

SUPREME COURT PROCEDURE BILL, 1957.

*Schedule of Amendments referred to in Legislative Council's  
Message of 26 March, 1957.*

No. 1.—Pages 7 and 8, clause 5, lines 8 to 39 inclusive on page 7, lines 1 to 24 inclusive on page 8. *Omit* all words on these lines. *Insert* in lieu thereof—

Further  
amendment  
of Act No.  
21, 1899.  
Substituted  
sec. 98.

5. (1) The Common Law Procedure Act, 1899, as amended by subsequent Acts, is further amended by omitting section ninety-eight and by inserting in lieu thereof the following section:—

Extension  
of power to  
plead  
equitable  
plea or  
replication;  
transfer of  
certain  
actions into  
equity  
jurisdiction.

98. (1) Any such equitable plea or equitable replication may be pleaded notwithstanding that upon the facts pleaded the relief on equitable grounds would not be an absolute, perpetual and unconditional injunction, but if upon the facts pleaded that relief would not be such an injunction, the Court or Judge shall make an order that the action be transferred into the jurisdiction of the Court in equity.

No. 2.—Page 9, clause 5, line 14. *Omit* “and”.

No. 3.—Page 9, clause 5, line 18. *After* “equity” *insert* “and”.

No. 4.—Page 9, clause 5. *After* line 18 *insert*—

(c) the Court in equity may make such decree, declaration or order as appears just and may in addition thereto or in substitution thereof direct judgment to be entered on its verdict or finding and for costs in the manner prescribed and such a judgment so entered shall have the like force and effect in all respects as the signing of judgment in a Court of law and execution may issue thereon in the manner prescribed.

No. 5.—Pages 16 and 17, clause 7, lines 29 to 36 inclusive on page 16, lines 1 to 4 inclusive on page 17. *Omit* all words on these lines. *Insert* in lieu thereof—

Sec. 3.  
(Commercial  
causes.)

(a) by omitting from section three the word “include” and by inserting in lieu thereof the word “mean”.

No. 6.—Page 19. *After* line 12 *insert* new clause—

Amendment  
of Act No.  
40, 1900.  
Sec. 568.  
(Jurisdic-  
tion, &c., of  
Courts of  
Quarter  
Sessions.)

11. The Crimes Act, 1900, as amended by subsequent Acts, is amended by omitting from subsection three of section five hundred and sixty-eight the words “not punishable with death,” and by inserting in lieu thereof the words “(other than a crime or misdemeanour which is punishable with death or which was so punishable immediately before the commencement of the Crimes (Amendment) Act, 1955),”.



PROPOSED AMENDMENTS TO THE CONSTITUTION

Section 1. The Constitution of the United States, hereinafter referred to as the Constitution, is hereby amended as follows:

Section 2. (1) The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, but not exceeding three percentum of the total income of the individual.

Section 3. (1) Any such special law shall be subject to the approval of the people of the State in which it is enacted, and shall be subject to the approval of the people of the United States in general.

Section 4. (1) The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, but not exceeding three percentum of the total income of the individual.

Section 5. (1) The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, but not exceeding three percentum of the total income of the individual.

Section 6. (1) The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, but not exceeding three percentum of the total income of the individual.

Section 7. (1) The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, but not exceeding three percentum of the total income of the individual.

Section 8. (1) The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, but not exceeding three percentum of the total income of the individual.

Section 9. (1) The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, but not exceeding three percentum of the total income of the individual.



*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY,  
and, having this day passed, is now ready for presentation to the  
LEGISLATIVE COUNCIL for its concurrence.*

ALLAN PICKERING,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 28 February, 1957.*

*The LEGISLATIVE COUNCIL has this day agreed to this Bill with  
Amendments.*

J. R. STEVENSON,  
*Clerk of the Parliaments.*

*Legislative Council Chamber,  
Sydney, 26 March, 1957.*

## **New South Wales**



ANNO SEXTO

**ELIZABETHÆ II REGINÆ**

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**Act No. , 1957.**

An Act to make further provision in respect of the powers of the Supreme Court in certain of its jurisdictions and in respect of the practice and procedure of that Court; for these and other purposes to amend the Common Law Procedure Act, 1899, the Supreme Court and Circuit Courts Act, 1900, the Supreme Court Procedure Act, 1900, the Judgment Creditors' Remedies Act, 1901, the Equity Act, 1901, the Justices Act, 1902, the Commercial Causes Act, 1903, and certain other Acts; and for purposes connected therewith.

39241 78—A

BE



*Supreme Court Procedure.*

**B**E it enacted by the Queen's Most Excellent Majesty,  
by and with the advice and consent of the Legis-  
lative Council and Legislative Assembly of New South  
Wales in Parliament assembled, and by the authority of  
5 the same, as follows :—

**1.** (1) This Act may be cited as the "Supreme Court  
Procedure Act, 1957."

Short title  
and  
commence-  
ment.

(2) This Act shall commence on the first day of  
July, one thousand nine hundred and fifty-seven.

**10 2.** Each Act specified in the first column of the Second  
Schedule to this Act and as amended by subsequent Acts,  
if any, and by this Act may be cited in the manner speci-  
fied in the second column of that Schedule opposite the  
reference to that Act in the first column.

Citation of  
amended  
Acts.

**15 3.** The Common Law Procedure Act, 1899, as  
amended by subsequent Acts, is amended—

Amendment  
of Act  
No. 21, 1899.

(a) (i) by inserting in section fifteen after the word  
"service" where firstly occurring the words  
"or within such enlarged time as the Court  
or a Judge may order";

Sec. 15.  
(Indorse-  
ment of  
service.)

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(ii) by inserting in the same section after the  
words "under this Act" the words—

"Any such order may be made although  
application therefor is not made until after  
25 the expiration of three days after such  
service.";

(b) by omitting from subsection one of section one  
hundred and two the words "upon an affidavit  
by such party or his attorney of his belief that  
any document to the production of which he is  
entitled for the purpose of discovery or other-  
wise is in the possession or power of the opposite  
party,";

Sec. 102.  
(Discovery  
of  
documents.)

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(c)



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- (c) by inserting next after section one hundred and eighty-four the following new section:— New sec. 184A.

5 184A. (1) Whenever in any proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Judge may order such third person to appear and to state the nature and particulars of his claim upon such debt. Lien or claim of third person on debt.

15 (2) After hearing the allegations of any third person under any such order as is mentioned in subsection one of this section, and of any other person who by the same or any subsequent order is ordered by the Judge to appear, or in case of such third person not appearing when ordered, the Judge may order execution to issue as provided in section one hundred and eighty-three of this Act, or may order any issue or question arising to be tried or determined, and may bar the claim of such third person or make such other order as he may think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Judge shall think just and reasonable.

- (d) by omitting section two hundred and twenty-eight and by inserting in lieu thereof the following section:— Substituted sec. 228.

30 228. Upon a finding for the claimant, judgment may be signed and execution issue for the recovery of the possession of the property or such part thereof as the jury finds the claimant entitled to, and for costs, at such time as may be prescribed and in the manner prescribed. Judgment upon finding for claimant.

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(e)



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5 (e) (i) by omitting from subsection three of section two hundred and sixty-eight the words "or before the Colonial Parliament at any time before the commencement of the operation of any such rule";

Sec. 268.  
(General  
rules may  
be made  
by the  
Judges.)

(ii) by inserting next after subsection three of the same section the following new subsection:—

10 (3A) All general rules and orders, rules, orders or regulations made pursuant to the foregoing provisions of this section and all rules made pursuant to section two hundred and sixty-six of this Act shall—

(a) be published in the Gazette;

15 (b) take effect from the date of publication or from a later date to be specified in the general rules and orders, rules, orders or regulations; and

20 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then  
25 within fourteen sitting days after the commencement of the next session.

30 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the general rules and orders, rules, orders or regulations have been laid before such House disallowing any general rule or order, or rule, order or regulation, or part thereof, such general rule or order, or rule, order or regulation, or part shall thereupon  
35 cease to have effect.



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4. The Supreme Court and Circuit Courts Act, 1900, as amended by subsequent Acts, is amended—

Amendment  
of Act  
No. 35,  
1900.

- (a) (i) by omitting the proviso to subsection one of section nine;  
(ii) by omitting subsection four of the same section;

Sec. 9.  
(Puisne  
Judges.)

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

Substituted  
sec. 20.

20. (1) The Court may be held by one Judge alone for the disposal of applications for a rule or order nisi for prohibition, mandamus, or certiorari notwithstanding that it may be term time, or that the Court held before two or more Judges may be at the same time sitting in banco.

Powers of  
Court may  
be exercised  
by single  
Judge in  
certain  
cases.

Nothing in this subsection—

- (a) authorises the Court to be held by one Judge alone for the purpose of exercising the powers and jurisdiction of the Court on the return of a rule or order nisi for prohibition, mandamus or certiorari; or

- (b) affects the construction of subsection two of this section.

(2) The powers and jurisdiction of the Court on the return of a rule or order nisi for prohibition, mandamus or certiorari to make absolute, discharge, or make any order whatsoever in respect of, the rule or order nisi (whether made by the Court or a Judge) may be exercised by one Judge alone—

- (a) at any time when the Court is not sitting in banco;  
(b) in cases of exigency when the Court is sitting in banco.

(3) Any person aggrieved by any decision or determination by one Judge alone made pursuant to subsection one or two of this section may appeal therefrom to the Court. Any such appeal shall be in accordance with rules of court.

(4)



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5 (4) The Judges or any five of them may by rules of court authorise the exercise (subject to those rules) by a Judge, in vacation or in any case of exigency, of any power which can only under ordinary circumstances be exercised by the Court.

The power to make rules of court conferred by this subsection does not include power to make rules of court with respect to—

- 10 (a) applications for rules or orders nisi for prohibition, mandamus or certiorari;
- 15 (b) the exercise in the circumstances mentioned in subsection two of this section of the powers and jurisdiction conferred by that subsection upon one Judge alone.

20 (c) (i) by inserting in section forty after the word "shall" the words " , subject to subsection two of this section,"; Sec. 40. (Rules to have force of law.)

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

25 (2) All rules and orders so made and all rules made under section twenty of this Act shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules and orders or rules; and
- 30 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.
- 35

If



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If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules and orders or rules have been laid before such House disallowing any rule or order or part thereof such rule or order or part shall thereupon cease to have effect.

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5. (1) The Common Law Procedure Act, 1899, as amended by subsequent Acts, is further amended—

Further  
amendment  
of Act No.  
21, 1899.

10 (a) by omitting section ninety five and by inserting in lieu thereof the following section:—

Substituted  
sec. 95.

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95. (1) No action at any time pending in the Court shall be restrained by injunction or order of the Court in equity, but every matter of equity on which an injunction against the prosecution of any such action might have been obtained, whether unconditionally or on any terms or conditions, before the commencement of the Supreme Court Procedure Act, 1957, may be relied on by way of defence thereto:

Equitable  
defence  
or stay  
instead of  
injunction,  
&c.  
cf. 15 & 16  
Geo. V, c. 49,  
s. 41.

20

Provided that—

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(a) nothing in this Act shall disable the Court or a Judge, if it or he thinks fit so to do, from directing a stay of proceedings in any action pending;

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(b) any person, whether a party or not to any such action, who would before the commencement of the Supreme Court Procedure Act, 1957, have been entitled to apply to the Court in equity to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule or order, in contravention of which all or any part of the proceedings in the action have been taken, may apply to the Court or a Judge in the prescribed manner for a stay of proceedings in the action, either generally

35

or



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or so far as may be necessary for the purposes of justice, and the Court or the Judge, as the case may be, shall thereupon make such order as shall be just.

(2) Any such defence as is mentioned in subsection one of this section shall state the facts which entitle the defendant to relief and the Court may receive such defence by way of plea.

Such plea shall begin with the words "for defence on equitable grounds," or words to the like effect.

(b) by omitting section ninety-eight and by inserting in lieu thereof the following section:—

98. (1) If it appears to the Court or Judge at any stage of an action that any such equitable plea or equitable replication pleaded in the action cannot be dealt with by a Court of law so as to do justice between the parties, the Court or Judge shall not strike out the plea or replication but shall make an order that the action be transferred into the jurisdiction of the Court in equity.

5. (1) The Common Law Procedure Act, 1899, as amended by subsequent Acts, is further amended by omitting section ninety-eight and by inserting in lieu thereof the following section:—

98. (1) Any such equitable plea or equitable replication may be pleaded notwithstanding that upon the facts pleaded the relief on equitable grounds would not be an absolute, perpetual and unconditional injunction, but if upon the facts pleaded that relief would not be such an injunction, the Court or Judge shall make an order that the action be transferred into the jurisdiction of the Court in equity.

The Court or the Judge when making the order may impose such terms as to costs and otherwise as to the Court or Judge seems reasonable.

(2)

Substituted  
sec. 98.

Transfer  
of certain  
actions into  
equity  
jurisdiction.

Further  
amendment  
of Act No.  
21, 1899.  
Substituted  
sec. 98.

Extension  
of power to  
plead  
equitable  
plea or  
replication;  
transfer of  
certain  
actions into  
equity  
jurisdiction.



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(2) Where an order is made under subsection one of this section the whole record of the action shall be transferred into the jurisdiction of the Court in equity.

5 (3) After an action has been transferred into the jurisdiction of the Court in equity under this section—

10 (a) any Judge exercising that jurisdiction may, from time to time, make such orders as he considers necessary relating to amendments, the filing of fresh pleadings, the settling of issues for trial, or otherwise to enable the action to be disposed of in that jurisdiction; ~~and~~

15 (b) the action shall, subject to paragraph (a) of this subsection, be disposed of according to the practice and procedure of the Court in equity; ~~and~~

20 (c) the Court in equity may make such decree, declaration or order as appears just and may in addition thereto or in substitution therefor direct judgment to be entered on its verdict or finding and for costs in the manner prescribed and such a judgment so  
25 entered shall have the like force and effect in all respects as the signing of judgment in a Court of law and execution may issue thereon in the manner prescribed.

30 In so far as the costs of the proceedings before transfer have not been dealt with under subsection one of this section, the Court in equity may deal with those costs.

(2) The Equity Act, 1901, as amended by subse- Amendment  
quent Acts, is amended— of Act No.  
24, 1901.

35 (a) (i) by omitting from section eight the words Sec. 8.  
“any proceeding before it” and by insert- (Power to  
ing in lieu thereof the words “any suit or decide legal  
titles, &c.)  
proceeding



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proceeding before it or has to be decided in any action transferred into its jurisdiction under section ninety-eight of the Common Law Procedure Act, 1899-1957,";

- 5 (ii) by omitting from the same section the words "no suit in equity" and by inserting in lieu thereof the words "no suit or proceeding in equity and no action so transferred";

- 10 (b) by inserting next after section eight the following new section:— New sec. 8A.

15 8A. (1) If it appears to the Court at any stage of any suit or proceeding in the Court that the Court has no jurisdiction to deal with the subject matter of the suit or proceeding and that the appropriate remedy in respect thereof lies in the Common Law jurisdiction of the Supreme Court, the Court shall make an order that the suit or proceeding be transferred into that jurisdiction. Transfer of certain suits, &c., into common law jurisdiction.

20 The Court when making the order may impose such terms as to costs and otherwise as to the Court seems reasonable.

25 (2) Where an order is made under subsection one of this section the whole record of the suit or proceeding shall be transferred into the Common Law jurisdiction of the Supreme Court.

30 (3) After a suit or proceeding has been transferred into the Common Law jurisdiction of the Supreme Court under this section—

- 35 (a) any Judge exercising that jurisdiction may, from time to time, make such orders as he considers necessary relating to amendments, the filing of fresh pleadings, the settling of issues for trial, or otherwise to enable the suit or proceeding to be disposed of in that jurisdiction; and (b)



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- 5 (b) the suit or proceeding shall, subject to paragraph (a) of this subsection, be disposed of according to the practice and procedure of the Supreme Court at Common Law.

10 In so far as the costs of the proceedings before transfer have not been dealt with under subsection one of this section, the Judge presiding at the trial or the Supreme Court at Common Law may make such order as to those costs as may be just.

- (c) by inserting at the end of section nine the following new paragraph:—

15 Nothing in this section shall be construed as limiting the operation of any other section of this Act. Sec. 9.  
(Power to Court to award damages in certain cases.)

- 20 (d) (i) by omitting from subsection one of section thirty-nine the words "right or claim," and by inserting in lieu thereof the words "equitable or legal right or claim, whether or not connected with the claim of the plaintiff,";

25 (ii) by inserting in subsection two of the same section after the words "ought not" the words "in the circumstances of the case";

- (e) by omitting subsection three of section ninety-four and by inserting in lieu thereof the following subsection:—

(3) All rules made under this Act shall—

- 30 (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules; and
- 35 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and



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and if not, then within fourteen sitting days after the commencement of the next session.

5 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof such rule or part shall thereupon cease to have effect.

10 **6.** The Justices Act, 1902, as amended by subsequent Acts, is amended—

(a) (i) by inserting next after subsection one of section one hundred and one the following new subsection:—

15 (1A) The application need not be served upon the Justice or Justices personally, but shall be deemed to have been properly made if served upon the clerk of the court at which the determination of the Justice or Justices was made.

20 (ii) by inserting at the end of the same section the following new subsection:—

25 (3) Written notice that application has been made for a case to be stated and signed pursuant to subsection one of this section shall be given by the appellant to the respondent within the time prescribed by rules of the Supreme Court.

