of each warrant of attorney and cognovit**

63. The said officer of the said Supreme Court shall cause every warrant of attorney and *cognovit actionem* in any personal action and every copy thereof filed in the officer's said office to be numbered and shall keep a book or books in which the officer shall cause to be fairly entered an alphabetical list of every such warrant of attorney or cognovit containing therein the names and additions and descriptions of the respective defendants or persons giving such warrants of attorney or cognovits and also the names additions and descriptions of the plaintiff or persons in whose favour the same shall have been given together with the number and dates of the execution and filing of the same or of a copy thereof respectively and the sums for which judgment is to be entered up and also the sums which are specified to be paid by the defeasances or conditions in such warrant of attorney or *cognovit actionem* and the times when the same are thereby made payable.

### **Satisfaction entered on warrants of attorney and cognovits**

64. It shall be lawful for any of the judges of the court in which such warrant of attorney or *cognovit actionem* is given to order a memorandum of satisfaction to be written upon such warrant of attorney *cognovit actionem* or copy thereof respectively as aforesaid if it shall appear to the judge that the debt for which such warrant of attorney or *cognovit actionem* is given as a security shall have been satisfied or discharged.

## ***Division 26—Transitional***

### **Application of amendments made by Common Law Practice and Workers' Compensation Amendment Act 1994**

65.(1) To remove any doubt, the amendments of section 18 made by the

*Common Law Practice and Workers' Compensation Amendment Act 1994* apply only to a death that happens on or after 17 October 1994.

(2) Subsection (1) is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

(3) This section expires 3 years after it commences.

## **PART 5—PROVISIONS FROM COMMON LAW PROCESS ACT 1867**

### *Division 1—Purpose of part*

#### **Purpose of pt 5**

66. The purpose of this part is to consolidate the laws about mesne process and process of execution and to the remedies of plaintiffs in actions at common law.

### *Division 2—Execution of writs on Sunday*

#### **Writs when executed on Sunday**

67. Any writ of *capias ad respondendum* or of *capias ad satisfaciendum* issued or to be issued out of the Supreme Court shall and may respectively be lawfully executed upon a Sunday in like manner in all respects as the same respectively may now be executed upon any other day any law statute or usage to the contrary in anywise notwithstanding.

### *Division 3—Affidavits sworn before a consul*

#### **Affidavits in certain cases may be sworn before a consul**

68. Any affidavit for the purpose of enabling the court or a judge to direct proceedings to be taken against a defendant residing out of the jurisdiction

of the said court may, in any country or place outside the Commonwealth, be sworn before any consul general consul vice-consul or consular agent for the time being appointed by Her Majesty or before any Australian consular officer within the meaning of the *Australian Consular Officers' Notarial Powers and Evidence Act 1946*, or before any other person who is a consular officer within the meaning of the *Evidence and Discovery Act 1867*, section 37A, exercising his or her functions in that country or place and every affidavit so sworn by virtue of this part may be used and shall be admitted in evidence saving all just exceptions provided it be signed by such consul general consul vice-consul or consular agent, or by such Australian consular officer or, as the case may be, by such other person who is a consular officer within the meaning of the *Evidence and Discovery Act 1867*, section 37A, and it shall be taken to be so signed if it purport to be so signed without proof of the official character and signature of the person appearing to have signed the same.

#### *Division 4—Meaning of absent defendants*

#### **If defendant shall be absent at the commencement of foreign attachment proceedings to be sufficient**

**69.(1)** Divisions 5 to 10 apply to any defendant who shall be absent from the State at the time of proceeding thereunder notwithstanding that the defendant may have been within the State at the time of issuing the writ of summons against the defendant.

(2) However, it shall appear by affidavit that reasonable efforts were made and with due diligence to serve such summons on the defendant but without effect.

(3) In addition, at any time during such proceedings a judge may require proof to the judge's satisfaction that the plaintiff has no sufficient remedy under divisions 5 to 17 and in default thereof may stay proceedings or make such order as to the judge may seem just.

#### **The term “absence”**

**70.** Absence from the said State shall for divisions 5 to 10 be taken to



mean absence for the time being whether the party shall ever have been within the said State or not.

### *Division 5—Proceedings against absent defendants*

#### **Absent defendant**

**71.(1)** In every action at law commenced in the Supreme Court wherein it shall appear by an endorsement upon the writ of summons made by the officer or person and by an affidavit of such officer or person who shall be charged or entrusted with the service thereof upon any defendant in such action to the effect that the officer or person has made diligent search for such defendant and has been unable to find the defendant if an affidavit shall be filed on behalf of the plaintiff (in addition to a full affidavit of the cause of action) that such cause of action arose within the said State and that to the best of the deponent's belief such defendant does not reside within the said State and is to the best of the deponent's belief possessed of or entitled to or otherwise beneficially interested in any lands moneys securities for money chattels or other property in the custody or under the control of any person or persons in the said State (to be named in such affidavit) or that any such person or persons is or are indebted to such defendant the plaintiff may proceed against such defendant by process of foreign attachment in the manner hereinafter directed.

**(2)** However, by leave of a judge (where it shall appear that plaintiff may sustain injury by the delay) such affidavit may be filed before the return of such writ of summons.

#### **Form of attachment and how served**

**72.(1)** At any time after the filing of such endorsement and affidavits as aforesaid a writ of foreign attachment may be issued at the plaintiff's instance as of course and every such writ shall be in such form as the Supreme Court shall prescribe and be returnable into the said court either in term or in vacation on some day not less than 14 days nor more than 60 days next after the date thereof and shall be served upon the several garnishees or persons therein named in whose hands it is intended thereby to attach any such lands moneys chattels property or debts by delivering a

copy thereof to each such garnishee personally or by leaving the same at his or her then or last usual place of abode.

(2) However, final judgment shall in no case be signed in any such action until an entry shall have been made on the record of the issue of such writ of attachment with a suggestion of the fact that the cause or causes of action so arose as aforesaid and in case it shall at any time appear that the cause of action did not arise within the said State the attachment shall be forthwith dissolved with costs to be paid by the plaintiff to such parties and in such manner as the court or any judge thereof shall direct.

### **Plaintiff to enter into a bond to account etc.**

73. Within 14 days next after any such writ of attachment shall have issued as aforesaid the plaintiff at whose suit the same shall have been issued or if absent some person on the plaintiff's behalf shall before the prothonotary registrar or some commissioner of the Supreme Court enter into a bond with 2 sufficient sureties to be approved of by such prothonotary registrar or commissioner acknowledging himself or herself and themselves to be indebted to the defendant against whom such attachment shall have so issued in such sum as one of the judges shall think fit to order conditioned amongst other things to repay all such sums as the said plaintiff shall recover in the action in case the judgment therein shall be thereafter vacated reversed or altered together with all costs sustained by the defendant which said bond and condition shall be in such form as the said court shall prescribe and in case of any breach or alleged breach of such condition the defendant shall be at liberty to sue the parties to such bond thereon at any time and if such bond be not so entered into as aforesaid the attachment shall be ipso facto dissolved.

### **After judgment plaintiff may issue fieri-facias**

74.(1) At any time after such bond shall have been so entered into and after final judgment in favour of the plaintiff shall have been obtained it shall be lawful for the plaintiff to cause a writ or writs of fieri-facias upon such judgment to be from time to time issued as in any ordinary case for the amount of the debt or damages and costs thereby recovered and to cause to be taken in execution under any such writ (as against any defendant whose property shall have been so attached as aforesaid) not only all or any

part of the lands goods moneys and other property so attached and which shall then continue subject to such attachment as aforesaid in whose hands soever the same property shall then be (and whatever may be the nature of such property whether ordinarily liable to be taken in execution or not and although the same or part thereof may be of the nature of a chose in action) but also by leave of a judge any other real or personal property of the defendant which the said plaintiff shall then be able to find and to receive any such goods moneys or property in satisfaction or part satisfaction of such debt or damages and costs at an amount to be fixed by the sheriff or to cause all such property (except as nextmentioned) to be sold under such writ or writs as in ordinary cases.

(2) However, with respect to any such debt or other chose in action as aforesaid no sale or other disposition thereof shall take place except by order of the court or one of the judges thereof and upon the application of the plaintiff it shall be lawful for the said court or any judge thereof at any time in a summary manner to authorise an action for the amount of any such debt to be brought in the name of the creditor being such defendant as aforesaid or to cause the debtor to be summoned to attend such court or judge to show cause why the debtor should not forthwith pay the amount of such debt to such plaintiff and if no sufficient cause be shown to order such payment accordingly and to enforce such order together with all costs attending the same by an attachment for a contempt as in other cases.

(3) In addition, where such leave of a judge shall not have been obtained the writ of fieri-facias shall be special and limited to the property so attached or to part thereof.

### *Division 6—Proceeding in the action*

#### **After attachment returned plaintiff may proceed in the action**

**75.(1)** At any time after the return day of any such writ of attachment it shall be lawful for the plaintiff to proceed in the action as if the defendant against whom the same shall have so issued resided in Brisbane in the State aforesaid and had appeared to such action in person.

(2) However, such bond as is hereinafter in that behalf prescribed shall have been first duly entered into.

***Division 7—Advertisement*****Public notice to be given**

**76.** In addition to service of the writ of foreign attachment the plaintiff shall also cause a notice of the issue of such writ signed by the plaintiff or the plaintiff's attorney to be published in the gazette and not less than twice in 1 other Brisbane newspaper and if the defendant or any garnishee shall reside within any other electoral district than Brisbane then not less than twice also in some newspaper published within such district or nearest thereto if none be published within it and every such notice shall be in such form as the court shall direct and the last of such publications thereof shall be 1 week at the least before the day on which the writ of attachment shall be made returnable.

***Division 8—The garnishees*****Property and debts bound from the time attachment served**

**77.** From the time of the service of such writ upon any such garnishee or person as aforesaid all and singular the lands and other hereditaments moneys and chattels bills bonds and other property of whatsoever nature in the custody or under the control of such garnishee then belonging to the defendant against whom such writ issued or to or in which such defendant shall then be legally or equitably entitled or otherwise beneficially interested (and whether solely or jointly with any person or persons) and all debts of every kind then due by any such garnishee to such defendant although the same or part thereof may be payable only at a future day shall to the extent of such defendant's right title and interest therein respectively be attached in the hands of such garnishee and (subject to any bona fide prior claims or liens thereon) be liable to the satisfaction of the particular demand or cause of action of which he or she shall by the said writ have had notice and if any such garnishee or person without the leave of the court or one of the judges shall at any time after such service and before the said attachment shall be dissolved sell or otherwise knowingly dispose of or part with any such property or pay over any such debt or any part thereof excepting only to or to the use of the plaintiff in such writ he or she shall upon the application in a summary way of such plaintiff to the court or any judge thereof and on

proof of the facts pay such damages to the plaintiff as such court or judge shall in that behalf think fit to order.

### **Inquiry as to property in garnishee's hand—attendance of parties**

**78.(1)** Upon the return of every such writ of attachment as aforesaid or as soon after as conveniently may be and upon such other day or days of adjournment (if any) as shall in that behalf be directed the said court or one of the judges thereof shall proceed to inquire and determine whether in fact the plaintiff's cause of action arose within the said State and if so then what lands moneys chattels and other property as aforesaid (sufficient or not more than sufficient to satisfy the plaintiff's cause of action together with the plaintiff's costs of suit) then are or were at the time of the service of the said writ in the custody or under the control of any such garnishee or person as aforesaid belonging to the defendant or to or in which the defendant was at that time entitled or interested as aforesaid and what debts were then due to such defendant from any such garnishee or person and the particulars thereof and whether such lands moneys and other property and debts or any part or parts thereof are or can be made available for the purpose of making such satisfaction as aforesaid and to what amount respectively and for the purposes of such inquiry and determination it shall be lawful for the said court or judge in a summary way to permit the said plaintiff to examine (before the said court or a judge or before a commissioner of the said court) viva voce upon oath every such garnishee or person together with such witnesses (if any) as the said court or judge may think proper to be so examined and for that purpose to make such orders and issue such summonses to the several garnishees and to any witness or witnesses as may in that behalf be deemed expedient and any such garnishee or person as aforesaid or witness who shall refuse or neglect to attend according to the exigency of any such writ of attachment or to obey any such order or summons or shall refuse to be so examined shall be liable to be summarily proceeded against as in cases of contempt of court and to be punished accordingly.

**(2)** However, in any case where it shall under the circumstances appear to be reasonable or just so to do it shall be lawful for the court or any judge to dispense with the attendance of any such garnishee upon the garnishee submitting to be examined upon oath before a commissioner of the court or upon such other terms as such court or judge shall impose and where any

such garnishee shall attend in obedience to any such writ or summons it shall be lawful for the court or sitting judge to award the garnishee the reasonable expenses of such attendance to be paid by the plaintiff.

### **Disposal of goods etc. by leave of court**

**79.** If any such garnishee or person in whose hands any such lands goods or property as aforesaid shall have been so attached shall be desirous of disposing of the same or any part thereof or of receiving or paying (as the case may be) the amount of any bill bond or debt or other chose in action or any part thereof pending such attachment and shall apply for that purpose to the court or to one of the judges it shall be lawful for the said court or judge (due notice having been given to the plaintiff of such intended application) to authorise such garnishee or person to sell or dispose of any such property or to receive or pay any such amount and the proceeds of such sale or disposal or the amount so received or paid (as the case may be) shall be thereafter held by such garnishee or person or be paid into court or invested or otherwise be detained or appropriated subject to such attachment as aforesaid or otherwise for the satisfaction of the plaintiff as such court or judge shall think fit to order.

### **Court to determine what property is to continue subject to attachment**

**80.(1)** So soon as upon any such examination or inquiry as aforesaid it shall be ascertained by the court or sitting judge what lands moneys or other such property and debts as aforesaid can (consistently with existing liens or prior claims thereon to be determined by the said court or judge) be made available for the purpose of making satisfaction to the plaintiff as aforesaid the said court or judge shall forthwith order the same (or such part or parts thereof respectively as such court or judge shall think proper in that behalf) to be thenceforward holden for that purpose and to continue subject to such attachment accordingly or to be sold or otherwise disposed of if such court or judge shall think fit and the proceeds or (in case of debts then payable) the amount of such debts to be paid into the hands of some officer of the court subject to such attachment as the said court or judge may order and with respect to all and singular the lands moneys and other property debts and other choses in action to which no such order as aforesaid shall be intended to apply or as to which no such order can be made it shall be

lawful for the said court or any of the judges at any time to direct that the said attachment shall be dissolved.

(2) However, where more than 1 writ of attachment shall have issued against the same garnishee or person or the same property shall have been attached at the suit of more than 1 plaintiff it shall be lawful for the said court or any judge to award and determine how much and what parts of the property so attached or to what amount in value thereof shall be retained or holden under each of such writs or be paid into court or disposed of (as the case may be) for the separate benefit of each plaintiff and as to writs lodged with the sheriff on the same day the plaintiffs therein shall be entitled to satisfaction *pari passu* but if any of such writs shall have been lodged with the sheriff on different days the plaintiffs shall be entitled to satisfaction respectively according to the priority of each in such lodgment.

### **Property in possession of any codefendant or husband or wife**

**81.** The property of any such absent defendant as aforesaid may under the provisions of this part be attached and taken in the custody or power of the defendant's husband wife or of any codefendant and no process of foreign attachment against any such absent defendant nor any lien intended to be thereby created upon the land moneys securities debts and chattels or other property of such defendant thereby attached shall be defeated by reason of such codefendant or any other garnishee as aforesaid being or claiming to be jointly interested with such defendant therein either as partner or otherwise and in all cases it shall be sufficient for the purposes of this part to attach property in the hands of the person or persons having the actual care custody or control thereof for the time being.

### **Attachment and execution may be pleaded in bar**

**82.** Every writ of attachment upon which any order shall have been made as aforesaid where the same shall have been followed by execution levied may be pleaded in bar by any person or persons in whose hands any lands goods debts or effects as aforesaid shall be attached to any action brought by or on behalf of the defendant for the recovery of such property and if any such action shall be brought pending the attachment the same shall be stayed by order of the court or a judge until the attachment shall be dissolved or the proceedings thereupon be otherwise determined and in

such plea it shall be necessary only to state shortly that such writ of attachment was issued and to set out the substance of the order finally made thereon and then to allege that the property sought to be recovered was taken under a writ of execution issued after such order.

### *Division 9—Defendant’s rights*

#### **Provision for dissolving foreign attachment**

**83.** If pending any such writ of foreign attachment as aforesaid or at any time before final judgment obtained in the action in which such writ issued the defendant against whom such attachment shall have issued or any person on the defendant’s behalf shall before the registrar of the said court enter into a bond with 2 sufficient sureties to be approved of by such registrar acknowledging himself or herself and themselves to be indebted to the plaintiff in such sum as a judge shall think fit to order conditioned to pay the said plaintiff the amount of such debt or damages and costs as the plaintiff shall at any time thereafter recover in such action then it shall be lawful for such defendant or person entering into the said bond upon entering an appearance (or if such appearance shall previously have been entered by the plaintiff then upon filing a plea or pleas therein) to defend such action and upon giving notice thereof to the said plaintiff to apply to the said court by motion as of course that the said attachment may be dissolved and the same shall be dissolved accordingly and the action shall thereupon proceed to trial and judgment in the ordinary manner.

#### **Provision enabling absent defendant to come in and defend notwithstanding judgment against absent defendant**

**84.** If after any final judgment obtained as aforesaid an affidavit shall be made by the defendant against whom such process of foreign attachment shall have issued as aforesaid that such defendant had at the time of the obtaining of the said judgment and still hath a substantial ground of defence (either wholly or in part) to the plaintiff’s action on the merits and such affidavit (sworn as next hereinafter mentioned) shall at any time before the expiration of 3 years next after such judgment be filed in the said court then upon motion thereupon for that purpose made to the said court on behalf of the said defendant and after due notice thereof given to the said plaintiff (and



security being entered into for the payment to the plaintiff of all costs by the plaintiff at any time thereby sustained) it shall be lawful for the said court to cause the merits so alleged as aforesaid to be inquired into and determined in such manner and form either by a feigned issue between the parties or otherwise and at such time and under terms and conditions for the purpose of securing the substantial ends of justice as to the said court shall seem meet and the said court after such inquiry and determination had shall thereupon give such judgment in the matter for the reversal of the judgment in the original action either in the whole or in part or shall or lawfully may from time to time make such order or orders in the premises between the parties as the justice of the case shall appear to require and every such judgment and order may at any time (if the party succeeding shall think fit) be suggested upon or added to the record of the original action in which such final judgment shall have been so obtained as aforesaid and every such affidavit if made within the said State shall be sworn before one of the judges or some officer of the court or person authorised to take affidavits to be used in the said court or if made elsewhere shall be sworn before a judge or master of some court of law or equity or the chief magistrate of some city or corporate town certified under the hand and seal of such magistrate.

### *Division 10—Copartners*

#### **Provision in case of absent defendants sued as copartners**

**85.** However, in all cases wherein 2 or more defendants shall be sued as copartners and as to any of such defendants there shall be such endorsement and affidavits as in section 71 mentioned but as to any other of such defendants there shall be a return of personal service or of *cipi corpus* then if at any time after any such return an affidavit shall be filed that to the best of the deponent's knowledge and belief the defendant served or arrested did in fact when the cause of action accrued carry on business in the said State as a copartner jointly with the defendant or defendants as to whom there shall have been such endorsement and affidavits and that such lastmentioned defendant or defendants is or are absent from the State it shall be lawful for the plaintiff at the plaintiff's option to proceed against every such absent defendant (in case no appearance be entered for him or her) in the manner next hereinafter mentioned that is to say upon the filing of such affidavit or as soon after as conveniently may be the plaintiff shall cause a

notice to every such defendant signed by himself or herself or the plaintiff's attorney to be published in the gazette and in not less than 1 other Brisbane newspaper in such form as the court shall for that purpose direct requiring every such defendant to appear and if on the day named in such notice (such day not being less than 10 days next after the day of the publication of the same in the said gazette) no appearance be entered for the defendant or defendants so being absent from the State the plaintiff may proceed as if he, she or they resided in the said State and had appeared to the action in person.

### **Similar provision where defendants not sued as copartners**

**86.(1)** The like appearance may be entered and proceedings had where 2 or more defendants shall be sued although not as copartners (where there shall be such endorsements and affidavits) upon an affidavit by or on behalf of the plaintiff that the cause of action against all the defendants accrued within the said State and that the defendant or defendants as to whom such endorsements and affidavits were made is or are absent from the State.

**(2)** However, in addition to the publication of such notice as aforesaid the plaintiff shall give security by bond before any such appearance as aforesaid shall be entered by the plaintiff to such amount and in such form as a judge shall order conditioned to repay all such sums as the plaintiff shall recover in the action against any such absent defendant together with all costs sustained by such defendant in the premises in case the judgment therein against the defendant shall afterwards be vacated reversed or altered and every such defendant shall have the like remedy and the same proceedings may be taken on the defendant's behalf for procuring the reversal of such judgment so far as the same affects such defendant as are hereinbefore provided with respect to defendants against whose property there shall have been issued as aforesaid any writ of foreign attachment.

### **Provisions to extend only to cases of contract**

**87.** Divisions 4 to 10 do not extend to any action of trespass or other action in tort (trover or detinue excepted) but to actions on or arising out of contract only.

***Division 11—Attachment of goods*****Attachment upon goods of absconding debtor**

**88.(1)** If a plaintiff in any action shall by the affidavit of himself or herself or some other person or persons show to the satisfaction of a judge of the Supreme Court that such plaintiff has a cause of action against the defendant or defendants to the amount of \$20 or upwards or has sustained damage to that amount and that the defendant or defendants is or are about to remove or is or are making preparations to remove or has or have absconded out of the jurisdiction of the court or to remote parts within the State by which is intended parts beyond the limits which now are or hereafter may be prescribed for location within the same and that such action will be defeated thereby it shall be lawful for such judge of the Supreme Court by a special order upon such terms as to giving security or otherwise as the judge may deem fit to direct that the plaintiff have leave to issue a writ which said writ shall be called a writ of attachment and seizure and thereupon the sheriff shall seize and attach the goods and chattels of the defendant or defendants and if the defendant or defendants whose goods and chattels shall have been so seized and attached or any one on his, her or their behalf shall give bail with 2 sufficient sureties in treble the amount of debt or damages sought to be recovered by the plaintiff the action shall proceed and the sheriff shall release the said goods from the sheriff's possession but in default of such bail at the expiration of 14 days from the return of the said writ of attachment the action shall or may be set down for trial before the registrar when the plaintiff shall prove the plaintiff's debt or damages viva voce to the satisfaction of the registrar and such proof shall be reduced to the form of a deposition and so signed by the deponents and also by the registrar and filed and thereupon judgment may be entered and a special writ of fieri-facias may issue thereon for the sale of the said goods and chattels.

**(2)** However, if the goods and chattels so seized shall be of such a nature as to render the immediate sale thereof expedient the judge or in the judge's absence the said registrar upon proof thereof upon affidavit may order the same to be sold and the money to be deposited in court until such bail shall be given and if such bail shall not be given within the time aforesaid the proceeds of any such sale shall be paid to the sheriff in satisfaction of the debt or damages and costs in such writ of fieri-facias upon the said

judgment.

(3) In addition, nothing herein contained shall prevent the plaintiff from arresting the defendant on a *capias ad respondendum* under any law now or hereafter to be in force.

(4) In addition, the plaintiff unless it be otherwise ordered by a judge shall enter into such bond as is required by section 73 *mutatis mutandis*.

### *Division 12—Capias ad respondendum*

#### **Arrest on mesne process abolished except in certain cases**

**89.** No person shall be arrested upon mesne process in any civil action in any court within the said State except in the cases and in the manner hereinafter provided.

#### **When person may be arrested or held to bail**

**90.** If a plaintiff in any action in which the defendant is now liable to arrest whether upon the order of a judge or without such order shall by the affidavit of himself, herself or some other person or persons show to the satisfaction of a judge of the Supreme Court that such plaintiff has a cause of action against the defendant or defendants to the amount of \$40 or upwards or has sustained damage to that amount and that the defendant or any 1 or more of the defendants is about to remove or is making preparations to remove out of the jurisdiction of the Supreme Court or otherwise to abscond to remote parts within the said State (by which is intended parts beyond the limits which now are or hereafter may be prescribed for location within the same) and that such action will be defeated unless he, she or they be forthwith apprehended it shall be lawful for such judge by a special order to direct that such defendant or defendants so about to remove or abscond shall be held to bail for such sum as such judge shall think fit not exceeding the amount of the debt or damages and thereupon it shall be lawful for such plaintiff within the time which shall be expressed in such order but not afterwards to sue out 1 or more writ or writs of *capias* against any such defendant or defendants so directed to be held to bail which writ of *capias* shall be in the form to be prescribed as hereinafter mentioned by the judges of the Supreme Court.

**Sheriff may proceed to arrest defendant—defendant to remain in custody until defendant finds bail or makes deposit**

91. The sheriff or other officer to whom any such writ of *capias ad respondendum* shall be directed shall before the return of the said writ but not afterwards proceed to arrest the defendant thereupon and such defendant when so arrested shall remain in custody until the defendant shall have given a bail bond to the sheriff or other officer or shall have made deposit of the sum endorsed on such writ of *capias* together with \$20 costs.

**Order may be made at any stage of the proceedings before final judgment**

92. Any such special order may be made and the defendant arrested in pursuance thereof at any time after the commencement of such action and before final judgment shall have been obtained therein.

***Division 13—Discharge of prisoner*****Defendant may apply for defendant's discharge forthwith—judge may discharge defendant or not**

93.(1) It shall be lawful for any person arrested upon any such writ of *capias ad respondendum* to apply at any time after such arrest to a judge of the Supreme Court for an order or rule on the plaintiff in such action to show cause why the person arrested should not be discharged out of custody and it shall be lawful for such judge to make absolute or discharge such order or rule and to direct the costs of the application to be paid by either party or to make such other order therein as to such judge shall seem fit.

(2) However, any such order made by a judge may be discharged or varied by the court on application made thereto by either party dissatisfied with such order.

**Division 14—*Capias ad satisfaciendum*****As to arrests on Supreme Court writs**

**94.(1)** Except as hereinafter provided no person shall be arrested on any writ of *capias ad satisfaciendum* issuing out of the Supreme Court.

**(2)** However, if any judge of the said Supreme Court shall be satisfied by affidavit that the defendant fraudulently conceals money goods or valuable securities from the judge's judgment creditor or that the defendant is about to leave the State without satisfying the judgment the said judge shall order such writ to issue and the defendant may be arrested on such writ anything hereinbefore contained notwithstanding.

**(3)** In addition, nothing in this section contained shall extend to any writ of *capias ad satisfaciendum* issued in any action for breach of promise of marriage libel slander seduction criminal conversation with the plaintiff's wife or any malicious injury.

**Writs of ca. sa. to fix bail**

**95.** In any case in which a defendant shall have been arrested or have 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.

**Proceedings for charging in execution a person already in prison**

**96.** It shall not be necessary in any case to sue out a writ of *habeas corpus ad satisfaciendum* to charge in execution a person already in the prison of the court but such person may be so charged in execution by a *capias ad satisfaciendum* in all cases where by law such lastmentioned writ may now issue and the service of such lastmentioned writ upon the keeper of the prison for the time being shall have the effect of a detainer.

***Division 15—Discharge of prisoner*****Sheriff or gaoler may discharge prisoner by authority of the attorney in the cause**

**97.** A written order under the hand of the attorney in the cause by whom any writ of *capias ad satisfaciendum* shall have been issued shall justify the sheriff gaoler or person in whose custody the party may be under such writ in discharging such party unless the party for whom such attorney professes to act shall have given written notice to the contrary to such sheriff gaoler or person in whose custody the opposite party may be but such discharge shall not be a satisfaction of the debt unless made by the authority of the creditor and nothing herein contained shall justify any attorney in giving such order for discharge without the consent of the attorney's client.

***Division 16—Fieri-facias*****Sheriff empowered to seize moneys banknotes etc.**

**98.(1)** By virtue of any writ of fieri-facias to be sued out of the Supreme Court or any precept in pursuance thereof the sheriff or other officer having the execution thereof may and shall seize and take any money or banknote or notes of any banking society or company established in Queensland or elsewhere and any cheques bills of exchange promissory notes bonds specialties or other securities for money belonging to the person against whose effects such writ of fieri-facias shall be sued out and may and shall pay or deliver to the party suing out such execution any money or banknotes which shall be so seized or a sufficient part thereof and may and shall hold any such cheques bills of exchange promissory notes bonds specialties or other securities for money as a security or securities for the amount by such writ of fieri-facias directed to be levied or so much thereof as shall not have been otherwise levied and raised and may sue in the name of such sheriff or other officer for the recovery of the sum or sums secured thereby if and when the time of payment thereof shall have arrived and the payment to such sheriff or other officer by the party liable on any such cheque bill of exchange promissory note bond specialty or other security with or without suit or the recovery and levying execution against the party

so liable shall discharge the party to the extent of such payment or of such recovery and levy in execution as the case may be from the party's liability on any such cheque bill of exchange promissory note bond specialty or other security and such sheriff and other officer may and shall pay over to the party suing out such writ the money so to be recovered or such part thereof as shall be sufficient to discharge the amount by such writ directed to be levied and if after satisfaction of the amount so to be levied together with sheriff's poundage and expenses any surplus shall remain in the hands of such sheriff or other officer the same shall be paid to the party against whom such writ shall be so issued.

(2) However, no such sheriff or other officer shall be bound to sue any party liable upon any such cheque bill of exchange promissory note bond specialty or other security unless the party suing out such execution shall enter into a bond with 2 sufficient sureties for indemnifying him or her from all costs and expenses to be incurred in the prosecution of such action or to which he or she may become liable in consequence thereof the expense of such bond to be deducted out of any money to be recovered in such action.

(3) For the purposes of this section—

**“writ of fieri-facias”** includes a warrant or precept in the nature of such writ sued out of any inferior court in the said State.

### **Property of debtors liable to be sold in execution**

99.(1) It shall be lawful for the sheriff under any writ of execution issued out of the Supreme Court whereby the sheriff is directed to levy any sum of money and whereby the sheriff is directed in the behalf herein mentioned to execute the same as herein mentioned (that is to say) to seize and take and to cause to be sold all and singular the lands tenements goods chattels choses in action and other property within the said State of or to which the person named in the said writ against whom any judgment decree or order has been recovered or pronounced is or may be seized possessed or entitled or which the sheriff can either at law or in equity assign or dispose of whether such person be resident or domiciled within or without the said State.

(2) However, this part shall not empower such sheriff to sell any mere claim or right of entry to which such person is or may be entitled.



**Sheriff to execute deed of bargain and sale to purchaser**

**100.** In case of any sale by the said sheriff by himself, herself or the sheriff's deputy of the right title and interest of any person of to or in any lands the said sheriff is hereby required to execute a proper deed of bargain and sale of the right title and interest of such person to the purchaser thereof.

**Sales of land by sheriff**

**101.** It shall not hereafter be necessary for any sheriff to make an actual seizure of land under any writ in order to authorise a sale thereof but instead of such seizure the sheriff shall cause notice of the writ and of the intended day and place of sale and the particulars of the property to be published in accordance with the *Rules of the Supreme Court* and the publication of such notice shall be equivalent to an actual levy by the sheriff on the land indicated by such notice.

**Deeds of sale by sheriff**

**102.** Every deed of sale heretofore or hereafter executed by any sheriff of the land of a judgment debtor or of the right title and interest of such debtor to and in any land shall be prima facie evidence of the existence of a valid judgment and writ to support a levy by such sheriff on the land and of the fact of a levy having been duly made on such land if stated in the deed or of such notice as aforesaid having been duly published if that fact be so stated and no such deed shall be deemed invalid by reason only of nonregistration within 1 calendar month.

**Sheriff may sell equities of redemption**

**103.(1)** It shall be lawful for the sheriff to whom any writ of fieri-facias issued out of the Supreme Court shall be directed to take in execution and cause to be put up for sale and to be sold under such writ any equity of redemption or other equitable interest of or belonging to the defendant therein named and every such sale (the same being by public auction only and in cases of equity of redemption being previously advertised in the gazette and in 1 or more newspaper or newspapers at least 1 calendar month before the same shall take place) shall be as valid and effectual to pass all such defendant's right and title to and interest in such equity or equitable

interest as if the same had been conveyed or assigned to the purchaser by such defendant.

(2) However, where any such equity or equitable interest shall relate to real estate a deed of bargain and sale thereof or of such defendant's right and title to and interest therein shall be executed by such sheriff to such purchaser and be by him or her duly registered within 1 calendar month next after sale.

### *Division 17—Special commissioners*

#### **Chief justice to appoint commissioners in certain towns**

**104.** It shall be lawful for the chief justice of the Supreme Court to appoint from time to time by commission under the chief justice's hand and the seal of the said court some fit persons residing respectively at the towns of Maryborough Gladstone Rockhampton Bowen and Warwick or within 4 km of the said places to be commissioners of the said court for the purposes of this part which commissioners shall at the instance of any plaintiff have power to issue writs of summons and of *capias ad respondendum* in the said court against any defendant about to depart out of the State from any of the said towns in cases where by law an arrest upon mesne process is now allowed in the said court and every such writ of *capias* shall (except where hereby otherwise provided) have the same force and effect as an ordinary writ of *capias ad respondendum* issued out of the said court at Brisbane.

#### **No writ of *capias* to issue unless upon proof that defendant is about to leave the State—security to be given by the plaintiff**

**105.(1)** No writ of *capias* shall be issued under section 104 unless proof by affidavit shall be first given to the commissioner issuing the same that the defendant is about to depart out of the State from any of the said towns and of all such other facts and matters which are or may be necessary to be given and established to obtain an order from a judge of the said court for the issue of an ordinary writ of *capias ad respondendum* out of the said court at Brisbane nor unless the plaintiff shall first give a bond of 2 sufficient persons (of whom the plaintiff if in the opinion of the said

commissioner the plaintiff is of sufficient ability may be one) to the satisfaction of the said commissioner to the defendant in a sum of money to be fixed by said commissioner not being less than double the amount for which the defendant shall be liable to be arrested or held to bail under such writ conditioned to be void on payment to the defendant of all damages costs and charges which may be adjudged to the defendant in any action by the defendant against the plaintiff and the bailiff to whom such writ of *capias* shall be directed or either of them for or by reason of such writ having been issued or of the defendant being arrested thereunder or of any wrong or damage sustained by the defendant on account thereof or of any wrongful act or omission of such bailiff in or about the execution thereof or otherwise in relation thereto and of all costs charges and expenses which upon any application by the defendant to the said court or any judge thereof for any rule or order to set aside any such writ or to discharge the defendant from custody thereunder or to cancel any bail bond given thereunder or otherwise in relation or connection with such writ or anything done thereunder may be adjudged or ordered to be paid to the defendant.

(2) However, the amount for which such bail bond shall be given shall in no case exceed the sum of \$800 and such commissioner shall forthwith transmit such bond to the prothonotary of the said court at Brisbane and such prothonotary shall upon demand deliver such bond to the defendant or anyone applying for the same on the defendant's behalf.

### **Memorandum by commissioner on writ of *capias***

**106.** It shall not be necessary for any order to be made to warrant the issuing of any writ of *capias* under section 104 but the commissioner shall by memorandum thereon under the commissioner's hand certify on whose application and on what affidavit or affidavits and when it was issued and the amount for which the defendant is to be arrested or held to bail.

### **Writs of *capias* to be directed to special bailiff**

**107.** Every writ of *capias* issued under section 104 shall instead of being directed to the sheriff be directed to some person to be specially named by the plaintiff as bailiff to execute the same and shall be issued under the signature and seal of the commissioner issuing the same.

**Copies of writs to be transmitted to Supreme Court in Brisbane**

**108.** Every writ of summons issued under section 104 shall be the commencement of an action in the said court by the plaintiff against the defendant and such commissioner upon issuing any such writ of summons or *capias* shall forthwith transmit copies thereof and of every endorsement thereon and the original affidavits upon which any such writ of *capias* was issued by the commissioner to the office of the prothonotary of the said Supreme Court at Brisbane to be there filed and kept.

**Bail to be taken by bailiff**

**109.** The bailiff acting under any writ of *capias* issued under section 104 shall have authority and shall be bound to take bail by bond of the defendant and 2 sureties to himself or herself for the appearance and rendering of the body of the defendant according to the exigency of such writ and the practice of the said court of the same kind and in like manner in all respects as the sheriff is bound to take bail from a defendant arrested under an ordinary writ of *capias ad respondendum* issued out of the said court at Brisbane directed to himself or herself and such bailiff upon such bail bond being entered into and given to the bailiff shall release the defendant from the bailiff's custody under such writ and every such bail bond shall be assignable by such bailiff to the plaintiff and such bailiff upon being required so to do shall assign the same to the plaintiff and the plaintiff upon such assignment thereof may sue thereon in like manner in all respects as if it was an ordinary bail bond to the sheriff.

**Deposit in lieu of bail**

**110.** Every bailiff acting under any writ of *capias* issued under section 104 shall be bound to receive from the defendant as a deposit in lieu of bail the amount for which the defendant is to be arrested or held to bail thereunder and the sum of \$20 for costs in like manner as the sheriff is bound to do under an ordinary writ of *capias ad respondendum* issued out of the said court at Brisbane directed to and executed by the bailiff and upon receipt of such deposit such bailiff shall release the defendant from the bailiff's custody under such writ and shall forthwith pay or cause to be paid to the prothonotary of the said court at Brisbane the money so deposited by

such defendant as aforesaid to be held and disposed of by such prothonotary according to law.

**Commissioners may issue writs of summons and subpoena to give evidence**

**111.(1)** It shall be lawful for any of the said commissioners residing at any of the towns aforesaid to receive any praecipe for and to issue any writ of summons for the said Supreme Court at Brisbane and also to issue any writ of subpoena to give evidence in any case civil or criminal.

**(2)** However, every such writ of summons shall be returnable in the Supreme Court at Brisbane and that every such praecipe shall as soon as conveniently may be after the issue of the writ to which the same relates be transmitted by the commissioner who received the same to the office of the prothonotary of the Supreme Court.

**PART 6—PROVISIONS FROM COSTS ACT 1867**

**Executors suing in right of the testator to pay costs**

**112.** In all actions hereafter brought by executors or administrators in right of their testator or intestate such executors or administrators (unless the court or a judge shall otherwise order) shall be liable to pay costs to the defendant in case of being nonsuited or a verdict passing against them and in all other cases in which they would be liable to costs if suing upon a cause of action accruing to themselves in their own right and the defendant shall have judgment for such costs accordingly.

## **PART 7—PROVISIONS FROM EQUITY ACT 1867**

### *Division 1—Purpose of part*

#### **Purpose of pt 7**

**113.** The purpose of this part is to consolidate and amend the laws about proceedings in equity.

### *Division 2—Interpretation*

#### **Definitions for pt 7**

- 114.** In this part—
- “**affidavit**” includes affirmation.
- “**bill of complaint**” includes information.

### *Division 3—Substituted service*

#### **Equity process to be served in parts beyond jurisdiction**

**115.** It shall be lawful for the Supreme Court in its equitable jurisdiction in any suit instituted in the said court—

- (a) concerning lands or hereditaments situate in the State; or
- (b) concerning any charge lien judgment or encumbrance thereon; or
- (c) concerning any money vested in any government or public stock or public shares in public or joint stock companies or concerns in the said State; or
- (d) concerning the interests dividends or produce thereof;

upon special motion in open court on behalf of the complainant in such suit founded upon affidavit and such other documents as may be applicable for the purpose of ascertaining the residence of defendants in such suit or parties sought to be served and the particulars material to identify them and

their residence and also specifying the means whereby such service may be authenticated and especially where there are any officers civil or military appointed or serving under the Government of the said State residing at or near the place of the alleged residence of the said defendants or parties to order that service of any bill and endorsement thereon and of all subsequent process thereupon upon any defendant in such suit then residing out of the jurisdiction of the said court in such parts in which the defendant shall so reside and be so served or in case the said court shall deem fit upon the receiver steward agent or other person receiving or remitting the rents of the premises or the dividends and profits of the said stock or concerns hereinbefore mentioned (if any) the subject or in part the subject matter of the suit returnable at such time as the court shall direct shall be deemed good service on every such defendant or party and afterwards upon an affidavit of such service had to order an appearance to be entered for such defendant or party in such manner and at such times as the court shall direct and thereupon it shall be lawful for such court and the plaintiff to proceed upon such appearance entered or such service so made as aforesaid as fully and effectually as if such appearance had been duly entered by a defendant residing or such service had been duly made within the jurisdiction of the said court.

### **Substitution of such service**

**116.** When it shall appear upon affidavit to the satisfaction of the said court that any defendant in any such suit can not by reasonable diligence be served with the bill and endorsement thereon or that upon inquiry at the defendant's last or usual place of abode the defendant could not be found so as to be served with such process and there is just ground for believing that such defendant secretes or withdraws himself or herself so as to avoid being served with the process of such court then it shall be lawful for the said court to order such substitution of such service of the bill and endorsement thereon as the said court shall think reasonable.

### **Special order for absolute decree**

**117.(1)** However, no decree in cases within sections 115 and 116 shall be made absolute in the said court without the special order of such court made upon a special motion for that purpose.

(2) In addition, nothing in this part shall be held to make it compulsory upon the complainant in any suit to serve or bring before such court any party or person further or otherwise than such complainant is now by law or the practice of such court required to do.

#### *Division 4—Joinder of parties*

#### **Court may proceed without representative of deceased person or may appoint one**

**118.** If in any suit or proceeding before the court it shall appear to the court that any deceased person who was interested in the matters in question has no legal personal representative it shall be lawful for the court either to proceed in the absence of any person representing the estate of such deceased person or to appoint some person to represent such estate for all the purposes of the suit or proceeding on such notice (if any) as the court shall think fit either specially or generally by public advertisement and every order made by the said court in reference to the matter and any orders consequent thereon shall bind the estate of such deceased person in the same manner in every respect as if there had been a duly constituted legal personal representative of such deceased person and such legal personal representative had been a party to the suit or proceeding and had duly appeared and submitted the personal representative's rights and interests to the protection of the court.

#### **Court may decide between some of the parties without making other interested persons parties**

**119.(1)** It shall be lawful for the court to adjudicate on questions arising between parties notwithstanding that they may be some only of the parties interested in the property respecting which the question may have arisen or that the property in question is comprised with other property in the same settlement will or other instrument without making the other parties interested in the property respecting which the question may have arisen or interested under the same settlement will or other instrument parties to the suit and without requiring the whole trusts and purposes of the settlement will or other instrument to be executed under the direction of the court and without taking the accounts of the trustees or other accounting parties or



ascertaining the particulars or amount of the property touching which the question or questions may have arisen.

(2) However, if the court shall be of opinion that the application is fraudulent or collusive or for some other reason ought not to be entertained it shall have power to refuse to make the order prayed.

### **Objections for want of parties**

**120.** It shall not be competent to any defendant to take any objection for want of parties in any case to which the rules next hereinafter set forth extend and such rules shall be taken as part of the law and practice of the court and any law or practice inconsistent therewith is hereby annulled—

**Rule 1.** Any residuary legatee or next of kin may without serving the remaining residuary legatees or next of kin have a decree for the administration of the personal estate of a deceased person.

**Rule 2.** Any legatee interested in a legacy charged upon real estate and any person interested in the proceeds of real estate directed to be sold may without serving any other legatee or person interested in the proceeds of the estate have a decree for the administration of the estate of a deceased person.

**Rule 3.** Any residuary devisee or heir may without serving any coresiduary devisee or coheir have the like decree.

**Rule 4.** Any one of several cestui que trust under any deed or instrument may without serving any other of such cestuis que trust have a decree for the execution of the trusts of the deed or instrument.

**Rule 5.** In all cases of suits for the protection of property pending litigation and in all cases in the nature of waste 1 person may sue on behalf of himself or herself and of all persons having the same interest.

**Rule 6.** Any executor administrator or trustee may obtain a decree against any 1 legatee next of kin or cestui que trust for the administration of the estate or the execution of the trusts.

**Rule 7.** In all the above cases the court if it shall see fit may require any other person or persons to be made a party or parties to the suit and may if it shall see fit give the conduct of the suit to such person as it may deem proper and may make such order in any particular case as it may deem just for placing the defendant on the record on the same footing in regard to

costs as other parties having a common interest with the defendant in the matters in question.

**Rule 8.** In all the above cases the persons who according to the previous practice of the court would be necessary parties to the suit shall be served with notice of the decree and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit and they may by an order of course have liberty to attend the proceedings under the decree and any party so served may within such time as shall in that behalf be prescribed by the general order of the Supreme Court apply to the court to add to the decree.

**Rule 9.** In all suits concerning real or personal estate which is vested in trustees under a will settlement or otherwise such trustees shall represent the persons beneficially interested under the trust in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate and in such cases it shall not be necessary to make the persons beneficially interested under the trusts parties to the suit but the court may upon consideration of the matter on the hearing if it shall so think fit order such persons or any of them to be made parties.

### *Division 5—Examination of defendants*

#### **In the court of equity defendant may be examined on behalf of the plaintiff or any codefendant**

**121.** In the court of equity any defendant to any cause pending in such court may be examined as a witness on the behalf of the plaintiff or of any codefendant in any such cause saving just exceptions and any interest which such defendant so to be examined may have in the matters or any of the matters in question in the cause shall not be deemed a just exception to the testimony of such defendant but shall only be considered as affecting or tending to affect the credit of such defendant as a witness.

#### **Limited commissions**

**122.** In order to relieve persons in prison from the expense of a master's attendance to take affidavits or answers the chief justice may in the chief

justice's discretion by 1 or more commission or commissions under the seal of the court upon or in respect of which no fee shall be payable nominate and appoint the warden keeper or other chief officer of any prison within the State and their deputies to be commissioners for the Supreme Court in equity for the purpose of taking and receiving such affidavits and answers as any person or persons within any such prison shall be willing or desirous to make and for no other purpose.

*Division 6—Evidence on motions, petitions etc.*

**Any party in a cause may by subpoena require attendance of any witness**

**123.** Any party in any cause or matter depending in the said court may by a writ of subpoena ad testificandum or duces tecum require the attendance of any witness before the master in equity or before a commissioner specially appointed for the purpose and examine such witness orally for the purpose of using the witness's evidence upon any motion petition or other proceeding before the court in like manner as such witness would be bound to attend and be examined with a view to the hearing of a cause.

**Parties who have deposed by affidavit bound to attend for cross-examination if required**

**124.(1)** And any party having made an affidavit to be used or which shall be used on any motion petition or other proceeding before the court shall be bound on being served with such writ to attend before the court master in equity or a commissioner for the purpose of being cross-examined.

**(2)** However, the court shall always have a discretionary power of acting upon such evidence as may be before it at the time and of making such interim orders or otherwise as may appear necessary to meet the justice of the case.

***Division 7—Evidence taken out of the jurisdiction*****Pleas declarations etc. how to be sworn and taken in places out of this State**

**125.** All pleas answers disclaimers examinations affidavits declarations affirmations and attestations of honour in causes or matters depending in the Supreme Court in equity may be sworn and taken in any place out of this State under the dominion of Her Majesty before any judge court notary public or person lawfully authorised to administer oaths at such place or before any of Her Majesty's consuls or vice-consuls or before any Australian consular officer within the meaning of the *Australian Consular Officers' Notarial Powers and Evidence Act 1946* or before any other person who is a consular officer within the meaning of the *Evidence and Discovery Act 1867*, section 37A, in any place out of Her Majesty's dominions and the judges and other officers of the said Supreme Court shall take judicial notice of the seal or signature as the case may be and authority of any such court judge notary public person consul or vice-consul or of such Australian consular officer or, as the case may be, of such other person who is a consular officer within the meaning of the *Evidence and Discovery Act 1867*, section 37A attached appended or subscribed to any such plea answer disclaimer examination affidavit affirmation attestation of honour declaration or other document to be used in the said court.

***Division 8—Scientific assistance*****Court in equity may obtain assistance of scientific persons and others**

**126.** It shall be lawful for the Supreme Court or any judge thereof in such way as they may think fit to obtain the assistance of conveyancing counsel accountants merchants engineers actuaries or other scientific persons the better to enable such court or judge to determine any matter at issue in any cause or proceeding depending in the equity jurisdiction of the court and to act upon the certificate of such persons.

**Fees to such persons**

**127.** The allowances in respect of fees to such conveyancing counsel accountants merchants engineers actuaries and other scientific persons shall be regulated by the taxing officer of the said court subject to an appeal to any judge whose decision shall be final.

***Division 9—Declarations*****Suit may be for declaratory order only**

**128.** No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby and it shall be lawful for the court to make binding declarations of right without granting consequential relief.

***Division 10—Directions*****Where account required to be taken court may give special directions as to the mode of taking same**

**129.** It shall be lawful for the court in any case where any account is required to be taken to give such special directions (if any) as it may think fit with respect to the mode in which the account should be taken or vouched and such special directions may be given either by the decree or order directing such account or by any subsequent order or orders upon its appearing to the court that the circumstances of the case are such as to require such special directions and particularly it shall be lawful for the court in cases where it shall think fit so to do to direct that in taking the account the books of account in which the accounts required to be taken have been kept or any of them shall be taken as prima facie evidence of the truth of the matters therein contained with liberty to the parties interested to take such objections thereto as they may be advised.

**Where property is the subject of proceedings court may allow to parties the annual income**

**130.** Where any real or personal property shall form the subject of any

proceedings in the Supreme Court in equity and the court shall be satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such suit it shall be lawful for the said court at any time after the commencement of such proceedings to allow to the parties interested therein or any 1 or more of them the whole or part of the annual income of such real property or a part of such personal property or a part or the whole of the income thereof up to such time as the said court shall direct and for that purpose to make such orders as may appear to the said court necessary or expedient.

### **Heir or devisee of real estate not to claim payment of mortgage out of personal assets**

**131.(1)** When any person shall after 31 December 1855 have died seized of or entitled to any estate or interest in any land or other hereditaments which shall at the time of the person's death have been charged with the payment of any sum or sums of money by way of mortgage and such person shall not by the person's will or deed or other document have signified any contrary or other intention the heir or devisee to whom such land or hereditaments shall descend or be devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate or any other real estate of such person but the land or hereditaments so charged shall as between the different persons claiming through or under the deceased person be primarily liable to the payment of all mortgage debts with which the same shall be charged every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

**(2)** However, nothing herein contained shall affect or diminish any right of the mortgagee on such lands or hereditaments to obtain full payment or satisfaction of the mortgagee's mortgage debt either out of the personal estate of the person so dying as aforesaid or otherwise.

**(3)** In addition, nothing herein contained shall affect the rights of any person claiming under or by virtue of any will deed or document made before 1 January 1856.

***Division 11—Contempt*****Sheriff to keep a register of persons committed and report 4 times a year to the court**

**132.** The sheriff shall keep a register of the names of all persons committed by the Supreme Court in equity for contempts stating the dates and the grounds of their several commitments and the dates of their respective discharges and shall in every term make a report to the Supreme Court of the names and descriptions of such prisoners in the sheriff's custody on each of such days respectively with the causes and dates of their respective commitments.

**Defendants brought into court by habeas corpus or in custody and refusing to enter appearance court may enter it for them**

**133.** If any defendant by virtue of any writ of habeas corpus or other process issuing out of the court in equity shall be brought into court and shall refuse or neglect or being within the walls of any prison in Queensland under or charged with an attachment or other process of contempt shall after 14 days previous notice in writing requiring the defendant to enter an appearance refuse or neglect to enter the defendant's appearance according to the rules or method required by the said court or to appoint an attorney of such court to act on the defendant's behalf such court may appoint an attorney of such court to enter an appearance for such defendant and such proceedings may thereupon be had in the cause as if the party had actually appeared.

**Any person in custody for contempt for not executing any deed etc. and after 2 months still refusing to execute court may order registrar to execute the same**

**134.** When any person shall have been directed by any decree or order to execute any deed or other instrument or make a surrender or transfer and shall have refused or neglected to execute make or transfer the same and shall have been committed to prison under process for such contempt or being confined in prison for any other cause shall have been charged with or detained under process for such contempt and shall remain in such prison

the court may upon motion or petition and upon affidavit that such person has after the expiration of 2 calendar months from the time of the person being committed under or charged with or detained under such process again refused to execute such deed or instrument order or appoint the registrar or if the act is to be done out of Brisbane then if necessary one of the commissioners of the Supreme Court in equity to execute such deed or other instrument or to make such surrender or transfer for and in the name of such person and the execution of the said deed or other instrument and the surrender or transfer made by the said registrar or commissioner shall in all respects have the same force and validity as if the same had been executed or made by the party himself or herself and within 10 days after the execution or making of any such deed or other instrument or surrender or transfer notice thereof shall be given by the adverse solicitor to the party in whose name the same is executed or made and such party as soon as the deed or other instrument surrender or transfer shall be executed made levied or suffered shall be considered as having cleared the party's contempt except as far as regards the payment of the costs of the contempt and shall be entitled to be discharged therefrom under any of the provisions of this part applicable to the party's case and the court shall make such order as shall be just touching the payment of the costs of or attending any such deed surrender instrument or transfer.

**A person committed for contempt for not delivering up books etc. any sequestrator may seize the same**

**135.** Where a person shall be committed for a contempt in not delivering to any person or persons or depositing in court or elsewhere as by any order may be directed books papers or any other articles or things any sequestrator or sequestrators appointed under any commission of sequestration shall have the same power to seize and take such books papers writings or other articles or things being in the custody or power of the person against whom the sequestration issues as they would have over the person's own property and thereupon such articles or things so seized and taken shall be dealt with by the court as shall be just and after such seizure it shall be lawful for the court upon the application of the prisoner or of any other person in the cause or matter or upon any report to be made in pursuance of this part to make such order for the discharge of the prisoner upon such terms and if it shall see fit making any costs in the cause as to the court shall seem proper.



**Other cases of contempt court may order discharge upon terms**

**136.** In any other case of a commitment for contempt not herein specially provided for the court may upon any such application as last aforesaid or upon any such report as aforesaid make such order for the discharge of the prisoner upon any such terms and making if the court shall see fit any costs in the cause as to the court shall seem proper.

**A person committed for contempt omitting to apply for the person's discharge the court may compulsorily discharge the person**

**137.** Where any person committed for a contempt shall be entitled to discharge upon applying to the court but shall omit to make such application the court may upon any such report as aforesaid compulsorily discharge such person from the contempt and from custody and pay the costs of the contempt out of any funds belonging to the person over which the court may have power or make them costs in the cause as against the person or may discharge the person from the contempt but leave the person in custody for the costs which may be cleared if the person be insolvent under the provisions hereinafter contained in that behalf.

***Division 12—Insolvents*****Discharge of insolvent may extend to process for contempt in nonpayment of money and to costs incurred by creditor but subject to taxation**

**138.** The discharge of any prisoner adjudicated upon under the authority of any Act already or which may hereafter be passed for the relief of insolvent debtors shall and may extend to all process issuing from any court of equity for any contempt of such court for nonpayment of money or of costs charges or expenses in any such court and in such case the said discharge shall be deemed to extend to all costs which such prisoner shall be liable to pay in consequence or by reason of such contempt or on purging the same and every discharge so adjudicated as aforesaid as to any debt or damages of any creditor of such prisoner shall be deemed to extend also to all costs incurred by such creditor before the filing of such prisoner's schedule in any action or suit brought by such creditor against such prisoner

for the purpose for the recovery of the same and all persons as to whose demands for any such costs money or expenses any such persons shall be so adjudged to be discharged shall be deemed and taken to be creditors of such prisoner in respect thereof and entitled to the benefits of all the provisions made for creditors by the said Act or any future Act subject nevertheless to such ascertaining of the amount of the said demands as may be had by taxation or otherwise and to such examination thereof as is in the said lastmentioned Act or as shall be in any future Act provided in respect of all claim to a dividend of such insolvent's estate and effects.

### *Division 13—Privilege*

#### **Appearances may be put in for defendants having privilege of Parliament in court of equity on return of process of sequestration**

**139.(1)** And whereas in many cases persons having privilege of Parliament are named as defendants in suits instituted in courts of equity against them either alone or jointly with other persons for enforcing against them demands and duties cognisable in courts of equity and in some cases such defendants having privileges of Parliament have stood out to the return of process of sequestration issued against them for enforcing appearance and such process of sequestration hath not been found sufficient to enforce such appearance be it therefore enacted.

**(2)** That in case any defendant having privilege of Parliament shall upon a return of process of sequestration issued against the defendant for not putting in an appearance to any original or other bill of complaint instituted against the defendant in a court of equity for enforcing discovery and relief or discovery alone (as the case may be) neglect to appear that then and in such case such court upon producing the return of such sequestration in court may on the motion or other application of the plaintiff in such cause appoint a solicitor to enter an appearance for such defendant so having privilege of Parliament and such proceedings may be thereupon had in the cause as if the party had actually appeared.

***Division 14—Attestations upon honour*****Commissioners and others may take attestations upon honour**

**140.** Every person by law authorised to administer oaths and take declarations and affirmations shall be so authorised to take attestations upon honour.

***Division 15—Jurisdiction in infancy*****Mother petitioning may obtain access to mother's infant under regulations**

**141.** It shall be lawful for the Supreme Court or for the primary judge of the said court in equity or during the primary judge's absence or illness for any other judge of the said court upon hearing the petition of the mother of an infant being in the sole custody or control of the father thereof or of any person by the judge's authority or of any guardian after the death of the father if the said court or judge shall see fit to make order for the access of the petitioner to such infant at such times and subject to such regulations as the said court or judge shall deem convenient and just and if such infant shall be within the age of 7 years to make order that such infant shall be delivered to and remain in the custody of the petitioner until attaining such age subject to such regulations as the said court or judge shall deem convenient and just.