30 (b) by omitting from subsection one of section one hundred and two the words "Before any such case is stated and delivered to the appellant, he shall enter into a recognizance" and by inserting in lieu thereof the words "The appellant shall, within twenty-eight days after the determination appealed from, enter into a recognizance";

(c)

Amendment of Act No. 27, 1902.

Sec. 101.

(Party dissatisfied with determination of Justices on point of law may apply to have a case stated for opinion of Supreme Court.)

Sec. 102.

(Before case is stated appellant to give security.)



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

Substituted  
sec. 105.

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105. When the appellant has received the case or has been notified in writing that it has been stated and signed and is available, he shall—

Appellant  
to transmit  
case to  
Prothono-  
tary and  
give notice.

10

(a) within such period thereafter as may be prescribed by rules of the Supreme Court transmit such case to the Prothonotary of the Supreme Court; and

15

(b) within such period and in such manner as may be prescribed by rules of the Supreme Court serve the respondent with such number of copies of the case as may be prescribed by those rules.

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- (d) (i) by omitting from subsection two of section one hundred and seven the words “Supreme Court” and by inserting in lieu thereof the words “Judges of the Supreme Court or any five of them”;

Sec. 107.  
(Powers of  
Court may  
be exercised  
by Judge in  
Chambers.)

- (ii) by inserting at the end of the same section the following new subsection:—

(3) Rules and orders made under this section shall—

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(a) be published in the Gazette;  
(b) take effect from the date of publication or from a later date to be specified in the rules and orders;  
and

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(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

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If either House of Parliament passes a resolution of which notice has been given at



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5 at any time within fifteen sitting days after the rules and orders have been laid before such House disallowing any rule or order or part thereof, such rule or order or part shall thereupon cease to have effect.

(e) (i) by omitting from subsection one of section one hundred and twelve the words "apply—

(a) in all cases to the Supreme Court, or, in vacation, to a Judge thereof;

10 (b) in the following cases, whether in term or in vacation, to a Judge—

(i) where imprisonment has been directed;

15 (ii) where the fine imposed, or the amount ordered to be paid, or the value of the matter adjudicated upon does not exceed thirty pounds,"

20 and by inserting in lieu thereof the words "apply to the Supreme Court";

(ii) by inserting at the end of subsection five of the same section the following new paragraph:—

25 Nothing in this subsection—

(a) authorises the Supreme Court to be held by one Judge alone for the purpose of exercising the powers and jurisdiction of the Court on the return of any rule or order granted or made under this section;

30 (b) affects the construction of sections one hundred and fourteen and one hundred and fifteen of this Act;

35 (iii) by omitting subsection six of the same section;

(f)



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- (f) by omitting section one hundred and fourteen and by inserting in lieu thereof the following section:— Substituted sec. 114.

5      114. Subject to any rules of court made by the Judges of the Supreme Court or any five of them, any rule or order granted or made by the Court or a Judge under section one hundred and twelve of this Act may be made returnable before the Court or any such Judge. Before whom rule to be returnable.

- 10      (g) by omitting section one hundred and sixteen and by inserting in lieu thereof the following section:— Substituted sec. 116.

15      116. (1) Where so provided by rules of court made by the Judges of the Supreme Court or any five of them, any person aggrieved by any decision or determination by one Judge alone made pursuant to sections one hundred and fourteen and one hundred and fifteen of this Act may appeal therefrom to the Court. Certain rules and writs made by a Judge may be reviewed by the Court.

20      Any such appeal shall be in accordance with rules of court made by the Judges of the Supreme Court or any five of them.

25      (2) A Judge before whom any rule or order is made returnable pursuant to section one hundred and fourteen of this Act may, at any stage of the proceedings, refer the matter to the Court to be determined.

- (h) by inserting next after section one hundred and seventeen the following new section:— New sec. 117A.

30      117A. The provisions of subsection three of section one hundred and seven of this Act apply to and in respect of rules of court made under this Division of this Part. Publication, commencement and disallowance of rules.

(i)



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(i) (i) by inserting next after subsection two of section one hundred and twenty-two the following new subsection:—

Sec. 122.  
(Appeal to  
Quarter  
Sessions.)

5 (2A) Where but for the provisions of this subsection an appeal may not proceed by reason only that—

(a) the appellant was not served with notice of the time and place of hearing of the appeal; and

10 (b) the Court is not satisfied that—

(i) the appellant had knowledge of such time and place; or

15 (ii) where the Court is satisfied that he had such knowledge, he would not be prejudiced by the non-service,

20 the appeal may nevertheless proceed if the Court is satisfied that the appellant is evading service of the notice or cannot, after diligent search and inquiry, be found.

25 (ii) by inserting in subsection four of the same section after the word “hearing” the words “or, where a later address has been notified by any such person or his attorney to the Clerk of the Peace, to the last address so notified”.

7. The Commercial Causes Act, 1903, is amended—

Amendment  
of Act No.  
19, 1903.

30 (a) by omitting section three and by inserting in lieu thereof the following section:—

Subst.  
sec. 3.

35 2. Commercial causes mean causes arising out of the ordinary transactions of merchants and traders, such as those relating to the construction of mercantile documents, export and import of merchandise, affreightment, insurance, banking and mercantile agency and mercantile usages

Commercial  
causes.



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usages, and include all causes of the kind held to be commercial causes before the commencement of the Supreme Court Procedure Act, 1957.

5 (a) by omitting from section three the word Sec. 3.  
(Commercial causes.)  
"include" and by inserting in lieu thereof the word "mean".

(b) (i) by inserting at the end of paragraph (d) of Sec. 6.  
(Directions.)  
section six the words—  
10 "or lists of documents to be exchanged and inspection allowed";

(ii) by omitting paragraph (g) of the same section and by inserting in lieu thereof the following paragraph:—

15 (g) order the trial to be either with or without a jury or that special issues be tried by a jury.

(c) (i) by omitting from section eight the word Sec. 8.  
(Rules of Court.)  
"three" and by inserting in lieu thereof the word "five";

20 (ii) by inserting at the end of the same section the following new subsection:—

(2) All such rules of court shall—

(a) be published in the Gazette;  
25 (b) take effect from the date of publication or from a later date to be specified in the rules; and

30 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

35 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House



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disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

8. The Matrimonial Causes Act 1899, as amended by Amendment of Act No. 14, 1899. Sec. 91. (Power to make rules.)

- (4) All rules made under this section shall—
- (a) be published in the Gazette;
  - 10 (b) take effect from the date of publication or from a later date to be specified in the rules; and
  - 15 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

9. The Supreme Court Procedure Act, 1900, as amended by subsequent Acts, is amended by omitting section seventeen and by inserting in lieu thereof the following section:—

17. All rules of court made under the powers herein contained shall—
- 30 (a) be published in the Gazette;
  - (b) take effect from the date of publication or from a later date to be specified in the rules; and
  - 35 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not

Amendment of Act No. 49, 1900. Substituted sec. 17.

Rules to be published in Gazette and laid before Parliament, &c.



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*Supreme Court Procedure.*

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not, then within fourteen sitting days after the commencement of the next session.

5 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

10 **10.** The Jury Act, 1912, as amended by subsequent Acts, is amended by inserting in subsection two of section fifty-five after the word "capital" the words "or murder".

Amendment  
of Act  
No. 31,  
1912.  
Sec. 55.  
(Challenge  
in criminal  
cases.)

15 **11.** The Crimes Act, 1900, as amended by subsequent Acts, is amended by omitting from subsection three of section five hundred and sixty-eight the words "not punishable with death," and by inserting in lieu thereof the words "(other than a crime or misdemeanour which is punishable with death or which was so punishable immediately before the commencement of the Crimes

Amendment  
of Act No.  
40, 1900.  
Sec. 568.  
(Jurisdic-  
tion, &c., of  
Courts of  
Quarter  
Sessions.)

20 (Amendment) Act, 1955),".

~~11.~~ **12.** The Land and Valuation Court Act, 1921, as amended by subsequent Acts, is amended—

Amendment  
of Act No.  
10, 1921.

- 25 (a) (i) by inserting in subsection three of section four after the word "powers" the word  
", immunities";
- (ii) by inserting in subsection (3A) of the same section after the word "powers" the word  
", immunities";
- 30 (iii) by omitting the proviso to paragraph (a) of subsection five of the same section;
- (iv) by omitting the proviso to paragraph (a) of subsection six of the same section;
- Sec. 4.  
(Constitu-  
tion of  
Land and  
Valuation  
Court and  
appointment  
of judge.)
- (b)



*Supreme Court Procedure.*

(b) by inserting next after section nine the following new section:—

New  
sec. 9A.

5 9A. (1) The court may in every case obtain the assistance of conveyancing counsel, accountants, engineers, actuaries, or other scientific persons the better to enable it to determine any matter at issue in any proceeding before it and may act upon the certificate of any such person.

Assistance  
of scientific  
persons.  
cf. Act. No.  
24, 1901,  
s. 7.

10 (2) The allowance in respect of fees to such persons shall be regulated by the registrar, subject to an appeal to the court.

~~12.~~ 13. The Acts (as amended by subsequent Acts, if any) specified in the first and second columns of the First Schedule to this Act are amended as respectively specified in the third column of that Schedule.

Amendment  
of Acts  
specified  
in First  
Schedule.

~~13.~~ 14. (1) Rules of court, general rules and orders, rules, orders or regulations made or promulgated by the Supreme Court of New South Wales or any Judge or Judges thereof by virtue of any power howsoever conferred on such Supreme Court, Judge or Judges, and in force at the commencement of this Act, shall not be affected by the repeal and substitution by this Act of any provision under which they were made, or by any alteration in the number of Judges authorised to make them, or by the provisions of this Act requiring them to be published in the Gazette and laid before both Houses of Parliament and making them subject to disallowance by resolution of either House of Parliament but may be amended, repealed or replaced by rules of court, general rules and orders, rules, orders or regulations, as the case may be, lawfully made after that commencement.

Savings.

(2) Unless the contrary intention appears, the repeal of any enactment by this Act shall not revive anything not in force or existing at the time at which the repeal takes effect.



*Supreme Court Procedure.*

## FIRST SCHEDULE.

Sec. 12.

Reference to Act.	Short Title.	Amendment.
No. 21, 1899	Common Law Procedure Act, 1899.	<p>Section 1— Omit the matter relating to Part XV.</p> <p>Section 4, subsection (1)— (a) Insert after the words “jurisdiction of the Court” the words “or if the defendant is a corporation residing or incorporated or registered within the jurisdiction of the Court or if the defendant is a corporation registered under Part VI of the Companies Act, 1936, as amended by subsequent Acts” (b) Omit the words “Form No. 1 contained in the Second Schedule to this Act” and insert in lieu thereof the words “form prescribed”.</p> <p>Section 4, subsection (2)— Omit the subsection.</p> <p>Section 10— Omit the words “Form No. 2 contained in the Second Schedule hereto, or to the like effect” and insert in lieu thereof the words “the form prescribed”.</p> <p>Section 11— Omit the word “six” and insert in lieu thereof the word “twelve”.</p> <p>Section 12, subsection (1)— (a) Omit the word “six” and insert in lieu thereof the word “twelve”. (b) Omit the words “including the day of such date”.</p> <p>Section 12, subsection (2)— (a) Omit the word “six” and insert in lieu thereof the word “twelve”.</p>

FIRST



*Supreme Court Procedure.*

FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 12, subsection (2)—<i>continued.</i></p> <p>(b) Omit the words “by being marked by the proper officer with the date of such renewal upon delivery to him by the plaintiff or his attorney of a praecipe in such form as before the commencement of the Common Law Procedure Act of 1853 was required to be delivered upon the obtaining of an alias writ” and insert in lieu thereof the words “by being marked as prescribed”.</p> <p>Section 14—</p> <p>Omit the words “by the proper officer”.</p> <p>Sections 17, 18 and 19—</p> <p>Omit these sections and insert in lieu thereof the following sections :—</p> <p>17. The service of a writ of summons shall, wherever it is practicable, be personal, but where prompt personal service cannot be effected substituted service may be effected as prescribed.</p> <p>18. (1) In any action against a defendant who—</p> <p>(a) being a corporation is not resident incorporated or registered within the jurisdiction of the Court and is not registered under Part VI of the Companies Act, 1936, as amended by subsequent Acts; or</p> <p>(b) being any other person is not resident within the jurisdiction of the Court,</p> <p>the plaintiff may issue a writ of summons in the form prescribed.</p>