**Orders may be enforced by process of contempt**

**142.** All orders which shall be made by virtue of this part by the said court or judge shall be enforced by process of contempt of the said court.

**Unless in cases of adultery**

**143.** However, no order shall be made by virtue of this part whereby the mother against whom adultery shall be established by the judgment decree or sentence of the court in its matrimonial causes jurisdiction shall have the custody of any infant or access to any infant anything herein contained to the contrary notwithstanding.

**Infants may with the approbation of the Supreme Court make valid settlements or contracts for settlements of their real and personal estate upon marriage**

**144.(1)** It shall be lawful for every infant upon or in contemplation of his or her marriage with the sanction of the Supreme Court in its equitable jurisdiction to make a valid and binding settlement or contract for a settlement of all or any part of his or her property or property over which he or she has any power of appointment whether real or personal and whether in possession reversion remainder or expectancy and every conveyance appointment and assignment of such real or personal estate or contract to make a conveyance appointment or assignment thereof executed by such infant with the approbation of the said court for the purpose of giving effect to such settlement shall be as valid and effectual as if the person executing the same were of full age.

**(2)** However, this enactment shall not extend to powers of which it is expressly declared that they shall not be exercised by an infant.

**In case infant die under age appointment etc. to be void**

**145.** In addition, in case any appointment under a power of appointment or any disentailing assurance shall have been executed by any infant tenant in tail under the provisions of this part and such infant shall afterwards die under age such appointment or disentailing assurance shall thereupon become absolutely void.

**The sanction of the Supreme Court to be given upon petition**

**146.** The sanction of the Supreme Court in its equitable jurisdiction to any such settlement or contract for a settlement may be given upon petition presented by the infant or his or her guardian in a summary way without the institution of a suit and if there be no guardian the court may require a guardian to be appointed or not as it shall think fit and the court also may if it shall think fit require that any persons interested or appearing to be interested in the property should be served with notice of such petition.

**Not to apply to males under 17 or females under 17 years of age**

**147.** However, nothing in this part contained shall apply to any male infant under the age of 17 years or to any female infant under the age of 17 years.

**Jurisdiction given to the primary judge in equity or 1 other judge in the primary judge's absence or illness**

**148.** The jurisdiction and powers by sections 144 to 147 vested in the Supreme Court may be exercised by the primary judge thereof in equity or 1 other judge acting as such in the primary judge's absence or during the primary judge's illness in the same manner as the ordinary equitable jurisdiction and powers of the Supreme Court are exercised and subject in like manner to appeal rehearing and review.

**PART 8—PROVISIONS FROM INTERDICT ACT 1867***Division 1—Purpose of part***Purpose of pt 8**

**149.** The purpose of this part is to consolidate and amend the law about arbitration, interpleader, mandamus, quo warranto, prohibition and injunction.

*Division 2—Interpleader***Action that may be taken by the court**

**150.** Upon application made by or on behalf of any defendant sued in the Supreme Court in any action of assumpsit debt detinue or trover such application being made after declaration and before plea by affidavit or otherwise showing that such defendant does not claim any interest in the subject matter of the suit but that the right thereto is claimed or supposed to

belong to some third party who has sued or is expected to sue for the same and that such defendant does not in any manner collude with such third party but is ready to bring into court or to pay or dispose of the subject matter of the action in such manner as the court (or any judge thereof) may order or direct it shall be lawful for the court or any judge thereof to make rules and orders calling upon such third party to appear and to state the nature and particulars of his or her claim and maintain or relinquish his or her claim and upon such rule or order to hear the allegations as well of such third party as of the plaintiff and in the meantime to stay the proceedings in such action and finally to order such third party to make himself or herself defendant in the same or some other action or to proceed to trial on 1 or more feigned issue or issues and also to direct which of the parties shall be plaintiff or defendant on such trial or with the consent of the plaintiff and such third party their counsel or attorneys to dispose of the merits of their claims and determine the same in a summary manner and to make such other rules and orders therein as to costs and all other matters as may appear to be just and reasonable.

### **Judgment and decision to be final**

**151.** The judgment in any such action or issue as may be directed by the court or judge and the decision of the court or judge in a summary manner shall be final and conclusive against the parties and all persons claiming by from or under them.

### **If such third party shall not appear etc. the court may bar his or her claim against the original defendant**

**152.** If such third party shall not appear upon such rule or order to maintain or relinquish his or her claim being duly served therewith or shall neglect or refuse to comply with any rule or order to be made after appearance it shall be lawful for the court or judge to declare such third party and all persons claiming by from or under him or her to be forever barred from prosecuting his or her claim against the original defendant his or her executors or administrators saving nevertheless the right or claim of such third party against the plaintiff and thereupon to make such order between such defendant and the plaintiff as to costs and other matters as may appear just and reasonable.

**Proviso as to orders made by a single judge**

**153.** However, every order to be made in pursuance of this part by a single judge not sitting in open court shall be liable to be rescinded or altered by the court in like manner as other orders made by a single judge.

**If a judge thinks the matter more fit for the decision of the court the judge may refer it**

**154.** In addition, if upon application to a judge in the first instance or in any later stage of the proceedings the judge shall think the matter more fit for the decision of the court it shall be lawful for the judge to refer the matter to the court and thereupon the court shall and may hear and dispose of the same in the same manner as if the proceeding had originally commenced by rule of court instead of the order of a judge.

**Interpleader may be granted though titles have not a common origin**

**155.** Where an action has been commenced in respect of a common law claim for the recovery of money or goods or when the goods and chattels have been taken or are intended to be taken in execution under process issued from the Supreme Court or any court of record in the State and the defendant in such action or the sheriff or other officer has applied for relief under the provisions of this part it shall be lawful for the court or a judge to whom such application is made to exercise all the powers and authorities given to them by this part though the titles of the claimants to the money goods or chattels in question or to the value or proceeds thereof have not a common origin but are adverse to and independent of one another.

**Power to court or judge to decide summarily in certain cases**

**156.** Upon hearing of any rule or order calling upon persons to appear and state the nature and particulars of their claims it shall be lawful for the court or a judge wherever the amount in dispute or the value of the goods seized shall not exceed \$100 if it shall appear to them or the judge desirable and right to do so at the request of either party to dispose of the merits of the respective claims of such parties and to determine the same in a summary manner upon such terms as they or the judge shall think fit to

impose and to make such other rules and orders therein as to costs and all other matters as may be just.

### **Special case may be stated where facts undisputed**

**157.** In all cases of interpleader proceedings where the question is one of law and the facts are not in dispute the judge shall be at liberty at the judge's discretion to decide the question without directing an action or issue and if the judge shall think it desirable to order that a special case be stated for the opinion of the court.

### **Proceedings on special cases**

**158.** The proceedings upon such case shall as nearly as may be the same as upon a special case stated under part 3.

### **Judgment and decision when to be final**

**159.** The judgment in any such action or issue as may be directed by the court or a judge in any interpleader proceedings and the decision of the court or a judge in a summary manner shall be final and conclusive against the parties and all persons claiming by from or under them.

## ***Division 3—Interpleader by sheriff***

### **For relief of sheriffs and other officers in execution of process against goods and chattels**

**160.** And whereas difficulties sometimes arise in the execution of process against goods and chattels issued by or under the authority of the Supreme Court by reason of claims made to such goods and chattels by assignees of bankrupts and other persons not being the parties against whom such process has issued whereby sheriffs and other officers are exposed to the hazard and expense of actions and it is reasonable to afford relief and protection in such cases to such sheriffs and other officers be it therefore further enacted that when any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process or to the proceeds or value thereof it shall and may be lawful to and



for the Supreme Court or any judge thereof upon application of such sheriff or other officer made before or after the return of such process and as well before as after any action brought against such sheriff or other officer to call before them, him or her by rule of court as well the party issuing such process as the party making such claim and thereupon to exercise for the adjustment of such claims and the relief and protection of the sheriff or other officer all or any of the powers and authorities hereinbefore contained and make such rules and decisions as shall appear to be just according to the circumstances of the case and the costs of all such proceedings shall be in the discretion of the said court or judge.

### **Court or judge may direct sale of goods seized in execution**

**161.** Where goods or chattels have been seized in execution by a sheriff or other officer under process of the Supreme Court and some third party claims to be entitled under a bill of sale or otherwise to such goods or chattels by way of security for a debt the court or a judge may order a sale of the whole or part thereof upon such terms as to the payment of the whole or part of the secured debt or otherwise as they, he or she shall think fit and may direct the application of the proceeds of such sale in such manner and upon such terms as to such court or judge may seem just.

### **Sheriff's costs**

**162.** Where it shall appear to the Supreme Court or a judge thereof that the sheriff or other officer has acted bona fide and with due diligence in making application for relief under this part in case of adverse claims it shall be lawful for the said court or a judge thereof to allow the sheriff or other officer all reasonable costs and expenses which the sheriff or other officer shall have incurred as to the court or a judge shall seem fit.

### ***Division 4—Rules orders etc. in interpleader proceedings***

### **Rules orders etc. made in interpleader proceedings may be entered of record and made evidence**

**163.** All rules orders matters and decisions to be made and done in interpleader proceedings under this part (excepting only any affidavits) may

together with the declaration in the cause (if any) be entered of record with a note in the margin expressing the true date of such entry to the end that the same may be evidence in future times if required and to secure and enforce the payments of costs directed by any such rule or order and every such rule or order so entered shall have the force and effect of a judgment of the Supreme Court.

### *Division 5—Prerogative writ of mandamus*

#### **Return to be made to first writ**

**164.** Persons required to make a return to a writ of mandamus shall make their return to the first writ.

#### **Procedure on return of writ**

**165.** As often as any writ of mandamus shall issue out of the Supreme Court and a return shall be made thereunto it shall and may be lawful to and for the person or persons suing or prosecuting such writ of mandamus to plead to or traverse all or any the material facts contained within the said return to which the person or persons making such return shall reply take issue or demur and such further proceedings and in such manner shall be had therein for the determination thereof as might have been had if the person or persons suing such writ had brought his, her or their action on the case for a false return and if any issue shall be joined on such proceedings the person or persons suing such writ shall and may try the same in such place as an issue joined in such action on the case should or might have been tried and in such case a verdict shall be found for the person or persons suing such writ or judgment given for the person or thereupon a demurrer or *nildicit* or for want of a replication or other pleading he, she or they shall recover his, her or their damages and costs in such manner as he, she or they might have done in such action on the case as aforesaid such costs and damages to be levied by *capias ad satisfaciendum fieri-facias* or *elegit* and a peremptory writ of mandamus shall be granted without delay for him, her or them for whom judgment shall be given as might have been if such return had been adjudged insufficient and in case judgment shall be given for the person or persons making such return to such writ he, she or

they shall recover his, her or their costs of suit to be levied in manner aforesaid.

**Person against whom damages shall be recovered not liable to be sued in other actions**

**166.** However, if any damages shall be recovered by virtue of this part against any such person or persons making such return to such writ as aforesaid he, she or they shall not be liable to be sued in any other action or suit for the making such return any law usage or custom to the contrary thereof in anywise notwithstanding.

**For protection of certain officers to whom writs of mandamus are directed**

**167.** And whereas writs of mandamus are sometimes issued to officers and other persons commanding them to admit to offices or do or perform other matters in respect whereof the persons to whom such writs are directed claim no right or interest or whose functions are merely ministerial in relation to such offices or matters and it may be proper that such officers and persons should in certain cases be protected against the payment of damages or costs to which they may otherwise become liable be it therefore enacted that—

(1) It shall be lawful for the court to which application may be made for any writ of mandamus if such court shall see fit so to do to make rules and orders calling not only upon the person to whom such writ may be required to issue but also all and every other person having or claiming any right or interest in or to the matter of such writ to show cause against the issuing of such writ and payment of costs of the application and upon the appearance of such other person in compliance with such rules or in default of appearance after service thereof to exercise all such powers and authorities and make all such rules and orders applicable to the case as are or may be given or mentioned by or in this or any Act for giving relief against adverse claims made upon persons having no interest in the subject of such claims.

(2) However, the return to be made to any such writ and issues joined in fact or in law upon any traverse thereof or upon any demurrer shall be made and joined by and in the name of the person to whom such writ shall be directed but nevertheless the same shall and may if the court shall think fit

so to direct be expressed to be made and joined on the behalf of such other person as may be mentioned in such rules and in that case such other person shall be permitted to frame the return and to conduct the subsequent proceedings at the person's own expense and in such case if any judgment shall be given for or against the party suing such writ such judgment shall be given against or for the person or persons on whose behalf the return shall be expressed to be made and who shall have the like remedy for the recovery of costs and enforcing the judgment as the person to whom the writ shall have been directed might and would otherwise have had.

### **Proceedings not to abate by removal of officer**

**168.** In case the return to any such writ shall in pursuance of the authority given by this part be expressed to be made on behalf of any other person as aforesaid the further proceedings on such writ shall not abate or be discontinued by the death or resignation of or removal from office of the person having made such return but the same shall and may be continued and carried on in the name of such person and if a peremptory writ shall be awarded the same shall and may be directed to any successor in office or right to such person.

### **Costs to be in the discretion of the court**

**169.** In all cases of application for any writ of mandamus whatsoever the costs of such application whether the writ shall be granted or refused and also the costs of the writ if the same shall be issued and obeyed shall be in the discretion of the court and the court is hereby authorised to order and direct by whom and to whom the same shall be paid.

### **Proceedings for prerogative writ of mandamus accelerated**

**170.** Upon application by motion for any writ of mandamus the rule may in all cases be absolute in the first instance if the court shall think fit and the writ may bear teste on the day of its issuing and may be made returnable forthwith whether in term or in vacation but time may be allowed to return it by the court or a judge either with or without terms.

**The enactments herein relating to returns to writs of mandamus therein mentioned and the proceedings thereon extended to all other writs of mandamus**

**171.** The several enactments contained herein relating to the return to writs of mandamus and the proceedings on such returns and to the recovery of damages and costs shall be and the same are hereby extended and made applicable to all other writs of mandamus and the proceedings thereon.

*Division 6—Action for mandamus*

**Action for mandamus to enforce the performance of duties**

**172.** The plaintiff in any action in the Supreme Court except replevin and ejection may endorse upon the writ and copy to be served a notice that the plaintiff intends to claim a writ of mandamus and the plaintiff may thereupon claim in the declaration either together with any other demand which may now be enforced in such action or separately a writ of mandamus commanding the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested.

**Declaration in action for mandamus**

**173.** The declaration in such action shall set forth sufficient grounds upon which such claim is founded and shall set forth that the plaintiff is personally interested therein and that the plaintiff sustains or may sustain damage by the nonperformance of such duty and that performance thereof has been demanded by the plaintiff and refused or neglected.

**Proceedings upon claim for mandamus**

**174.** The pleadings and other proceedings in any action in which a writ of mandamus is claimed shall be the same in all respects as nearly as may be and costs shall be recoverable by either party as in an ordinary action for the recovery of damages.

**Judgment and execution**

**175.** In case judgment shall be given to the plaintiff that a mandamus do issue it shall be lawful for the court if it shall see fit besides issuing execution in the ordinary way for the costs and damages also to issue a peremptory writ of mandamus to the defendant commanding the defendant forthwith to perform the duty to be enforced.

**Form of peremptory writ**

**176.** The writ need not recite the declaration or other proceedings or the matter therein stated but shall simply command the performance of the duty and in other respects shall be in the form of an ordinary writ of execution except that it shall be directed to the party and not to the sheriff and may be issued in term or vacation and returnable forthwith and no return thereto except that of compliance shall be allowed but time to return it may upon sufficient grounds be allowed by the court or a judge either with or without terms.

**Effect of mandamus**

**177.** The writ of mandamus so issued as aforesaid shall have the same force and effect as a peremptory writ of mandamus and in case of disobedience may be enforced by attachment.

**The court may order the act to be done at the expense of the defendant**

**178.** The court may upon application by the plaintiff besides or instead of proceeding against the disobedient party by attachment direct that the act required to be done may be done by the plaintiff or some other person appointed by the court at the expense of the defendant and upon the act being done the amount of such expense may be ascertained by the court either by writ of inquiry or reference to the prothonotary as the court or a judge may order and the court may order payment of the amount of such expenses and costs and enforce payment thereof by execution.

**Prerogative writ of mandamus preserved**

**179.** Nothing herein contained shall take away the jurisdiction of the Supreme Court to grant writs of mandamus nor shall any writ of mandamus issued out of that court be invalid by reason of the right of the prosecutor to proceed by action for mandamus under this part.<sup>1</sup>

***Division 7—Injunction*****Claim of writ of injunction**

**180.** In all cases of breach of contract or other injury where the party injured is entitled to maintain and has brought an action the party may in like case and manner as hereinbefore provided with respect to mandamus claim a writ of injunction against the repetition or continuance of such breach of contract or other injury or the committal of any breach of contract or injury of a like kind arising out of the said contract or relating to the same property or right and the party may also in the same action include a claim for damages or other redress.

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<sup>1</sup> The Judicial Review Act 1991, section 41 provides—

**Certain prerogative writs not to be issued**

**41.(1)** The prerogative writs of mandamus, prohibition or certiorari are no longer to be issued by the court.

**(2)** If, before the commencement of this Act, the court had jurisdiction to grant any relief or remedy by way of a writ of mandamus, prohibition or certiorari, the court continues to have the jurisdiction to grant the relief or remedy, but must grant the relief or remedy by making an order, the relief or remedy under which is in the nature of, and to the same effect as, the relief or remedy that could, but for subsection (1), have been granted by way of such a writ.

**(3)** In an enactment in force immediately before the commencement of this Act, a reference to a writ of mandamus, prohibition or certiorari is taken to be a reference to an order of a kind that the court is empowered to make under this section.

**Form of writ of summons and endorsement thereon**

**181.** The writ of summons in such action shall be in the same form as the writ of summons in any personal action but on every such writ and copy thereof there shall be endorsed a notice that in default of appearance the plaintiff may besides proceeding to judgment and execution for damages and costs apply for and obtain a writ of injunction.

**Form of proceedings and of judgment**

**182.** The proceedings in such action shall be the same as nearly as may be and subject to the like control as the proceedings in an action to obtain a mandamus under the provisions hereinbefore contained and in such action judgment may be given that the writ of injunction do or do not issue as justice may require and in case of disobedience such writ of injunction may be enforced by attachment by the court or where such court shall not be sitting by a judge.

**Writ of injunction may be applied for at any stage of the cause**

**183.(1)** It shall be lawful for the plaintiff at any time after the commencement of the action and whether before or after judgment to apply ex parte to the court or a judge for a writ of injunction to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract complained of or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right and such writ may be granted or denied by the court or judge upon such terms as to the duration of the writ keeping an account giving security or otherwise as to such court or judge shall seem reasonable and just and in case of disobedience such writ may be enforced by attachment by the court or out of term by a judge.

**(2)** However, an order for a writ of injunction made by a judge or any writ issued by virtue thereof may be discharged or varied or set aside by the court on application made thereto by any party dissatisfied with such order.

**Mode of enforcing writs of injunction against corporations**

**184.** Writs of injunction against a corporation may be enforced either by attachment against the directors or other officers thereof as in the case of a



mandamus or by writ of sequestration against their property and effects to be issued in such form and tested and returnable in like manner as writs of execution and to be proceeded upon and executed in like manner as writs of sequestration issuing out of the Court of Chancery.

*Division 8—Costs of mandamus and injunctions*

**Costs of writs of mandamus and injunctions may be included in writs**

**185.** In all cases in which a writ of mandamus or of injunction is issued under this part for the time being such writ shall unless otherwise ordered by the court or a judge in addition to the matter directed to be inserted therein command the defendant to pay to the plaintiff the costs of preparing issuing and serving such writ and payment of such costs may be enforced in the same manner as costs payable under a rule of court are now by law enforceable.

*Division 9—Quo warranto*

**How informations in the nature of quo warranto may be exhibited against such as intrude etc. into offices etc.**

**186.** In case any person or persons shall usurp intrude into or unlawfully hold and execute any offices or franchises it shall and may be lawful to and for the proper officer with the leave of the Supreme Court to exhibit 1 or

more information or informations in the nature of a *quo warranto*<sup>2</sup> at the relation of any person or persons desiring to sue or prosecute the same and who shall be mentioned in such information or informations to be the relator or the relators against such person or persons so usurping intruding into or unlawfully holding and executing any of the said offices or franchises and to proceed therein in such manner as is usual in cases of information in the nature of a *quo warranto* and if it shall appear to the court that the several rights of divers persons to the said offices or franchises may properly be determined on 1 information it shall and may be lawful for the court to give leave to exhibit 1 such information against several persons in order to try their respective rights to such offices or franchises and such person or persons against whom such information or informations in the nature of a *quo warranto* shall be sued or prosecuted shall appear and plead as of the same term or sessions in which the said information or informations shall be filed unless the court where such information shall be filed shall give further time to such person or persons against whom such information shall be exhibited to plead and such person or persons who shall sue or prosecute such information or informations in the nature of a *quo warranto* shall proceed thereupon with the most convenient speed that may be any law or usage to the contrary thereof in anywise notwithstanding.

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<sup>2</sup> The *Judicial Review Act 1991*, section 42 provides—

#### **Abolition of *quo warranto***

**42.(1)** Informations in the nature of *quo warranto* are abolished.

**(2)** If—

- (a) a person acts in an office in which the person is not entitled to act; and
- (b) an information in the nature of *quo warranto* would, but for subsection (1), lie against the person;

the court may—

- (c) grant an injunction restraining the person from acting in the office; and
- (d) declare the office to be vacant.

**(3)** In an enactment in force immediately before the commencement of this Act, a reference to an information in the nature of *quo warranto* is taken to be as reference to an injunction of the kind that the court is empowered to grant under this section.

**Judgment of ouster shall be given against persons found guilty of usurpation etc.**

**187.(1)** In case any person or persons against whom any information or informations in the nature of a quo warranto shall in any of the said cases be exhibited in the Supreme Court shall be found or adjudged guilty of an usurpation or intrusion into or unlawfully holding and executing any of the said offices or franchises it shall and may be lawful to and for the said Supreme Court as well to give judgment of ouster against such person or persons of and from any of the said offices or franchises as to fine such person or persons respectively for his, her or their usurping intruding into or unlawfully holding and executing any of the said offices or franchises.

**(2)** And also it shall and may be lawful to and for the said court to give judgment that the relator or relators in such information named shall recover his, her or their costs of such prosecution and if judgment shall be given for the defendant or defendants in such information he, she or they for whom such judgment shall be given shall recover his, her or their costs therein expended against such relator or relators such costs to be levied in manner aforesaid.

***Division 10—Prohibition*****Writs of prohibition**

**188.(1)** It shall not be necessary to file a suggestion on any application for a writ of prohibition<sup>3</sup> but such application may be made on affidavits only.

**(2)** And in case the party applying shall be directed to declare in prohibition before writ issued such declaration shall be expressed to be on behalf of such party only and not as heretofore on the behalf of the party and of Her Majesty and shall contain and set forth in a concise manner so much only of the proceeding in the court below as may be necessary to show the ground of the application without alleging the delivery of a writ or any contempt and shall conclude by praying that a writ of prohibition may issue to which declaration the party defendant may demur or plead such

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<sup>3</sup> See footnote to s 179.

matters by way of traverse or otherwise as may be proper to show that the writ ought not to issue and conclude by praying that such writ may not issue and judgment shall be given that the writ of prohibition do or do not issue as justice may require.

(3) And the party in whose favour judgment shall be given whether on nonsuit verdict demurrer or otherwise shall be entitled to the costs attending the application and subsequent proceedings and have judgment to recover the same.

(4) And in case a verdict shall be given for the party plaintiff in such declaration it shall be lawful for the jury to assess damages for which judgment shall also be given but such assessment shall not be necessary to entitle the plaintiff to costs.

### *Division 11—General provision*

#### **Proceedings on prerogative writ of mandamus**

**189.** The provisions of parts 3 to 5 and this part so far as they are applicable shall apply to the pleadings and proceedings upon a prerogative or other writ of mandamus or for an injunction quo warranto or prohibition.

## **PART 9—PROVISIONS FROM SUPREME COURT ACT 1867**

### *Division 1—Seals of the court*

#### **Court shall have and use seals**

**190.** The Supreme Court shall have and use as occasion may require a seal having inscribed on a label thereon the words ‘The Seal of the Supreme Court of Queensland’ and such other seals as may be required for the business of the court and the offices thereof.

**Judge's stamp**

**191.(1)** A judge of the Supreme Court may have a stamp for impressing the judge's name on summonses issued from and orders made in the judge's chambers and such impression on any such summons or order otherwise duly sealed shall have the force and effect of the judge's signature and the court or a judge may take judicial notice of such impression on any such summons or order otherwise duly sealed.

**(2)** And such impression may be impressed by the judge's associate or clerk.

**Orders to be sealed**

**192.** The proper officer shall officially recognise such impressions on such precepts summonses and orders but no orders so impressed shall be sealed until the consent or judge's minute shall have been delivered to the sealing officer.

**Judge's chamber seal**

**193.** A judge of the Supreme Court may have a chamber seal and such seal on any such summons or order or on any document used at chambers shall have the force and effect of a seal of the Supreme Court office.

**Authority to be filed**

**194.** No document whatever shall be sealed and no judge's order shall be impressed with the judge's name unless all documents whereon the authority for the sealing and impression is or purports to be founded shall then be on the file unless the court or a judge shall otherwise order.

*Division 2—The judges of the Supreme Court***Commission of judges**

**195.(1)** The commissions of the present and any future judges of the said Supreme Court shall be continue and remain in full force during his, her or their good behaviour notwithstanding the demise of Her Majesty or of her

heirs and successors any law usage or practice hereof in anywise notwithstanding.

(2) However, it shall be lawful for Her Majesty her heirs and successors to remove any such judge or judges upon the address of the Legislative Assembly.

### **Judges' salaries**

**196.** Such salaries as shall be settled upon such judges for the time being by Act of Parliament or otherwise and all such salaries as may in future be granted by Her Majesty or otherwise to any future judge of the Supreme Court shall in all time coming be paid and payable to every such judge for the time being so long as the judge's patent or commission shall continue or remain in force.

## *Division 3—Constitution of the court*

### **Power of judges in vacation**

**197.(1)** Every judge of the said Supreme Court of the State shall have power in vacation if under the special circumstances of the case the judge shall see fit to make all such orders and grant all such writs as can only under ordinary circumstances be made or granted by the court and every such order and writ shall have the same force and effect as a rule of the said court without the necessity for any further motion or order of the said court.

(2) However, every such order or writ so made shall be liable to be set aside on application to be made to the said court by motion or notice at any time within the first 4 days of the next ensuing term.

### **Proceedings to be dated and how tested**

**198.** Every writ process or other like proceeding and every commission issuing out of the Supreme Court shall in all cases civil criminal or other bear date the day on which the same shall be issued and shall be tested in the name of the chief justice.

***Division 4—Common law and general jurisdiction*****Laws of England to be applied in the administration of justice**

**199.(1)** All laws and statutes in force within the realm of England at the time of the passing of the Imperial Act 9 Geo 4 ch 83 (not being inconsistent herewith or with any law or statute now in force in this State) shall be applied in the administration of justice in the courts of Queensland so far as the same can be applied within the said State.

**(2)** But nothing herein shall have the effect of extending to Queensland the operation of any Imperial Act not now extending to Queensland or of diminishing the present jurisdiction power or authority of the said Supreme Court or of the judges or any judge thereof.

**Common law and general jurisdiction of the court—jurisdiction at common law**

**200.** The said court or a judge thereof in the administration of the law of Queensland shall have the same jurisdiction power and authority as the superior courts of common law and the High Court of Chancery in England or any or either of the lastmentioned courts respectively or any judge thereof have or has in the administration of the law of England and the said court shall have recognisance of all civil pleas and shall have jurisdiction within the said State and its dependencies to hear and determine all actions whatsoever real personal and mixed as fully and amply to all intents and purposes as Her Majesty's Courts of Queen's Bench Common Pleas and Exchequer of Pleas at Westminster or either of them lawfully have or hath in England.

***Division 5—Equitable jurisdiction*****Equitable jurisdiction**

**201.** The said court shall have equitable jurisdiction within the State and such power and authority to do exercise and perform all acts matters and things necessary for the due execution of such equitable jurisdiction as is possessed by the Lord High Chancellor or other equity judges of England

in the exercise of similar jurisdiction within the realm of England and also to do all such other acts matters and things as can and may be done by the said Lord High Chancellor or other equity judges within the realm of England in the exercise of the common law jurisdiction to him or her belonging and to appoint guardians and committees of the persons and estates of infants and of natural-born fools lunatics and persons deprived of understanding and reason by the act of God and unable to govern themselves or their estates and for that purpose to inquire into hear and determine by inspection of the person the subject of such inquiry or by examination on oath or otherwise of the party in whose custody or charge such person may be or of any other person or persons or by such other ways and means by which the truth may be best discovered and to act in all cases whatsoever as fully and amply to all intents and purposes as the said Lord High Chancellor or other equity judges or the grantee from the Crown of the persons and estates of infants and lunatics natural-born fools and persons deprived of understanding as aforesaid may now lawfully do.

### *Division 6—Criminal jurisdiction*

#### **Criminal jurisdiction**

**202.** The said court shall have jurisdiction to inquire of hear and determine within the said State and its dependencies all treasons crimes misdemeanours and offences of what nature or kind soever and wheresoever committed which can or may be inquired of heard and determined in Her Majesty's Court of Queen's Bench at Westminster or in the Central Criminal Court in London or by judges of assize or oyer and terminer and general gaol delivery in England.

#### **Proceeding by information**

**203.** All indictments in which such treasons crimes misdemeanours and offences are charged may be preferred before any 1 or more judges of the said Supreme Court sitting in open court in Brisbane and all issues at law joined on every such indictment shall be determined by any 1 or more judge or judges of the said court and all issues of fact joined on every such indictment shall be tried by and before any 1 or more such judge or judges



and a jury of 12 people to be summoned empanelled and sworn according to law.

### **Error**

**204.** Error and appeal shall lie upon any proceeding had under section 203 in the same manner as upon any like proceeding had before a Circuit Court or an inferior court.

### **Attorney-General to issue warrant for discharge of prisoner against whom the Attorney-General does not file information**

**205.** In order to prevent persons committed to gaol upon charges of crime or misdemeanour and against whom Her Majesty's Attorney-General or other duly appointed prosecuting officer declines to file an information from suffering unnecessary imprisonment it shall be lawful for the Attorney-General in respect of any such persons to issue at any time a warrant under the Attorney-General's signature addressed to the sheriff or gaoler in whose custody any such prisoner shall be and in and by such warrant to authorise such sheriff or gaoler (who is hereby also authorised so to do) immediately and without fee or reward to discharge the prisoner therein mentioned from imprisonment in respect of the offence mentioned in the said warrant and if any such sheriff or gaoler shall refuse or neglect so to do the sheriff or gaoler shall for every such offence forfeit and pay to the use of Her Majesty a fine or penalty of \$100 to be recovered by action of debt in the name of the Attorney-General.

## ***Division 7—Circuit Courts***

### **Circuit Courts**

**206.(1)** A regulation may define the districts, and the places within the districts, where Circuit Courts are to be held.

**(2)** The Governor in Council may, by gazette notice, fix the number of times at which Circuit Courts are to be held at each place.

**(3)** And every such Circuit Court shall be holden in and for such district by 1 or more judge or judges of the Supreme Court who shall fix the dates

for the holding of the same.

(4) Every such Circuit Court shall be a superior court of record and shall have full power as such superior court to punish for contempt and shall have the same power authority and jurisdiction to hear and determine all civil issues to be tried within the limits of the circuit district in which the same is held and all treasons crimes misdemeanours and offences wheresoever committed as courts of *nisi prius* assize oyer and terminer and general gaol delivery in England possess and also to inquire into and assess damages in any action at law commenced in the said Supreme Court.

(5) And all persons convicted in such Circuit Court of any treason crime misdemeanour or other offence cognisable therein shall be subject and liable to the same penalties and punishments as by law could be inflicted on them if convicted thereof in the said Supreme Court.

(6) And every such Circuit Court shall stand in the same relation to the said Supreme Court with respect to civil issues as the court of *nisi prius* in England stands with respect to the superior court from which the *nisi prius* record is sent and in the same relation to the said Supreme Court with respect to Crown issues as the court of oyer and terminer and general gaol delivery in England stands with respect to the Court of Queen's Bench.

(7) However, it shall not be necessary to issue any special commission to any judge or judges of the said Supreme Court to empower him, her or them to hold any such Circuit Court.

### **Opening Circuit Court**

**207.(1)** Every such Circuit Court shall be opened by the judge or judges of assize at the time and place appointed.

(2) However, should such judge or judges not arrive at the place where such court is to be holden in time to open the same on the day appointed it shall be lawful for the said judge or judges or for some other judge of the said Supreme Court to open and hold the said Circuit Court on any day or days following the day upon which the same should have been opened and held and the proceedings of such Circuit Court shall be as valid as if the same had been duly opened and held at the appointed time.

***Division 8—Special commissions*****Special commission may issue to 1 or more judges of District Courts enabling them to discharge duties of a judge of the Supreme Court at remote places**

**208.** It shall be lawful for the Governor in Council at any time to issue a special commission to any 1 or more District Court judge or judges or to any 1 or more barrister or barristers of 5 years standing appointing him, her or them to act as judge or judges of the Supreme Court for the trial of issues civil or criminal at any Circuit Court or court of gaol delivery or at remote places at which a judge of the Supreme Court could not attend without detriment to the ordinary business of such court and thereupon the person or persons so appointed shall at the place and for the time specified in such commission have and exercise all the powers and privileges and discharge all the duties of a judge of the Supreme Court.

***Division 9—Appearances*****Appearance to be in person or by barrister or solicitor or person allowed by the judge**

**209.(1)** In all matters and proceedings in the Supreme Court a party may appear in person or by a barrister or solicitor or by any person allowed by special leave of the judge in any case.

**(2)** A person who is not a barrister or solicitor of the Supreme Court shall not be entitled to claim or recover or receive directly or indirectly a sum of money or other remuneration for appearing or acting on behalf of another person in the Supreme Court.

**(3)** In this section—

“**party**” includes a person served with notice of or attending a matter or proceeding although not named in the record.

***Division 10—Officers of the court*****Officers of the court**

**210.(1)** The said court shall have a master in equity who shall be a practising barrister of England or Ireland or advocate of Scotland of not less than 3 years standing or a practising barrister of New South Wales or Victoria or of the said court not previously admitted in any of the superior courts of Westminster Dublin or Edinburgh of not less than 3 years standing or an attorney at law of not less than 7 years standing and such master in equity when appointed shall if required perform the duties and discharge the office of chief commissioner of insolvency.

**(2)** And the said court shall also have a prothonotary and registrar and such and so many other officers as appear to be necessary for the administration of justice and the due execution of all the powers and authorities of the said court.

**(3)** And such master prothonotary and registrar and other officers shall respectively draw up prepare and settle all such and the like orders rules decrees reports and proceedings as are usually drawn up prepared and settled by persons holding similar offices in the superior courts of law and equity in Westminster or in such other manner as may have been provided for by any legislative enactment in force in the said State without any charge whatsoever.

**(4)** And the appointment of every such person to any such office as is hereinbefore expressly named shall be made by the Governor in Council and shall be by commission.

**(5)** And every such officer shall hold the officer's appointment during ability and good behaviour but it shall be lawful for the Governor with the advice aforesaid to remove any such officer for inability or misbehaviour.

**(6)** And all persons who may be appointed to any other office in the said court than those hereinbefore particularly enumerated shall be so appointed by the Governor in Council.

***Division 11—Masters*****Masters**

**211.(1)** The Governor in Council may, by commission, appoint a person who is qualified to be appointed as a Supreme Court judge as master.

(2) If there are 2 or more masters, the Governor in Council may, by commission, appoint a master to be the senior master.

(3) The senior master shall have seniority ahead of any other master.

(4) A master, other than the senior master, shall have seniority according to the date on which the master's appointment as master takes effect and where the appointment of 2 or more masters (other than the senior master) take effect on the same date, the seniority of each of them shall be such as is assigned to the master by the Governor in Council.

(5) The Governor in Council, by commission in Her Majesty's name, may appoint a person qualified for appointment as a master to be an acting master if circumstances occur that in the Governor in Council's opinion make it necessary or desirable to do so.

(6) An acting master so appointed, during the time for which the acting master is appointed, shall have the powers, jurisdiction and functions and perform the duties of a master.

(7) The provisions of the law applicable to a District Court judge with respect to salary, allowances including allowances by way of travelling expenses and leave of absence are applicable to a master or an acting master, but excluding the senior master with respect to salary, as though the senior master were a District Court judge.

(8) The provisions of the law applicable to the District Court judge designated as chief judge of District Courts with respect to salary are applicable to the senior master as though the senior master were the District Court judge designated as chief judge of District Courts save that the amount of the salary thereby payable to the senior master in accordance with those provisions shall be the amount which is \$500 per annum less than the annual rate of salary to which the District Court judge designated as chief judge of District Courts is entitled for the time being.

(9) Salary payable to a master or an acting master shall be a charge upon

and paid out of consolidated fund which is hereby appropriated accordingly.

(10) The provisions of the law applicable to a District Court judge with respect to retirement and pensions (and, in the case of pensions, applicable to the spouse or any child of a District Court judge) are applicable to a master (and, in the case of pensions, to the spouse or any child of a master) as though the master were a District Court judge.

(11) A master or an acting master shall not practise as a barrister, solicitor or notary or be directly or indirectly concerned or interested in the practice of a barrister, solicitor or notary; and he or she shall not be capable of being summoned or being chosen as a member of the Legislative Assembly.

(12) The Governor in Council may remove a master or an acting master for incapacity or misbehaviour.

(13) However, 21 days at the least before removal, the master or acting master shall receive notice of the intention to remove him or her, and he or she shall thereafter and before removal have the opportunity of being heard before the Governor in Council in his or her defence.

(14) Subsection (13) shall not apply in the case of an acting master where the Governor in Council determines, because of the proximity of the expiration of the time for which the acting master was appointed acting master, that the subsection should not apply and notifies such determination in the gazette.

(15) If a District Court judge is appointed master or acting master, his or her service as a District Court judge shall be taken into account in computing length of service as a master or an acting master for the purpose of determining any matter relating to leave of absence, pension or any other entitlement.

(16) If a master or an acting master is appointed a District Court judge, his or her service as a master or an acting master shall be taken into account in computing length of service as a District Court judge for the purpose of determining any matter relating to leave of absence, pension or any other entitlement.

(17) The masters shall exercise such of the powers, jurisdiction and functions of the Supreme Court as may be prescribed in rules of court.

***Division 12—The sheriff*****Sheriff**

**212.** The Governor in Council may appoint a sheriff who shall execute all writs summonses rules orders warrants precepts commands and process of the said court which may be from time to time directed to the sheriff and shall make return of the same to the said court together with the manner of the execution thereof as the sheriff may be thereby required and shall receive and detain all such persons as shall be committed into his or her custody and shall discharge such persons as the sheriff may be by law enjoined.

**Deputy sheriffs**

**213.** The Governor in Council may appoint deputies for the said sheriff in the districts in which circuits of the said court are to be held which deputies shall when required by the said court or any judge thereof by any writ process or other proceeding to them respectively directed or in any other manner perform within such districts all such acts as the sheriff would be bound to perform were the sheriff personally present and acting in such district.

**District sheriffs**

**214.(1)** The Governor may appoint some fit and proper person to act as and be the sheriff in and for every or any such circuit district and the sheriff first so appointed shall continue in office until the sheriff shall be reappointed or another person shall be appointed in the sheriff's stead in manner next hereinafter mentioned and it shall be lawful for the Governor on the first Monday in the next and every succeeding year to nominate and appoint in manner aforesaid the same or some other fit and proper person to act as and be the sheriff for every or any such district for the year next following.

**(2)** And every such sheriff so appointed shall as soon as conveniently may be take before one of the judges of the Supreme Court the oath of allegiance and an oath faithfully to execute the sheriff's office and every sheriff appointed as last aforesaid shall continue in office during the space

of 1 whole year then next following and until he or she be reappointed or another person be appointed and sworn into office in his or her stead in manner aforesaid.

(3) And if the sheriff for any such circuit district shall die or depart from the said State or become otherwise incapable of executing the duties of the sheriff's office then and in such case another person shall be appointed and sworn in like manner and such person shall continue in office for the remainder of the year and until he or she be reappointed or another person be appointed and sworn into office in his or her stead as aforesaid.

(4) And every such sheriff during the time of the sheriff's continuance in office shall in and for the district for which the sheriff shall have been so appointed have and execute the same powers and duties and enjoy the same privileges and be subject to the same liabilities in all respects as by law belong to the office of a sheriff and the powers duties privileges and liabilities of the sheriff of Queensland shall within such district cease and determine.

### **Sheriff may sell property without taking out an auctioneer's licence**

**216.** It shall be lawful for the said sheriff personally or by his or her deputy to sell by auction all property of whatever nature which may be taken by him or her in execution without having taken out an auctioneer's licence anything in any law now in force to the contrary notwithstanding.

### **Sheriff may act as justice of peace**

**217.** It shall be lawful for the sheriff of Queensland to act as a justice of the peace any law or custom to the contrary notwithstanding.

### **Deposit for expenses to be made with the sheriff**

**218.** On any writ or other process being left with the sheriff for execution by the sheriff the person so leaving such writ or other process as aforesaid shall if required deposit with the sheriff a sufficient sum for the payment of the necessary expenses in and about the execution of the writ or other process and if any dispute should arise as to the amount to be deposited as aforesaid a reference shall be made to the registrar of the Supreme Court whose decision shall be final unless a judge shall otherwise order.



***Division 13—Costs*****Fees of officers of court to be paid to Her Majesty**

**219.** All fees poundage perquisites or costs of whatever nature received or receivable by any such officer of the said courts the fees properly due to and receivable by such attorneys solicitors and practitioners excepted under and by virtue of any such rule and order of the said judges shall be paid to Her Majesty her heirs and successors for the public uses of the said State and in support of the government thereof and shall be applied in such manner as may be from time to time directed by any Act and in no other manner.

**Commissioners of Supreme Court may receive fees**

**220.** The enactment of section 219 shall not be deemed to extend or to have extended to any commissioner of the Supreme Court for taking affidavits or recognisances or to any commissioner for taking acknowledgments under the Act for the registry of deeds except in respect of fees received by any salaried officer or clerk of the Supreme Court for anything done by him or her as such commissioner during the ordinary office hours.

**Power to award costs**

**221.** The Supreme Court shall have power to award costs in all cases lawfully brought before it and not provided for otherwise than by this section.

***Division 14—Effect of decrees, rules and orders*****Decrees rules and orders to have effect of judgments**

**222.** All decrees and orders of the Supreme Court in equity and all rules and orders of the said court at common law or in its ecclesiastical or matrimonial jurisdiction whereby any sum of money or any costs charges or expenses shall be payable to any person shall have the effect of judgment at law and such person shall or lawfully may have execution thereon for the

moneys so payable and the judges of the said court may from time to time cause writs of execution to be framed accordingly and to issue as they shall think fit and all such writs shall be enforced in the same manner as writs of execution are in ordinary cases.

### *Division 15—Change of venue*

#### **Change of venue**

**223.** It shall be lawful for the said court at any stage of any proceedings civil or criminal depending therein or in any Circuit Court whether the venue be by law local or not to order that the venue be changed and to direct that the trial thereof be had in Brisbane or in some particular circuit district of the said State in such cases and for such reasons as the justice of the case may require and subject to such conditions as the court may in its discretion impose.

### *Division 16—Questions of fact*

#### **Power of court to direct trial of feigned issues**

**224.** It shall be lawful for the court or a judge in every case in which the ends of justice shall appear to the court or judge to render that mode of inquiry expedient whether at common law or in its equitable insolvency matrimonial ecclesiastical or other jurisdiction to direct the trial by a jury of any feigned issue or issues and for that purpose from time to time to make all such orders and issue all such writs and cause all such proceedings to be had and taken from time to time as the said court shall think necessary and upon the finding of such jury (unless a new trial shall for any sufficient reason in that behalf be ordered) to give such decision and make such decree or pronounce such judgment in the cause or matter pending before them as justice shall seem to such court to require.

#### **Feigned issues and new trials**

**225.** In all cases where the Supreme Court or any judge thereof now is or hereafter shall be authorised to direct the trial of any feigned issue or the

said court shall in any action grant a new trial it shall be lawful for the said court or judge to impose such conditions on the parties respectively and to direct such admissions to be made by them or either of them for the purpose of any such trial or new trial and (in every case of new trial) to grant the same either generally or on some particular point or points only as to such court or judge respectively shall seem meet and (upon any such new trial as aforesaid) if the said court or judge shall think meet to order that the testimony of any witnesses examined at the former trial may be read from the judge's notes instead of any such witnesses being again examined in open court and upon any such feigned issue as aforesaid to permit both or any or either of the parties to examine on oath the other of them and for the several purposes aforesaid to make all such orders from time to time as may be necessary.

## **PART 10—PROVISIONS FROM WRITS OF DEDIMUS ACT 1871**

### **Writs of dedimus potestatem and commissions for affidavits may be issued and executed outside the State**

**226.** Writs of dedimus potestatem and commissions for taking affidavits in the Supreme Court may be issued as has been the practice heretofore and may be executed within and without the State and all such writs and commissions heretofore issued and all things done thereunder are hereby declared valid.

## **PART 11—PROVISIONS FROM SUPREME COURT ACT 1874**

### **Salaries to be charged on consolidated fund**

**227.(1)** The salaries payable to the judges of the Supreme Court shall be charged on and paid out of the consolidated fund.

(2) Such salaries shall grow due from day to day but shall be payable to the persons entitled thereto or to their executors or administrators on the usual monthly days of payment or at such other period as the Governor in Council may decide.

### **Supreme Court to be court of error**

**228.** The Supreme Court shall for all purposes be the court of error for the State.

### **Power to amend defects or errors**

**229.** The Supreme Court in all its civil jurisdictions and any judge thereof shall have power at all times and in all matters to amend defects or errors whether there be anything in writing to amend by or not and all such amendments may be made upon such terms as to the court or judge may seem fit.

### **New trials only where substantial wrong occasioned**

**230.** A new trial shall not be granted in any action at common law on the ground of misdirection or of the improper admission or rejection of evidence unless in the opinion of the court some substantial wrong or miscarriage has been thereby occasioned in the trial of the action and if it appear to such court that such wrong or miscarriage affects part only of the matter in controversy the court may give final judgment as to part thereof and direct a new trial as to the other part only.

## **PART 12—PROVISIONS FROM SHERIFF'S ACT 1875**

### **Purpose of pt 12**

**231.** The purpose of this part is to provide for the more speedy and effective execution of the process of the Supreme Court.

**Governor may appoint high bailiffs or bailiffs when necessary**

**232.** It shall be lawful for the Governor with the advice of the Executive Council to appoint fit and proper persons to be high bailiffs or bailiffs at such towns and places as shall be necessary or expedient.

**Officers so appointed to be deemed sheriff's officers**

**233.** Every person so appointed as aforesaid shall for the purposes of this part be deemed to be an officer of the sheriff and shall be bound by himself, herself or the person's deputies to execute all lawful orders and precepts of the sheriff directed to the person and shall in all respects have and perform the same duties as have been heretofore performed by the officers of the sheriff appointed under the sheriff's hand and seal.

**Persons aggrieved by acts of officers may sue the sheriff by that name and not personally—mode of payment of damages recovered**

**234.(1)** Any person aggrieved by any act or default of any of the officers of the sheriff appointed as aforesaid shall have the like remedy as heretofore by action.

**(2)** However, every such action brought against the sheriff shall be brought against the sheriff by the name of 'The Sheriff of Queensland' and not by the sheriff's own name and any damages or costs adjudged to be recovered by the plaintiff in any such action shall be paid by the Treasurer out of the consolidated fund.

**Power to appoint person to execute process where sheriff ought not to execute**

**235.** Whenever the said court or any judge thereof shall direct any process to issue against the sheriff or award any process in any cause matter or thing wherein the said sheriff on account of the sheriff being related to any of the parties thereto or by reason of any good cause of challenge which would be allowed against any sheriff in England ought not to execute the same it shall be lawful for the said court or any judge thereof to appoint some other fit person to execute the same.

**Power to appoint special bailiff**

**236.(1)** Whenever the process of the court is to be executed in a remote part of the State and it shall appear to the court or any judge thereof that delay in the execution of such process would be likely to ensue if such process were directed to the sheriff it shall be lawful for the said court or any judge thereof upon the application of the party at whose suit such process is to be issued to order that such process shall be directed to some fit person instead of to the sheriff and executed in such manner and under such terms and conditions as the court or judge shall deem meet.

**(2)** And in any such case no action shall be brought against the sheriff for any acts or defaults of the person named in such process but any party aggrieved by any act or default of such person shall have the like remedy against the person that he or she might have had by action against the sheriff in case such process had been directed to the said sheriff and the act or default had been committed by the sheriff or the sheriff's officers.

**(3)** However, in any such case all fees of right payable to the sheriff by the person against whom such process is directed shall with the exception of those for registering the warrant and returning the same be paid to the person on whose behalf such process was issued.

**Action of debt not to lie on escape of debtor**

**237.** If any debtor in execution shall escape out of legal custody the sheriff deputy-sheriff bailiff or other person having the custody of such debtor shall not be liable to any action of debt in consequence of such escape but the party aggrieved shall be entitled to an action upon the case for the damages sustained by him or her.

**Jurisdiction and accountability of sheriff**

**238.(1)** The sheriff appointed under part 94 (the “**sheriff of Queensland**”) has jurisdiction throughout the entire State.

**(2)** The sheriff of Queensland shall not be personally accountable for any acts or defaults of the central, northern or far northern sheriff.

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<sup>4</sup> Part 9 (Provisions from Supreme Court Act 1867)

**Sheriff and officers personally accountable for their own acts or defaults**

**239.** Notwithstanding anything hereinbefore contained every sheriff bailiff and other officer of the sheriff shall be accountable for his or her own acts and defaults in the same manner and to the same extent as heretofore.

**PART 13—PROVISIONS FROM JUDICATURE ACT  
1876****Purpose of pt 13**

**240.** The purpose of this part is to provide for the administration of a uniform system of law in all courts of justice and to simplify and amend the practice of the Supreme Court.

**Definitions for pt 13**

**241.** In this part—

“**action**” means a civil proceeding commenced by writ or in such other manner as may be prescribed by rules of court.

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

“**court**” means the Supreme Court.

“**defendant**” includes every person served with any writ of summons or process or served with notice of or entitled to attend any proceedings.

“**existing**” means existing at the time appointed for the commencement of the *Judicature Act 1876*.

“**judgment**” includes decree.

“**matter**” includes every proceeding in the court not in a cause.

“**order**” includes rule.

“**party**” includes every person served with notice of or attending any

proceeding although not named on the record.

**“petitioner”** includes every person making any application to the court either by petition motion or summons otherwise than as against any defendant.

**“plaintiff”** includes every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding whether the same be taken by action suit petition motion summons or otherwise.

**“pleading”** includes any petition or summons and includes the statements in writing of the claim or demand of any plaintiff and of the defence of any defendant thereto and of the answer of the plaintiff to any set-off or counterclaim of a defendant.

**“suit”** includes action.

### **Rules of law to apply to all courts**

**242.** The several rules of law enacted and declared by this part shall be in force and receive effect in all courts whatsoever in Queensland so far as the matters to which such rules relate shall be respectively cognisable by such courts.

### **Provision for saving of existing procedure of courts when not inconsistent with this part or rules of court**

**243.** Save as by this part or by any rules of court may be otherwise provided all forms and methods of procedure which at the commencement of the *Judicature Act 1876* were in force in the Supreme Court under or by virtue of any law custom general order or rules whatsoever and which are not inconsistent with this part or with any rules of court may continue to be used and practised in the said court in such and the like cases and for such and the like purposes as those to which they would have been applicable if the *Judicature Act 1876* had not passed.

### **Law and equity to be administered in all suits by Supreme Court**

**244.** In every civil cause or matter commenced in the court law and equity shall be administered by such court and shall be administered



according to the rules following—

**Equitable relief claimed by plaintiff to be given in all cases**

(1) If any plaintiff or petitioner claims to be entitled to any equitable estate or right or to relief upon any equitable ground against any deed instrument or contract or against any right title or claim whatsoever asserted by any defendant or respondent in such cause or matter or to any relief founded upon a legal right which heretofore could only have been given by a court of equity the said court and every judge thereof shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the said court in its equitable jurisdiction in a suit or proceeding for the same or the like purpose properly instituted before the passing of the *Judicature Act 1876*.

**Equitable relief to be given to defendants**

(2) If any defendant claims to be entitled to any equitable estate or right or to relief upon any equitable ground against any deed instrument or contract or against any right title or claim asserted by any plaintiff or petitioner in such cause or matter or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter the said court and every judge thereof shall give to every equitable estate right or ground of relief so claimed and to every equitable defence so alleged such and the same effect by way of defence against the claim of such plaintiff or petitioner as the said court in its equitable jurisdiction ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that court for the same or the like purpose before the passing of the *Judicature Act 1876*.

**Or such equitable relief as defendant might obtain by cross bill**

(3) The said court and every judge thereof shall also have power to grant to any defendant in respect of any equitable estate or right or other matter of equity and also in respect of any legal estate right or title claimed or asserted by the defendant all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by the defendant's pleading and as such court or any judge thereof might grant in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner and also all such relief relating to or connected with the original subject of the cause or matter and in like manner claimed against any other person whether already a party to the same cause or matter or not who shall have

duly served with notice in writing of such claim pursuant to any rule of court or any order of the court as might properly have been granted against any such person if the person had been made a defendant to a cause duly instituted by the same defendant for the like purpose.

### **Other parties may be made parties by notice**

(4) And every person served with any such notice shall thenceforth be deemed a party to such cause or matter with the same rights in respect of the person's defence against such claim as if the person had been duly sued in the ordinary way by such defendant.

### **Court to recognise equitable estates rights and liabilities**

(5) The said court and every judge thereof shall recognise and take notice of all equitable estates titles and rights and all equitable duties and liabilities appearing incidentally in the course of any cause or matter depending before it in the same manner in which the said court in its equitable jurisdiction would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of the *Judicature Act 1876*.

### **No injunction to restrain proceedings**

(6) No cause or proceeding at any time pending in the said court shall be restrained by injunction but every matter of equity on which an unconditional injunction against the prosecution of any such cause or proceeding might have been obtained if the *Judicature Act 1876* had not passed may be relied on by way of defence thereto.

### **Stay of proceedings may be directed either generally or on terms**

(7) The said court or any judge thereof may direct a stay of proceedings in any cause or matter pending before it if the court or judge shall think fit and any person whether a party or not to any such cause or matter who would have been entitled if the *Judicature Act 1876* had not passed to apply to the said court to restrain the prosecution thereof or who may be entitled to enforce by attachment or otherwise any judgment decree rule or order contrary to which all or any part of the proceedings in such cause or matter may have been taken shall be at liberty to apply to the court or a judge by motion in a summary way for a stay of proceedings in such cause or matter either generally or so far as may be necessary for the purposes of justice and the court or judge shall thereupon make such order as shall be just.

**All legal claims to be recognised**

(8) Subject to subsections (1) to (7) for giving effect to equitable rights and other matters of equity in manner aforesaid and to the other express provisions of this part the said court and every judge thereof shall recognise and give effect to all legal claims and demands and all estates titles rights duties obligations and liabilities existing by the common law or by any custom or created by any statute in the same manner as the same would have been recognised and given effect to by the said court if the *Judicature Act 1876* had not passed.

**Complete justice to be done in 1 suit so far as possible**

(9) The said court and every judge thereof in the exercise of the jurisdiction conferred by this part in every cause or matter pending before them respectively shall have power to grant and shall grant either absolutely or on such reasonable terms and conditions as to them shall seem just all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter so that as far as possible all matters so in controversy between the said parties respectively may be completely and finally determined and all multiplicity of legal proceedings concerning any of such matters avoided.

**Estates of persons deceased to be administered as in insolvency**

**245.(1)** In the administration by any court of the assets of any person who may die after the passing of the *Judicature Act 1876* and whose estate may prove to be insufficient for the payment in full of the person's debts and liabilities and in the winding-up of any company under the *Companies Act 1863* whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding-up the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to the debts and liabilities provable and as to the valuation of annuities and future or contingent liabilities respectively as may be in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent.

(2) And all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person or out of the assets of any such company may come in under the decree or order

for the administration of such estate or under the winding-up of such company and may make such claims against the same as they may respectively be entitled to by virtue of this part.

**Writs of mandamus and injunction may be granted and receivers appointed in all cases when just or convenient**

**246.** A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it shall appear to the court to be just or convenient that such order should be made and any such order may be made either unconditionally or upon such terms and conditions as the court shall think just and if an injunction is asked either before or at or after the hearing of any cause or matter to prevent any threatened or apprehended waste or trespass such injunction may be granted if the court shall think fit whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title and whether the estates claimed by both or by either of the parties are legal or equitable.