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Sections 17, 18 and 19—<i>continued.</i></p> <p>(2) Either the writ of summons or a notice thereof in the form prescribed shall be served upon the defendant as may be prescribed.</p> <p>(3) Until otherwise prescribed the writ of summons shall be served in the following cases :—</p> <p>(a) Where the writ of summons may be served under the provisions of the Service and Execution of Process Act 1901 (as amended by subsequent Acts) of the Parliament of the Commonwealth.</p> <p>(b) Where the defendant is a British subject or being a corporation is incorporated in the United Kingdom or in Australia or in any of the other realms and territories of Her Majesty the Queen.</p> <p>(c) Where the defendant is in the United Kingdom or in Australia or in any of the other realms and territories of Her Majesty the Queen.</p> <p>(4) If the defendant does not appear to the writ of summons within the time prescribed, a Judge, upon being satisfied—</p> <p>(a) that there is a cause of action which arose within the jurisdiction, or in respect of the breach of a contract made within the jurisdiction; and</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Sections 17, 18 and 19—<i>continued.</i></p> <p>(b) that service of the writ or notice thereof, as the case may be, was duly effected or that the writ or the notice thereof came to the defendant's knowledge,</p> <p>may, if he thinks fit, by order, permit the plaintiff to proceed to sign final or interlocutory judgment in such manner and subject to such conditions as may be prescribed or as he in all the circumstances may deem fit.</p> <p>Section 20— Insert after the word "by" the words "or under".</p> <p>Section 21— Omit the words "If either of the Forms of writ of summons Nos. 1, 3, and 4, contained in the Second Schedule hereto," and insert in lieu thereof the words "If one of the prescribed forms of writ of summons".</p> <p>Section 23— Omit the section.</p> <p>Section 24, subsection (1)— (a) Insert after the word "Court" the words "or being a corporation is resident or incorporated or registered within that jurisdiction or is registered under Part VI of the Companies Act, 1936, as amended by subsequent Acts".</p> <p>(b) Omit the words "Form No. 5 contained in the Second Schedule hereto, or to the like effect" and insert in lieu thereof the words "form prescribed".</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 25, subsection (1)— Omit the words "Form No. 6 contained in the Second Schedule hereto" and insert in lieu thereof the words "form prescribed".</p> <p>Section 29— Omit the section and insert in lieu thereof the following section :—  29. Appearance to a writ of Mode of summons or under the authority appearance of this Act shall be entered by filing a notice of appearance in the form and manner prescribed.</p> <p>Sections 32 and 33— Omit the sections.</p> <p>Section 51, subsection (1)— Insert at the end thereof the words "in the manner prescribed".</p> <p>Section 51, subsections (2) and (3)— Omit the subsections.</p> <p>Section 69— After the word "shall" insert the words ", unless a Judge otherwise orders,".</p> <p>Sections 70 and 71— Omit the sections and insert in lieu thereof the following section :—  70. Every declaration shall Commence- commence and conclude in the ment and forms prescribed. conclusion of declaration</p> <p>Section 73— Omit the section and insert in lieu thereof the following section :—  73. The defendant shall plead to Time for the plaintiff's declaration within pleading to the time and in the manner declaration. prescribed.</p> <p>Section 76— Omit the section.</p> <p>Section 81— Omit the section.</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 88, subsection (1)— Omit the words "Form No. 15 contained in the Second Schedule hereto, or to the like effect" and insert in lieu thereof the words "form prescribed".</p> <p>Section 100, subsection (1)— Omit the words "Form No. 16 contained in the Second Schedule hereto, or to the like effect," and insert in lieu thereof the words "form prescribed".</p> <p>Section 100, subsection (3)— Omit the words "Form No. 17 contained in the said Schedule, or to the like effect" and insert in lieu thereof the words "form prescribed".</p> <p>Section 104, subsection (1)— Omit the words ", or by so many and such of the persons summoned as jurors for the trial as may be thought desirable,".</p> <p>Sections 121 to 128 inclusive— Omit the sections.</p> <p>Section 129, subsection (1)— Omit the words "it shall not be necessary to issue a writ of inquiry, but".</p> <p>Section 129, subsection (2)— Omit "in the same manner as before a jury upon a writ of inquiry".</p> <p>Section 133— Omit the section and insert in lieu thereof the following section :— 133. A party in whose favour a verdict has been given, a nonsuit granted or a judgment directed to be entered may sign judgment in the manner and time prescribed.</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 134—</p> <p>Omit the section and insert in lieu thereof the following section:—</p> <p>134. A party in whose favour Execution judgment has been signed may after issue execution thereon unless judgment signed. a Judge otherwise orders:</p> <p>Provided that where ten years have elapsed since judgment was signed or any change has taken place by death or otherwise in the parties entitled or liable to execution, execution shall not issue without the leave of a Judge. The party alleging himself to be entitled to execution may apply for such leave in the manner prescribed.</p> <p>Part XV—</p> <p>Omit the Part.</p> <p>Section 156—</p> <p>Omit the words “, so as such judgment be entered within two terms after such verdict”.</p> <p>Section 157, subsections (3), (4) and (5)—</p> <p>Omit the subsections and insert in lieu thereof the following subsection:—</p> <p>(3) In any such case the action may be maintained by the executor or administrator mentioned in subsection one of this section or against the executor or administrator mentioned in subsection two of this section or by the firstmentioned executor or administrator against the secondmentioned executor or administrator, as the case may be, upon the filing of a suggestion of the death of the plaintiff or defendant or both, as the case may be, and</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 157, subsections (3), (4) and (5)—<i>continued.</i></p> <p>representation. A copy of any suggestion so filed shall be served upon all other parties to the action and the truth of the suggestion shall not be in issue unless notice of such issue is given to the person filing the suggestion within fourteen days of service of such copy or within such time as may be prescribed.</p> <p>Section 159, subsection (2)— Omit the words “or writ of revivor pursuant to this Act”.</p> <p>Section 184, subsection (1)— Omit the word “writ” and insert in lieu thereof the word “summons”.</p> <p>Section 184, subsection (2)— Omit the subsection and insert in lieu thereof the following subsection:— (2) Such summons shall be issued, and the procedure thereon shall be, in the manner prescribed.</p> <p>Section 186— Omit the section.</p> <p>Section 210, subsection (1)— (a) Omit the words “Form No. 21 contained in the Second Schedule hereto, or to the like effect” and insert in lieu thereof the words “form prescribed”. (b) Omit the words “sixteen days” and insert in lieu thereof the words “the time prescribed”.</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 210, subsection (2)— Omit the word “three” and insert in lieu thereof the word “twelve”.</p> <p>Section 212— Omit the section and insert in lieu thereof the following section :— 212. The writ shall, wherever practicable, be served personally on the persons named therein but where prompt personal service cannot be effected substituted service may be effected in the manner prescribed or in such manner as may be provided for the purpose by any other Act.</p> <p>Section 219— (a) Insert after the word “judgment” where firstly occurring the words “in the form prescribed”. (b) Omit the words “Such judgment if for all may be in the Form No. 22 contained in the Second Schedule hereto, or to the like effect, and if for part may be in the Form No. 23 contained in the said Schedule, or to the like effect.”</p> <p>Section 220, subsection (2)— Omit the subsection and insert in lieu thereof the following subsection :— (2) Such issue may be in the form prescribed.</p> <p>Section 221— Omit the words “used before the commencement of the Common Law Procedure Act of 1853” and insert in lieu thereof the word “prescribed”.</p> <p>Section 223— Omit the section.</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 229— Omit the words “within such time as the Court or Judge before whom the cause is tried shall order, and if no such order be made then on the fifth day in term after the verdict or within fourteen days after such verdict whichever shall first happen” and insert in lieu thereof the words “at such time as may be prescribed and in the manner prescribed”.</p> <p>Section 243— Omit the section and insert in lieu thereof the following section :— 243. The claimant may at any Discontin- time discontinue the action as to uance of one or more of the defendants action. in the manner prescribed.</p> <p>Section 245— Omit the section and insert in lieu thereof the following section :— 245. Where an appearance has Judgment been entered and the claimant for not omits to set the action down for proceeding trial in the manner and within the to trial after time prescribed the defendant notice. may give him such notice as may be prescribed to set the action down within a time prescribed for this purpose and if the claim- ant fails so to do the defendant may suggest such failure and sign judgment in the manner pre- scribed.</p> <p>Section 246— Omit the words “Form No. 28 contained in the Second Schedule hereto, or to the like effect” and insert in lieu thereof the words “form prescribed”.</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Sections 252, 253 and 254—</p> <p>Omit the sections and insert in lieu thereof the following sections :—</p> <p>252. Every application for an order nisi for a writ of habeas corpus shall be made to a Judge. Such application may be made <i>ex parte</i> in the manner prescribed.</p> <p>253. (1) Every order nisi for a writ of habeas corpus shall be returnable before a Judge sitting in public chambers whether in Term or not unless the Judge considers that it should be returnable before the Full Court.</p> <p>(2) On the return of such order the Judge or the Court may dispose of the case as the circumstances appear to require and may make such order as to costs as the Judge or Court thinks fit.</p> <p>254. Any order made by a Judge under section two hundred and fifty-two or two hundred and fifty-three of this Act shall be subject to appeal to the Full Court within the same time and in the same manner as prescribed for motions for a new trial.</p> <p>Section 263—</p> <p>Omit the section.</p> <p>Section 266—</p> <p>Omit the words " The lowest scale shall extend to all cases not exceeding fifty pounds, the second scale to all cases above fifty and not exceeding one hundred pounds, and the highest scale to all other cases."</p> <p>Section 268, subsections (1) and (2)—</p> <p>After the words " The Judges " insert the words " or any five of them ".</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
No. 29, 1902	Arbitration Act, 1902.	Sections 269 and 270— Omit the sections. Second Schedule— Omit the Schedule. Section 10— Insert after the words "submission may" the words ", by leave of a Judge,".
No. 24, 1902	Arrest on Mesne Process Act, 1902.	Section 5, paragraph (b)— Omit the word "twenty" and insert in lieu thereof the words "two hundred". Section 11— Omit the section and insert in lieu thereof the following section :—  11. (1) Any person in respect of Application whom a special order is made under for order to section five of this Act may apply set aside to a Judge for an order on the special order and writ or plaintiff to show cause why the for discharge the special order and any writ issued thereunder should not be set aside and for an order staying proceedings on the special order and any such writ in the meantime.  (2) Any person arrested upon a writ of capias may apply to a Judge at any time after such arrest for an order on the plaintiff to show cause why such person should not be discharged out of custody. Section 12— Omit the section and insert in lieu thereof the following section :—  12. Any Judge may, upon the Hearing of hearing of the application, make application. such order therein as he thinks fit and direct that the costs of the application be paid by either party.

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
No. 8, 1901	Judgment Creditors' Remedies Act, 1901.	<p>Section 13— Omit "such order" and insert in lieu thereof the words "order made under section twelve of this Act".</p> <p>Section 27, subsection (1)— (a) After the words "the Supreme Court" insert the words "or in a District Court". (b) Omit the words "of the said Court" and insert in lieu thereof the words "of the Supreme Court or the District Court, as the case may be,".</p> <p>Section 31— Omit the words "of the said Court" and insert in lieu thereof the words "of the Supreme Court or the District Court, as the case may be".</p>
No. 35, 1900	Supreme Court and Circuit Courts Act, 1900.	<p>Section 1— Omit the matter relating to Parts IV and V and insert in lieu thereof the following matter :— PART IV.—<i>Sittings of Court elsewhere than at Sydney—ss. 22-33.</i> PART IVA.—<i>Gaol Delivery—s. 33A.</i></p> <p>Section 19, paragraph (b)— Omit the paragraph. Insert in Part IV immediately before section 22 the heading "SITTINGS OF COURT ELSEWHERE THAN AT SYDNEY." Insert next after Part IV the following new Part :— PART IVA. GAOL DELIVERY.</p>



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>33A. The governor of each prison shall, at the times prescribed by rules of court, make returns in writing to the Supreme Court, Sydney, as to all persons detained in such prison, otherwise than in pursuance of a sentence, giving the particulars required by such rules. If he fails to make such returns, he may be ordered by the Court to pay a fine not exceeding five hundred pounds.</p> <p>The Court shall, after the receipt of such returns with respect to a prison, deliver such prison.</p> <p>For the purpose aforesaid the Court may be constituted by one Judge sitting in open court in the exercise of the criminal jurisdiction of the court.</p> <p>Except as aforesaid, it shall not be obligatory on the Court or a Judge to deliver any prison, or for a governor of a prison, unless so directed by the Court or a Judge, to make any such returns.</p> <p>Part V— Omit the Part.</p> <p>Section 39— Omit the word “three” and insert in lieu thereof the word “five”.</p> <p>Section 39A, paragraph (a)— Omit the word “now”.</p>
No. 9, 1912	Supreme Court and Circuit Courts (Amendment) Act, 1912.	Section 8— Omit the section.

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
No. 10, 1921	Land and Valuation Court Act, 1921.	Section 13, subsection (1)— Omit the subsection and insert in lieu thereof the following subsection :— (1) All process issuing out of the court shall be in the form prescribed, and be signed by the officer issuing the process and marked with the court office stamp.
No. 16, 1900	Sheriff Act, 1900	Section 1— Omit the matter relating to Part IV. Part IV— Omit the Part.
No. 49, 1900	Supreme Court Procedure Act, 1900.	Sections 12 and 13— Omit these sections. Section 14— Omit the word "three" and insert in lieu thereof the word "five". Section 16— Omit the words "in the Schedule to this Act, or". Schedule— Omit the Schedule.
No. 31, 1912	Jury Act, 1912.	Section 32, subsection (2)— (a) Omit the words "and seal". (b) Insert at the end thereof the words "or of the prothonotary thereof". Section 32, subsection (3)— Omit the words "and seal". Fifth Schedule— Omit the words "and seal".
No. 42, 1924	Administration of Justice Act, 1924.	Section 14— Omit the section. Schedule— Omit the Schedule.

SECOND



*Supreme Court Procedure.*

## SECOND SCHEDULE.

Sec. 2.

## CITATION OF ACTS.

First Column.	Second Column.
Administration of Justice Act, 1924.	Administration of Justice Act, 1924-1957.
Arbitration Act, 1902.	Arbitration Act, 1902-1957.
Arrest on Mesne Process Act, 1902.	Arrest on Mesne Process Act, 1902-1957.
Commercial Causes Act, 1903.	Commercial Causes Act, 1903-1957.
Common Law Procedure Act, 1899.	Common Law Procedure Act, 1899-1957.
Equity Act, 1901.	Equity Act, 1901-1957.
Judgment Creditors' Remedies Act, 1901.	Judgment Creditors' Remedies Act, 1901-1957.
Jury Act, 1912.	Jury Act, 1912-1957.
Justices Act, 1902.	Justices Act, 1902-1957.
Land and Valuation Court Act, 1921.	Land and Valuation Court Act, 1921-1957.
Matrimonial Causes Act 1899.	Matrimonial Causes Act, 1899-1957.
Sheriff Act, 1900.	Sheriff Act, 1900-1957.
Supreme Court and Circuit Courts Act, 1900.	Supreme Court and Circuit Courts Act, 1900-1957.
Supreme Court Procedure Act, 1900.	Supreme Court Procedure Act, 1900-1957.



*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY,  
and, having this day passed, is now ready for presentation to the  
LEGISLATIVE COUNCIL for its concurrence.*

ALLAN PICKERING,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 28 February, 1957.*

*The LEGISLATIVE COUNCIL has this day agreed to this Bill with  
Amendments.*

*Clerk of the Parliaments.*

*Legislative Council Chamber,  
Sydney, March, 1957.*

## New South Wales



ANNO SEXTO

ELIZABETHÆ II REGINÆ

\*\*\*\*\*

Act No. , 1957.

An Act to make further provision in respect of the powers of the Supreme Court in certain of its jurisdictions and in respect of the practice and procedure of that Court; for these and other purposes to amend the Common Law Procedure Act, 1899, the Supreme Court and Circuit Courts Act, 1900, the Supreme Court Procedure Act, 1900, the Judgment Creditors' Remedies Act, 1901, the Equity Act, 1901, the Justices Act, 1902, the Commercial Causes Act, 1903, and certain other Acts; and for purposes connected therewith.

39241 78—A

BE

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter.



*Supreme Court Procedure.*

**B**E it enacted by the Queen's Most Excellent Majesty,  
by and with the advice and consent of the Legis-  
lative Council and Legislative Assembly of New South  
Wales in Parliament assembled, and by the authority of  
**5** the same, as follows:—

**1.** (1) This Act may be cited as the "Supreme Court  
Procedure Act, 1957."

Short title  
and  
commence-  
ment.

(2) This Act shall commence on the first day of  
July, one thousand nine hundred and fifty-seven.

**10 2.** Each Act specified in the first column of the Second  
Schedule to this Act and as amended by subsequent Acts,  
if any, and by this Act may be cited in the manner speci-  
fied in the second column of that Schedule opposite the  
reference to that Act in the first column.

Citation of  
amended  
Acts.

**15 3.** The Common Law Procedure Act, 1899, as  
amended by subsequent Acts, is amended—

Amendment  
of Act  
No. 21, 1899.

(a) (i) by inserting in section fifteen after the word  
"service" where firstly occurring the words  
"or within such enlarged time as the Court  
or a Judge may order";

Sec. 15.  
(Indorse-  
ment of  
service.)

**20**

(ii) by inserting in the same section after the  
words "under this Act" the words—

**25**

"Any such order may be made although  
application therefor is not made until after  
the expiration of three days after such  
service.";

**30**

(b) by omitting from subsection one of section one  
hundred and two the words "upon an affidavit  
by such party or his attorney of his belief that  
any document to the production of which he is  
entitled for the purpose of discovery or other-  
wise is in the possession or power of the opposite  
party,";

Sec. 102.  
(Discovery  
of  
documents.)

(c)



*Supreme Court Procedure.*

- (c) by inserting next after section one hundred and eighty-four the following new section:— New sec. 184A.

5           184A. (1) Whenever in any proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Judge may order such third person to appear and to state the nature and particulars of his claim upon such debt. Lien or claim of third person on debt.

10

15           (2) After hearing the allegations of any third person under any such order as is mentioned in subsection one of this section, and of any other person who by the same or any subsequent order is ordered by the Judge to appear, or in case of such third person not appearing when ordered, the Judge may order execution to issue as provided in section one hundred and eighty-three of this Act, or may order any issue or question arising to be tried or determined, and may bar the claim of such third person or make such other order as he may think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Judge shall think just and reasonable.

20

25

- (d) by omitting section two hundred and twenty-eight and by inserting in lieu thereof the following section:— Substituted sec. 228.

30           228. Upon a finding for the claimant, judgment may be signed and execution issue for the recovery of the possession of the property or such part thereof as the jury finds the claimant entitled to, and for costs, at such time as may be prescribed and in the manner prescribed. Judgment upon finding for claimant.

35

(e)



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*Supreme Court Procedure.*

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- (e) (i) by omitting from subsection three of section two hundred and sixty-eight the words “or before the Colonial Parliament at any time before the commencement of the operation of any such rule”; Sec. 268. (General rules may be made by the Judges.)
- 5
- (ii) by inserting next after subsection three of the same section the following new subsection:—
- (3A) All general rules and orders, rules, orders or regulations made pursuant to the foregoing provisions of this section and all rules made pursuant to section two hundred and sixty-six of this Act shall—
- 10
- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the general rules and orders, rules, orders or regulations; and
- 15
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.
- 20
- 25

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the general rules and orders, rules, orders or regulations have been laid before such House disallowing any general rule or order, or rule, order or regulation, or part thereof, such general rule or order, or rule, order or regulation, or part shall thereupon cease to have effect.

30

35



*Supreme Court Procedure.*

4. The Supreme Court and Circuit Courts Act, 1900, as amended by subsequent Acts, is amended—

Amendment  
of Act  
No. 35,  
1900.

(a) (i) by omitting the proviso to subsection one of section nine;

Sec. 9.  
(Puisne  
Judges.)

5 (ii) by omitting subsection four of the same section;

(b) by omitting section twenty and by inserting in lieu thereof the following section:—

Substituted  
sec. 20.

10 20. (1) The Court may be held by one Judge alone for the disposal of applications for a rule or order nisi for prohibition, mandamus, or certiorari notwithstanding that it may be term time, or that the Court held before two or more Judges may be at the same time sitting in banco.

Powers of  
Court may  
be exercised  
by single  
Judge in  
certain  
cases.

15 Nothing in this subsection—

(a) authorises the Court to be held by one Judge alone for the purpose of exercising the powers and jurisdiction of the Court on the return of a rule or order nisi for prohibition, mandamus or certiorari; or

20

(b) affects the construction of subsection two of this section.

25 (2) The powers and jurisdiction of the Court on the return of a rule or order nisi for prohibition, mandamus or certiorari to make absolute, discharge, or make any order whatsoever in respect of, the rule or order nisi (whether made by the Court or a Judge) may be exercised by one Judge alone—

30

(a) at any time when the Court is not sitting in banco;

(b) in cases of exigency when the Court is sitting in banco.

35

(3) Any person aggrieved by any decision or determination by one Judge alone made pursuant to subsection one or two of this section may appeal therefrom to the Court. Any such appeal shall be in accordance with rules of court.

(4)



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5 (4) The Judges or any five of them may by rules of court authorise the exercise (subject to those rules) by a Judge, in vacation or in any case of exigency, of any power which can only under ordinary circumstances be exercised by the Court.

The power to make rules of court conferred by this subsection does not include power to make rules of court with respect to—

10 (a) applications for rules or orders nisi for prohibition, mandamus or certiorari;

15 (b) the exercise in the circumstances mentioned in subsection two of this section of the powers and jurisdiction conferred by that subsection upon one Judge alone.

20 (c) (i) by inserting in section forty after the word "shall" the words " , subject to subsection two of this section,"; Sec. 40. (Rules to have force of law.)

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

25 (2) All rules and orders so made and all rules made under section twenty of this Act shall—

(a) be published in the Gazette;

30 (b) take effect from the date of publication or from a later date to be specified in the rules and orders or rules; and

35 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If



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5 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules and orders or rules have been laid before such House disallowing any rule or order or part thereof such rule or order or part shall thereupon cease to have effect.