**In cases of collision rules of admiralty to prevail**

**247.** In any cause or proceeding for damages arising out of a collision between 2 ships if both ships shall be found to have been in fault the rules hitherto in force in the High Court of Admiralty so far as they have been at variance with the rules in force in the courts of common law shall prevail.

**In questions relating to infants rules of equity to prevail**

**248.** In questions relating to the custody and education of infants the rules of equity shall prevail.

**Rules of equity to prevail where any conflict between them and rules of law**

**249.** Generally in all matters not hereinbefore particularly mentioned in which there is any conflict or variance between the rules of equity and the

rules of the common law with reference to the same matter the rules of equity shall prevail.

### **Powers of 1 or more judges**

**250.(1)** Any judge of the court may subject to any rules of court exercise in court or in chambers all or any part of the jurisdiction of the said court in all such causes and matters and in all such proceedings in any causes or matters as before the commencement of the *Judicature Act 1876* might have been heard in court or in chambers respectively by a single judge of the said court or as may be directed or authorised to be so heard by any rules of court to be hereafter made.

**(2)** In all such cases any judge sitting in court shall be deemed to constitute the court.

**(3)** However, every issue of law and every special case stated by consent of parties shall be heard and determined by a single judge in the first instance unless either party shall require that the same be heard and determined by the Court of Appeal in the first instance in which case the same shall be so heard and determined accordingly.

### **Cases and points may be reserved for or directed to be argued before the Court of Appeal**

**251.** Subject to any rules of court, a judge of the Supreme Court sitting in the trial division may reserve any case or any point in a case for the consideration of the Court of Appeal or may direct any case or point in a case to be argued before the Court of Appeal.

### **Motions for new trials to be heard by Court of Appeal**

**252.** Every motion for a new trial of any cause or matter on which a verdict has been found by a jury or by a judge without a jury and every motion for judgment other than a motion for judgment on default in delivering a defence or demurrer and every motion to reduce damages shall be heard before the Court of Appeal.

**What orders shall not be subject to appeal**

**253.** No order made by any judge of the said court by the consent of parties or as to costs only which by law are left to the discretion of the judge shall be subject to any appeal except by leave of the judge making such order.

**As to appeals from orders made by single judge**

**254.** An appeal shall lie to the Court of Appeal from every order made by a judge in court or chambers except orders made in the exercise of such discretion as aforesaid.

**Referees and assessors**

**255.(1)** Subject to any rules of court and to such right as may now exist to have particular cases submitted to the verdict of a jury any question arising in any cause or matter before the court may be referred by the court or judge before whom such cause or matter may be pending for inquiry and report to a special referee and the report of any such referee may be adopted wholly or partially by the court and may (if so adopted) be enforced as a judgment by the court.

**(2)** The court or judge may also in any such cause or matter as aforesaid in which it may think it expedient so to do call in the aid of 1 or more assessors specially qualified and try and hear such cause or matter wholly or partially with the assistance of such assessors.

**(3)** The remuneration (if any) to be paid to such special referees or assessors shall be determined by the court or judge.

**Power to direct trials before referees**

**256.(1)** In any cause or matter before the said court in which all parties interested who are under no disability consent thereto and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts or any scientific or local investigation which can not in the opinion of the court or a judge conveniently be made before a jury or conducted by the court through its other ordinary officers the court or a judge may at any time on such terms as may be thought proper order any

question or issue of fact or any question of account arising therein to be tried before a special referee to be appointed by the court or judge.

(2) All such trials before referees shall be conducted in such manner as may be prescribed by rules of court and subject thereto in such manner as the court or judge ordering the same shall direct.

### **Power of referees and effect of their finding**

**257.(1)** In all cases of any reference to or trial by referees under this part the referees shall be deemed to be officers of the court and shall have such authority for the purpose of such reference or trial as shall be prescribed by rules of court or (subject to such rules) by the court or judge ordering such reference or trial.

(2) And the report of any referee upon any question of fact on any such trial shall (unless set aside by the court) be equivalent to the verdict of a jury.

### **Powers of court with respect to proceedings before referees**

**258.** With respect to all such proceedings before referees and their reports the court or such judge as aforesaid shall have in addition to any other powers the same or the like powers as are given to the court or a judge with respect to references to arbitration and proceedings before arbitrators and their awards respectively by the part 8.

### **Duty of judge and jury**

**259.(1)** It shall be the duty of a jury to answer any question of fact that may be left to them by the presiding judge at the trial.

(2) But nothing herein or in any rule of court contained shall take away or prejudice the right of any party to any action to have the questions submitted and left by the judge to the jury with a proper and complete direction to the jury upon the law and as to the evidence applicable to such questions.

## **PART 14—PROVISIONS FROM SUPREME COURT ACT 1892**

### **Motions for judgment**

**260.** Notwithstanding anything in section 252 or in any other enactment to the contrary contained, every motion for judgment in any cause or matter in the court in which there has been a trial of the cause or matter, or of any issue therein, with or without a jury, shall be heard and determined in the first instance by the judge before whom the trial took place, unless it is impracticable or inconvenient that such judge should act, in which case the motion shall be heard and determined by some other judge.

### **Hearing of cases in chambers**

**261.(1)** When, upon an opposed application coming on to be heard before a judge in chambers, either party appears by counsel or solicitor, the matter shall be adjourned into court, without any costs of the adjournment, and shall be heard in open court, unless all the parties consent to its being heard in chambers.

**(2)** However, the same persons shall be entitled to audience in a matter so adjourned into court that would have been so entitled if it had not been so adjourned.

**(3)** In addition, all existing forms and methods of procedure in relation to any proceeding in chambers may continue to be used and practised in relation to such proceeding when adjourned into court, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in relation to such proceeding in chambers.



## **PART 15—PROVISIONS FROM SUPREME COURT ACT 1893**

### **Definitions for pt 15**

**262.** In this part—

“**appointed judge of assize**” means the judge who, according to the arrangements for the dispatch of business then in force, is the judge to preside at the Circuit Court in question.

“**cause**” see part 13.

“**civil issues**” includes issues in matters on the Crown side of the court.

“**matter**” see part 13.

“**sheriff**”, in the case of Circuit Courts within the central district or the northern district, means the central sheriff or the northern sheriff, as the case may be.

### **When it is certified to the judges that there is no business at a Circuit Court a judge need not attend**

**263.(1)** If the sheriff certifies to the appointed judge or judges of assize that there are no charges of any treasons, crimes, or misdemeanours to be tried, heard, or determined at a Circuit Court named in the certificate, and if the registrar also certifies to such judge or judges that there are no civil issues to be tried nor any damages to be assessed at the same Circuit Court, it shall not be necessary for such judge or judges to attend at the place appointed for holding such court or to open the same; anything in section 207 or any other Act to the contrary notwithstanding.

**(2)** However, such certificates shall be sent to the appointed judge or judges of assize not earlier than 2 days before the day on which he, she or they would ordinarily set out from Brisbane Rockhampton or Townsville, as the case may be, for the purpose of attending the Circuit Court.

### **Jurors to be warned not to attend**

**264.** In any case in which certificates have been given as in section 263

provided, the sheriff may and shall give notice to the jurors (if any) who have been summoned to attend at the Circuit Court, that their attendance will not be required, and any juror, who, after receiving such notice at a reasonable time before the time appointed for holding the court, nevertheless attends at the court, shall not be entitled to any compensation for such attendance.

### **Discharge of jurors**

**265.** When, at any place where a Circuit Court is appointed to be holden, no judge of assize is present on the day appointed for holding the court, and there are no treasons, crimes, or misdemeanours, to be tried, heard, or determined, and no civil issues to be tried nor any damages to be assessed, at that court, the sheriff or the sheriff's deputy shall attend the court at the time and place appointed for holding the same, and shall discharge the jurors (if any) who are there present from further attendance.

## **PART 16—PROVISIONS FROM SUPREME COURT ACT 1895**

### **Definitions for pt 16**

**266.** In this part—

“**Central Court**” means the court as held within the central district as provided by this part.

“**Far Northern Court**” means the court as held within the far northern district as provided by this part.

“**judge**” means a judge of the court.

“**Northern Court**” means the court as held within the northern district as provided by this part.

“**the court**” means the Supreme Court.

**Central, northern and far northern districts**

**266A.(1)** The central district of the Supreme Court is the part of the State comprised within the boundaries described in schedule 1.

**(2)** The northern district of the Supreme Court is the part of the State comprised within the boundaries described in schedule 2.

**(3)** The far northern district of the Supreme Court is the part of the State comprised within the boundaries described in schedule 3.<sup>5</sup>

**Sittings in central, northern and far northern districts**

**267.(1)** Sittings of the Supreme Court shall be held within the central district, northern district and far northern district.

**(2)** The Central Court, Northern Court and Far Northern Court, until other provision is made in that behalf, and without prejudice to the jurisdiction, powers, and authority exercisable in any Circuit Court within the central, northern or far northern district, as the case may be, shall be held at Rockhampton, Townsville and Cairns respectively.

**Jurisdiction etc. of judges sitting in Central, Northern and Far Northern Courts**

**268.** The judges sitting for the time being in the Central Court, Northern Court and Far Northern Court shall respectively have and exercise within the central district, northern district and far northern district all the jurisdiction, powers, and authorities of the court which may be exercised by a judge sitting alone.

**Central, northern and far northern judges**

**269.(1)** One of the judges of the court must be called ‘the central judge’, and must be designated as the central judge in the judge’s commission of appointment as a judge.

**(2)** One of the judges of the court must be called ‘the northern judge’,

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<sup>5</sup> There are references to Supreme Court districts in various Acts. See, for example, the *Bills of Sale and Other Instruments Act 1955*.

and must be designated as the northern judge in the judge's commission of appointment as a judge.

(3) One of the judges of the court must be called 'the far northern judge', and must be designated as the far northern judge in the judge's commission of appointment as a judge.

(4) The northern judge or another judge may act as the far northern judge until the appointment of the far northern judge.

### **Transfer of judge**

**270.** The Governor in Council may—

- (a) in the event of a vacancy, appoint—
  - (i) the far northern judge to be the northern judge or the central judge; or
  - (ii) the northern judge to be the central judge or the far northern judge; or
  - (iii) the central judge to be the northern judge or the far northern judge, or
  - (iv) a judge at Brisbane to be the central judge, northern judge or far northern judge; or
- (b) transfer the central judge, the northern judge or the far northern judge to the Supreme Court at Brisbane.

### **General jurisdiction of central judge, northern judge and far northern judge**

**272.** Subject to the provisions of this part as to the jurisdiction to be exercised by the central judge within the central district, by the northern judge within the northern district, and by the far northern judge within the far northern district, every judge of the court shall have and shall be deemed to have always had, and may exercise, in any part of Queensland at which the Supreme Court or a Circuit Court is appointed to sit, all the jurisdiction, powers, and authorities of a judge of the court.

**Officers may be appointed**

**273.(1)** The Governor in Council may from time to time appoint, for the purposes of the Central, Northern and Far Northern Courts respectively, such and so many duly qualified persons as may be requisite to perform within those districts respectively the duties of sheriff, prothonotary, and registrar, and the duties of such other officers as may be necessary.

**(2)** And the officers so appointed shall have and perform within the central, northern or far northern district, as the case may be, the like duties to those performed by the corresponding officers at Brisbane.

**(3)** The person appointed to perform the duties of sheriff is to be called—

- (a) for the Central Court—the central sheriff; and
- (b) for the Northern Court—the northern sheriff; and
- (c) for the Far Northern Court—the far northern sheriff.

**Duties and status of central, northern and far northern sheriffs**

**273A.(1)** The central sheriff, the northern sheriff and the far northern sheriff are deputies of the sheriff of Queensland for the execution of all writs, summonses, rules, orders, warrants, precepts, commands and processes of the court that are to be executed within their respective districts.

**(2)** A writ, summons, rule, order, warrant, precept, command or process of the court wherever it is to be executed must be directed to the sheriff of Queensland.

**(3)** For the purpose of deciding any question of priority between writs of execution or other process, the office of the sheriff at Brisbane and the offices of the central sheriff, northern sheriff and far northern sheriff are taken to be the same office.

**Causes may be transferred**

**274.** All matters pending in the Supreme Court at Brisbane or in the Central, Northern or Far Northern Court may be transferred to any other one of the said courts in such manner as may be prescribed by rules of court.

**Construction of Acts in which Brisbane is mentioned**

**275.** Whenever in any Act relating to the court the word ‘Brisbane’ is used, or any act or thing is required to be done or performed at Brisbane, such Act shall, so far as may be necessary or convenient for the exercise of the jurisdiction of the Central, Northern or Far Northern Court, be read and construed as if the word ‘Rockhampton’ or ‘Townsville’ or ‘Cairns’, as the case requires, were substituted for the word ‘Brisbane’.

**Process where returnable**

**276.(1)** Any writ or other process issued out of the office of the Central Court, or by any commissioner residing within the central district, shall be returnable in the office of the Central Court.

**(2)** Any writ or other process issued out of the office of the Northern Court, or by any commissioner residing within the northern district, shall be returnable in the office of the Northern Court.

**(3)** A writ or other process issued out of the Far Northern Court is returnable in the Far Northern Court.

**(4)** But every writ or other process shall have full force and effect, and may be enforced at any place within the State.

**Performance of duties of registrar within central and northern districts**

**277.** In the case of Circuit Courts within the central, northern or far northern district, the duties of the registrar under section 263 shall be performed by the officer of the Central, Northern or Far Northern Court, as the case may be, who for the time being is performing the duties of the registrar of that court.

**Transitional—references to northern district and Northern Court**

**277A.(1)** This section applies if, under an Act as in force immediately before the commencement of this section, a thing is required or permitted to be done in the northern district or the Northern Court.

**(2)** The thing may be done in the far northern district or Far Northern

Court if, having regard to the place where the thing happens or some other relevant factor, it is more appropriate for the thing to be done in the far northern district or Far Northern Court.

## **PART 18—PROVISIONS FROM COMMERCIAL CAUSES ACT 1910**

### **Purposes of pt 18**

**279.** The purpose of this part is to make better provision for the trial of commercial causes.

### **Definitions for pt 18**

**280.** In this part—

“**commercial causes**” include causes arising out of the ordinary transactions of merchants and traders; amongst others those relating to the construction of mercantile documents, export or import of merchandise, carriage of goods, sale of goods, building contracts, engineering contracts, insurance, banking, money lending, mercantile agency and mercantile usages.

“**prescribed**” means prescribed by rules of court.

### **A list of commercial causes to be kept**

**281.(1)** A list of commercial causes shall be kept by the registrar.

(2) All proceedings in the causes on such list shall be in accordance with the provisions of this part.

(3) No cause shall be entered on such list except upon the order of a judge as hereinafter provided.

**Either party may apply to have action placed on such list**

**282.(1)** Either party to an action in the Supreme Court may, at any time after the commencement of the action, call upon the other party to show cause before a judge in chambers why such action should not be entered on the list of commercial causes.

**(2)** The judge may order the action to be so entered, and from such order there shall be no appeal.

**Directions**

**283.(1)** Such judge or any other judge shall, by such or a subsequent order, give such directions as in the judge's opinion are expedient for the speedy and inexpensive determination of the questions in the action really at issue between the parties.

**(2)** To effect this purpose the judge may inter alia do any or all of the following things—

- (a) dispense with pleadings;
- (b) dispense with the rules of evidence for proving any matter where it is just to do so (including cases where expense and delay might otherwise be caused); and without limiting the generality of this power, dispense with the proof of handwriting, of documents, of the identity of parties or parcels, or of authority;
- (c) require particulars of the cause of action, of the grounds of defence, or of any other facts or circumstances connected with the action to be served within a specified time by either party;
- (d) order mutual discoveries and inspection within a specified time;
- (e) require either party to make admissions with respect to any question of fact involved in the action;
- (f) settle the issues for trial;
- (g) order the action to be tried without a jury unless a jury is demanded by both parties;
- (h) order the trial to be expedited;
- (i) direct that notes of the evidence at the trial shall be taken in shorthand;



- (j) state a case on matters of law for the Court of Appeal;
- (k) fix the amount of party and party costs to be paid by the unsuccessful party.

### **Jury's verdict or judge's decision may be final**

**284.** The parties may, if they so desire, agree that the verdict of the jury or the decision of the judge in a commercial cause shall be final.

### **Commercial dispute concerning construction of document**

**285.(1)** Where a commercial dispute has arisen concerning the construction of a document or its application to any facts, any party to the dispute may apply to a judge in chambers for the determination of the questions involved in the dispute notwithstanding that no commercial cause has been commenced.

**(2)** A commercial dispute is a dispute which would be a commercial cause if made the subject of an action in the Supreme Court.

**(3)** An application under this section may be made in a summary manner by originating summons returnable on 2 clear days notice, supported by affidavit.

**(4)** Where it is necessary in the determination of a commercial dispute to decide any question of fact, the judge may decide the question forthwith or settle the issues for trial and give any consequential directions as if the matter was a commercial cause.

**(5)** A determination of any issue of fact or of any question of law pursuant to this section shall be binding on all parties to the summons in the same manner as if the issue or question had been determined in a commercial cause.

**(6)** Where on the hearing of an application under this section, the judge is of opinion that the dispute is not a commercial dispute but is a matter in which an application may be made under the *Rules of the Supreme Court*, order 64, rule 1A, 1B or 1BB the judge may proceed to determine the matter as if it was the subject of an application pursuant to such of the said rules as are applicable in the circumstances.

## **PART 19—PROVISIONS FROM SUPREME COURT ACT 1921**

### *Division 1—Districts etc.*

#### **Constitution of districts etc.**

**286.(1)** A regulation may—

- (a) constitute Supreme Court districts, each of which shall consist of a Magistrates Court district or 2 or more contiguous Magistrates Courts districts;
- (b) constitute at each place where sittings of the court are to be held in a district a Supreme Court registry with a proper court seal or stamp.

(2) The Governor in Council may, by gazette notice, order that sittings of the Supreme Court presided over by a judge are to be held for the trial of criminal causes, and the trial and hearing of civil causes and matters, at stated times and places within each Supreme Court district.

(3) The Governor in Council may from time to time appoint a registrar and deputy sheriff and such and so many other officers as are necessary in and for every Supreme Court district constituted under subsection (1).

(4) Unless or until otherwise prescribed, all existing districts and District Court registries constituted under and for the purposes of the repealed Acts, shall be deemed to have been constituted to be districts and registries for all purposes under this part, and shall continue subject to this part.

(5) Registrars appointed to act in and for a district shall, in relation to proceedings in their respective registries, be registrars of the Supreme Court, and shall have all the powers, jurisdictions, and authorities of such registrars.

#### **District sittings are Circuit Courts**

**287.(1)** The sittings of the Supreme Court held in a district under this part shall be a Circuit Court, and for that purpose, sections 206 and 207 shall be applicable, except as regards the dates for holding such courts.

(2) However, where by reason of the absence of the appointed judge the Circuit Court can not be held at the time appointed the sheriff or the sheriff's deputy or in the event of the absence of both the bailiff shall adjourn the court to such date as that judge shall direct and shall publish notice of the day to which the court is adjourned in such manner as that judge directs.

(3) The far northern judge, northern judge and central judge shall respectively reside in the far northern district, northern district and central district.

(4) Subject to subsection (5), the northern judge and central judge shall also act as judge at all Circuit Courts in the northern district and central district, respectively.

(5) In this section—

**“appointed judge”** means the judge who according to the arrangements for the dispatch of business then in force is the judge to preside at the Circuit Court in question or such other judge as shall be presiding in the judge's stead at that Circuit Court.

**“sheriff”**, in the case of Circuit Courts within the central district, northern district or the far northern district, means the central sheriff, northern sheriff or the far northern sheriff, as the case may be.

## *Division 2—Civil causes and matters*

### **Civil jurisdiction**

**288.** Subject to this part, every civil cause or matter commenced in the Supreme Court shall be commenced in the prescribed registry, and all applications and other proceedings therein shall be made and carried on in such registry accordingly; such cause or matter shall be tried or heard in the district for which such registry has been constituted by or before a judge either alone or sitting with a jury.

### **Removal to another registry**

**289.** Any party may apply to a judge or registrar to have a cause or matter removed into another registry; and if it is made to appear to such

judge or registrar that such cause or matter could be tried or heard more expeditiously, cheaply, conveniently, or advantageously in the district for which such other registry is constituted, such judge or registrar may remove the same to such other registry, and thereupon the proceedings shall be continued in such other registry and the cause or matter shall be tried or heard in such district.

### **Transmission of writ etc.**

**290.** In any such case the registrar of the registry in which the cause or matter was commenced shall transmit to the proper registrar a copy of the order, together with a copy of the writ of summons and of the pleadings (if any), and other documents as prescribed.

### **Proceedings on removal**

**291.(1)** Any cause or matter so removed, and all subsequent proceedings therein, shall be tried and taken as if the cause or matter had originally been commenced in the registry to which it has been so removed.

**(2)** The judge shall appoint a day for the trial or hearing, and notice of it shall be sent by the registrar, by post or otherwise, to the parties or their solicitors.

**(3)** Where a jury is requested for the trial of the cause, the judge may direct the summoning of such jury for the day appointed for the trial, and such jury shall be summoned and shall attend accordingly.

### **Writs and appearance to be endorsed with statement of claim and defence**

**292.** Subject to this part, every writ of summons issued out of a registry shall be endorsed with or have annexed thereto a short statement of claim, and every appearance to such writ shall shortly state the defence, and unless by order of a judge no further pleadings shall be delivered.

### **Summons for directions to be issued by registrar**

**293.** Subject to this part, on the entry of an appearance to a writ of

summons, a summons for directions shall be issued by the registrar, bringing the parties before the registrar, who may give all such directions upon such summons as the registrar thinks fit, and for such purposes such registrar shall have all the powers and authorities of a judge in chambers, or such registrar may refer the summons to a judge.

## **PART 20—PROVISIONS FROM SUPREME COURT ACTS AMENDMENT ACT (NO. 2) 1958**

### **Saving**

**296.** This part shall apply so as not to limit or affect howsoever the operation and effect of section 260, or of the Criminal Code, sections 627, 660, 661 and 671F.

### **Hearing de novo when trial judge unable to continue**

**297.(1)** When after the commencement of the hearing of any cause or matter, civil or criminal, including any appeal before a judge, but before judgment in the cause or matter has been given, the judge dies or becomes incapable of continuing to sit or, in the case of a cause or matter which has been heard but judgment wherein has not been given, of giving the judge's judgment, any party to the cause or matter may, upon giving 7 days notice to the other party or parties, apply to a judge for an order that the cause or matter be heard and determined de novo.

**(2)** On an application under this section to a judge, that judge—

- (a)** if this section is applicable in the cause or matter by reason of the temporary incapacity of a judge—may, according as the judge deems fit, either adjourn the cause or matter as the judge deems necessary in order to enable the judge before whom the hearing thereof was commenced to give judgment and, if necessary for that purpose, to complete the hearing, or order the cause or matter to be heard and determined de novo; and
- (b)** in any other case—shall order the cause or matter to be heard and

determined de novo.

(3) When, pursuant to this section, a cause or matter is heard and determined de novo—

- (a) the judge so hearing and determining the same may make such order as to the costs of the first hearing as the judge shall think fit; and
- (b) the first hearing shall for all purposes, other than that set out in paragraph (a), be deemed a nullity.

### **Proof of incapacity of judge**

**298.** When proof of the temporary or permanent incapacity of a judge is necessary for a purpose of this part, the certificate of the chief justice or in the chief justice's absence that of the next senior judge that such judge is incapable as specified in the certificate shall be prima facie evidence of that fact.

## **PART 21—MISCELLANEOUS**

### **Saving provisions**

**299.** Nothing in this part shall be construed to limit or affect the granting of probates or letters of administration or orders to administer in the registries at Brisbane, Rockhampton, and Townsville, respectively.

### **References to certain Acts and provisions**

**300.(1)** In an Act or document, a reference to any of the following Acts may, if the context permits, be taken to be a reference to this Act, and a reference (whether express or implied) to a provision of any of the following Acts that was relocated to this Act may, if the context permits, be taken to be a reference to the corresponding provision of this Act—

- *Supreme Court Constitution Amendment Act 1861*
- *Common Law Pleading Act 1867*

*Supreme Court Act 1995*

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- *Common Law Practice Act 1867*
- *Common Law Process Act 1867*
- *Equity Act 1867*
- *Interdict Act 1867*
- *Writs of Dedimus Act 1871*
- *Supreme Court Act 1874*
- *Sheriff's Act 1875*
- *Judicature Act 1876*
- *Supreme Court Act 1892*
- *Supreme Court Act 1893*
- *Supreme Court Act 1895*
- *Supreme Court Act 1899*
- *Commercial Causes Act 1910*
- *Supreme Court Acts Amendment Act (No. 2) 1958.*

(2) In an Act or document, a reference (whether express or implied) to a provision of the Supreme Court Acts (whether or not the reference includes a year or years), or a provision of either of the following Acts, that was relocated to this Act may, if the context permits, be taken to be a reference to this Act or the corresponding provision of this Act, as the case requires—

- *Costs Act 1867*
- *Supreme Court Act 1867.*

(3) In an Act or document, a reference to the *Supreme Court Act 1921*, other than a reference to a provision of that Act that was relocated to the *Legal Practitioners Acts Amendment Act 1968*, is a reference to this Act.

**SCHEDULE 1****CENTRAL DISTRICT**

section 266

Commencing on the east coast at the mouth of the Kolan River, and bounded thence on the south by the northern watershed of that river westerly to Dawes Range; by that range and the range forming the northern and western watersheds of the Rawbelle River and its tributaries westerly and southerly to their junction with the southern watershed of Ross and Cracow Creeks; by that watershed westerly to the Dawson River; by that river downwards to Bigge's Range; by that range westerly to Carnarvon Range; by that range westerly to the Great Dividing Range; by that range westerly to the Warrego Range; by that range westerly to the Cheviot Range; by that range north-westerly and westerly to the confluence of the Thomson and Barcoo Rivers; by a line due west to the western boundary of the State; on the west by that boundary north to the 24th parallel of south latitude; on the north by that parallel easterly to its intersection with the east boundary of Ingledoun no. 3 block; by part of the east boundary of that block; by the northern boundaries of Ingledoun no. 1 and Walla Munda; by parts of the west and the north boundaries of Diamantina Lakes no. 3; by part of the west and the south boundaries of Diamantina Lakes no. 2; by the south boundary of Diamantina Plains; by the south and part of the east boundaries of Mayne Downs no. 4 to the 24th parallel of latitude; again by that parallel easterly to the range forming the eastern watershed of the Diamantina River and its tributaries; by that range northerly to the ranges forming the southern watershed of the Flinders River and its tributaries; by that range north-easterly to the 21st parallel of latitude; by that parallel easterly to the Great Dividing Range; by that range southerly to its junction with the southern watershed of the Cape River; by that watershed easterly to the confluence of the Belyando and Suttor Rivers; thence by the Suttor River upwards to its head in the Leichhardt Range; thence by that range and the northern watershed of Funnel Creek and its tributaries easterly and southerly to a spur forming the watershed separating the waters of Marion and Rocky Dam Creeks; thence by that watershed north-easterly to Cape



## SCHEDULE 1 (continued)

Palmerston on the east coast of the State; thence by a line eastward to the eastern boundary of the State; thence on the east by that boundary southerly to Sandy Cape; and again on the south by a line westerly to the point of commencement;—inclusive of all islands adjacent thereto south of the latitude of Cape Palmerston and north of the latitude of Sandy Cape.

**SCHEDULE 2****NORTHERN DISTRICT**

section 266

Commencing on the east coast at Cape Palmerston, and bounded thence on the south by a line east to the eastern boundary of the State; thence on the east, north-east, north, and west by that boundary to the 24th parallel of south latitude; on the south by that parallel easterly to its intersection with the east boundary of Ingledoun no. 3 block; by part of the east boundary of that block; by the northern boundary of Ingledoun no. 1 and Walla Munda; by parts of the west and north boundaries of Diamantina Lakes no. 3; by part of the west and the south boundaries of Diamantina Lakes no. 2; by the south boundary of Diamantina Plains; by the south and part of the east boundaries of Mayne Downs no. 4 to the 24th parallel of latitude; again by that parallel easterly to the range forming the eastern watershed of the Diamantina River and its tributaries; by that range northerly to the range forming the southern watershed of the Flinders River and its tributaries; by that range north-easterly to the 21st parallel of latitude; by that parallel easterly to the Great Dividing Range; by that range southerly to its junction with the southern watershed of the Cape River; by that watershed easterly to the confluence of the Belyando and Suttor Rivers; thence by the Suttor River upwards to its head in the Leichhardt Range; thence by that range and the northern watershed of Funnel Creek and its tributaries easterly and southerly to its junction with a spur forming the watershed separating the waters of Marion and Rocky Dam Creeks; and thence by that watershed north-easterly to the point of commencement;—inclusive of all islands adjacent thereto north of the latitude of Cape Palmerston.

However, after the commencement of the *Courts Reform Amendment Act 1997*, section 82,<sup>6</sup> the northern district does not include any part of the State comprised within the boundaries of the far northern district.

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<sup>6</sup> Section 82 (Amendment of s 266 (Definitions for pt 16))

**SCHEDULE 3****FAR NORTHERN DISTRICT**

section 266A

The far northern district comprises the part of the State within the boundaries of the Supreme Court district containing Cairns as constituted from time to time under part 19.<sup>7</sup>

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<sup>7</sup> Part 19 (Provisions from Supreme Court Act 1921)

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 11 December 1997. Future amendments of the Supreme Court Act 1995 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Supreme Court 1995—historical context

The Supreme Court Act 1995 was not enacted in 1995. It is a consolidation (see s 2) of provisions of the Supreme Court Act 1921 and provisions relocated from the following Acts—

- Supreme Court Constitution Amendment Act 1861
- Common Law Pleading Act 1867
- Common Law Practice Act 1867
- Common Law Process Act 1867
- Costs Act 1867
- Equity Act 1867
- Interdict Act 1867

- Supreme Court Act 1867
- Writs of Dedimus Act 1871
- Supreme Court Act 1874
- Sheriff's Act 1875
- Judicature Act 1876
- Supreme Court Act 1892
- Supreme Court Act 1893
- Supreme Court Act 1895
- Supreme Court Act 1899
- Commercial Causes Act 1910
- Supreme Court Acts Amendment Act (No. 2) 1958.

## 4 Key

### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

**5 Table of earlier reprints**

## TABLE OF EARLIER REPRINTS

**Supreme Court Act 1995**

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 58 of 1995	8 December 1995
1A	to Act No. 38 of 1997	24 October 1997

**Common Law Practice Act 1867**

Reprint No.	Amendments included	Reprint date
1	to Act No. 87 of 1981	24 June 1994

**Common Law Process Act 1867**

Reprint No.	Amendments included	Reprint date
1	to Act No. 31 of 1972	19 August 1994

**Common Law Pleading Act 1867**

Reprint No.	Amendments included	Reprint date
1	to Act 8 Edw 7 No. 18 of 1908	11 August 1994

**Equity Act 1867**

Reprint No.	Amendments included	Reprint date
1	to Act No. 68 of 1991	19 July 1994

**Interdict Act 1867**

Reprint No.	Amendments included	Reprint date
1	to Act No. 34 of 1973	26 October 1994

**Writs of Dedimus Act 1871**

Reprint No.	Amendments included	Reprint date
1	none	11 July 1994

**Sheriff's Act 1875**

Reprint No.	Amendments included	Reprint date
1	to Act 8 Edw 7 No. 18 of 1908	17 January 1995

**Judicature Act 1876**

Reprint No.	Amendments included	Reprint date
1	to Act No. 68 of 1991	12 October 1994

**Commercial Causes Act 1910**

Reprint No.	Amendments included	Reprint date
1	to Act No. 68 of 1991	9 December 1994

**6 Tables in earlier reprints**

## TABLES IN EARLIER REPRINTS

**Supreme Court Act 1995**

Name of table	Reprint No.
Changed names and titles	1
Corrected minor errors	1
Obsolete and redundant provisions	1

**Common Law Practice Act 1867**

Name of table	Reprint No.
Changed names and titles	1
Corrected minor errors	1
Renumbered provisions	1
Comparative legislation	1

**Common Law Process Act 1867**

Name of table	Reprint No.
Changed names and titles	1
Obsolete and redundant provisions	1
Renumbered provisions	1
Comparative legislation	1

**Common Law Pleading Act 1867**

Name of table	Reprint No.
Corrected minor errors	1
Renumbered provisions	1
Comparative legislation	1

**Equity Act 1867**

Name of table	Reprint No.
Changed names and titles	1
Renumbered provisions	1
Comparative legislation	1

**Interdict Act 1867**

Name of table	Reprint No.
Changed names and titles	1
Obsolete and redundant provisions	1
Corrected minor errors	1
Renumbered provisions	1
Comparative legislation	1



**Writs of Dedimus Act 1871**

Name of table	Reprint No.
Changed names and titles	1

**Sheriff's Act 1875**

Name of table	Reprint No.
Changed names and titles	1
Renumbered provisions	1

**Judicature Act 1876**

Name of table	Reprint No.
Obsolete and redundant provisions	1
Renumbered provisions	1
Comparative legislation	1

**Commercial Causes Act 1910**

Name of table	Reprint No.
Obsolete and redundant provisions	1
Renumbered provisions	1

**7 List of legislation****Supreme Court Act 1995 (prev Supreme Court Act 1921 12 Geo 5 No. 15)**

as amended by—

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**List of legislation to Supreme Court Constitution Amendment Act 1861 25 Vic No. 13—before relocation to the Supreme Court Act 1995****Supreme Court Constitution Amendment Act 1861 25 Vic No. 13**

date of assent 7 August 1861

commenced on date of assent

as amended by—

**Repealing Act 1867 31 Vic No. 39 s 2 sch**

date of assent 28 December 1867

commenced 31 December 1867 (see s 9)

**Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 sch 1**

date of assent 23 December 1908

commenced on date of assent

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**List of legislation to Common Law Pleading Act 1867 31 Vic No. 5—before relocation to Supreme Court Act 1995**

**Common Law Pleading Act 1867 31 Vic No. 5**

date of assent 26 November 1867

commenced 31 December 1867 (see s 63)

as amended by—

**Defamation Act 1889 53 Vic No. 12 s 2 sch (prev Defamation Law of Queensland)**

date of assent 11 October 1889

commenced on date of assent

**Acts Citation Act 1903 3 Edw 7 No. 10 s 10 sch 3 (prev Acts Shortening Act Amendment Act 1903)**

date of assent 13 November 1903

commenced on date of assent

**Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 sch 1**

date of assent 23 December 1908

commenced on date of assent

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**List of legislation to Common Law Practice Act 1867 31 Vic No. 17—before relocation to Supreme Court Act 1995**

**Common Law Practice Act 1867 31 Vic No. 17**

date of assent 28 December 1867

commenced 31 December 1867 (see s 95)

as amended by—

**Sale of Goods Act 1896 60 Vic No. 6 s 60 sch**

date of assent 7 September 1896  
commenced 1 January 1897 (see s 2)

**Acts Citation Act 1903 3 Edw 7 No. 10 s 10 sch 3 (prev Acts Shortening Act Amendment Act 1903)**

date of assent 13 November 1903  
commenced on date of assent

**Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 sch 1**

date of assent 23 December 1908  
commenced on date of assent

**Common Law Practice Act Amendment Act 1915 6 Geo 5 No. 22**

date of assent 14 December 1915  
commenced on date of assent

**Common Law Practice Act Amendment Act 1940 4 Geo 6 No. 6**

date of assent 16 October 1940  
commenced on date of assent

**Law Reform (Limitation of Actions) Act 1956 5 Eliz 2 No. 19 ss 6–7**

date of assent 22 November 1956  
commenced on date of assent

**Common Law Practice Act Amendment Act 1964 No. 38**

date of assent 2 November 1964  
commenced on date of assent

**Common Law Practice Act Amendment Act 1970 No. 44**

date of assent 21 December 1970  
commenced on date of assent

**Common Law Practice Act Amendment Act 1972 No. 34**

date of assent 21 December 1972  
commenced on date of assent

**Property Law Act 1974 No. 76 s 3(2) sch 6 pt 3**

date of assent 1 November 1974  
commenced on date of assent

**Evidence Act 1977 No. 47 s 3(3) sch 1 pt C**

date of assent 3 October 1977  
commenced 1 January 1978 (see s 1(2))

**Common Law Practice Act Amendment Act 1978 No. 84**

date of assent 15 December 1978  
commenced on date of assent

**Succession Act 1981 No. 69 s 3(1) sch 1**

date of assent 7 October 1981  
commenced 1 January 1982 (proc pubd gaz 19 December 1981 p 1622)

**Common Law Practice and Limitation of Actions Acts Amendment Act 1981  
No. 87 pt 2**

date of assent 13 November 1981  
commenced on date of assent

**Common Law Practice and Workers' Compensation Amendment Act 1994  
No. 85 pts 1–2**

date of assent 1 December 1994  
ss 1–2 commenced on date of assent  
remaining provisions commenced 17 October 1994 (see s 2)

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995  
commenced on date of assent

**List of legislation to Common Law Process Act 1867 31 Vic No. 4—before  
relocation to Supreme Court Act 1995****Common Law Process Act 1867 31 Vic No. 4**

date of assent 26 November 1867  
commenced 31 December 1867 (see s 77)

as amended by—

**Statute 36 Vic No. 1**

date of assent 26 November 1867  
commenced on date of assent

**Criminal Code Act 1899 63 Vic No. 9 s 3(2) sch 3**

date of assent 28 November 1899  
commenced on date of assent

**Acts Citation Act 1903 3 Edw 7 No. 10 s 10 sch 3 (prev Acts Shortening Act  
Amendment Act 1903)**

date of assent 13 November 1903  
commenced on date of assent

**Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 sch 1**

date of assent 23 December 1908  
commenced on date of assent

**Australian Consular Officers' Notarial Powers and Evidence Act 1946 10 Geo 6  
No. 43 s 5(ii)**

date of assent 28 November 1946  
commenced 28 November 1946 (see s 1(3))

**Evidence and Discovery Acts and Other Acts Amendment Act 1960 9 Eliz 2  
No. 22 pt 3**

date of assent 14 November 1960  
commenced on date of assent

**Metric Conversion Act 1972 No. 31 pt 2 sch 1**

date of assent 21 December 1972

commenced 1 July 1973 (proc pubd gaz 16 June 1973 p 1460)

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**List of legislation to Costs Act 1867 31 Vic No. 20—before relocation to Supreme Court Act 1995****Costs Act 1867 31 Vic No. 20**

date of assent 28 December 1867

commenced 31 December 1867 (see s 37)

as amended by—

**Criminal Code Act 1899 63 Vic No. 9 s 3(2) sch 3**

date of assent 28 November 1899

commenced on date of assent

**Acts Citation Act 1903 3 Edw 7 No. 10 s 10 sch 3 (prev Acts Shortening Act Amendment Act 1903)**

date of assent 13 November 1903

commenced on date of assent

**Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 sch 1**

date of assent 23 December 1908

commenced on date of assent

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**List of legislation to Equity Act 1867 31 Vic No. 18—before relocation to Supreme Court Act 1995****Equity Act 1867 31 Vic No. 18**

date of assent 28 December 1867

commenced 31 December 1867 (see s 157)

as amended by—

**Supreme Court Funds Act 1895 59 Vic No. 7 s 4 sch**

date of assent 24 September 1895

commenced 1 January 1896 (see s 2)

**Criminal Code Act 1899 63 Vic No. 9 s 3(2) sch 3**

date of assent 28 November 1899

commenced on date of assent

**Acts Citation Act 1903 3 Edw 7 No. 10 s 10 sch 3 (prev Acts Shortening Act Amendment Act 1903)**

date of assent 13 November 1903  
commenced on date of assent

**Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 sch 1**

date of assent 23 December 1908  
commenced on date of assent

**Australian Consular Officers' Notarial Powers and Evidence Act 1946 10 Geo 6 No. 43 s 5(iii), (v)**

date of assent 28 November 1946  
commenced 28 November 1946 (see s 1(3))

**Evidence and Discovery Acts and Other Acts Amendment Act 1960 9 Eliz 2 No. 22 pt 3**

date of assent 14 November 1960  
commenced on date of assent

**Age of Majority Act 1974 No. 57 s 8 sch**

date of assent 27 September 1974  
commenced 1 March 1975 (proc pubd gaz 16 November 1974 p 1083)

**Property Law Act 1974 No. 76 s 3(2) sch 6 (as amd 1975 No. 57 s 21) (as from 27 November 1975)**

date of assent 1 November 1974  
commenced 1 December 1975 (see s 1(2))

**Succession Act 1981 No. 69 s 3(1) sch 1**

date of assent 7 October 1981  
commenced 1 January 1982 (proc pubd gaz 19 December 1981 p 1622)

**Statute Law (Miscellaneous Provisions) Act 1989 No. 103 s 3 sch**

date of assent 25 October 1989  
commenced on date of assent

**Supreme Court of Queensland Act 1991 No. 68 ss 1–2, 111 sch 2**

date of assent 24 October 1991  
commenced 14 December 1991 (1991 SL No. 173)

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995  
commenced on date of assent

**List of legislation to Interdict Act 1867 31 Vic No. 11—before relocation to Supreme Court Act 1995****Interdict Act 1867 31 Vic No. 11**

date of assent 28 December 1867  
commenced 31 December 1867 (see s 64)

as amended by—

**Criminal Code Act 1899 63 Vic No. 9 s 3(2) sch 3**

date of assent 28 November 1899  
 commenced on date of assent

**Acts Citation Act 1903 3 Edw 7 No. 10 s 10 sch 3 (prev Acts Shortening Act Amendment Act 1903)**

date of assent 13 November 1903  
 commenced on date of assent

**Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 sch 1**

date of assent 23 December 1908  
 commenced on date of assent

**Arbitration Act 1973 No. 34 s 3(1) sch 1**

date of assent 26 April 1973  
 commenced on date of assent

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995  
 commenced on date of assent

**List of legislation to Supreme Court Act 1867 31 Vic No. 23—before relocation to Supreme Court Act 1995****Supreme Court Act 1867 31 Vic No. 23**

date of assent 28 December 1867  
 commenced 31 December 1867 (see s 64)

**Note**—ss 40–42 relocated to Legal Practitioners Act 1995 pt 3 (see 1995 No. 58 s 4 sch 1)

as amended by—

**Supreme Court Act 1874 38 Vic No. 3 s 1**

date of assent 30 June 1874  
 commenced on date of assent

**Sheriff's Act 1875 39 Vic No. 3 s 1**

date of assent 13 July 1875  
 commenced on date of assent

**Supreme Court Act 1895 59 Vic No. 21 s 3 sch 3**

date of assent 19 December 1895  
 commenced on date of assent

**Criminal Code Act 1899 63 Vic No. 9 s 3(2) sch 3**

date of assent 28 November 1899  
 commenced on date of assent

**Acts Citation Act 1903 3 Edw 7 No. 10 s 10 sch 3 (prev Acts Shortening Act Amendment Act 1903)**

date of assent 13 November 1903  
 commenced on date of assent

**Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 sch 1**

date of assent 23 December 1908  
commenced on date of assent

**Supreme Court Act 1921 12 Geo 5 No. 15 s 12(2)(iii)**

date of assent 5 November 1921  
commenced 31 March 1922 (proc pubd gaz 30 March 1922 p 999)

**Supreme Court Acts Amendment Act 1960 9 Eliz 2 No. 37 s 4**

date of assent 14 December 1960  
commenced on date of assent

**Supreme Court Acts Amendment Act 1965 No. 7 s 2**

date of assent 8 April 1965  
commenced on date of assent

**Supreme Court Act Amendment Act 1973 No. 50 s 2**

date of assent 22 October 1973  
commenced on date of assent

**Supreme Court Acts Amendment Act 1980 No. 57 s 4**

date of assent 30 September 1980  
commenced 6 November 1980 (proc pubd gaz 1 November 1980 p 1039)

**Succession Act 1981 No. 69 s 3(1) sch 1**

date of assent 7 October 1981  
commenced 1 January 1982 (proc pubd gaz 19 December 1981 p 1622)

**Supreme Court Judges Appointment Act 1983 No. 6 s 6**

date of assent 21 March 1983  
commenced on date of assent

**Supreme Court Acts Amendment Act 1985 No. 51 s 3**

date of assent 19 September 1985  
commenced on date of assent

**Supreme Court Acts Amendment Act 1989 No. 57 s 3**

date of assent 5 May 1989  
commenced on date of assent

**Supreme Court of Queensland Act 1991 No. 68 ss 1–2, 111 sch 2**

date of assent 24 October 1991  
commenced 14 December 1991 (1991 SL No. 173)

**Justice Legislation (Miscellaneous Provisions) Act 1992 No. 40 pts 1, 5**

date of assent 14 August 1992  
commenced on date of assent

**Supreme Court Legislation (Miscellaneous Provisions) Act 1993 No. 20 pts 1, 3**

date of assent 28 May 1993  
commenced on date of assent

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995  
commenced on date of assent



**List of legislation to Writs of Dedimus Act 1871 34 Vic No. 25—before relocation to Supreme Court Act 1995****Writs of Dedimus Act 1871 34 Vic No. 25**

date of assent 13 June 1871  
commenced on date of assent

as amended by—

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995  
commenced on date of assent

**List of legislation to Supreme Court Act 1874 38 Vic No. 3—before relocation to Supreme Court Act 1995****Supreme Court Act 1874 38 Vic No. 3**

date of assent 30 June 1874  
commenced on date of assent

as amended by—

**Legal Practitioners Act 1881 45 Vic No. 5 s 3**

date of assent 10 October 1881  
commenced on date of assent

**Supreme Court Act 1889 53 Vic No. 17 s 4 sch**

date of assent 13 November 1889  
commenced 1 December 1889 (see s 2)

**Prisons Act 1890 54 Vic No. 17 s 4 sch 1**

date of assent 25 November 1890  
commenced 1 January 1891 (see s 3)

**Supreme Court Act 1892 55 Vic No. 37 s 3**

date of assent 14 April 1892  
commenced on date of assent

**Supreme Court Act 1895 59 Vic No. 21 s 3 sch 3**

date of assent 19 December 1895  
commenced on date of assent

**Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 sch 1**

date of assent 23 December 1908  
commenced on date of assent

**Supreme Court Acts Amendment Act 1944 9 Geo 6 No. 3 s 2(2)(i)**

date of assent 14 December 1944  
commenced on date of assent

**Judges (Pensions and Long Leave) Act 1957 6 Eliz 2 No. 38 ss 12–13 (prev Judges' Pensions Act 1957)**

date of assent 17 December 1957

commenced on date of assent

**Supreme Court of Queensland Act 1991 No. 68 ss 1–2, 111 sch 2**

date of assent 24 October 1991

commenced 14 December 1991 (1991 SL No. 173)

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**List of legislation to Sheriff's Act 1875 39 Vic No. 3—before relocation to Supreme Court Act 1995****Sheriff's Act 1875 39 Vic No. 3**

date of assent 13 July 1875

commenced on date of assent

as amended by—

**Acts Citation Act 1903 3 Edw 7 No. 10 s 10 sch 3 (prev Acts Shortening Act Amendment Act 1903)**

date of assent 13 November 1903

commenced on date of assent

**Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 sch 1**

date of assent 23 December 1908

commenced on date of assent

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**List of legislation to Judicature Act 1876 40 Vic No. 6—before relocation to Supreme Court Act 1995****Judicature Act 1876 40 Vic No. 6**

date of assent 9 October 1876

commenced 1 January 1877 (see s 26)

as amended by—

**Repealing Rules 1900 s 1 sch 1**

pubd gaz 17 October 1900 pp 1146–7

commenced 1 January 1901 (see s 5)

**Acts Citation Act 1903 3 Edw 7 No. 10) s 10 sch 3 (prev Acts Shortening Act Amendment Act 1903)**

date of assent 13 November 1903

commenced on date of assent

**Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 sch 1**

date of assent 23 December 1908

commenced on date of assent

**Supreme Court Act 1921 12 Geo 5 No. 15 s 12(2)(i)**

date of assent 5 November 1921

commenced 31 March 1922 (proc pubd gaz 30 March 1922 p 999)

**Property Law Act 1974 No. 76 s 3(2) sch 6 pt 3**

date of assent 1 November 1974

commenced 1 December 1975 (see s 1(2))

**Supreme Court of Queensland Act 1991 No. 68 ss 1–2, 111 sch 2**

date of assent 24 October 1991

commenced 14 December 1991 (1991 SL No. 173)

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**List of legislation to Supreme Court Act 1892 55 Vic No. 37—before relocation to Supreme Court Act 1995****Supreme Court Act 1892 55 Vic No. 37**

date of assent 14 April 1892

commenced on date of assent

as amended by—

**Supreme Court Act 1893 57 Vic No. 17 ss 3–4**

date of assent 18 October 1893

commenced on date of assent

**Supreme Court Act 1895 59 Vic No. 21 ss 17, 3 sch 3**

date of assent 19 December 1895

commenced on date of assent

**Supreme Court of Queensland Act 1991 No. 68 ss 1–2, 111 sch 2**

date of assent 24 October 1991

commenced 14 December 1991 (1991 SL No. 173)

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**List of legislation to Supreme Court Act 1893 57 Vic No. 17—before relocation to Supreme Court Act 1995****Supreme Court Act 1893 57 Vic No. 17**

date of assent 18 October 1893

commenced on date of assent

as amended by—

**Supreme Court Act 1895 59 Vic No. 21 s 17**

date of assent 19 December 1895

commenced on date of assent

**Supreme Court of Queensland Act 1991 No. 68 ss 1–2, 111 sch 2**

date of assent 24 October 1991

commenced 14 December 1991 (1991 SL No. 173)

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**List of legislation to Supreme Court Act 1895 59 Vic No. 21—before relocation to Supreme Court Act 1995****Supreme Court Act 1895 59 Vic No. 21**

date of assent 19 December 1895

commenced on date of assent

as amended by—

**Supreme Court Act 1899 63 Vic No. 5 s 4**

date of assent 3 November 1899

commenced on date of assent

**Central and Northern Districts Boundaries Act 1900 64 Vic No. 2 s 2**

date of assent 18 September 1900

commenced on date of assent

**Supreme Court Acts Amendment Act 1903 3 Edw 7 No. 9 s 4**

date of assent 13 November

commenced on date of assent

**Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 sch 1**

date of assent 23 December 1908

commenced on date of assent

**Supreme Court Act 1921 12 Geo 5 No. 15 s 12(2)(iv)**

date of assent 5 November 1921

commenced 31 March 1922 (proc pubd gaz 30 March 1922 p 999)

**Supreme Court of Queensland Act 1991 No. 68 ss 1–2, 111 sch 2**

date of assent 24 October 1991

commenced 14 December 1991 (1991 SL No. 173)

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**List of legislation to Supreme Court Act 1899 63 Vic No. 5—before relocation to Supreme Court Act 1995****Supreme Court Act 1899 63 Vic No. 5**

date of assent 3 November 1899

commenced on date of assent

as amended by—

**Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 sch 1**

date of assent 23 December 1908

commenced on date of assent

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**List of legislation to Commercial Causes Act 1910 1 Geo 5 No. 23—before relocation to Supreme Court Act 1995****Commercial Causes Act 1910 1 Geo 5 No. 23**

date of assent 4 January 1911

commenced on date of assent

as amended by—

**Commercial Causes Act Amendment Act 1972 No. 15**

date of assent 15 December 1972

commenced on date of assent

**Supreme Court of Queensland Act 1991 No. 68 ss 1–2, 111 sch 2**

date of assent 24 October 1991

commenced 14 December 1991 (1991 SL No. 173)

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**List of legislation to Supreme Court Act 1921 12 Geo 5 No. 15—before relocation to Supreme Court Act 1995****Supreme Court Act 1921 12 Geo 5 No. 15**

date of assent 5 November 1921

commenced 31 March 1922 (proc pubd gaz 30 March 1922 p 999)

**Note**—ss 10–10A relocated to Legal Practitioners Act 1995 pt 5 (see 1995 No. 58 s 4 sch 1)

as amended by—

**Industrial Arbitration Act Amendment Act 1925 16 Geo 5 No. 13 s 6 sch**

date of assent 26 October 1925  
commenced on date of assent

**Financial Emergency Act 1931 22 Geo 5 No. 1 s 6(2)(ii)**

date of assent 29 June 1931  
commenced 1 July 1931 (proc pubd gaz 30 June 1931 p 2505)

**Legal Practitioners Act Amendment Act 1938 2 Geo 6 No. 20 s 7**

date of assent 24 November 1938  
commenced on date of assent

**Supreme Court Act Amendment Act 1941 5 Geo 6 No. 11 s 2**

date of assent 20 November 1941  
commenced on date of assent

**Supreme Court Acts Amendment Act 1944 9 Geo 6 No. 3 s 2(2)(ii)**

date of assent 14 December 1944  
commenced on date of assent

**Supreme Court Acts Amendment Act 1946 10 Geo 6 No. 53 s 3**

date of assent 9 December 1946  
commenced on date of assent

**Supreme Court Acts Amendment Act 1949 13 Geo 6 No. 42 s 3**

date of assent 10 November 1949  
commenced on date of assent

**Supreme Court Acts Amendment Act 1952 1 Eliz 2 No. 30 s 3**

date of assent 16 October 1952  
commenced on date of assent

**Supreme Court Acts and Another Act Amendment Act 1955 4 Eliz 2 No. 34 s 4**

date of assent 24 November 1955  
commenced on date of assent

**Supreme Court Acts Amendment Act (No. 2) 1955 4 Eliz 2 No. 35 s 5**

date of assent 30 November 1955  
commenced on date of assent

**District Courts Act 1958 7 Eliz 2 No. 66 s 4(1)**

date of assent 16 December 1958  
commenced 10 April 1959 (proc pubd gaz 10 April 1959 p 1939)

**Supreme Court Acts Amendment Act 1961 10 Eliz 2 No. 4 s 3**

date of assent 17 March 1961  
commenced on date of assent

**Supreme Court Acts Amendment Act (No. 2) 1963 No. 46 s 2**

date of assent 20 December 1963  
commenced on date of assent

**Supreme Court Acts Amendment Act 1975 No. 3 s 3**

date of assent 3 April 1975  
commenced on date of assent

**Supreme Court Act Amendment Act 1979 No. 18 s 2**

date of assent 15 May 1979  
commenced on date of assent

**Supreme Court Acts Amendment Act 1982 No. 49 s 3**

date of assent 22 October 1982  
commenced on date of assent

**Supreme Court Judges Appointment Act 1983 No. 6 s 7**

date of assent 21 March 1983  
commenced on date of assent

**Supreme Court of Queensland Act 1991 No. 68 ss 1–2, 111 sch 2**

date of assent 24 October 1991  
commenced 14 December 1991 (1991 SL No. 173)

**Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 ss 1–3 sch 1**

date of assent 7 December 1992  
commenced on date of assent

**Justice and Attorney-General (Miscellaneous Provisions) Act 1994 No. 24 ss 1–3(1) sch**

date of assent 10 May 1994  
commenced 30 May 1994 (1994 SL No. 168)

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995  
commenced on date of assent

**List of legislation to Supreme Court Acts Amendment Act (No. 2) 1958 7 Eliz 2 No. 13—before relocation to Supreme Court Act 1995****Supreme Court Acts Amendment Act (No. 2) 1958 7 Eliz 2 No. 13**

date of assent 28 April 1958  
commenced on date of assent

as amended by—

**Supreme Court of Queensland Act 1991 No. 68 ss 1–2, 111 sch 2**

date of assent 24 October 1991  
commenced 14 December 1991 (1991 SL No. 173)

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995  
commenced on date of assent

**List of legislation to Supreme Court Act 1995—after relocation of Supreme Court Constitution Amendment Act 1861 25 Vic No. 13, Common Law Pleading Act 1867 31 Vic No. 5, Common Law Practice Act 1867 31 Vic No. 17, Common Law Process Act 1867 31 Vic No. 4, Costs Act 1867 31 Vic No. 20, Equity Act 1867 31 Vic No. 18, Interdict Act 1867 31 Vic No. 11, Supreme Court Act 1867 31 Vic No. 23, Writs of Dedimus Act 1871 34 Vic No. 25, Supreme Court Act 1874 38 Vic No. 3, Sheriff's Act 1875 39 Vic No. 3, Judicature Act 1876 40 Vic No. 6, Supreme Court Act 1892 55 Vic No. 37, Supreme Court Act 1893 57 Vic No. 17, Supreme Court Act 1895 59 Vic No. 21, Supreme Court Act 1899 63 Vic No. 5, Commercial Causes Act 1910 1 Geo 5 No. 23, Supreme Court Act 1921 12 Geo 5 No. 15, Supreme Court Acts Amendment Act (No. 2) 1958 7 Eliz 2 No. 13**

**Courts Reform Amendment Act 1997 No. 38 ss 1–2 pt 12**

date of assent 18 July 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 1997 (1997 SL No. 265)

**Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82 ss 1–3, sch**

date of assent 5 December 1997

commenced on date of assent

## **8 List of annotations**

**Supreme Court Act 1995 (prev Supreme Court Act 1921 12 Geo 5 No. 15)**

**Long title** amd 1995 No. 58 s 4 sch 1

**PART 1—PRELIMINARY**

**pt hdg** ins 1995 No. 58 s 4 sch 1

**Short title**

**s 1** sub 1995 No. 58 s 4 sch 1

**Act is a consolidation**

**s 2** ins 1995 No. 58 s 4 sch 1

**PART 2—PROVISIONS FROM SUPREME COURT CONSTITUTION AMENDMENT ACT 1861**

**pt hdg** ins 1995 No. 58 s 4 sch 1

**Purpose of pt 2**

**s 3** (prev 1861 25 Vic No. 13 s 31)  
om 1867 31 Vic No. 39 s 2 sch  
pres s 3 ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Deeds etc. may be registered**