5. (1) The Common Law Procedure Act, 1899, as amended by subsequent Acts, is further amended— Further amendment of Act No. 21, 1899.

10 (a) by omitting section ninety-five and by inserting in lieu thereof the following section:— Substituted sec. 95.

15 95. (1) No action at any time pending in the Court shall be restrained by injunction or order of the Court in equity, but every matter of equity on which an injunction against the prosecution of any such action might have been obtained, whether unconditionally or on any terms or conditions, before the commencement of the Supreme Court Procedure Act, 1957, may be relied on by way of defence thereto: Equitable defence or stay instead of injunction, &c. cf. 15 & 16 Geo. V, c. 49, s. 41.

20 be relied on by way of defence thereto:

Provided that—

(a) nothing in this Act shall disable the Court or a Judge, if it or he thinks fit so to do, from directing a stay of proceedings in any action pending;

25 (b) any person, whether a party or not to any such action, who would before the commencement of the Supreme Court Procedure Act, 1957, have been entitled to apply to the Court in equity to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule or order, in contravention of which all or any part of the proceedings in the action have been taken, may apply to the Court or a Judge in the prescribed manner for a stay of proceedings in the action, either generally

or



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or so far as may be necessary for the purposes of justice, and the Court or the Judge, as the case may be, shall thereupon make such order as shall be just.

(2) Any such defence as is mentioned in subsection one of this section shall state the facts which entitle the defendant to relief and the Court may receive such defence by way of plea.

Such plea shall begin with the words "for defence on equitable grounds," or words to the like effect.

(b) by omitting section ninety-eight and by inserting in lieu thereof the following section:—

98. (1) If it appears to the Court or Judge at any stage of an action that any such equitable plea or equitable replication pleaded in the action cannot be dealt with by a Court of law so as to do justice between the parties, the Court or Judge shall not strike out the plea or replication but shall make an order that the action be transferred into the jurisdiction of the Court in equity.

5. (1) The Common Law Procedure Act, 1899, as amended by subsequent Acts, is further amended by omitting section ninety-eight and by inserting in lieu thereof the following section:—

98. (1) Any such equitable plea or equitable replication may be pleaded notwithstanding that upon the facts pleaded the relief on equitable grounds would not be an absolute, perpetual and unconditional injunction, but if upon the facts pleaded that relief would not be such an injunction, the Court or Judge shall make an order that the action be transferred into the jurisdiction of the Court in equity.

The Court or the Judge when making the order may impose such terms as to costs and otherwise as to the Court or Judge seems reasonable.

(2)

Substituted  
sec. 98.

Transfer  
of certain  
actions into  
equity  
jurisdiction.

Further  
amendment  
of Act No.  
21, 1899.  
Substituted  
sec. 98.

Extension  
of power to  
plead  
equitable  
plea or  
replication;  
transfer of  
certain  
actions into  
equity  
jurisdiction.



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(2) Where an order is made under subsection one of this section the whole record of the action shall be transferred into the jurisdiction of the Court in equity.

5           (3) After an action has been transferred into the jurisdiction of the Court in equity under this section—

10           (a) any Judge exercising that jurisdiction may, from time to time, make such orders as he considers necessary relating to amendments, the filing of fresh pleadings, the settling of issues for trial, or otherwise to enable the action to be disposed of in that jurisdiction; ~~and~~

15           (b) the action shall, subject to paragraph (a) of this subsection, be disposed of according to the practice and procedure of the Court in equity; ~~and~~

20           (c) the Court in equity may make such decree, declaration or order as appears just and may in addition thereto or in substitution therefor direct judgment to be entered on its verdict or finding and for costs in the manner prescribed and such a judgment so entered shall have the like force and effect in all respects as the signing of judgment in a Court of law and execution may issue thereon in the manner prescribed.

30           In so far as the costs of the proceedings before transfer have not been dealt with under subsection one of this section, the Court in equity may deal with those costs.

(2) The Equity Act, 1901, as amended by sub-  
quent Acts, is amended—

Amendment  
of Act No.  
24, 1901.

35           (a) (i) by omitting from section eight the words  
“any proceeding before it” and by insert-  
ing in lieu thereof the words “any suit or  
proceeding

Sec. 8.  
(Power to  
decide legal  
titles, &c.)



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proceeding before it or has to be decided in any action transferred into its jurisdiction under section ninety-eight of the Common Law Procedure Act, 1899-1957,";

- 5 (ii) by omitting from the same section the words "no suit in equity" and by inserting in lieu thereof the words "no suit or proceeding in equity and no action so transferred";

- 10 (b) by inserting next after section eight the following new section:—

8A. (1) If it appears to the Court at any stage of any suit or proceeding in the Court that the Court has no jurisdiction to deal with the subject matter of the suit or proceeding and that the appropriate remedy in respect thereof lies in the Common Law jurisdiction of the Supreme Court, the Court shall make an order that the suit or proceeding be transferred into that jurisdiction.

Transfer of certain suits, &c., into common law jurisdiction.

The Court when making the order may impose such terms as to costs and otherwise as to the Court seems reasonable.

- 25 (2) Where an order is made under subsection one of this section the whole record of the suit or proceeding shall be transferred into the Common Law jurisdiction of the Supreme Court.

- 30 (3) After a suit or proceeding has been transferred into the Common Law jurisdiction of the Supreme Court under this section—

- (a) any Judge exercising that jurisdiction may, from time to time, make such orders as he considers necessary relating to amendments, the filing of fresh pleadings, the settling of issues for trial, or otherwise to enable the suit or proceeding to be disposed of in that jurisdiction; and
- 25 (b)



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5 (b) the suit or proceeding shall, subject to paragraph (a) of this subsection, be disposed of according to the practice and procedure of the Supreme Court at Common Law.

10 In so far as the costs of the proceedings before transfer have not been dealt with under subsection one of this section, the Judge presiding at the trial or the Supreme Court at Common Law may make such order as to those costs as may be just.

(c) by inserting at the end of section nine the following new paragraph:—

15 Nothing in this section shall be construed as limiting the operation of any other section of this Act.

Sec. 9.  
(Power to Court to award damages in certain cases.)

20 (d) (i) by omitting from subsection one of section thirty-nine the words "right or claim," and by inserting in lieu thereof the words "equitable or legal right or claim, whether or not connected with the claim of the plaintiff,";

Sec. 39.  
(Set-off and counter-claim.)

25 (ii) by inserting in subsection two of the same section after the words "ought not" the words "in the circumstances of the case";

(e) by omitting subsection three of section ninety-four and by inserting in lieu thereof the following subsection:—

(3) All rules made under this Act shall—

30 (a) be published in the Gazette;  
(b) take effect from the date of publication or from a later date to be specified in the rules; and  
35 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session,  
and



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and if not, then within fourteen sitting days after the commencement of the next session.

5 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof such rule or part shall thereupon cease to have effect.

10 **6.** The Justices Act, 1902, as amended by subsequent Acts, is amended—

(a) (i) by inserting next after subsection one of section one hundred and one the following new subsection:—

15 (1A) The application need not be served upon the Justice or Justices personally, but shall be deemed to have been properly made if served upon the clerk of the court at which the determination of the Justice or Justices was made.

20 (ii) by inserting at the end of the same section the following new subsection:—

25 (3) Written notice that application has been made for a case to be stated and signed pursuant to subsection one of this section shall be given by the appellant to the respondent within the time prescribed by rules of the Supreme Court.

30 (b) by omitting from subsection one of section one hundred and two the words "Before any such case is stated and delivered to the appellant, he shall enter into a recognizance" and by inserting in lieu thereof the words "The appellant shall, within twenty-eight days after the determination appealed from, enter into a recognizance";

Amendment of Act No. 27, 1902.

Sec. 101. (Party dissatisfied with determination of Justices on point of law may apply to have a case stated for opinion of Supreme Court.)

Sec. 102. (Before case is stated appellant to give security.)

(c)



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

Substituted  
sec. 105.

5      105. When the appellant has received the case or has been notified in writing that it has been stated and signed and is available, he shall—

Appellant  
to transmit  
case to  
Prothono-  
tary and  
give notice.

10      (a) within such period thereafter as may be prescribed by rules of the Supreme Court transmit such case to the Prothonotary of the Supreme Court; and

15      (b) within such period and in such manner as may be prescribed by rules of the Supreme Court serve the respondent with such number of copies of the case as may be prescribed by those rules.

20      (d) (i) by omitting from subsection two of section one hundred and seven the words "Supreme Court" and by inserting in lieu thereof the words "Judges of the Supreme Court or any five of them";

Sec. 107.  
(Powers of  
Court may  
be exercised  
by Judge in  
Chambers.)

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

(3) Rules and orders made under this section shall—

25      (a) be published in the Gazette;  
(b) take effect from the date of publication or from a later date to be specified in the rules and orders; and

30      (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

35

If either House of Parliament passes a resolution of which notice has been given at



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at any time within fifteen sitting days after the rules and orders have been laid before such House disallowing any rule or order or part thereof, such rule or order or part shall thereupon cease to have effect.

5

- (e) (i) by omitting from subsection one of section one hundred and twelve the words "apply—
- Sec. 112.  
(Any person aggrieved by conviction or order may apply for prohibition.)
- (a) in all cases to the Supreme Court, or, in vacation, to a Judge thereof;
- (b) in the following cases, whether in term or in vacation, to a Judge—

10

(i) where imprisonment has been directed;

15

(ii) where the fine imposed, or the amount ordered to be paid, or the value of the matter adjudicated upon does not exceed thirty pounds,"

20

and by inserting in lieu thereof the words "apply to the Supreme Court";

- (ii) by inserting at the end of subsection five of the same section the following new paragraph:—

25

Nothing in this subsection—

(a) authorises the Supreme Court to be held by one Judge alone for the purpose of exercising the powers and jurisdiction of the Court on the return of any rule or order granted or made under this section;

30

(b) affects the construction of sections one hundred and fourteen and one hundred and fifteen of this Act;

35

- (iii) by omitting subsection six of the same section;

(f)



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- (f) by omitting section one hundred and fourteen and by inserting in lieu thereof the following section:— Substituted  
sec. 114.

5           114. Subject to any rules of court made by the Judges of the Supreme Court or any five of them, any rule or order granted or made by the Court or a Judge under section one hundred and twelve of this Act may be made returnable before the Court or any such Judge. Before  
whom rule  
to be  
returnable.

- 10           (g) by omitting section one hundred and sixteen and by inserting in lieu thereof the following section:— Substituted  
sec. 116.

15           116. (1) Where so provided by rules of court made by the Judges of the Supreme Court or any five of them, any person aggrieved by any decision or determination by one Judge alone made pursuant to sections one hundred and fourteen and one hundred and fifteen of this Act may appeal therefrom to the Court. Certain  
rules and  
writs made  
by a Judge  
may be  
reviewed  
by the  
Court.

20           Any such appeal shall be in accordance with rules of court made by the Judges of the Supreme Court or any five of them.

25           (2) A Judge before whom any rule or order is made returnable pursuant to section one hundred and fourteen of this Act may, at any stage of the proceedings, refer the matter to the Court to be determined.

- (h) by inserting next after section one hundred and seventeen the following new section:— New  
sec. 117A.

30           117A. The provisions of subsection three of section one hundred and seven of this Act apply to and in respect of rules of court made under this Division of this Part. Publication,  
commence-  
ment and  
disallowance  
of rules.

(i)



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- (i) (i) by inserting next after subsection two of section one hundred and twenty-two the following new subsection:—

Sec. 122.  
(Appeal to  
Quarter  
Sessions.)

5 (2A) Where but for the provisions of this subsection an appeal may not proceed by reason only that—

(a) the appellant was not served with notice of the time and place of hearing of the appeal; and

10 (b) the Court is not satisfied that—

(i) the appellant had knowledge of such time and place; or

15 (ii) where the Court is satisfied that he had such knowledge, he would not be prejudiced by the non-service,

20 the appeal may nevertheless proceed if the Court is satisfied that the appellant is evading service of the notice or cannot, after diligent search and inquiry, be found.

25 (ii) by inserting in subsection four of the same section after the word “hearing” the words “or, where a later address has been notified by any such person or his attorney to the Clerk of the Peace, to the last address so notified”.

7. The Commercial Causes Act, 1903, is amended—

Amendment  
of Act No.  
19, 1903.  
Subst.  
sec. 3.

30 (a) by omitting section three and by inserting in lieu thereof the following section:—

35 2. Commercial causes mean causes arising out of the ordinary transactions of merchants and traders, such as those relating to the construction of mercantile documents, export and import of merchandise, affreightment, insurance, banking and mercantile agency and mercantile usages

Commercial  
causes.



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usages, and include all causes of the kind held to be commercial causes before the commencement of the Supreme Court Procedure Act, 1957.

- 5 (a) by omitting from section three the word "include" and by inserting in lieu thereof the word "mean". Sec. 3.  
(Commercial causes.)
- (b) (i) by inserting at the end of paragraph (d) of section six the words— Sec. 6.  
(Directions.)
- 10 "or lists of documents to be exchanged and inspection allowed";
- (ii) by omitting paragraph (g) of the same section and by inserting in lieu thereof the following paragraph:—
- 15 (g) order the trial to be either with or without a jury or that special issues be tried by a jury.
- (c) (i) by omitting from section eight the word "three" and by inserting in lieu thereof the word "five"; Sec. 8.  
(Rules of Court.)
- 20 (ii) by inserting at the end of the same section the following new subsection:—
- (2) All such rules of court shall—
- (a) be published in the Gazette;
- 25 (b) take effect from the date of publication or from a later date to be specified in the rules; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.
- 30
- 35 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House
- 78—B disallowing



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disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

8. The Matrimonial Causes Act 1899, as amended by  
5 subsequent Acts, is amended by omitting subsection four  
of section ninety-one and by inserting in lieu thereof the  
following subsection:—

Amendment  
of Act No.  
14, 1899.

Sec. 91.

(Power to  
make rules.)

(4) All rules made under this section shall—

- (a) be published in the Gazette;
- 10 (b) take effect from the date of publication or  
from a later date to be specified in the rules;  
and
- 15 (c) be laid before both Houses of Parliament  
within fourteen sitting days after publica-  
tion if Parliament is in session, and if not,  
then within fourteen sitting days after the  
commencement of the next session.

20 If either House of Parliament passes a resolution  
of which notice has been given at any time within  
fifteen sitting days after the rules have been laid  
before such House disallowing any rule or part  
thereof, such rule or part shall thereupon cease to  
have effect.

9. The Supreme Court Procedure Act, 1900, as  
25 amended by subsequent Acts, is amended by omitting  
section seventeen and by inserting in lieu thereof the  
following section:—

Amendment  
of Act No.  
49, 1900.

Substituted  
sec. 17.

17. All rules of court made under the powers  
herein contained shall—

- 30 (a) be published in the Gazette;
- (b) take effect from the date of publication or  
from a later date to be specified in the  
rules; and
- 35 (c) be laid before both Houses of Parliament  
within fourteen sitting days after publica-  
tion if Parliament is in session, and if  
not

Rules to  
be published  
in Gazette  
and laid  
before  
Parliament,  
&c.



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not, then within fourteen sitting days after the commencement of the next session.

5 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

10 **10.** The Jury Act, 1912, as amended by subsequent Acts, is amended by inserting in subsection two of section fifty-five after the word "capital" the words "or murder".

Amendment of Act No. 31, 1912.  
Sec. 55.  
(Challenge in criminal cases.)

15 **11.** The Crimes Act, 1900, as amended by subsequent Acts, is amended by omitting from subsection three of section five hundred and sixty-eight the words "not punishable with death," and by inserting in lieu thereof the words "(other than a crime or misdemeanour which is punishable with death or which was so punishable immediately before the commencement of the Crimes Act, 1955),".

Amendment of Act No. 40, 1900.  
Sec. 568.  
(Jurisdiction, &c., of Courts of Quarter Sessions.)

~~11.~~ **12.** The Land and Valuation Court Act, 1921, as amended by subsequent Acts, is amended—

Amendment of Act No. 10, 1921.

- 25 (a) (i) by inserting in subsection three of section four after the word "powers" the word  
", immunities";
- (ii) by inserting in subsection (3A) of the same section after the word "powers" the word  
", immunities";
- 30 (iii) by omitting the proviso to paragraph (a) of subsection five of the same section;
- (iv) by omitting the proviso to paragraph (a) of subsection six of the same section;

Sec. 4.  
(Constitution of Land and Valuation Court and appointment of judge.)

(b)



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(b) by inserting next after section nine the following new section:—

New  
sec. 9A.

5 9A. (1) The court may in every case obtain the assistance of conveyancing counsel, accountants, engineers, actuaries, or other scientific persons the better to enable it to determine any matter at issue in any proceeding before it and may act upon the certificate of any such person.

Assistance  
of scientific  
persons.  
cf. Act. No.  
24, 1901,  
s. 7.

10 (2) The allowance in respect of fees to such persons shall be regulated by the registrar, subject to an appeal to the court.

~~12.~~ 13. The Acts (as amended by subsequent Acts, if any) specified in the first and second columns of the First Schedule to this Act are amended as respectively specified in the third column of that Schedule.

Amendment  
of Acts  
specified  
in First  
Schedule.

~~13.~~ 14. (1) Rules of court, general rules and orders, rules, orders or regulations made or promulgated by the Supreme Court of New South Wales or any Judge or Judges thereof by virtue of any power howsoever conferred on such Supreme Court, Judge or Judges, and in force at the commencement of this Act, shall not be affected by the repeal and substitution by this Act of any provision under which they were made, or by any alteration in the number of Judges authorised to make them, or by the provisions of this Act requiring them to be published in the Gazette and laid before both Houses of Parliament and making them subject to disallowance by resolution of either House of Parliament but may be amended, repealed or replaced by rules of court, general rules and orders, rules, orders or regulations, as the case may be, lawfully made after that commencement.

Savings.

(2) Unless the contrary intention appears, the repeal of any enactment by this Act shall not revive anything not in force or existing at the time at which the repeal takes effect.



*Supreme Court Procedure.*

## FIRST SCHEDULE.

Sec. 12.

Reference to Act.	Short Title.	Amendment.
No. 21, 1899	Common Law Procedure Act, 1899.	<p>Section 1— Omit the matter relating to Part XV.</p> <p>Section 4, subsection (1)— (a) Insert after the words "jurisdiction of the Court" the words "or if the defendant is a corporation residing or incorporated or registered within the jurisdiction of the Court or if the defendant is a corporation registered under Part VI of the Companies Act, 1936, as amended by subsequent Acts" (b) Omit the words "Form No. 1 contained in the Second Schedule to this Act" and insert in lieu thereof the words "form prescribed".</p> <p>Section 4, subsection (2)— Omit the subsection.</p> <p>Section 10— Omit the words "Form No. 2 contained in the Second Schedule hereto, or to the like effect" and insert in lieu thereof the words "the form prescribed".</p> <p>Section 11— Omit the word "six" and insert in lieu thereof the word "twelve".</p> <p>Section 12, subsection (1)— (a) Omit the word "six" and insert in lieu thereof the word "twelve". (b) Omit the words "including the day of such date".</p> <p>Section 12, subsection (2)— (a) Omit the word "six" and insert in lieu thereof the word "twelve".</p>

FIRST



*Supreme Court Procedure.***FIRST SCHEDULE—continued.**

Reference to Act.	Short Title.	Amendment.
		<p>Section 12, subsection (2)—<i>continued.</i></p> <p>(b) Omit the words “by being marked by the proper officer with the date of such renewal upon delivery to him by the plaintiff or his attorney of a praecipe in such form as before the commencement of the Common Law Procedure Act of 1853 was required to be delivered upon the obtaining of an alias writ” and insert in lieu thereof the words “by being marked as prescribed”.</p> <p>Section 14— Omit the words “by the proper officer”.</p> <p>Sections 17, 18 and 19— Omit these sections and insert in lieu thereof the following sections:—</p> <p>17. The service of a writ of summons shall, wherever it is practicable, be personal, but where prompt personal service cannot be effected substituted service may be effected as prescribed.</p> <p>18. (1) In any action against a defendant who—</p> <p>(a) being a corporation is not resident incorporated or registered within the jurisdiction of the Court and is not registered under Part VI of the Companies Act, 1936, as amended by subsequent Acts; or</p> <p>(b) being any other person is not resident within the jurisdiction of the Court,</p> <p>the plaintiff may issue a writ of summons in the form prescribed.</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Sections 17, 18 and 19—<i>continued.</i></p> <p>(2) Either the writ of summons or a notice thereof in the form prescribed shall be served upon the defendant as may be prescribed.</p> <p>(3) Until otherwise prescribed the writ of summons shall be served in the following cases:—</p> <p>(a) Where the writ of summons may be served under the provisions of the Service and Execution of Process Act 1901 (as amended by subsequent Acts) of the Parliament of the Commonwealth.</p> <p>(b) Where the defendant is a British subject or being a corporation is incorporated in the United Kingdom or in Australia or in any of the other realms and territories of Her Majesty the Queen.</p> <p>(c) Where the defendant is in the United Kingdom or in Australia or in any of the other realms and territories of Her Majesty the Queen.</p> <p>(4) If the defendant does not appear to the writ of summons within the time prescribed, a Judge, upon being satisfied—</p> <p>(a) that there is a cause of action which arose within the jurisdiction, or in respect of the breach of a contract made within the jurisdiction; and</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Sections 17, 18 and 19—<i>continued.</i></p> <p>(b) that service of the writ or notice thereof, as the case may be, was duly effected or that the writ or the notice thereof came to the defendant's knowledge,</p> <p>may, if he thinks fit, by order, permit the plaintiff to proceed to sign final or interlocutory judgment in such manner and subject to such conditions as may be prescribed or as he in all the circumstances may deem fit.</p> <p>Section 20—</p> <p>Insert after the word "by" the words "or under".</p> <p>Section 21—</p> <p>Omit the words "If either of the Forms of writ of summons Nos. 1, 3, and 4, contained in the Second Schedule hereto," and insert in lieu thereof the words "If one of the prescribed forms of writ of summons".</p> <p>Section 23—</p> <p>Omit the section.</p> <p>Section 24, subsection (1)—</p> <p>(a) Insert after the word "Court" the words "or being a corporation is resident or incorporated or registered within that jurisdiction or is registered under Part VI of the Companies Act, 1936, as amended by subsequent Acts".</p> <p>(b) Omit the words "Form No. 5 contained in the Second Schedule hereto, or to the like effect" and insert in lieu thereof the words "form prescribed".</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 25, subsection (1)— Omit the words "Form No. 6 contained in the Second Schedule hereto" and insert in lieu thereof the words "form prescribed".</p> <p>Section 29— Omit the section and insert in lieu thereof the following section :— 29. Appearance to a writ of Mode of summons or under the authority appearance. of this Act shall be entered by filing a notice of appearance in the form and manner prescribed.</p> <p>Sections 32 and 33— Omit the sections.</p> <p>Section 51, subsection (1)— Insert at the end thereof the words "in the manner prescribed".</p> <p>Section 51, subsections (2) and (3)— Omit the subsections.</p> <p>Section 69— After the word "shall" insert the words ", unless a Judge otherwise orders,".</p> <p>Sections 70 and 71— Omit the sections and insert in lieu thereof the following section :— 70. Every declaration shall Commence- commence and conclude in the ment and forms prescribed. conclusion of declaration</p> <p>Section 73— Omit the section and insert in lieu thereof the following section :— 73. The defendant shall plead to Time for the plaintiff's declaration within pleading to the time and in the manner declaration. prescribed.</p> <p>Section 76— Omit the section.</p> <p>Section 81— Omit the section.</p>

FIRST



*Supreme Court Procedure.***FIRST SCHEDULE—continued.**

Reference to Act.	Short Title.	Amendment.
		<p>Section 88, subsection (1)— Omit the words “Form No. 15 contained in the Second Schedule hereto, or to the like effect” and insert in lieu thereof the words “form prescribed”.</p> <p>Section 100, subsection (1)— Omit the words “Form No. 16 contained in the Second Schedule hereto, or to the like effect,” and insert in lieu thereof the words “form prescribed”.</p> <p>Section 100, subsection (3)— Omit the words “Form No. 17 contained in the said Schedule, or to the like effect” and insert in lieu thereof the words “form prescribed”.</p> <p>Section 104, subsection (1)— Omit the words “, or by so many and such of the persons summoned as jurors for the trial as may be thought desirable,”.</p> <p>Sections 121 to 128 inclusive— Omit the sections.</p> <p>Section 129, subsection (1)— Omit the words “it shall not be necessary to issue a writ of inquiry, but”.</p> <p>Section 129, subsection (2)— Omit “in the same manner as before a jury upon a writ of inquiry”.</p> <p>Section 133— Omit the section and insert in lieu thereof the following section :— 133. A party in whose favour a verdict has been given, a nonsuit granted or a judgment directed to be entered may sign judgment in the manner and time prescribed.</p>

Signing  
judgment.

FIRST



*Supreme Court Procedure.***FIRST SCHEDULE—continued.**

Reference to Act.	Short Title.	Amendment.
		<p>Section 134— Omit the section and insert in lieu thereof the following section:— 134. A party in whose favour Execution judgment has been signed may after issue execution thereon unless judgment a Judge otherwise orders : signed. Provided that where ten years have elapsed since judgment was signed or any change has taken place by death or otherwise in the parties entitled or liable to execution, execution shall not issue without the leave of a Judge. The party alleging himself to be entitled to execution may apply for such leave in the manner prescribed.</p> <p>Part XV— Omit the Part.</p> <p>Section 156— Omit the words “, so as such judgment be entered within two terms after such verdict”.</p> <p>Section 157, subsections (3), (4) and (5)— Omit the subsections and insert in lieu thereof the following subsection :— (3) In any such case the action may be maintained by the executor or administrator mentioned in subsection one of this section or against the executor or administrator mentioned in subsection two of this section or by the firstmentioned executor or administrator against the secondmentioned executor or administrator, as the case may be, upon the filing of a suggestion of the death of the plaintiff or defendant or both, as the case may be, and</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 157, subsections (3), (4) and (5)—<i>continued.</i></p> <p>representation. A copy of any suggestion so filed shall be served upon all other parties to the action and the truth of the suggestion shall not be in issue unless notice of such issue is given to the person filing the suggestion within fourteen days of service of such copy or within such time as may be prescribed.</p> <p>Section 159, subsection (2)— Omit the words “or writ of revivor pursuant to this Act”.</p> <p>Section 184, subsection (1)— Omit the word “writ” and insert in lieu thereof the word “summons”.</p> <p>Section 184, subsection (2)— Omit the subsection and insert in lieu thereof the following subsection :— (2) Such summons shall be issued, and the procedure thereon shall be, in the manner prescribed.</p> <p>Section 186— Omit the section.</p> <p>Section 210, subsection (1)— (a) Omit the words “Form No. 21 contained in the Second Schedule hereto, or to the like effect” and insert in lieu thereof the words “form prescribed”. (b) Omit the words “sixteen days” and insert in lieu thereof the words “the time prescribed”.</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 210, subsection (2)— Omit the word “three” and insert in lieu thereof the word “twelve”.</p> <p>Section 212— Omit the section and insert in lieu thereof the following section :— 212. The writ shall, wherever practicable, be served personally on the persons named therein but where prompt personal service cannot be effected substituted service may be effected in the manner prescribed or in such manner as may be provided for the purpose by any other Act. <span style="float: right;">Service of writ.</span></p> <p>Section 219— (a) Insert after the word “judgment” where firstly occurring the words “in the form prescribed”. (b) Omit the words “Such judgment if for all may be in the Form No. 22 contained in the Second Schedule hereto, or to the like effect, and if for part may be in the Form No. 23 contained in the said Schedule, or to the like effect.”</p> <p>Section 220, subsection (2)— Omit the subsection and insert in lieu thereof the following subsection :— (2) Such issue may be in the form prescribed.</p> <p>Section 221— Omit the words “used before the commencement of the Common Law Procedure Act of 1853” and insert in lieu thereof the word “prescribed”.</p> <p>Section 223— Omit the section.</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 229— Omit the words “within such time as the Court or Judge before whom the cause is tried shall order, and if no such order be made then on the fifth day in term after the verdict or within fourteen days after such verdict whichever shall first happen” and insert in lieu thereof the words “at such time as may be prescribed and in the manner prescribed”.</p> <p>Section 243— Omit the section and insert in lieu thereof the following section :— 243. The claimant may at any Discontin- time discontinue the action as to uance of one or more of the defendants action. in the manner prescribed.</p> <p>Section 245— Omit the section and insert in lieu thereof the following section :— 245. Where an appearance has Judgment been entered and the claimant for not omits to set the action down for proceeding trial in the manner and within the to trial after time prescribed the defendant notice. may give him such notice as may be prescribed to set the action down within a time prescribed for this purpose and if the claim- ant fails so to do the defendant may suggest such failure and sign judgment in the manner pre- scribed.</p> <p>Section 246— Omit the words “Form No. 28 contained in the Second Schedule hereto, or to the like effect” and insert in lieu thereof the words “form prescribed”.</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Sections 252, 253 and 254— Omit the sections and insert in lieu thereof the following sections :—</p> <p>252. Every application for an Application order nisi for a writ of habeas for order nisi corpus shall be made to a Judge. for writ of habeas corpus. Such application may be made ex parte in the manner prescribed.</p> <p>253. (1) Every order nisi for a Return of writ of habeas corpus shall be order nisi. returnable before a Judge sitting in public chambers whether in Term or not unless the Judge considers that it should be returnable before the Full Court.</p> <p>(2) On the return of such order the Judge or the Court may dispose of the case as the circumstances appear to require and may make such order as to costs as the Judge or Court thinks fit.</p> <p>254. Any order made by a Appeal Judge under section two hundred and fifty-two or two hundred and fifty-three of this Act shall be subject to appeal to the Full Court within the same time and in the same manner as prescribed for motions for a new trial.</p> <p>Section 263— Omit the section.</p> <p>Section 266— Omit the words "The lowest scale shall extend to all cases not exceeding fifty pounds, the second scale to all cases above fifty and not exceeding one hundred pounds, and the highest scale to all other cases."</p> <p>Section 268, subsections (1) and (2)— After the words "The Judges" insert the words "or any five of them".</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
No. 29, 1902	Arbitration Act, 1902.	Sections 269 and 270— Omit the sections. Second Schedule— Omit the Schedule. Section 10— Insert after the words “ submission may ” the words “ , by leave of a Judge,”.
No. 24, 1902	Arrest on Mesne Process Act, 1902.	Section 5, paragraph (b)— Omit the word “ twenty ” and insert in lieu thereof the words “ two hundred ”. Section 11— Omit the section and insert in lieu thereof the following section :— 11. (1) Any person in respect of Application whom a special order is made under for order to section five of this Act may apply set aside to a Judge for an order on the special order and writ or plaintiff to show cause why the for discharge. special order and any writ issued thereunder should not be set aside and for an order staying proceedings on the special order and any such writ in the meantime. (2) Any person arrested upon a writ of capias may apply to a Judge at any time after such arrest for an order on the plaintiff to show cause why such person should not be discharged out of custody. Section 12— Omit the section and insert in lieu thereof the following section :— 12. Any Judge may, upon the Hearing of hearing of the application, make application. such order therein as he thinks fit and direct that the costs of the application be paid by either party.



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
No. 8, 1901	Judgment Creditors' Remedies Act, 1901.	<p>Section 13— Omit "such order" and insert in lieu thereof the words "order made under section twelve of this Act".</p> <p>Section 27, subsection (1)— (a) After the words "the Supreme Court" insert the words "or in a District Court". (b) Omit the words "of the said Court" and insert in lieu thereof the words "of the Supreme Court or the District Court, as the case may be,".</p> <p>Section 31— Omit the words "of the said Court" and insert in lieu thereof the words "of the Supreme Court or the District Court, as the case may be".</p>
No. 35, 1900	Supreme Court and Circuit Courts Act, 1900.	<p>Section 1— Omit the matter relating to Parts IV and V and insert in lieu thereof the following matter :— PART IV.—<i>Sittings of Court elsewhere than at Sydney—</i> ss. 22-33. PART IVA.—<i>Gaol Delivery—</i> s. 33A.</p> <p>Section 19, paragraph (b)— Omit the paragraph. Insert in Part IV immediately before section 22 the heading "SITTINGS OF COURT ELSEWHERE THAN AT SYDNEY." Insert next after Part IV the following new Part :— PART IVA. GAOL DELIVERY.</p>



*Supreme Court Procedure.***FIRST SCHEDULE—continued.**

Reference to Act.	Short Title.	Amendment.
		<p>33A. The governor of each prison shall, at the times prescribed by rules of court, make returns in writing to the Supreme Court, Sydney, as to all persons detained in such prison, otherwise than in pursuance of a sentence, giving the particulars required by such rules. If he fails to make such returns, he may be ordered by the Court to pay a fine not exceeding five hundred pounds.</p> <p>The Court shall, after the receipt of such returns with respect to a prison, deliver such prison.</p> <p>For the purpose aforesaid the Court may be constituted by one Judge sitting in open court in the exercise of the criminal jurisdiction of the court.</p> <p>Except as aforesaid, it shall not be obligatory on the Court or a Judge to deliver any prison, or for a governor of a prison, unless so directed by the Court or a Judge, to make any such returns.</p> <p>Part V— Omit the Part.</p> <p>Section 39— Omit the word "three" and insert in lieu thereof the word "five".</p> <p>Section 39A, paragraph (a)— Omit the word "now".</p>
No. 9, 1912	Supreme Court and Circuit Courts (Amendment) Act, 1912.	Section 8— Omit the section.



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
No. 10, 1921	Land and Valuation Court Act, 1921.	Section 13, subsection (1)— Omit the subsection and insert in lieu thereof the following subsection :— (1) All process issuing out of the court shall be in the form prescribed, and be signed by the officer issuing the process and marked with the court office stamp.
No. 16, 1900	Sheriff Act, 1900	Section I— Omit the matter relating to Part IV. Part IV— Omit the Part.
No. 49, 1900	Supreme Court Procedure Act, 1900.	Sections 12 and 13— Omit these sections. Section 14— Omit the word " three " and insert in lieu thereof the word " five ". Section 16— Omit the words " in the Schedule to this Act, or ". Schedule— Omit the Schedule.
No. 31, 1912	Jury Act, 1912.	Section 32, subsection (2)— (a) Omit the words " and seal ". (b) Insert at the end thereof the words " or of the prothonotary thereof ". Section 32, subsection (3)— Omit the words " and seal ". Fifth Schedule— Omit the words " and seal ".
No. 42, 1924	Administration of Justice Act, 1924.	Section 14— Omit the section Schedule— Omit the Schedule.