**s 4** (prev 1861 25 Vic No. 13 s 32)



amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**As to examination of witnesses on interrogatories**

**s 5** (prev 1861 25 Vic No. 13 s 49)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Habeas corpus**

**s 6** (prev 1861 25 Vic No. 13 s 63)  
reloc 1995 No. 58 s 4 sch 1

**PART 3—PROVISIONS FROM COMMON LAW PLEADING ACT 1867**

**pt hdg** ins 1995 No. 58 s 4 sch 1

**Division 1—Purpose of part**

**div hdg** (prev 1867 31 Vic No. 5 div 1 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Purpose of pt 3**

**s 7** (prev 1867 31 Vic No. 5 s 42)  
om 1903 8 Edw 7 No. 18 s 2 sch 1  
pres s 7 ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 2—Payment**

**div hdg** (prev 1867 31 Vic No. 5 div 2 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Action of debt being brought on judgment after money paid such payment may  
be pleaded in bar the like in bonds**

**s 8** (prev 1867 31 Vic No. 5 s 43)  
reloc 1995 No. 58 s 4 sch 1

**Division 3—Payment into court**

**div hdg** (prev 1867 31 Vic No. 5 div 3 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Principal and interest on bonds payable into court**

**s 9** (prev 1867 31 Vic No. 5 s 44)  
reloc 1995 No. 58 s 4 sch 1

**Payment into court in replevin**

**s 10** (prev 1867 31 Vic No. 5 s 46)  
reloc 1995 No. 58 s 4 sch 1

**Effect of such payment in replevin**

**s 11** (prev 1867 31 Vic No. 5 s 47)  
reloc 1995 No. 58 s 4 sch 1

**PART 4—PROVISIONS FROM COMMON LAW PRACTICE ACT 1867**

**pt hdg** ins 1995 No. 58 s 4 sch 1

**Division 1—Purpose of part**

**div hdg** (prev 1867 31 Vic No. 17 div 1 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Purpose of pt 4**

**s 12** (prev 1867 31 Vic No. 17 s 1)  
sub 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 2—Interpretation**

**div hdg** (prev 1867 31 Vic No. 5 div 2 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Definitions for pt 4**

**s 13** (prev 1867 31 Vic No. 17 s 2)  
amd 1970 No. 44 s 2  
sub 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 3—Abolition of wager of law**

**div hdg** (prev 1867 31 Vic No. 5 div 3 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Wager of law abolished**

**s 14** (prev 1867 31 Vic No. 17 s 3)  
reloc 1995 No. 58 s 4 sch 1

**Division 4—Assessment of damages**

**div hdg** (prev 1867 31 Vic No. 5 div 4 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Loss of earnings and future earnings**

**s 15** (prev 1867 31 Vic No. 17 s 4)  
om 1908 8 Edw 7 No. 18 s 2 sch 1  
pres s 15 ins 1978 No. 84 s 2  
reloc 1995 No. 58 s 4 sch 1

**Compensation for future loss to be discounted**

**s 16** (prev 1867 31 Vic No. 17 s 5)  
om 1908 8 Edw 7 No. 18 s 2 sch 1  
pres s 16 ins 1981 No. 87 s 5  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 5—Actions against and by executors**

**div hdg** (prev 1867 31 Vic No. 5 div 5 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Liability for death caused wrongfully**

- s 17** (prev 1867 31 Vic No. 17 s 12)  
reloc 1995 No. 58 s 4 sch 1

**Actions how brought**

- s 18** (prev 1867 31 Vic No. 17 s 13)  
amd 1994 No. 85 s 5  
reloc 1995 No. 58 s 4 sch 1

**Limitation of actions**

- s 19** (prev 1867 31 Vic No. 17 s 14)  
amd 1956 5 Eliz 2 No. 19 s 6; 1981 No. 87 s 6  
reloc 1995 No. 58 s 4 sch 1

**Particulars of demand**

- s 20** (prev 1867 31 Vic No. 17 s 15)  
reloc 1995 No. 58 s 4 sch 1

**Where no action brought within 6 months by executor, then action may be brought by persons beneficially interested**

- s 21** (prev 1867 31 Vic No. 17 s 15A)  
ins 1915 6 Geo 5 No. 22 s 2  
reloc 1995 No. 58 s 4 sch 1

**Payment into court in 1 sum**

- s 22** (prev 1867 31 Vic No. 17 s 15B)  
ins 1915 6 Geo 5 No. 22 s 2  
reloc 1995 No. 58 s 4 sch 1

**Exclusion of certain payments in assessment of damages**

- s 23** (prev 1867 31 Vic No. 17 s 15C)  
ins 1915 6 Geo 5 No. 22 s 2  
sub 1972 No. 34 s 2  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 6—Specific delivery of chattels**

- div hdg** (prev 1867 31 Vic No. 5 div 6 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Procedure after verdict for recovery of specific goods**

- prov hdg** sub 1995 No. 58 s 4 sch 1  
**s 24** (prev 1867 31 Vic No. 17 s 16)  
reloc 1995 No. 58 s 4 sch 1

**Specific delivery of chattels**

- s 25** (prev 1867 31 Vic No. 17 s 17)  
reloc 1995 No. 58 s 4 sch 1

**Division 7—Execution on decrees and orders**

- div hdg** (prev 1867 31 Vic No. 5 div 7 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Decrees and orders of courts of equity etc. to have effect of judgments**

**s 26** (prev 1867 31 Vic No. 17 s 19)  
reloc 1995 No. 58 s 4 sch 1

**Division 8—Execution on foreign judgment**

**div hdg** (prev 1867 31 Vic No. 5 div 8 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Memorial of judgment etc. under seal of Supreme Court of any other Australasian colony filed in Supreme Court at Brisbane shall be a record thereof and execution may issue**

**s 27** (prev 1867 31 Vic No. 17 s 20)  
reloc 1995 No. 58 s 4 sch 1

**Particulars of memorial**

**s 28** (prev 1867 31 Vic No. 17 s 21)  
reloc 1995 No. 58 s 4 sch 1

**Mode of obtaining execution**

**s 29** (prev 1867 31 Vic No. 17 s 22)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 9—Description of parties**

**div hdg** (prev 1867 31 Vic No. 5 div 9 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Initials of names may be used in some cases**

**s 30** (prev 1867 31 Vic No. 17 s 23)  
reloc 1995 No. 58 s 4 sch 1

**Misnomer not to be pleaded in abatement**

**s 31** (prev 1867 31 Vic No. 17 s 24)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 10—Style of defendant**

**div hdg** (prev 1867 31 Vic No. 5 div 10 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Copartnerships all of whose members are not known**

**s 32** (prev 1867 31 Vic No. 17 s 25)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Proviso**

**s 33** (prev 1867 31 Vic No. 17 s 26)  
reloc 1995 No. 58 s 4 sch 1

**Division 11—Refusal to make affidavit**

**div hdg** (prev 1867 31 Vic No. 5 div 11 hdg)

ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Examination of person who refuses to make an affidavit**

**s 34** (prev 1867 31 Vic No. 17 s 40)  
reloc 1995 No. 58 s 4 sch 1

**Proceedings upon order for examination**

**s 35** (prev 1867 31 Vic No. 17 s 41)  
amd 1977 No. 47 s 3(3) sch 1 pt C  
reloc 1995 No. 58 s 4 sch 1

**Division 12—No new trial about stamp rulings**

**div hdg** (prev 1867 31 Vic No. 5 div 12 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**No new trial for ruling as to stamp**

**s 36** (prev 1867 31 Vic No. 17 s 46)  
reloc 1995 No. 58 s 4 sch 1

**Division 13—Execution**

**div hdg** (prev 1867 31 Vic No. 5 div 13 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Securities not realised to be relinquished if the person be taken in execution**

**s 37** (prev 1867 31 Vic No. 17 s 48)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 14—Distringas**

**div hdg** (prev 1867 31 Vic No. 5 div 14 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Stock and shares in public companies belonging to the debtor and standing in the debtor's own name to be charged by order of a judge**

**s 38** (prev 1867 31 Vic No. 17 s 49)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Order of judge to be made in the first instance ex parte and on notice to the bank or company etc. to operate as a distringas**

**s 39** (prev 1867 31 Vic No. 17 s 50)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 15—Garnishment**

**div hdg** (prev 1867 31 Vic No. 5 div 15 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Judge may refuse to interfere in proceeding to attach debts**

**s 40** (prev 1867 31 Vic No. 17 s 59)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 16—View**

**div hdg** (prev 1867 31 Vic No. 5 div 16 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**View by rule without writ**

**s 41** (prev 1867 31 Vic No. 17 s 62)  
reloc 1995 No. 58 s 4 sch 1

**Division 17—Inquiry before prothonotary**

**div hdg** (prev 1867 31 Vic No. 5 div 17 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Inquiry of damages may be directed to take place before the prothonotary**

**s 42** (prev 1867 31 Vic No. 17 s 63)  
reloc 1995 No. 58 s 4 sch 1

**Division 18—Writs of trial and inquiry**

**div hdg** (prev 1867 31 Vic No. 5 div 18 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**No rule to compute**

**s 43** (prev 1867 31 Vic No. 17 s 64)  
reloc 1995 No. 58 s 4 sch 1

**Proceedings on return of writs of inquiry or trial**

**s 44** (prev 1867 31 Vic No. 17 s 66)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Commissioner's notes of evidence etc.**

**s 45** (prev 1867 31 Vic No. 17 s 69)  
reloc 1995 No. 58 s 4 sch 1

**Division 19—Precepts**

**div hdg** (prev 1867 31 Vic No. 5 div 19 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Rule or order for summoning jury**

**s 46** (prev 1867 31 Vic No. 17 s 70)  
reloc 1995 No. 58 s 4 sch 1

**Division 20—Practice at the trial**

**div hdg** (prev 1867 31 Vic No. 5 div 20 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Interest up to judgment**

- s 47** (prev 1867 31 Vic No. 17 s 72)  
sub 1972 No. 34 s 4  
reloc 1995 No. 58 s 4 sch 1

**Interest on debt under judgment or order**

- s 48** (prev 1867 31 Vic No. 17 s 73)  
sub 1972 No. 34 s 5  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Persons may be examined without a subpoena**

- s 49** (prev 1867 31 Vic No. 17 s 74)  
reloc 1995 No. 58 s 4 sch 1

**Witnesses failing to attend**

- s 50** (prev 1867 31 Vic No. 17 s 75)  
sub 1964 No. 38 s 2  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 21—Trial without jury**

- div hdg** (prev 1867 31 Vic No. 5 div 21 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Judge may be consent try questions of fact**

- s 51** (prev 1867 31 Vic No. 17 s 78)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Power to judge to direct arbitration at time of trial when issues of fact left to the judge's decision**

- s 52** (prev 1867 31 Vic No. 17 s 79)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 22—Amendment**

- div hdg** (prev 1867 31 Vic No. 5 div 22 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Amendment**

- s 53** (prev 1867 31 Vic No. 17 s 80)  
reloc 1995 No. 58 s 4 sch 1

**In cases where a variance shall appear between written or printed evidence and the record the court may order the record to be amended**

- s 54** (prev 1867 31 Vic No. 17 s 81)  
reloc 1995 No. 58 s 4 sch 1

**Amendments to be made in the record in certain cases**

- s 55** (prev 1867 31 Vic No. 17 s 82)  
reloc 1995 No. 58 s 4 sch 1

**Amendments at trial**

**s 56** (prev 1867 31 Vic No. 17 s 83)  
reloc 1995 No. 58 s 4 sch 1

**Division 23—Warrants of attorney**

**div hdg** (prev 1867 31 Vic No. 5 div 23 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Warrants of attorney and cognovit actionem to be executed in the presence of an attorney on behalf of the person**

**s 57** (prev 1867 31 Vic No. 17 s 84)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Warrant etc. not formally executed invalid**

**s 58** (prev 1867 31 Vic No. 17 s 85)  
reloc 1995 No. 58 s 4 sch 1

**Warrants of attorney in personal actions to be filed within 21 days**

**s 59** (prev 1867 31 Vic No. 17 s 86)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**In what case warrant of attorney deemed fraudulent**

**s 60** (prev 1867 31 Vic No. 17 s 87)  
reloc 1995 No. 58 s 4 sch 1

**Division 24—Cognovit**

**div hdg** (prev 1867 31 Vic No. 5 div 24 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Cognovit actionem to be filed in like manner or void against creditors**

**s 61** (prev 1867 31 Vic No. 17 s 88)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 25—Warrants and cognovits**

**div hdg** (prev 1867 31 Vic No. 5 div 25 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Defeasance of warrant of attorney etc. to be written on same paper**

**s 62** (prev 1867 31 Vic No. 17 s 89)  
reloc 1995 No. 58 s 4 sch 1

**Officer of court to keep a book containing list and particulars of each warrant of attorney and cognovit**

**s 63** (prev 1867 31 Vic No. 17 s 90)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1



**Satisfaction entered on warrants of attorney and cognovits**

**s 64** (prev 1867 31 Vic No. 17 s 93)  
reloc 1995 No. 58 s 4 sch 1

**Division 26—Transitional**

**div hdg** (prev 1867 31 Vic No. 5 div 26 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Application of amendments made by Common Law Practice and Workers' Compensation Amendment Act 1994**

**s 65** (prev 1867 31 Vic No. 17 s 95)  
sub 1994 No. 85 s 7  
exp 17 December 1997 (see s 65(3))  
AIA s 20A applies (see s 65(2))  
reloc 1995 No. 58 s 4 sch 1

**PART 5—PROVISIONS FROM COMMON LAW PROCESS ACT 1867**

**pt hdg** ins 1995 No. 58 s 4 sch 1

**Division 1—Purpose of part**

**div hdg** (prev 1867 31 Vic No. 4 div 1 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 N. 58 s 4 sch 1

**Purpose of pt 5**

**s 66** (prev 1867 31 Vic No. 4 s 22)  
om 1908 8 Edw 7 No. 18 s 2 sch 1  
pres s 66 ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 2—Execution of writs on Sunday**

**div hdg** (prev 1867 31 Vic No. 4 div 2 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Writs when executed on Sunday**

**s 67** (prev 1867 31 Vic No. 4 s 23)  
reloc 1995 No. 58 s 4 sch 1

**Division 3—Affidavits sworn before a consul**

**div hdg** (prev 1867 31 Vic No. 4 div 3 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Affidavits in certain cases may be sworn before a consul**

**s 68** (prev 1867 31 Vic No. 4 s 24)  
amd Statute 36 Vic No. 1 s 1; 1899 63 Vic No. 9 s 3(2) sch 3; 1946  
10 Geo 6 No. 43 s 5(ii); 1960 9 Eliz 2 No. 22 s 7; 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 4—Meaning of absent defendants**

**div hdg** (prev 1867 31 Vic No. 4 div 4 hdg)

ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**If defendant shall be absent at the commencement of foreign attachment proceedings to be sufficient**

**s 69** (prev 1867 31 Vic No. 4 s 27)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**The term “absence”**

**s 70** (prev 1867 31 Vic No. 4 s 28)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 5—Proceedings against absent defendants**

**div hdg** (prev 1867 31 Vic No. 4 div 5 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Absent defendant**

**s 71** (prev 1867 31 Vic No. 4 s 29)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Form of attachment and how served**

**s 72** (prev 1867 31 Vic No. 4 s 30)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Plaintiff to enter into a bond to account etc.**

**s 73** (prev 1867 31 Vic No. 4 s 31)  
reloc 1995 No. 58 s 4 sch 1

**After judgment plaintiff may issue fieri-facias**

**s 74** (prev 1867 31 Vic No. 4 s 32)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 6—Proceeding in the action**

**div hdg** (prev 1867 31 Vic No. 4 div 6 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**After attachment returned plaintiff may proceed in the action**

**s 75** (prev 1867 31 Vic No. 4 s 33)  
reloc 1995 No. 58 s 4 sch 1

**Division 7—Advertisement**

**div hdg** (prev 1867 31 Vic No. 4 div 7 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Public notice to be given**

**s 76** (prev 1867 31 Vic No. 4 s 34)  
reloc 1995 No. 58 s 4 sch 1

**Division 8—The garnishees**

**div hdg** (prev 1867 31 Vic No. 4 div 8 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Property and debts bound from the time attachment served**

**s 77** (prev 1867 31 Vic No. 4 s 35)  
reloc 1995 No. 58 s 4 sch 1

**Inquiry as to property in garnishee's hand—attendance of parties**

**s 78** (prev 1867 31 Vic No. 4 s 36)  
reloc 1995 No. 58 s 4 sch 1

**Disposal of goods etc. by leave of court**

**s 79** (prev 1867 31 Vic No. 4 s 37)  
reloc 1995 No. 58 s 4 sch 1

**Court to determine what property is to continue subject to attachment**

**s 80** (prev 1867 31 Vic No. 4 s 38)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Property in possession of any codefendant or husband or wife**

**s 81** (prev 1867 31 Vic No. 4 s 39)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Attachment and execution may be pleaded in bar**

**s 82** (prev 1867 31 Vic No. 4 s 40)  
reloc 1995 No. 58 s 4 sch 1

**Division 9—Defendant's rights**

**div hdg** (prev 1867 31 Vic No. 4 div 9 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Provision for dissolving foreign attachment**

**s 83** (prev 1867 31 Vic No. 4 s 41)  
reloc 1995 No. 58 s 4 sch 1

**Provision enabling absent defendant to come in and defend notwithstanding judgment against absent defendant**

**s 84** (prev 1867 31 Vic No. 4 s 42)  
reloc 1995 No. 58 s 4 sch 1

**Division 10—Copartners**

**div hdg** (prev 1867 31 Vic No. 4 div 10 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Provision in case of absent defendants sued as copartners**

**s 85** (prev 1867 31 Vic No. 4 s 43)  
reloc 1995 No. 58 s 4 sch 1

**Similar provision where defendants not sued as copartners**

**s 86** (prev 1867 31 Vic No. 4 s 44)  
amd 1903 3 Edw 7 No. 10 s 10 sch 3  
reloc 1995 No. 58 s 4 sch 1

**Provisions to extend only to cases of contract**

**prov hdg** amd 1995 No. 58 s 4 sch 1  
**s 87** (prev 1867 31 Vic No. 4 s 45)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 11—Attachment of goods**

**div hdg** (prev 1867 31 Vic No. 4 div 11 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Attachment upon goods of absconding debtor**

**s 88** (prev 1867 31 Vic No. 4 s 46)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 12—Capias ad respondendum**

**div hdg** (prev 1867 31 Vic No. 4 div 12 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Arrest on mesne process abolished except in certain cases**

**s 89** (prev 1867 31 Vic No. 4 s 47)  
reloc 1995 No. 58 s 4 sch 1

**When person may be arrested or held to bail**

**prov hdg** sub 1995 No. 58 s 4 sch 1  
**s 90** (prev 1867 31 Vic No. 4 s 48)  
reloc 1995 No. 58 s 4 sch 1

**Sheriff may proceed to arrest defendant—defendant to remain in custody until defendant finds bail or makes deposit**

**s 91** (prev 1867 31 Vic No. 4 s 49)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Order may be made at any stage of the proceedings before final judgment**

**s 92** (prev 1867 31 Vic No. 4 s 50)  
reloc 1995 No. 58 s 4 sch 1

**Division 13—Discharge of prisoner**

**div hdg** (prev 1867 31 Vic No. 4 div 13 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Defendant may apply for defendant's discharge forthwith—judge may discharge defendant or not**

**s 93** (prev 1867 31 Vic No. 4 s 51)  
reloc 1995 No. 58 s 4 sch 1

**Division 14—Capias ad satisfaciendum**

**div hdg** (prev 1867 31 Vic No. 4 div 14 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**As to arrests on Supreme Court writs**

**s 94** (prev 1867 31 Vic No. 4 s 52)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Writs of ca. sa. to fix bail**

**s 95** (prev 1867 31 Vic No. 4 s 53)  
reloc 1995 No. 58 s 4 sch 1

**Proceedings for charging in execution a person already in prison**

**s 96** (prev 1867 31 Vic No. 4 s 54)  
reloc 1995 No. 58 s 4 sch 1

**Division 15—Discharge of prisoner**

**div hdg** (prev 1867 31 Vic No. 4 div 15 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Sheriff or gaoler may discharge prisoner by authority of the attorney in the cause**

**s 97** (prev 1867 31 Vic No. 4 s 55)  
reloc 1995 No. 58 s 4 sch 1

**Division 16—Fieri-facias**

**div hdg** (prev 1867 31 Vic No. 4 div 16 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Sheriff empowered to seize moneys bank notes etc.**

**prov hdg** amd 1995 No. 58 s 4 sch 1  
**s 98** (prev 1867 31 Vic No. 4 s 56)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Property of debtors liable to be sold in execution**

**s 99** (prev 1867 31 Vic No. 4 s 57)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Sheriff to execute deed of bargain and sale to purchaser**

**s 100** (prev 1867 31 Vic No. 4 s 58)  
reloc 1995 No. 58 s 4 sch 1

**Sales of land by sheriff**

- s 101** (prev 1867 31 Vic No. 4 s 59)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Deeds of sale by sheriff**

- s 102** (prev 1867 31 Vic No. 4 s 60)  
 reloc 1995 No. 58 s 4 sch 1

**Sheriff may sell equities of redemption**

- s 103** (prev 1867 31 Vic No. 4 s 61)  
 reloc 1995 No. 58 s 4 sch 1

**Division 17—Special commissioners**

- div hdg** (prev 1867 31 Vic No. 4 div 17 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Chief justice to appoint commissioners in certain towns**

- s 104** (prev 1867 31 Vic No. 4 s 64)  
 amd 1972 No. 31 s 6 sch 1; 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**No writ of *capias* to issue unless upon proof that defendant is about to leave the State—Security to be given by the plaintiff**

- s 105** (prev 1867 31 Vic No. 4 s 65)  
 reloc 1995 No. 58 s 4 sch 1

**Memorandum by commissioner on writ of *capias***

- s 106** (prev 1867 31 Vic No. 4 s 66)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Writs of *capias* to be directed to special bailiff**

- prov hdg** amd 1995 No. 58 s 4 sch 1  
**s 107** (prev 1867 31 Vic No. 4 s 67)  
 reloc 1995 No. 58 s 4 sch 1

**Copies of writs to be transmitted to Supreme Court in Brisbane**

- s 108** (prev 1867 31 Vic No. 4 s 68)  
 reloc 1995 No. 58 s 4 sch 1

**Bail to be taken by bailiff**

- s 109** (prev 1867 31 Vic No. 4 s 70)  
 reloc 1995 No. 58 s 4 sch 1

**Deposit in lieu of bail**

- s 110** (prev 1867 31 Vic No. 4 s 71)  
 reloc 1995 No. 58 s 4 sch 1

**Commissioners may issue writs of summons and subpoena to give evidence**

- s 111** (prev 1867 31 Vic No. 4 s 73)  
 reloc 1995 No. 58 s 4 sch 1

**PART 6—PROVISIONS FROM COSTS ACT 1867****pt hdg** ins 1995 No. 58 s 4 sch 1**Division 1—Purpose of part****div hdg** (prev 1867 31 Vic No. 20 div 1 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1**Executors suing in right of the testator to pay costs****s 112** (prev 1867 31 Vic No. 20 s 1)  
reloc 1995 No. 58 s 4 sch 1**PART 7—PROVISIONS FROM EQUITY ACT 1867****pt hdg** ins 1995 No. 58 s 4 sch 1**Division 1—Purpose of part****div hdg** (prev 1867 31 Vic No. 18 div 1 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1**Purpose of pt 7****s 113** (prev 1867 31 Vic No. 18 s 1)  
amd 1991 No. 68 s 111 sch  
sub 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1**Division 2—Interpretation****div hdg** (prev 1867 31 Vic No. 18 div 2 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1**Definitions for pt 7****s 114** (prev 1867 31 Vic No. 18 s 2)  
om 1908 8 Edw 7 No. 18 s 2 sch 1  
pres s 114 ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1**Division 3—Substituted service****div hdg** (prev 1867 31 Vic No. 18 div 3 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1**Equity process to be served in parts beyond jurisdiction****s 115** (prev 1867 31 Vic No. 18 s 15)  
reloc 1995 No. 58 s 4 sch 1**Substitution of such service****s 116** (prev 1867 31 Vic No. 18 s 16)  
reloc 1995 No. 58 s 4 sch 1**Special order for absolute decree****s 117** (prev 1867 31 Vic No. 18 s 17)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 4—Joinder of parties**

**div hdg** (prev 1867 31 Vic No. 18 div 4 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Court may proceed without representative of deceased person or may appoint one**

**s 118** (prev 1867 31 Vic No. 18 s 18)  
reloc 1995 No. 58 s 4 sch 1

**Court may decide between some of the parties without making other interested persons parties**

**s 119** (prev 1867 31 Vic No. 18 s 20)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Objections for want of parties**

**s 120** (prev 1867 31 Vic No. 18 s 22)  
reloc 1995 No. 58 s 4 sch 1

**Division 5—Examination of defendants**

**div hdg** (prev 1867 31 Vic No. 18 div 5 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**In the court of equity defendant may be examined on behalf of the plaintiff or any codefendant**

**s 121** (prev 1867 31 Vic No. 18 s 48)  
reloc 1995 No. 58 s 4 sch 1

**Limited commissions**

**s 122** (prev 1867 31 Vic No. 18 s 50)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 6—Evidence on motions, petitions etc.**

**div hdg** (prev 1867 31 Vic No. 18 div 6 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Any party in a cause may by subpoena require attendance of any witness**

**s 123** (prev 1867 31 Vic No. 18 s 51(1))  
reloc 1995 No. 58 s 4 sch 1

**Parties who have deposed by affidavit bound to attend for cross-examination if required**

**s 124** (prev 1867 31 Vic No. 18 s 51A)  
s 51(2)–(3) renum as s 51A 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 7—Evidence taken out of the jurisdiction**

**div hdg** (prev 1867 31 Vic No. 18 div 7 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1



**Pleas declarations etc. how to be sworn and taken in places out of this State**

- s 125** (prev 1867 31 Vic No. 18 s 53)  
 amd 10 Geo 6 No. 43 s 5(iii); 1960 9 Eliz 2 No. 22 s 8  
 reloc 1995 No. 58 s 4 sch 1

**Division 8—Scientific assistance**

- div hdg** (prev 1867 31 Vic No. 18 div 8 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Court in equity may obtain assistance of scientific persons and others**

- s 126** (prev 1867 31 Vic No. 18 s 54)  
 reloc 1995 No. 58 s 4 sch 1

**Fees to such persons**

- s 127** (prev 1867 31 Vic No. 18 s 55)  
 reloc 1995 No. 58 s 4 sch 1

**Division 9—Declarations**

- div hdg** (prev 1867 31 Vic No. 18 div 9 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Suit may be for declaratory order only**

- s 128** (prev 1867 31 Vic No. 18 s 73)  
 reloc 1995 No. 58 s 4 sch 1

**Division 10—Directions**

- div hdg** (prev 1867 31 Vic No. 18 div 10 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Where account required to be taken court may give special directions as to the mode of taking same**

- s 129** (prev 1867 31 Vic No. 18 s 75)  
 reloc 1995 No. 58 s 4 sch 1

**Where property is the subject of proceedings court may allow to parties the annual income**

- s 130** (prev 1867 31 Vic No. 18 s 77)  
 reloc 1995 No. 58 s 4 sch 1

**Heir or devisee of real estate not to claim payment of mortgage out of personal assets**

- s 131** (prev 1867 31 Vic No. 18 s 78)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Division 11—Contempt**

- div hdg** (prev 1867 31 Vic No. 18 div 11 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Sheriff to keep a register of persons committed and report 4 times a year to the court**

s 132 (prev 1867 31 Vic No. 18 s 120)  
reloc 1995 No. 58 s 4 sch 1

**Defendants brought into court by habeas corpus or in custody and refusing to enter appearance court may enter it for them**

s 133 (prev 1867 31 Vic No. 18 s 121)  
reloc 1995 No. 58 s 4 sch 1

**Any person in custody for contempt for not executing any deed etc. and after 2 months still refusing to execute court may order registrar to execute the same**

s 134 (prev 1867 31 Vic No. 18 s 132)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**A person committed for contempt for not delivering up books etc. any sequestrator may seize the same**

s 135 (prev 1867 31 Vic No. 18 s 133)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Other cases of contempt court may order discharge upon terms**

s 136 (prev 1867 31 Vic No. 18 s 134)  
reloc 1995 No. 58 s 4 sch 1

**A person committed for contempt omitting to apply for the person's discharge the court may compulsorily discharge the person**

s 137 (prev 1867 31 Vic No. 18 s 135)  
reloc 1995 No. 58 s 4 sch 1

**Division 12—Insolvents**

div hdg (prev 1867 31 Vic No. 18 div 12 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Discharge of insolvent may extend to process for contempt in nonpayment of money and to costs incurred by creditor but subject to taxation**

s 138 (prev 1867 31 Vic No. 18 s 140)  
reloc 1995 No. 58 s 4 sch 1

**Division 13—Privilege**

div hdg (prev 1867 31 Vic No. 18 div 13 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Appearances may be put in for defendants having privilege of Parliament in court of equity on return of process of sequestration**

s 139 (prev 1867 31 Vic No. 18 s 142)  
reloc 1995 No. 58 s 4 sch 1

**Division 14—Attestations upon honour**

div hdg (prev 1867 31 Vic No. 18 div 14 hdg)

ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Commissioners and others may take attestations upon honour**

**s 140** (prev 1867 31 Vic No. 18 s 146)  
reloc 1995 No. ? s 4 sch 1

**Division 15—Jurisdiction in infancy**

**div hdg** (prev 1867 31 Vic No. 18 div 15 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Mother petitioning may obtain access to mother's infant under regulations**

**s 141** (prev 1867 31 Vic No. 18 s 148)  
reloc 1995 No. 58 s 4 sch 1

**Orders may be enforced by process of contempt**

**s 142** (prev 1867 31 Vic No. 18 s 149)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Unless in cases of adultery**

**s 143** (prev 1867 31 Vic No. 18 s 150)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Infants may with the approbation of the Supreme Court make valid settlements or contracts for settlements of their real and personal estate upon marriage**

**s 144** (prev 1867 31 Vic No. 18 s 151)  
amd 1974 No. 57 s 8 sch  
reloc 1995 No. 58 s 4 sch 1

**In case infant die under age appointment etc. to be void**

**s 145** (prev 1867 31 Vic No. 18 s 152)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**The sanction of the Supreme Court to be given upon petition**

**s 146** (prev 1867 31 Vic No. 18 s 153)  
reloc 1995 No. 58 s 4 sch 1

**Not to apply to males under 17 or females under 17 years of age**

**s 147** (prev 1867 31 Vic No. 18 s 154)  
amd 1974 No. 57 s 8 sch; 1989 No. 103 s 3 sch; 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Jurisdiction given to the primary judge in equity or 1 other judge in the primary judge's absence or illness**

**s 148** (prev 1867 31 Vic No. 18 s 155)  
reloc 1995 No. 58 s 4 sch 1

**PART 8—PROVISIONS FROM INTERDICT ACT 1867**

**pt hdg** ins 1995 No. 58 s 4 sch 1

**Division 1—Purpose of part**

**div hdg** (prev 1867 31 Vic No. 11 div 1 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Purpose of pt 8**

**s 149** (prev 1867 31 Vic No. 11 s 21)  
om 1973 No. 34 s 3(1) sch 1  
pres s 149 ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 2—Interpleader**

**div hdg** (prev 1867 31 Vic No. 11 div 1A hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Action that may be taken by the court**

**prov hdg** sub 1995 No. 58 s 4 sch 1  
**s 150** (prev 1867 31 Vic No. 11 s 22)  
reloc 1995 No. 58 s 4 sch 1

**Judgment and decision to be final**

**s 151** (prev 1867 31 Vic No. 11 s 23)  
reloc 1995 No. 58 s 4 sch 1

**If such third party shall not appear etc. the court may bar his or her claim against the original defendant**

**s 152** (prev 1867 31 Vic No. 11 s 24)  
reloc 1995 No. 58 s 4 sch 1

**Proviso as to orders made by a single judge**

**s 153** (prev 1867 31 Vic No. 11 s 25)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**If a judge thinks the matter more fit for the decision of the court the judge may refer it**

**s 154** (prev 1867 31 Vic No. 11 s 26)  
reloc 1995 No. 58 s 4 sch 1

**Interpleader may be granted though titles have not a common origin**

**s 155** (prev 1867 31 Vic No. 11 s 27)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Power to court or judge to decide summarily in certain cases**

**s 156** (prev 1867 31 Vic No. 11 s 28)  
reloc 1995 No. 58 s 4 sch 1

**Special case may be stated where facts undisputed**

**s 157** (prev 1867 31 Vic No. 11 s 29)  
reloc 1995 No. 58 s 4 sch 1

**Proceedings on special cases**

- s 158** (prev 1867 31 Vic No. 11 s 30)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Judgment and decision when to be final**

- s 159** (prev 1867 31 Vic No. 11 s 31)  
 reloc 1995 No. 58 s 4 sch 1

**Division 3—Interpleader by sheriff**

- div hdg** (prev 1867 31 Vic No. 11 div 2 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**For relief of sheriffs and other officers in execution of process against goods and chattels**

- prov hdg** amd 1903 3 Edw 7 No. 10 s 10 sch 3  
**s 160** (prev 1867 31 Vic No. 11 s 32)  
 reloc 1995 No. 58 s 4 sch 1

**Court or judge may direct sale of goods seized in execution**

- s 161** (prev 1867 31 Vic No. 11 s 33)  
 reloc 1995 No. 58 s 4 sch 1

**Sheriff's costs**

- s 162** (prev 1867 31 Vic No. 11 s 34)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Division 4—Rules, orders etc. in interpleader proceedings**

- div hdg** (prev 1867 31 Vic No. 11 div 3 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Rules orders etc. made in interpleader proceedings may be entered of record and made evidence**

- s 163** (prev 1867 31 Vic No. 11 s 35)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Division 5—Prerogative writ of mandamus**

- div hdg** (prev 1867 31 Vic No. 11 div 4 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Return to be made to first writ**

- s 164** (prev 1867 31 Vic No. 11 s 36)  
 reloc 1995 No. 58 s 4 sch 1

**Procedure on return of writ**

- prov hdg** sub 1995 No. 58 s 4 sch 1  
**s 165** (prev 1867 31 Vic No. 11 s 37)  
 reloc 1995 No. 58 s 4 sch 1

**Person against whom damages shall be recovered not liable to be sued in other actions**

- s 166** (prev 1867 31 Vic No. 11 s 38)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**For protection of certain officers to whom writs of mandamus are directed**

- s 167** (prev 1867 31 Vic No. 11 s 39)  
reloc 1995 No. 58 s 4 sch 1

**Proceedings not to abate by removal of officer**

- s 168** (prev 1867 31 Vic No. 11 s 40)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Costs to be in the discretion of the court**

- s 169** (prev 1867 31 Vic No. 11 s 41)  
reloc 1995 No. 58 s 4 sch 1

**Proceedings for prerogative writ of mandamus accelerated**

- s 170** (prev 1867 31 Vic No. 11 s 42)  
reloc 1995 No. 58 s 4 sch 1

**The enactments herein relating to returns to writs of mandamus therein mentioned and the proceedings thereon extended to all other writs of mandamus**

- s 171** (prev 1867 31 Vic No. 11 s 43)  
reloc 1995 No. 58 s 4 sch 1

**Division 6—Action for mandamus**

- div hdg** (prev 1867 31 Vic No. 11 div 5 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Action for mandamus to enforce the performance of duties**

- s 172** (prev 1867 31 Vic No. 11 s 44)  
reloc 1995 No. 58 s 4 sch 1

**Declaration in action for mandamus**

- s 173** (prev 1867 31 Vic No. 11 s 45)  
reloc 1995 No. 58 s 4 sch 1

**Proceedings upon claim for mandamus**

- s 174** (prev 1867 31 Vic No. 11 s 46)  
reloc 1995 No. 58 s 4 sch 1

**Judgment and execution**

- s 175** (prev 1867 31 Vic No. 11 s 47)  
reloc 1995 No. 58 s 4 sch 1

**Form of peremptory writ**

- s 176** (prev 1867 31 Vic No. 11 s 48)  
reloc 1995 No. 58 s 4 sch 1

**Effect of mandamus**

**s 177** (prev 1867 31 Vic No. 11 s 49)  
reloc 1995 No. 58 s 4 sch 1

**The court may order the act to be done at the expense of the defendant**

**s 178** (prev 1867 31 Vic No. 11 s 50)  
reloc 1995 No. 58 s 4 sch 1

**Prerogative writ of mandamus preserved**

**s 179** (prev 1867 31 Vic No. 11 s 51)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 7—Injunction**

**div hdg** (prev 1867 31 Vic No. 11 div 6 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Claim of writ of injunction**

**s 180** (prev 1867 31 Vic No. 11 s 52)  
reloc 1995 No. 58 s 4 sch 1

**Form of writ of summons and endorsement thereon**

**s 181** (prev 1867 31 Vic No. 11 s 53)  
reloc 1995 No. 58 s 4 sch 1

**Form of proceedings and of judgment**

**s 182** (prev 1867 31 Vic No. 11 s 54)  
reloc 1995 No. 58 s 4 sch 1

**Writ of injunction may be applied for at any stage of the cause**

**s 183** (prev 1867 31 Vic No. 11 s 55)  
reloc 1995 No. 58 s 4 sch 1

**Mode of enforcing writs of injunction against corporations**

**s 184** (prev 1867 31 Vic No. 11 s 56)  
reloc 1995 No. 58 s 4 sch 1

**Division 8—Costs of mandamus and injunctions**

**div hdg** (prev 1867 31 Vic No. 11 div 7 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Costs of writs of mandamus and injunctions may be included in writs**

**s 185** (prev 1867 31 Vic No. 11 s 57)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 9—Quo warranto**

**div hdg** (prev 1867 31 Vic No. 11 div 8 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**How information in the nature of quo warranto may be exhibited against such as intrude etc. into offices etc.**

**s 186** (prev 1867 31 Vic No. 11 s 58)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Judgment of ouster shall be given against persons found guilty of usurpation etc.**

**s 187** (prev 1867 31 Vic No. 11 s 59)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Division 10—Prohibition**

**div hdg** (prev 1867 31 Vic No. 11 div 9 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Writs of prohibition**

**prov hdg** sub 1995 No. 58 s 4 sch 1  
**s 188** (prev 1867 31 Vic No. 11 s 60)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Division 11—General provision**

**div hdg** (prev 1867 31 Vic No. 11 div 10 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Proceedings on prerogative writ of mandamus**

**s 189** (prev 1867 31 Vic No. 11 s 61)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**PART 9—PROVISIONS FROM SUPREME COURT ACT 1867**

**pt hdg** ins 1995 No. 58 s 4 sch 1

**Division 1—Seals of the court**

**div hdg** (prev 1867 31 Vic No. 23 div 1 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Court shall have and use seals**

**prov hdg** amd 1991 No. 68 s 111 sch 2  
**s 190** (prev 1867 31 Vic No. 23 s 3)  
 amd 1991 No. 68 s 111 sch 2  
 reloc 1995 No. 58 s 4 sch 1

**Judge's stamp**

**s 191** (prev 1867 31 Vic No. 23 s 4)  
 reloc 1995 No. 58 s 4 sch 1

**Orders to be sealed**

**s 192** (prev 1867 31 Vic No. 23 s 5)  
 reloc 1995 No. 58 s 4 sch 1



**Judge's chamber seal**

**s 193** (prev 1867 31 Vic No. 23 s 6)  
reloc 1995 No. 58 s 4 sch 1

**Authority to be filed**

**s 194** (prev 1867 31 Vic No. 23 s 7)  
reloc 1995 No. 58 s 4 sch 1

**Division 2—The judges of the Supreme Court**

**div hdg** (prev 1867 31 Vic No. 23 div 2 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Commission of judges**

**s 195** (prev 1867 31 Vic No. 23 s 9)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Judges' salaries**

**s 196** (prev 1867 31 Vic No. 23 s 10)  
reloc 1995 No. 58 s 4 sch 1

**Division 3—Constitution of the court**

**div hdg** (prev 1867 31 Vic No. 23 div 3 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Power of judges in vacation**

**s 197** (prev 1867 31 Vic No. 23 s 15)  
reloc 1995 No. 58 s 4 sch 1

**Proceedings to be dated and how tested**

**s 198** (prev 1867 31 Vic No. 23 s 17)  
amd 1991 No. 68 s 111 sch 2  
reloc 1995 No. 58 s 4 sch 1

**Division 4—Common law and general jurisdiction**

**div hdg** (prev 1867 31 Vic No. 23 div 4 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Laws of England to be applied in the administration of justice**

**s 199** (prev 1867 31 Vic No. 23 s 20)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Common law and general jurisdiction of the court—jurisdiction at common law**

**s 200** (prev 1867 31 Vic No. 23 s 21)  
reloc 1995 No. 58 s 4 sch 1

**Division 5—Equitable jurisdiction**

**div hdg** (prev 1867 31 Vic No. 23 div 5 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Equitable jurisdiction**

- s 201** (prev 1867 31 Vic No. 23 s 22)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Division 6—Criminal jurisdiction**

- div hdg** (prev 1867 31 Vic No. 23 div 6 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Criminal jurisdiction**

- s 202** (prev 1867 31 Vic No. 23 s 24)  
 reloc 1995 No. 58 s 4 sch 1

**Proceeding by information**

- s 203** (prev 1867 31 Vic No. 23 s 25)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Error**

- s 204** (prev 1867 31 Vic No. 23 s 26)  
 reloc 1995 No. 58 s 4 sch 1

**Attorney-General to issue warrant for discharge of prisoner against whom the Attorney-General does not file information**

- s 205** (prev 1867 31 Vic No. 23 s 28)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Division 7—Circuit Courts**

- div hdg** (prev 1867 31 Vic No. 23 div 7 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Circuit Courts**

- s 206** (prev 1867 31 Vic No. 23 s 30)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Opening Circuit Court**

- s 207** (prev 1867 31 Vic No. 23 s 31)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Division 8—Special commissions**

- div hdg** (prev 1867 31 Vic No. 23 div 8 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Special commission may issue to 1 or more judges of District Courts enabling them to discharge duties of a judge of the Supreme Court at remote places**

- s 208** (prev 1867 31 Vic No. 23 s 33)  
 reloc 1995 No. 58 s 4 sch 1

**Division 9—Appearances**

**div hdg** (prev 1867 31 Vic No. 23 div 9 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Appearance to be in person or by barrister or solicitor or person allowed by the judge**

**s 209** (prev 1867 31 Vic No. 23 s 38A)  
ins 1973 No. 50 s 2  
reloc 1995 No. 58 s 4 sch 1

**Division 10—Officers of the court**

**div hdg** (prev 1867 31 Vic No. 23 div 10 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Officers of the court**

**s 210** (prev 1867 31 Vic No. 23 s 39)  
amd 1991 No. 68 s 111 sch 2  
reloc 1995 No. 58 s 4 sch 1

**Division 11—Masters**

**div hdg** (prev 1867 31 Vic No. 23 div 11 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Masters**

**s 211** (prev 1867 31 Vic No. 23 s 39A)  
ins 1980 No. 57 s 4  
amd 1985 No. 51 s 3; 1989 No. 57 s 3; 1991 No. 68 s 111 sch 2; 1992  
No. 40 s 162; 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Division 12—The sheriff**

**div hdg** (prev 1867 31 Vic No. 23 div 12 hdg)  
ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Sheriff**

**prov hdg** sub 1995 No. 58 s 4 sch 1  
**s 212** (prev 1867 31 Vic No. 23 s 43)  
amd 1875 39 Vic No. 3 s 1; 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Deputy sheriffs**

**prov hdg** sub 1995 No. 58 s 4 sch 1  
**s 213** (prev 1867 31 Vic No. 23 s 3)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**District sheriffs**

**prov hdg** sub 1995 No. 58 s 4 sch 1  
**s 214** (prev 1867 31 Vic No. 23 s 45)  
amd 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Sheriff's recognisances**

- s 215** (prev 1867 31 Vic No. 23 s 46)  
 reloc 1995 No. 58 s 4 sch 1  
 om 1997 No. 38 s 79

**Sheriff may sell property without taking out an auctioneer's licence**

- s 216** (prev 1867 31 Vic No. 23 s 48)  
 reloc 1995 No. 58 s 4 sch 1

**Sheriff may act as justice of peace**

- s 217** (prev 1867 31 Vic No. 23 s 49)  
 reloc 1995 No. 58 s 4 sch 1

**Deposit for expenses to be made with the sheriff**

- s 218** (prev 1867 31 Vic No. 23 s 51)  
 reloc 1995 No. 58 s 4 sch 1

**Division 13—Costs**

- div hdg** (prev 1867 31 Vic No. 23 div 13 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Fees of officers of court to be paid to Her Majesty**

- s 219** (prev 1867 31 Vic No. 23 s 54)  
 reloc 1995 No. 58 s 4 sch 1

**Commissioners of Supreme Court may receive fees**

- s 220** (prev 1867 31 Vic No. 23 s 57)  
 reloc 1995 No. 58 s 4 sch 1

**Power to award costs**

- s 221** (prev 1867 31 Vic No. 23 s 58)  
 reloc 1995 No. 58 s 4 sch 1

**Division 14—Effect of decrees, rules and orders**

- div hdg** (prev 1867 31 Vic No. 23 div 14 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Decrees rules and orders to have effect of judgments**

- s 222** (prev 1867 31 Vic No. 23 s 59)  
 reloc 1995 No. 58 s 4 sch 1

**Division 15—Change of venue**

- div hdg** (prev 1867 31 Vic No. 23 div 15 hdg)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Change of venue**

- s 223** (prev 1867 31 Vic No. 23 s 60)  
 reloc 1995 No. 58 s 4 sch 1

**Division 16—Questions of fact**

- div hdg** (prev 1867 31 Vic No. 23 div 16 hdg)

ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Power of court to direct trial of feigned issues**

**s 224** (prev 1867 31 Vic No. 23 s 61)  
reloc 1995 No. 58 s 4 sch 1

**Feigned issues and new trials**

**s 225** (prev 1867 31 Vic No. 23 s 62)  
reloc 1995 No. 58 s 4 sch 1

**PART 10—PROVISIONS FROM WRITS OF DEDIMUS ACT 1871**

**pt hdg** ins 1995 No. 58 s 4 sch 1

**Writs of dedimus potestatem and commissions for affidavits may be issued and executed outside the State**

**s 226** (prev 1871 34 Vic No. 25 s 1)  
reloc 1995 No. 58 s 4 sch 1

**PART 11—PROVISIONS FROM SUPREME COURT ACT 1874**

**pt hdg** ins 1995 No. 58 s 4 sch 1

**Salaries to be charged on consolidated fund**

**prov hdg** amd 1957 6 Eliz 2 No. 38 s 13  
**s 227** (prev 1874 38 Vic No. 3 s 6)  
amd 1957 6 Eliz 2 No. 38 s 13  
reloc 1995 No. 58 s 4 sch 1

**Supreme Court to be court of error**

**s 228** (prev 1874 38 Vic No. 3 s 10)  
reloc 1995 No. 58 s 4 sch 1

**Power to amend defects or errors**

**s 229** (prev 1874 38 Vic No. 3 s 11)  
reloc 1995 No. 58 s 4 sch 1

**New trials only where substantial wrong occasioned**

**s 230** (prev 1874 38 Vic No. 3 s 13)  
reloc 1995 No. 58 s 4 sch 1

**PART 12—PROVISIONS FROM SHERIFF'S ACT 1875**

**pt hdg** ins 1995 No. 58 s 4 sch 1

**Purpose of pt 12**

**s 231** (prev 1875 39 Vic No. 3 s 1)  
om 1908 8 Edw 7 No. 18 s 2 sch 1  
pres s 231 ins 1995 No. 58 s 4 sch 1  
reloc 1995 No. 58 s 4 sch 1

**Governor may appoint high bailiffs or bailiffs when necessary**

**s 232** (prev 1875 39 Vic No. 3 s 2)  
reloc 1995 No. 58 s 4 sch 1  
amd 1997 No. 38 s 80

**Officers so appointed to be deemed sheriff's officers**

- s 233** (prev 1875 39 Vic No. 3 s 3)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Persons aggrieved by acts of officers may sue the sheriff by that name and not personally—mode of payment of damages recovered**

- s 234** (prev 1875 39 Vic No. 3 s 4)  
 reloc 1995 No. 58 s 4 sch 1

**Power to appoint person to execute process where sheriff ought not to execute**

- s 235** (prev 1875 39 Vic No. 3 s 5)  
 reloc 1995 No. 58 s 4 sch 1

**Power to appoint special bailiff**

- s 236** (prev 1875 39 Vic No. 3 s 6)  
 reloc 1995 No. 58 s 4 sch 1

**Action of debt not to lie on escape of debtor**

- s 237** (prev 1875 39 Vic No. 3 s 7)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Jurisdiction and accountability of sheriff**

- prov hdg** sub 1997 No. 38 s 81(1)  
**s 238** (prev 1875 39 Vic No. 3 s 8)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1  
 amd 1997 No. 38 s 81(2)–(4)

**Sheriff and officers personally accountable for their own acts or defaults**

- s 239** (prev 1875 39 Vic No. 3 s 9)  
 reloc 1995 No. 58 s 4 sch 1

**PART 13—PROVISIONS FROM JUDICATURE ACT 1876**

- pt hdg** ins 1995 No. 58 s 4 sch 1

**Purpose of pt 13**

- s 240** (prev 1876 40 No. 6 s 1A)  
 ins 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Definitions for pt 13**

- prov hdg** sub 1995 No. 58 s 4 sch 1  
**s 241** (prev 1876 40 Vic No. 6 s 1)  
 amd 1995 No. 58 s 4 sch 1  
 def “existing” amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Rules of law to apply to all courts**

- s 242** (prev 1876 40 Vic No. 6 s 2)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Provision for saving of existing procedure of courts when not inconsistent with this Act or rules of court**

- s 243 (prev 1876 40 Vic No. 6 s 3)  
 amd 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Law and equity to be administered in all suits by Supreme Court**

- s 244 (prev 1876 40 Vic No. 6 s 4)  
 amd 1995 No. 58 s 4 sch 1  
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**Estates of persons deceased to be administered as in insolvency**

- s 245 (prev 1876 40 Vic No. 6 s 5(1)–(7))  
 amd 1903 3 Edw 7 No. 10 s 10 sch 3; 1974 No. 76 s 3(2) sch 6 pt 3; 1995  
 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Writs of mandamus and injunction may be granted and receivers appointed in all cases when just or convenient**

- s 246 (prev 1876 40 Vic No. 6 s 5A)  
 s 5(8) renum as s 5A 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**In cases of collision rules of admiralty to prevail**

- s 247 (prev 1876 40 Vic No. 6 s 5B)  
 s 5(9) renum as s 5B 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**In questions relating to infants rules of equity to prevail**

- s 248 (prev 1876 40 Vic No. 6 s 5C)  
 s 5(10) renum as s 5C 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Rules of equity to prevail where any conflict between them and rules of law**

- s 249 (prev 1876 40 Vic No. 6 s 5D)  
 s 5(11) renum as s 5D 1995 No. 58 s 4 sch 1  
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**Powers of 1 or more judges**

- s 250 (prev 1876 40 Vic No. 6 s 6)  
 amd 1991 No. 68 s 111 sch 2; 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

**Cases and points may be reserved for or directed to be argued before the Court of Appeal**

- prov hdg amd 1991 No. 68 s 111 sch 2  
 s 251 (prev 1876 40 Vic No. 6 s 7)  
 amd 1991 No. 68 s 111 sch 2  
 reloc 1995 No. 58 s 4 sch 1

**Motions for new trials to be heard by Court of Appeal**

- prov hdg amd 1991 No. 68 s 111 sch 2  
 s 252 (prev 1876 40 Vic No. 6 s 8)

amd 1991 No. 68 s 111 sch 2  
reloc 1995 No. 58 s 4 sch 1

**What orders shall not be subject to appeal**

**s 253** (prev 1876 40 Vic No. 6 s 9)  
reloc 1995 No. 58 s 4 sch 1

**As to appeals from orders made by single judge**

**s 254** (prev 1876 40 Vic No. 6 s 10)  
amd 1991 No. 68 s 111 sch 2  
reloc 1995 No. 58 s 4 sch 1

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**s 255** (prev 1876 40 Vic No. 6 s 11)  
reloc 1995 No. 58 s 4 sch 1

**Power to direct trials before referees**

**s 256** (prev 1876 40 Vic No. 6 s 12)  
reloc 1995 No. 58 s 4 sch 1

**Power of referees and effect of their finding**

**s 257** (prev 1876 40 Vic No. 6 s 13)  
amd 1995 No. 58 s 4 sch 1  
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**Powers of court with respect to proceedings before referees**

**s 258** (prev 1876 40 Vic No. 6 s 14)  
reloc 1995 No. 58 s 4 sch 1

**Duty of judge and jury**

**s 259** (prev 1876 40 Vic No. 6 s 15)  
reloc 1995 No. 58 s 4 sch 1

**PART 14—PROVISIONS FROM SUPREME COURT ACT 1892**

**pt hdg** ins 1995 No. 58 s 4 sch 1

**Motions for judgment**

**s 260** (prev 1892 55 Vic No. 37 s 9)  
amd 1991 No. 68 s 111 sch 2  
reloc 1995 No. 58 s 4 sch 1

**Hearing of cases in chambers**

**prov hdg** sub 1995 No. 58 s 4 sch 1  
**s 261** (prev 1892 55 Vic No. 37 s 15)  
amd 1995 No. 58 s 4 sch 1  
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**pt hdg** ins 1995 No. 58 s 4 sch 1

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**prov hdg** sub 1995 No. 58 s 4 sch 1  
**s 262** (prev 1893 57 Vic No. 17 s 2)  
amd 1995 No. 58 s 4 sch 1  
def “**cause**” sub 1995 No. 58 s 4 sch 1



def “**matter**” sub 1995 No. 58 s 4 sch 1  
 def “**sheriff**” amd 1895 59 Vic No. 21 s 17  
 reloc 1995 No. 58 s 4 sch 1

**When it is certified to the judges that there is no business at a Circuit Court a judge need not attend**

s 263 (prev 1893 57 Vic No. 17 s 5)  
 amd 1895 59 Vic No. 21 s 17; 1995 No. 58 s 4 sch 1  
 reloc 1995 No. 58 s 4 sch 1

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s 264 (prev 1893 57 Vic No. 17 s 6)  
 reloc 1995 No. 58 s 4 sch 1

**Discharge of jurors**

s 265 (prev 1893 57 Vic No. 17 s 7)  
 reloc 1995 No. 58 s 4 sch 1

**PART 16—PROVISIONS FROM SUPREME COURT ACT 1895**

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 s 266 (prev 1895 59 Vic No. 21 s 2)  
 amd 1995 No. 58 s 4 sch 1  
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 def “**Central Court**” ins 1997 No. 38 s 82(2)  
 def “**central district**” om 1997 No. 38 s 82(1)  
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s 266A ins 1997 No. 38 s 83

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prov hdg sub 1997 No. 38 s 84(1)  
 s 267 (prev 1895 59 Vic No. 21 s 4)  
 amd 1995 No. 58 s 4 sch 1  
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**s 270** (prev 1895 59 Vic No. 21 s 6A)  
 s 6(3) renum as s 6A 1995 No. 58 s 4 sch 1  
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**s 272** (prev 1895 59 Vic No. 21 s 8)  
 amd 1995 No. 58 s 4 sch 1  
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**s 277** (prev 1895 59 Vic No. 21 s 17)  
 amd 1903 3 Edw 7 No. 9 s 4

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amd 1995 No. 58 s 4 sch 1  
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**s 284** (prev 1910 1 Geo 5 No. 23 s 5)  
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**s 285** (prev 1910 1 Geo 5 No. 23 s 6A)  
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**s 291** prev s 8(1)(c) renum as 8C 1995 No. 58 s 4 sch 1

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**s 292** amd 1995 No. 58 s 4 sch 1  
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**s 293** amd 1995 No. 58 s 4 sch 1  
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**hdg (prec s 10)** om 1995 No. 58 s 4 sch 1

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**Admission of certain barristers as solicitors**

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amd 1955 4 Eliz 2 No. 34 s 4; 1979 No. 18 s 2  
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**hdg (prec s 11)** om 1995 No. 58 s 4 sch 1

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**s 295** ins 1995 No. 58 s 4 sch 1  
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**s 12** om R1 (see RA s 40)

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**s 296** (prev 1958 7 Eliz 2 No. 13 s 3)  
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**s 297** (prev 1958 7 Eliz 2 No. 13 s 5)  
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<b>s 190</b>	25 Vic No. 13 s 15
<b>s 191</b>	Reg. Gen. June 4 1866 pl 41
<b>s 192</b>	Reg. Gen. June 4 1866 pl 42
<b>s 194</b>	Regulation January 9 1865 pl 2
<b>s 195</b>	25 Vic No. 13 s 5
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<b>s 199</b>	9 Geo 4 c 83 s 24
<b>s 200</b>	25 Vic No. 13 s 16
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<b>s 219</b>	15 Vic No. 17 s 2
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