SECOND



*Supreme Court Procedure.*

## SECOND SCHEDULE.

Sec. 2.

## CITATION OF ACTS.

First Column.	Second Column.
Administration of Justice Act, 1924.	Administration of Justice Act, 1924-1957.
Arbitration Act, 1902.	Arbitration Act, 1902-1957.
Arrest on Mesne Process Act, 1902.	Arrest on Mesne Process Act, 1902-1957.
Commercial Causes Act, 1903.	Commercial Causes Act, 1903-1957.
Common Law Procedure Act, 1899.	Common Law Procedure Act, 1899-1957.
Equity Act, 1901.	Equity Act, 1901-1957.
Judgment Creditors' Remedies Act, 1901.	Judgment Creditors' Remedies Act, 1901-1957.
Jury Act, 1912.	Jury Act, 1912-1957.
Justices Act, 1902.	Justices Act, 1902-1957.
Land and Valuation Court Act, 1921.	Land and Valuation Court Act, 1921-1957.
Matrimonial Causes Act 1899.	Matrimonial Causes Act, 1899-1957.
Sheriff Act, 1900.	Sheriff Act, 1900-1957.
Supreme Court and Circuit Courts Act, 1900.	Supreme Court and Circuit Courts Act, 1900-1957.
Supreme Court Procedure Act, 1900.	Supreme Court Procedure Act, 1900-1957.



*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY,  
and, having this day passed, is now ready for presentation to the  
LEGISLATIVE COUNCIL for its concurrence.*

ALLAN PICKERING,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 28 February, 1957.*

## New South Wales



ANNO SEXTO

## ELIZABETHÆ II REGINÆ

\*\*\*\*\*

Act No. , 1957.

An Act to make further provision in respect of the powers of the Supreme Court in certain of its jurisdictions and in respect of the practice and procedure of that Court; for these and other purposes to amend the Common Law Procedure Act, 1899, the Supreme Court and Circuit Courts Act, 1900, the Supreme Court Procedure Act, 1900, the Judgment Creditors' Remedies Act, 1901, the Equity Act, 1901, the Justices Act, 1902, the Commercial Causes Act, 1903, and certain other Acts; and for purposes connected therewith.



*Supreme Court Procedure.*

**B**E it enacted by the Queen's Most Excellent Majesty,  
by and with the advice and consent of the Legis-  
lative Council and Legislative Assembly of New South  
Wales in Parliament assembled, and by the authority of  
5 the same, as follows:—

**1.** (1) This Act may be cited as the "Supreme Court  
Procedure Act, 1957."

Short title  
and  
commence-  
ment.

(2) This Act shall commence on the first day of  
July, one thousand nine hundred and fifty-seven.

**10 2.** Each Act specified in the first column of the Second  
Schedule to this Act and as amended by subsequent Acts,  
if any, and by this Act may be cited in the manner speci-  
fied in the second column of that Schedule opposite the  
reference to that Act in the first column.

Citation of  
amended  
Acts.

**15 3.** The Common Law Procedure Act, 1899, as  
amended by subsequent Acts, is amended—

Amendment  
of Act  
No. 21, 1899.

(a) (i) by inserting in section fifteen after the word  
"service" where firstly occurring the words  
"or within such enlarged time as the Court  
20 or a Judge may order";

Sec. 15.  
(Indorse-  
ment of  
service.)

(ii) by inserting in the same section after the  
words "under this Act" the words—

25 "Any such order may be made although  
application therefor is not made until after  
the expiration of three days after such  
service.";

**30 (b)** by omitting from subsection one of section one  
hundred and two the words "upon an affidavit  
by such party or his attorney of his belief that  
any document to the production of which he is  
entitled for the purpose of discovery or other-  
wise is in the possession or power of the opposite  
party,";

Sec. 102.  
(Discovery  
of  
documents.)

(c)



*Supreme Court Procedure.*

- (c) by inserting next after section one hundred and eighty-four the following new section:— New sec. 184A.

5 184A. (1) Whenever in any proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Judge may order such third person to appear and to state the nature and particulars of his claim upon such debt. Lien or claim of third person on debt.

15 (2) After hearing the allegations of any third person under any such order as is mentioned in subsection one of this section, and of any other person who by the same or any subsequent order is ordered by the Judge to appear, or in case of such third person not appearing when ordered, the Judge may order execution to issue as provided in section one hundred and eighty-three of this Act, or may order any issue or question arising to be tried or determined, and may bar the claim of such third person or make such other order as he may think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Judge shall think just and reasonable.

- (d) by omitting section two hundred and twenty-eight and by inserting in lieu thereof the following section:— Substituted sec. 228.

30 228. Upon a finding for the claimant, judgment may be signed and execution issue for the recovery of the possession of the property or such part thereof as the jury finds the claimant entitled to, and for costs, at such time as may be prescribed and in the manner prescribed. Judgment upon finding for claimant.

(e)



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*Supreme Court Procedure.*

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5 (e) (i) by omitting from subsection three of section two hundred and sixty-eight the words "or before the Colonial Parliament at any time before the commencement of the operation of any such rule";

Sec. 268.  
(General  
rules may  
be made  
by the  
Judges.)

(ii) by inserting next after subsection three of the same section the following new subsection:—

10 (3A) All general rules and orders, rules, orders or regulations made pursuant to the foregoing provisions of this section and all rules made pursuant to section two hundred and sixty-six of this Act shall—

(a) be published in the Gazette;

15 (b) take effect from the date of publication or from a later date to be specified in the general rules and orders, rules, orders or regulations; and

20 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

30 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the general rules and orders, rules, orders or regulations have been laid before such House disallowing any general rule or order, or rule, order or regulation, or part thereof, such general rule or order, or rule, order or regulation, or part shall thereupon  
35 cease to have effect.



*Supreme Court Procedure.*

4. The Supreme Court and Circuit Courts Act, 1900, as amended by subsequent Acts, is amended—

Amendment  
of Act  
No. 35,  
1900.

- (a) (i) by omitting the proviso to subsection one of section nine;  
(ii) by omitting subsection four of the same section;

Sec. 9.  
(Puisne  
Judges.)

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

Substituted  
sec. 20.

20. (1) The Court may be held by one Judge alone for the disposal of applications for a rule or order nisi for prohibition, mandamus, or certiorari notwithstanding that it may be term time, or that the Court held before two or more Judges may be at the same time sitting in banco.

Powers of  
Court may  
be exercised  
by single  
Judge in  
certain  
cases.

Nothing in this subsection—

- (a) authorises the Court to be held by one Judge alone for the purpose of exercising the powers and jurisdiction of the Court on the return of a rule or order nisi for prohibition, mandamus or certiorari; or

- (b) affects the construction of subsection two of this section.

(2) The powers and jurisdiction of the Court on the return of a rule or order nisi for prohibition, mandamus or certiorari to make absolute, discharge, or make any order whatsoever in respect of, the rule or order nisi (whether made by the Court or a Judge) may be exercised by one Judge alone—

- (a) at any time when the Court is not sitting in banco;

- (b) in cases of exigency when the Court is sitting in banco.

(3) Any person aggrieved by any decision or determination by one Judge alone made pursuant to subsection one or two of this section may appeal therefrom to the Court. Any such appeal shall be in accordance with rules of court.

(4)



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*Supreme Court Procedure.*

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5 (4) The Judges or any five of them may by rules of court authorise the exercise (subject to those rules) by a Judge, in vacation or in any case of exigency, of any power which can only under ordinary circumstances be exercised by the Court.

The power to make rules of court conferred by this subsection does not include power to make rules of court with respect to—

10 (a) applications for rules or orders nisi for prohibition, mandamus or certiorari;

15 (b) the exercise in the circumstances mentioned in subsection two of this section of the powers and jurisdiction conferred by that subsection upon one Judge alone.

20 (c) (i) by inserting in section forty after the word "shall" the words "subject to subsection two of this section,"; Sec. 40. (Rules to have force of law.)

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

25 (2) All rules and orders so made and all rules made under section twenty of this Act shall—

(a) be published in the Gazette;  
(b) take effect from the date of publication or from a later date to be specified in the rules and orders or rules; and

30

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

35

If



*Supreme Court Procedure.*

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules and orders or rules have been laid before such House disallowing any rule or order or part thereof such rule or order or part shall thereupon cease to have effect.

5. (1) The Common Law Procedure Act, 1899, as amended by subsequent Acts, is further amended—

Further amendment of Act No. 21, 1899.

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

Substituted sec. 95.

95. (1) No action at any time pending in the Court shall be restrained by injunction or order of the Court in equity, but every matter of equity on which an injunction against the prosecution of any such action might have been obtained, whether unconditionally or on any terms or conditions, before the commencement of the Supreme Court Procedure Act, 1957, may be relied on by way of defence thereto:

Equitable defence or stay instead of injunction, &c. cf. 15 & 16 Geo. V, c. 49, s. 41.

Provided that—

(a) nothing in this Act shall disable the Court or a Judge, if it or he thinks fit so to do, from directing a stay of proceedings in any action pending;

(b) any person, whether a party or not to any such action, who would before the commencement of the Supreme Court Procedure Act, 1957, have been entitled to apply to the Court in equity to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule or order, in contravention of which all or any part of the proceedings in the action have been taken, may apply



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*Supreme Court Procedure.*

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5                    apply to the Court or a Judge in the prescribed manner for a stay of proceedings in the action, either generally, or so far as may be necessary for the purposes of justice, and the Court or the Judge, as the case may be, shall thereupon make such order as shall be just.

10                  (2) Any such defence as is mentioned in subsection one of this section shall state the facts which entitle the defendant to relief and the Court may receive such defence by way of plea.

15                  Such plea shall begin with the words "for defence on equitable grounds," or words to the like effect.

(b) by omitting section ninety-eight and by inserting in lieu thereof the following section:—

Substituted  
sec. 98.

20                  98. (1) If it appears to the Court or Judge at any stage of an action that any such equitable plea or equitable replication pleaded in the action cannot be dealt with by a Court of law so as to do justice between the parties, the Court or Judge shall not strike out the plea or replication but shall make an order that the action be transferred into the jurisdiction of the Court in equity.

Transfer  
of certain  
actions into  
equity  
jurisdiction.

25                    The Court or the Judge when making the order may impose such terms as to costs and otherwise as to the Court or Judge seems reasonable.

30                    (2) Where an order is made under subsection one of this section the whole record of the action shall be transferred into the jurisdiction of the Court in equity.

(3)



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*Supreme Court Procedure.*

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(3) After an action has been transferred into the jurisdiction of the Court in equity under this section—

- 5 (a) any Judge exercising that jurisdiction may, from time to time, make such orders as he considers necessary relating to amendments, the filing of fresh pleadings, the settling of issues for trial, or otherwise to enable the action to be disposed of in that jurisdiction; and
- 10
- (b) the action shall, subject to paragraph (a) of this subsection, be disposed of according to the practice and procedure of the Court in equity.
- 15

In so far as the costs of the proceedings before transfer have not been dealt with under subsection one of this section, the Court in equity may deal with those costs.

- 20 (2) The Equity Act, 1901, as amended by subsequent Acts, is amended—

Amendment  
of Act No.  
24, 1901.

- (a) (i) by omitting from section eight the words “any proceeding before it” and by inserting in lieu thereof the words “any suit or proceeding before it or has to be decided in any action transferred into its jurisdiction under section ninety-eight of the Common Law Procedure Act, 1899-1957,”;
- 25

Sec. 8.  
(Power to  
decide legal  
titles, &c.)

- (ii) by omitting from the same section the words “no suit in equity” and by inserting in lieu thereof the words “no suit or proceeding in equity and no action so transferred”;
- 30

(b)



*Supreme Court Procedure.*

- (b) by inserting next after section eight the following new section:— New sec. 8A.

5        8A. (1) If it appears to the Court at any stage of any suit or proceeding in the Court that the Court has no jurisdiction to deal with the subject matter of the suit or proceeding and that the appropriate remedy in respect thereof lies in the Common Law jurisdiction of the Supreme Court, the Court shall make an order  
10        that the suit or proceeding be transferred into that jurisdiction.

The Court when making the order may impose such terms as to costs and otherwise as to the Court seems reasonable.

15        (2) Where an order is made under subsection one of this section the whole record of the suit or proceeding shall be transferred into the Common Law jurisdiction of the Supreme Court.

20        (3) After a suit or proceeding has been transferred into the Common Law jurisdiction of the Supreme Court under this section—

25        (a) any Judge exercising that jurisdiction may, from time to time, make such orders as he considers necessary relating to amendments, the filing of fresh pleadings, the settling of issues for trial, or otherwise to enable the suit or proceeding to be disposed of in that  
30        jurisdiction; and

(b) the suit or proceeding shall, subject to paragraph (a) of this subsection, be disposed of according to the practice and procedure of the Supreme Court  
35        at Common Law.

In so far as the costs of the proceedings before transfer have not been dealt with under subsection



*Supreme Court Procedure.*

subsection one of this section, the Judge presiding at the trial or the Supreme Court at Common Law may make such order as to those costs as may be just.

- 5 (c) by inserting at the end of section nine the following new paragraph:—
- Sec. 9.  
(Power to Court to award damages in certain cases.)
- Nothing in this section shall be construed as limiting the operation of any other section of this Act.

- 10 (d) (i) by omitting from subsection one of section thirty-nine the words "right or claim," and by inserting in lieu thereof the words "equitable or legal right or claim, whether or not connected with the claim of the plaintiff,";
- Sec. 39.  
(Set-off and counter-claim.)

- 15 (ii) by inserting in subsection two of the same section after the words "ought not" the words "in the circumstances of the case";

- 20 (e) by omitting subsection three of section ninety-four and by inserting in lieu thereof the following subsection:—

(3) All rules made under this Act shall—

- (a) be published in the Gazette;
- 25 (b) take effect from the date of publication or from a later date to be specified in the rules; and
- 30 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

35 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof such rule or part shall thereupon cease to have effect.



*Supreme Court Procedure.*

**6.** The Justices Act, 1902, as amended by subsequent Acts, is amended—

Amendment  
of Act No.  
27, 1902.

(a) (i) by inserting next after subsection one of section one hundred and one the following new subsection:—

Sec. 101.  
(Party  
dissatisfied  
with  
determina-  
tion of  
Justices on  
point of  
law may  
apply to  
have a case  
stated for  
opinion  
of Supreme  
Court.)

(1A) The application need not be served upon the Justice or Justices personally, but shall be deemed to have been properly made if served upon the clerk of the court at which the determination of the Justice or Justices was made.

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

(3) Written notice that application has been made for a case to be stated and signed pursuant to subsection one of this section shall be given by the appellant to the respondent within the time prescribed by rules of the Supreme Court.

(b) by omitting from subsection one of section one hundred and two the words "Before any such case is stated and delivered to the appellant, he shall enter into a recognizance" and by inserting in lieu thereof the words "The appellant shall, within twenty-eight days after the determination appealed from, enter into a recognizance";

Sec. 102.  
(Before  
case is  
stated  
appellant  
to give  
security.)

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

Substituted  
sec. 105.

105. When the appellant has received the case or has been notified in writing that it has been stated and signed and is available, he shall—

Appellant  
to transmit  
case to  
Prothono-  
tary and  
give notice.

(a) within such period thereafter as may be prescribed by rules of the Supreme Court transmit such case to the Prothonotary of the Supreme Court; and

(b)



*Supreme Court Procedure.*

5 (b) within such period and in such manner as may be prescribed by rules of the Supreme Court serve the respondent with such number of copies of the case as may be prescribed by those rules.

10 (d) (i) by omitting from subsection two of section one hundred and seven the words "Supreme Court" and by inserting in lieu thereof the words "Judges of the Supreme Court or any five of them";

Sec. 107.  
(Powers of Court may be exercised by Judge in Chambers.)

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

(3) Rules and orders made under this section shall—

15 (a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the rules and orders; and

20 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

30 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules and orders have been laid before such House disallowing any rule or order or part thereof, such rule or order or part shall thereupon cease to have effect.

(e)



*Supreme Court Procedure.*

- (e) (i) by omitting from subsection one of section one hundred and twelve the words "apply—  
 (a) in all cases to the Supreme Court, or, in vacation, to a Judge thereof;  
 5 (b) in the following cases, whether in term or in vacation, to a Judge—  
 (i) where imprisonment has been directed;  
 10 (ii) where the fine imposed, or the amount ordered to be paid, or the value of the matter adjudicated upon does not exceed thirty pounds,"  
 15 and by inserting in lieu thereof the words "apply to the Supreme Court";  
 (ii) by inserting at the end of subsection five of the same section the following new paragraph:—  
 20 Nothing in this subsection—  
 (a) authorises the Supreme Court to be held by one Judge alone for the purpose of exercising the powers and jurisdiction of the Court on the  
 25 return of any rule or order granted or made under this section;  
 (b) affects the construction of sections one hundred and fourteen and one hundred and fifteen of this Act;  
 30 (iii) by omitting subsection six of the same section;  
 (f) by omitting section one hundred and fourteen and by inserting in lieu thereof the following section:—  
 35 114. Subject to any rules of court made by the Judges of the Supreme Court or any five of them, any rule or order granted or made by the Court

Sec. 112.  
 (Any person aggrieved by conviction or order may apply for prohibition.)

Substituted  
 sec. 114.

Before  
 whom rule  
 to be  
 returnable,



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Court or a Judge under section one hundred and twelve of this Act may be made returnable before the Court or any such Judge.

- 5 (g) by omitting section one hundred and sixteen and by inserting in lieu thereof the following section:— Substituted  
sec. 116.

10 116. (1) Where so provided by rules of court made by the Judges of the Supreme Court or any five of them, any person aggrieved by any decision or determination by one Judge alone made pursuant to sections one hundred and fourteen and one hundred and fifteen of this Act may appeal therefrom to the Court. Any such appeal shall be in accordance with rules of court made by the Judges of the Supreme Court or any five of them. Certain  
rules and  
writs made  
by a Judge  
may be  
reviewed  
by the  
Court.

15

20 (2) A Judge before whom any rule or order is made returnable pursuant to section one hundred and fourteen of this Act may, at any stage of the proceedings, refer the matter to the Court to be determined.

- (h) by inserting next after section one hundred and seventeen the following new section:— New  
sec. 117A.

25 117A. The provisions of subsection three of section one hundred and seven of this Act apply to and in respect of rules of court made under this Division of this Part. Publication,  
commence-  
ment and  
disallowance  
of rules.

- 30 (i) (i) by inserting next after subsection two of section one hundred and twenty-two the following new subsection:— Sec. 122.  
(Appeal to  
Quarter  
Sessions.)

(2A) Where but for the provisions of this subsection an appeal may not proceed by reason only that—

- 35 (a) the appellant was not served with notice of the time and place of hearing of the appeal; and
- (b)



*Supreme Court Procedure.*

(b) the Court is not satisfied that—

(i) the appellant had knowledge of such time and place; or

5 (ii) where the Court is satisfied that he had such knowledge, he would not be prejudiced by the non-service,

10 the appeal may nevertheless proceed if the Court is satisfied that the appellant is evading service of the notice or cannot, after diligent search and inquiry, be found.

15 (ii) by inserting in subsection four of the same section after the word “hearing” the words “or, where a later address has been notified by any such person or his attorney to the Clerk of the Peace, to the last address so notified”.

7. The Commercial Causes Act, 1903, is amended— Amendment of Act No. 19, 1903.

20 (a) by omitting section three and by inserting in lieu thereof the following section:— Subst. sec. 3.

25 3. Commercial causes mean causes arising out of the ordinary transactions of merchants and traders, such as those relating to the construction of mercantile documents, export and import of merchandise, affreightment, insurance, banking and mercantile agency and mercantile usages, and include all causes of the kind held to be commercial causes before the commencement of the Supreme Court Procedure Act, 1957. Commercial causes.

30 (b) (i) by inserting at the end of paragraph (d) of section six the words— Sec. 6. (Directions.)

35 “or lists of documents to be exchanged and inspection allowed”;

(ii)



*Supreme Court Procedure.*

(ii) by omitting paragraph (g) of the same section and by inserting in lieu thereof the following paragraph:—

5 (g) order the trial to be either with or without a jury or that special issues be tried by a jury.

(c) (i) by omitting from section eight the word "three" and by inserting in lieu thereof the word "five";

Sec. 8.  
(Rules of Court.)

10 (ii) by inserting at the end of the same section the following new subsection:—

(2) All such rules of court shall—

- 15 (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules; and
- 20 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

25 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have

30 effect.

8. The Matrimonial Causes Act 1899, as amended by subsequent Acts, is amended by omitting subsection four of section ninety-one and by inserting in lieu thereof the following subsection:—

Amendment  
of Act No.  
14, 1899.  
Sec. 91.  
(Power to  
make rules.)

35 (4) All rules made under this section shall—

(a) be published in the Gazette;

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(b)



*Supreme Court Procedure.*

(b) take effect from the date of publication or from a later date to be specified in the rules; and

5 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

10 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

15 **9.** The Supreme Court Procedure Act, 1900, as amended by subsequent Acts, is amended by omitting section seventeen and by inserting in lieu thereof the following section:—

Amendment of Act No. 49, 1900. Substituted sec. 17.

20 17. All rules of court made under the powers herein contained shall—

Rules to be published in Gazette and laid before Parliament, &c.

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the rules; and

25 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

30 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

35

**10.**



*Supreme Court Procedure.*

- 10.** The Jury Act, 1912, as amended by subsequent Acts, is amended by inserting in subsection two of section fifty-five after the word "capital" the words "or murder". Amendment of Act No. 31, 1912. Sec. 55. (Challenge in criminal cases.)
- 5 11.** The Land and Valuation Court Act, 1921, as amended by subsequent Acts, is amended— Amendment of Act No. 10, 1921.
- (a) (i) by inserting in subsection three of section four after the word "powers" the word ", immunities"; Sec. 4. (Constitution of Land and Valuation Court and appointment of judge.)
- 10** (ii) by inserting in subsection (3A) of the same section after the word "powers" the word ", immunities";
- (iii) by omitting the proviso to paragraph (a) of subsection five of the same section;
- 15** (iv) by omitting the proviso to paragraph (a) of subsection six of the same section;
- (b) by inserting next after section nine the following new section:— New sec. 9A.
- 20** 9A. (1) The court may in every case obtain the assistance of conveyancing counsel, accountants, engineers, actuaries, or other scientific persons the better to enable it to determine any matter at issue in any proceeding before it and may act upon the certificate of any such person. Assistance of scientific persons. cf. Act. No. 24, 1901, s. 7.
- 25** (2) The allowance in respect of fees to such persons shall be regulated by the registrar, subject to an appeal to the court.
- 12.** The Acts (as amended by subsequent Acts, if any) specified in the first and second columns of the First Schedule to this Act are amended as respectively specified in the third column of that Schedule. Amendment of Acts specified in First Schedule.



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*Supreme Court Procedure.*

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**13.** (1) Rules of court, general rules and orders, <sup>Savings.</sup> rules, orders or regulations made or promulgated by the Supreme Court of New South Wales or any Judge or Judges thereof by virtue of any power howsoever conferred on such Supreme Court, Judge or Judges, and in force at the commencement of this Act, shall not be affected by the repeal and substitution by this Act of any provision under which they were made, or by any alteration in the number of Judges authorised to make them, or by the provisions of this Act requiring them to be published in the Gazette and laid before both Houses of Parliament and making them subject to disallowance by resolution of either House of Parliament but may be amended, repealed or replaced by rules of court, general rules and orders, rules, orders or regulations, as the case may be, lawfully made after that commencement.

(2) Unless the contrary intention appears, the repeal of any enactment by this Act shall not revive anything not in force or existing at the time at which the repeal takes effect.



*Supreme Court Procedure.*

## FIRST SCHEDULE.

Sec. 12.

Reference to Act.	Short Title.	Amendment.
No. 21, 1899	Common Law Procedure Act, 1899.	<p>Section 1— Omit the matter relating to Part XV.</p> <p>Section 4, subsection (1)— (a) Insert after the words "jurisdiction of the Court" the words "or if the defendant is a corporation residing or incorporated or registered within the jurisdiction of the Court or if the defendant is a corporation registered under Part VI of the Companies Act, 1936, as amended by subsequent Acts" (b) Omit the words "Form No. 1 contained in the Second Schedule to this Act" and insert in lieu thereof the words "form prescribed".</p> <p>Section 4, subsection (2)— Omit the subsection.</p> <p>Section 10— Omit the words "Form No. 2 contained in the Second Schedule hereto, or to the like effect" and insert in lieu thereof the words "the form prescribed".</p> <p>Section 11— Omit the word "six" and insert in lieu thereof the word "twelve".</p> <p>Section 12, subsection (1)— (a) Omit the word "six" and insert in lieu thereof the word "twelve". (b) Omit the words "including the day of such date".</p> <p>Section 12, subsection (2)— (a) Omit the word "six" and insert in lieu thereof the word "twelve".</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 12, subsection (2)—<i>continued.</i></p> <p>(b) Omit the words “by being marked by the proper officer with the date of such renewal upon delivery to him by the plaintiff or his attorney of a praecipe in such form as before the commencement of the Common Law Procedure Act of 1853 was required to be delivered upon the obtaining of an alias writ” and insert in lieu thereof the words “by being marked as prescribed”.</p> <p>Section 14—</p> <p>Omit the words “by the proper officer”.</p> <p>Sections 17, 18 and 19—</p> <p>Omit these sections and insert in lieu thereof the following sections:—</p> <p>17. The service of a writ of Mode of summons shall, wherever it is service. practicable, be personal, but where prompt personal service cannot be effected substituted service may be effected as prescribed.</p> <p>18. (1) In any action against a defendant who—</p> <p>(a) being a corporation is not resident incorporated or registered within the jurisdiction of the Court and is not registered under Part VI of the Companies Act, 1936, as amended by subsequent Acts; or</p> <p>(b) being any other person is not resident within the jurisdiction of the Court,</p> <p>the plaintiff may issue a writ of summons in the form prescribed.</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Sections 17, 18 and 19—<i>continued.</i></p> <p>(2) Either the writ of summons or a notice thereof in the form prescribed shall be served upon the defendant as may be prescribed.</p> <p>(3) Until otherwise prescribed the writ of summons shall be served in the following cases :—</p> <p>(a) Where the writ of summons may be served under the provisions of the Service and Execution of Process Act 1901 (as amended by subsequent Acts) of the Parliament of the Commonwealth.</p> <p>(b) Where the defendant is a British subject or being a corporation is incorporated in the United Kingdom or in Australia or in any of the other realms and territories of Her Majesty the Queen.</p> <p>(c) Where the defendant is in the United Kingdom or in Australia or in any of the other realms and territories of Her Majesty the Queen.</p> <p>(4) If the defendant does not appear to the writ of summons within the time prescribed, a Judge, upon being satisfied—</p> <p>(a) that there is a cause of action which arose within the jurisdiction, or in respect of the breach of a contract made within the jurisdiction; and</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Sections 17, 18 and 19—<i>continued.</i></p> <p>(b) that service of the writ or notice thereof, as the case may be, was duly effected or that the writ or the notice thereof came to the defendant's knowledge,</p> <p>may, if he thinks fit, by order, permit the plaintiff to proceed to sign final or interlocutory judgment in such manner and subject to such conditions as may be prescribed or as he in all the circumstances may deem fit.</p> <p>Section 20—</p> <p>Insert after the word "by" the words "or under".</p> <p>Section 21—</p> <p>Omit the words "If either of the Forms of writ of summons Nos. 1, 3, and 4, contained in the Second Schedule hereto," and insert in lieu thereof the words "If one of the prescribed forms of writ of summons".</p> <p>Section 23—</p> <p>Omit the section.</p> <p>Section 24, subsection (1)—</p> <p>(a) Insert after the word "Court" the words "or being a corporation is resident or incorporated or registered within that jurisdiction or is registered under Part VI of the Companies Act, 1936, as amended by subsequent Acts".</p> <p>(b) Omit the words "Form No. 5 contained in the Second Schedule hereto, or to the like effect" and insert in lieu thereof the words "form prescribed".</p>

FIRST



*Supreme Court Procedure.***FIRST SCHEDULE—continued.**

Reference to Act.	Short Title.	Amendment.
		Section 25, subsection (1)— Omit the words "Form No. 6 contained in the Second Schedule hereto" and insert in lieu thereof the words "form prescribed".
		Section 29— Omit the section and insert in lieu thereof the following section :— 29. Appearance to a writ of Mode of summons or under the authority appearance. of this Act shall be entered by filing a notice of appearance in the form and manner prescribed.
		Sections 32 and 33— Omit the sections.
		Section 51, subsection (1)— Insert at the end thereof the words "in the manner prescribed".
		Section 51, subsections (2) and (3)— Omit the subsections.
		Section 69— After the word "shall" insert the words " , unless a Judge otherwise orders,".
		Sections 70 and 71— Omit the sections and insert in lieu thereof the following section :— 70. Every declaration shall Commence- commence and conclude in the ment and forms prescribed. conclusion of declaration.
		Section 73— Omit the section and insert in lieu thereof the following section :— 73. The defendant shall plead to Time for the plaintiff's declaration within pleading to the time and in the manner declaration. prescribed.
		Section 76— Omit the section.
		Section 81— Omit the section.

**FIRST**



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 88, subsection (1)— Omit the words "Form No. 15 contained in the Second Schedule hereto, or to the like effect" and insert in lieu thereof the words "form prescribed".</p> <p>Section 100, subsection (1)— Omit the words "Form No. 16 contained in the Second Schedule hereto, or to the like effect," and insert in lieu thereof the words "form prescribed".</p> <p>Section 100, subsection (3)— Omit the words "Form No. 17 contained in the said Schedule, or to the like effect" and insert in lieu thereof the words "form prescribed".</p> <p>Section 104, subsection (1)— Omit the words ", or by so many and such of the persons summoned as jurors for the trial as may be thought desirable,".</p> <p>Sections 121 to 128 inclusive— Omit the sections.</p> <p>Section 129, subsection (1)— Omit the words "it shall not be necessary to issue a writ of inquiry, but".</p> <p>Section 129, subsection (2)— Omit "in the same manner as before a jury upon a writ of inquiry".</p> <p>Section 133— Omit the section and insert in lieu thereof the following section :— 133. A party in whose favour a verdict has been given, a nonsuit granted or a judgment directed to be entered may sign judgment in the manner and time prescribed.</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 134—</p> <p>Omit the section and insert in lieu thereof the following section:—</p> <p>134. A party in whose favour judgment has been signed may after issue execution thereon unless a Judge otherwise orders: <span style="float: right;">Execution judgment signed.</span></p> <p>Provided that where ten years have elapsed since judgment was signed or any change has taken place by death or otherwise in the parties entitled or liable to execution, execution shall not issue without the leave of a Judge. The party alleging himself to be entitled to execution may apply for such leave in the manner prescribed.</p> <p>Part XV—</p> <p>Omit the Part.</p> <p>Section 156—</p> <p>Omit the words “, so as such judgment be entered within two terms after such verdict”.</p> <p>Section 157, subsections (3), (4) and (5)—</p> <p>Omit the subsections and insert in lieu thereof the following subsection:—</p> <p>(3) In any such case the action may be maintained by the executor or administrator mentioned in subsection one of this section or against the executor or administrator mentioned in subsection two of this section or by the firstmentioned executor or administrator against the secondmentioned executor or administrator, as the case may be, upon the filing of a suggestion of the death of the plaintiff or defendant or both, as the case may be, and</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 157, subsections (3), (4) and (5)—<i>continued.</i></p> <p>representation. A copy of any suggestion so filed shall be served upon all other parties to the action and the truth of the suggestion shall not be in issue unless notice of such issue is given to the person filing the suggestion within fourteen days of service of such copy or within such time as may be prescribed.</p> <p>Section 159, subsection (2)— Omit the words “or writ of revivor pursuant to this Act”.</p> <p>Section 184, subsection (1)— Omit the word “writ” and insert in lieu thereof the word “summons”.</p> <p>Section 184, subsection (2)— Omit the subsection and insert in lieu thereof the following subsection:— (2) Such summons shall be issued, and the procedure thereon shall be, in the manner prescribed.</p> <p>Section 186— Omit the section.</p> <p>Section 210, subsection (1)— (a) Omit the words “Form No. 21 contained in the Second Schedule hereto, or to the like effect” and insert in lieu thereof the words “form prescribed”. (b) Omit the words “sixteen days” and insert in lieu thereof the words “the time prescribed”.</p>

FIRST



*Supreme Court Procedure.***FIRST SCHEDULE—continued.**

Reference to Act.	Short Title.	Amendment.
		<p>Section 210, subsection (2)— Omit the word “three” and insert in lieu thereof the word “twelve”.</p> <p>Section 212— Omit the section and insert in lieu thereof the following section :— 212. The writ shall, wherever practicable, be served personally on the persons named therein but where prompt personal service cannot be effected substituted service may be effected in the manner prescribed or in such manner as may be provided for the purpose by any other Act.</p> <p>Section 219— (a) Insert after the word “judgment” where firstly occurring the words “in the form prescribed”. (b) Omit the words “Such judgment if for all may be in the Form No. 22 contained in the Second Schedule hereto, or to the like effect, and if for part may be in the Form No. 23 contained in the said Schedule, or to the like effect.”</p> <p>Section 220, subsection (2)— Omit the subsection and insert in lieu thereof the following subsection :— (2) Such issue may be in the form prescribed.</p> <p>Section 221— Omit the words “used before the commencement of the Common Law Procedure Act of 1853” and insert in lieu thereof the word “prescribed”.</p> <p>Section 223— Omit the section.</p>

**FIRST**



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 229— Omit the words “within such time as the Court or Judge before whom the cause is tried shall order, and if no such order be made then on the fifth day in term after the verdict or within fourteen days after such verdict whichever shall first happen” and insert in lieu thereof the words “at such time as may be prescribed and in the manner prescribed”.</p> <p>Section 243— Omit the section and insert in lieu thereof the following section :— 243. The claimant may at any time Discontinue the action as to one or more of the defendants in the manner prescribed.</p> <p>Section 245— Omit the section and insert in lieu thereof the following section :— 245. Where an appearance has been entered and the claimant omits to set the action down for trial in the manner and within the time prescribed the defendant may give him such notice as may be prescribed to set the action down within a time prescribed for this purpose and if the claimant fails so to do the defendant may suggest such failure and sign judgment in the manner prescribed.</p> <p>Section 246— Omit the words “Form No. 28 contained in the Second Schedule hereto, or to the like effect” and insert in lieu thereof the words “form prescribed”.</p>



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Sections 252, 253 and 254—</p> <p>Omit the sections and insert in lieu thereof the following sections :—</p> <p>252. Every application for an Application order nisi for a writ of habeas for order nisi corpus shall be made to a Judge. for writ of habeas corpus. Such application may be made ex parte in the manner prescribed.</p> <p>253. (1) Every order nisi for a Return of writ of habeas corpus shall be order nisi. returnable before a Judge sitting in public chambers whether in Term or not unless the Judge considers that it should be returnable before the Full Court.</p> <p>(2) On the return of such order the Judge or the Court may dispose of the case as the circumstances appear to require and may make such order as to costs as the Judge or Court thinks fit.</p> <p>254. Any order made by a Appeal. Judge under section two hundred and fifty-two or two hundred and fifty-three of this Act shall be subject to appeal to the Full Court within the same time and in the same manner as prescribed for motions for a new trial.</p> <p>Section 263—</p> <p>Omit the section.</p> <p>Section 266—</p> <p>Omit the words "The lowest scale shall extend to all cases not exceeding fifty pounds, the second scale to all cases above fifty and not exceeding one hundred pounds, and the highest scale to all other cases."</p> <p>Section 268, subsections (1) and (2)—</p> <p>After the words "The Judges" insert the words "or any five of them".</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
No. 29, 1902	Arbitration Act, 1902.	Sections 269 and 270— Omit the sections. Second Schedule— Omit the Schedule. Section 10— Insert after the words "submission may" the words ", by leave of a Judge."
No. 24, 1902	Arrest on Mesne Process Act, 1902.	Section 5, paragraph (b)— Omit the word "twenty" and insert in lieu thereof the words "two hundred". Section 11— Omit the section and insert in lieu thereof the following section :— 11. (1) Any person in respect of whom a special order is made under section five of this Act may apply to a Judge for an order on the plaintiff to show cause why the special order and any writ issued thereunder should not be set aside and for an order staying proceedings on the special order and any such writ in the meantime. (2) Any person arrested upon a writ of <i>capias</i> may apply to a Judge at any time after such arrest for an order on the plaintiff to show cause why such person should not be discharged out of custody. Section 12— Omit the section and insert in lieu thereof the following section :— 12. Any Judge may, upon the hearing of the application, make such order therein as he thinks fit and direct that the costs of the application be paid by either party.



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
No. 8, 1901	Judgment Creditors' Remedies Act, 1901.	<p>Section 13— Omit "such order" and insert in lieu thereof the words "order made under section twelve of this Act".</p> <p>Section 27, subsection (1)— (a) After the words "the Supreme Court" insert the words "or in a District Court". (b) Omit the words "of the said Court" and insert in lieu thereof the words "of the Supreme Court or the District Court, as the case may be,".</p> <p>Section 31— Omit the words "of the said Court" and insert in lieu thereof the words "of the Supreme Court or the District Court, as the case may be".</p>
No. 35, 1900	Supreme Court and Circuit Courts Act, 1900.	<p>Section 1— Omit the matter relating to Parts IV and V and insert in lieu thereof the following matter:— PART IV.—<i>Sittings of Court elsewhere than at Sydney—</i> ss. 22-33. PART IVA.—<i>Gaol Delivery—</i> s. 33A.</p> <p>Section 19, paragraph (b)— Omit the paragraph. Insert in Part IV immediately before section 22 the heading "SITTINGS OF COURT ELSEWHERE THAN AT SYDNEY." Insert next after Part IV the following new Part:— PART IVA. GAOL DELIVERY.</p>



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>33A. The governor of each prison shall, at the times prescribed by rules of court, make returns in writing to the Supreme Court, Sydney, as to all persons detained in such prison, otherwise than in pursuance of a sentence, giving the particulars required by such rules. If he fails to make such returns, he may be ordered by the Court to pay a fine not exceeding five hundred pounds.</p> <p>The Court shall, after the receipt of such returns with respect to a prison, deliver such prison.</p> <p>For the purpose aforesaid the Court may be constituted by one Judge sitting in open court in the exercise of the criminal jurisdiction of the court.</p> <p>Except as aforesaid, it shall not be obligatory on the Court or a Judge to deliver any prison, or for a governor of a prison, unless so directed by the Court or a Judge, to make any such returns.</p> <p>Part V— Omit the Part.</p> <p>Section 39— Omit the word “three” and insert in lieu thereof the word “five”.</p> <p>Section 39A, paragraph (a)— Omit the word “now”.</p>
No. 9, 1912	Supreme Court and Circuit Courts (Amendment) Act, 1912.	Section 8— Omit the section.

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
No. 10, 1921	Land and Valuation Court Act, 1921.	Section 13, subsection (1)— Omit the subsection and insert in lieu thereof the following subsection :— (1) All process issuing out of the court shall be in the form prescribed, and be signed by the officer issuing the process and marked with the court office stamp.
No. 16, 1900	Sheriff Act, 1900	Section 1— Omit the matter relating to Part IV. Part IV— Omit the Part.
No. 49, 1900	Supreme Court Procedure Act, 1900.	Sections 12 and 13— Omit these sections. Section 14— Omit the word " three " and insert in lieu thereof the word " five ". Section 16— Omit the words " in the Schedule to this Act, or ". Schedule— Omit the Schedule.
No. 31, 1912	Jury Act, 1912.	Section 32, subsection (2)— (a) Omit the words " and seal ". (b) Insert at the end thereof the words " or of the prothonotary thereof ". Section 32, subsection (3)— Omit the words " and seal ". Fifth Schedule— Omit the words " and seal ".
No. 42, 1924	Administration of Justice Act, 1924.	Section 14— Omit the section. Schedule— Omit the Schedule.

SECOND



*Supreme Court Procedure.*

## SECOND SCHEDULE.

Sec. 2.

## CITATION OF ACTS.

First Column.	Second Column.
Administration of Justice Act, 1924.	Administration of Justice Act, 1924-1957.
Arbitration Act, 1902.	Arbitration Act, 1902-1957.
Arrest on Mesne Process Act, 1902.	Arrest on Mesne Process Act, 1902-1957.
Commercial Causes Act, 1903.	Commercial Causes Act, 1903-1957.
Common Law Procedure Act, 1899.	Common Law Procedure Act, 1899-1957.
Equity Act, 1901.	Equity Act, 1901-1957.
Judgment Creditors' Remedies Act, 1901.	Judgment Creditors' Remedies Act, 1901-1957.
Jury Act, 1912.	Jury Act, 1912-1957.
Justices Act, 1902.	Justices Act, 1902-1957.
Land and Valuation Court Act, 1921.	Land and Valuation Court Act, 1921-1957.
Matrimonial Causes Act 1899.	Matrimonial Causes Act, 1899-1957.
Sheriff Act, 1900.	Sheriff Act, 1900-1957.
Supreme Court and Circuit Courts Act, 1900.	Supreme Court and Circuit Courts Act, 1900-1957.
Supreme Court Procedure Act, 1900.	Supreme Court Procedure Act, 1900-1957.



*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

ALLAN PICKERING,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 28 March, 1957.*

## New South Wales



ANNO SEXTO

ELIZABETHÆ II REGINÆ

\*\*\*\*\*

Act No. 13, 1957.

An Act to make further provision in respect of the powers of the Supreme Court in certain of its jurisdictions and in respect of the practice and procedure of that Court; for these and other purposes to amend the Common Law Procedure Act, 1899, the Supreme Court and Circuit Courts Act, 1900, the Supreme Court Procedure Act, 1900, the Judgment Creditors' Remedies Act, 1901, the Equity Act, 1901, the Justices Act, 1902, the Commercial Causes Act, 1903, and certain other Acts; and for purposes connected therewith. [Assented to, 8th April, 1957.]

BE

*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

G. BOOTH,  
*Chairman of Committees of the Legislative Assembly.*



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*Supreme Court Procedure.*

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**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title  
and  
commence-  
ment.

**1.** (1) This Act may be cited as the "Supreme Court Procedure Act, 1957."

(2) This Act shall commence on the first day of July, one thousand nine hundred and fifty-seven.

Citation of  
amended  
Acts.

**2.** Each Act specified in the first column of the Second Schedule to this Act and as amended by subsequent Acts, if any, and by this Act may be cited in the manner specified in the second column of that Schedule opposite the reference to that Act in the first column.

Amendment  
of Act  
No. 21, 1899.

**3.** The Common Law Procedure Act, 1899, as amended by subsequent Acts, is amended—

Sec. 15.  
(Indorse-  
ment of  
service.)

(a) (i) by inserting in section fifteen after the word "service" where firstly occurring the words "or within such enlarged time as the Court or a Judge may order";

(ii) by inserting in the same section after the words "under this Act" the words—

"Any such order may be made although application therefor is not made until after the expiration of three days after such service.";

Sec. 102.  
(Discovery  
of  
documents.)

(b) by omitting from subsection one of section one hundred and two the words "upon an affidavit by such party or his attorney of his belief that any document to the production of which he is entitled for the purpose of discovery or otherwise is in the possession or power of the opposite party,";

(c)



*Supreme Court Procedure.*

- (c) by inserting next after section one hundred and eighty-four the following new section:— New  
sec. 184A.

184A. (1) Whenever in any proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Judge may order such third person to appear and to state the nature and particulars of his claim upon such debt. Lien or  
claim of  
third person  
on debt.

(2) After hearing the allegations of any third person under any such order as is mentioned in subsection one of this section, and of any other person who by the same or any subsequent order is ordered by the Judge to appear, or in case of such third person not appearing when ordered, the Judge may order execution to issue as provided in section one hundred and eighty-three of this Act, or may order any issue or question arising to be tried or determined, and may bar the claim of such third person or make such other order as he may think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Judge shall think just and reasonable.

- (d) by omitting section two hundred and twenty-eight and by inserting in lieu thereof the following section:— Substituted  
sec. 228.

228. Upon a finding for the claimant, judgment may be signed and execution issue for the recovery of the possession of the property or such part thereof as the jury finds the claimant entitled to, and for costs, at such time as may be prescribed and in the manner prescribed. Judgment  
upon  
finding for  
claimant.

(e)



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*Supreme Court Procedure.*

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Sec. 268.  
(General  
rules may  
be made  
by the  
Judges.)

(e) (i) by omitting from subsection three of section two hundred and sixty-eight the words "or before the Colonial Parliament at any time before the commencement of the operation of any such rule";

(ii) by inserting next after subsection three of the same section the following new subsection:—

(3A) All general rules and orders, rules, orders or regulations made pursuant to the foregoing provisions of this section and all rules made pursuant to section two hundred and sixty-six of this Act shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the general rules and orders, rules, orders or regulations; and

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the general rules and orders, rules, orders or regulations have been laid before such House disallowing any general rule or order, or rule, order or regulation, or part thereof, such general rule or order, or rule, order or regulation, or part shall thereupon cease to have effect.



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*Supreme Court Procedure.*

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4. The Supreme Court and Circuit Courts Act, 1900, as amended by subsequent Acts, is amended—

Amendment  
of Act  
No. 35,  
1900.

- (a) (i) by omitting the proviso to subsection one of section nine;  
(ii) by omitting subsection four of the same section;

Sec. 9.  
(Puisne  
Judges.)

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

Substituted  
sec. 20.

20. (1) The Court may be held by one Judge alone for the disposal of applications for a rule or order nisi for prohibition, mandamus, or certiorari notwithstanding that it may be term time, or that the Court held before two or more Judges may be at the same time sitting in banco.

Powers of  
Court may  
be exercised  
by single  
Judge in  
certain  
cases.

Nothing in this subsection—

- (a) authorises the Court to be held by one Judge alone for the purpose of exercising the powers and jurisdiction of the Court on the return of a rule or order nisi for prohibition, mandamus or certiorari; or  
(b) affects the construction of subsection two of this section.

(2) The powers and jurisdiction of the Court on the return of a rule or order nisi for prohibition, mandamus or certiorari to make absolute, discharge, or make any order whatsoever in respect of, the rule or order nisi (whether made by the Court or a Judge) may be exercised by one Judge alone—

- (a) at any time when the Court is not sitting in banco;  
(b) in cases of exigency when the Court is sitting in banco.

(3) Any person aggrieved by any decision or determination by one Judge alone made pursuant to subsection one or two of this section may appeal therefrom to the Court. Any such appeal shall be in accordance with rules of court.

(4)



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*Supreme Court Procedure.*

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(4) The Judges or any five of them may by rules of court authorise the exercise (subject to those rules) by a Judge, in vacation or in any case of exigency, of any power which can only under ordinary circumstances be exercised by the Court.

The power to make rules of court conferred by this subsection does not include power to make rules of court with respect to—

- (a) applications for rules or orders nisi for prohibition, mandamus or certiorari;
- (b) the exercise in the circumstances mentioned in subsection two of this section of the powers and jurisdiction conferred by that subsection upon one Judge alone.
- (c) (i) by inserting in section forty after the word “shall” the words “, subject to subsection two of this section,”;
- (ii) by inserting at the end of the same section the following new subsection:—
  - (2) All rules and orders so made and all rules made under section twenty of this Act shall—
    - (a) be published in the Gazette;
    - (b) take effect from the date of publication or from a later date to be specified in the rules and orders or rules; and
    - (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

Sec. 40.  
(Rules to  
have force  
of law.)

If



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*Supreme Court Procedure.*

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If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules and orders or rules have been laid before such House disallowing any rule or order or part thereof such rule or order or part shall thereupon cease to have effect.

5. (1) The Common Law Procedure Act, 1899, as amended by subsequent Acts, is further amended by omitting section ninety-eight and by inserting in lieu thereof the following section :—

Further  
amendment  
of Act No.  
21, 1899.  
Substituted  
sec. 98.

98. (1) Any such equitable plea or equitable replication may be pleaded notwithstanding that upon the facts pleaded the relief on equitable grounds would not be an absolute, perpetual and unconditional injunction, but if upon the facts pleaded that relief would not be such an injunction, the Court or Judge shall make an order that the action be transferred into the jurisdiction of the Court in equity.

Extension  
of power to  
plead  
equitable  
plea or  
replication;  
transfer of  
certain  
actions into  
equity  
jurisdiction.

The Court or the Judge when making the order may impose such terms as to costs and otherwise as to the Court or Judge seems reasonable.

(2) Where an order is made under subsection one of this section the whole record of the action shall be transferred into the jurisdiction of the Court in equity.

(3) After an action has been transferred into the jurisdiction of the Court in equity under this section—

(a) any Judge exercising that jurisdiction may, from time to time, make such orders as he considers necessary relating to amendments, the filing of fresh pleadings, the settling



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*Supreme Court Procedure.*

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settling of issues for trial, or otherwise to enable the action to be disposed of in that jurisdiction;

- (b) the action shall, subject to paragraph (a) of this subsection, be disposed of according to the practice and procedure of the Court in equity; and
- (c) the Court in equity may make such decree, declaration or order as appears just and may in addition thereto or in substitution therefor direct judgment to be entered on its verdict or finding and for costs in the manner prescribed and such a judgment so entered shall have the like force and effect in all respects as the signing of judgment in a Court of law and execution may issue thereon in the manner prescribed.

In so far as the costs of the proceedings before transfer have not been dealt with under subsection one of this section, the Court in equity may deal with those costs.

Amendment  
of Act No.  
24, 1901.

(2) The Equity Act, 1901, as amended by subsequent Acts, is amended—

Sec. 8.  
(Power to  
decide legal  
titles, &c.)

- (a) (i) by omitting from section eight the words “any proceeding before it” and by inserting in lieu thereof the words “any suit or proceeding before it or has to be decided in any action transferred into its jurisdiction under section ninety-eight of the Common Law Procedure Act, 1899-1957,”;
- (ii) by omitting from the same section the words “no suit in equity” and by inserting in lieu thereof the words “no suit or proceeding in equity and no action so transferred”;

(b)



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*Supreme Court Procedure.*

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- (b) by inserting next after section eight the following new section:— New sec. 8A.

8A. (1) If it appears to the Court at any stage of any suit or proceeding in the Court that the Court has no jurisdiction to deal with the subject matter of the suit or proceeding and that the appropriate remedy in respect thereof lies in the Common Law jurisdiction of the Supreme Court, the Court shall make an order that the suit or proceeding be transferred into that jurisdiction. Transfer of certain suits, &c., into common law jurisdiction.

The Court when making the order may impose such terms as to costs and otherwise as to the Court seems reasonable.

(2) Where an order is made under subsection one of this section the whole record of the suit or proceeding shall be transferred into the Common Law jurisdiction of the Supreme Court.

(3) After a suit or proceeding has been transferred into the Common Law jurisdiction of the Supreme Court under this section—

- (a) any Judge exercising that jurisdiction may, from time to time, make such orders as he considers necessary relating to amendments, the filing of fresh pleadings, the settling of issues for trial, or otherwise to enable the suit or proceeding to be disposed of in that jurisdiction; and
- (b) the suit or proceeding shall, subject to paragraph (a) of this subsection, be disposed of according to the practice and procedure of the Supreme Court at Common Law.

In



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*Supreme Court Procedure.*

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In so far as the costs of the proceedings before transfer have not been dealt with under subsection one of this section, the Judge presiding at the trial or the Supreme Court at Common Law may make such order as to those costs as may be just.

Sec. 9.  
(Power to  
Court to  
award  
damages in  
certain  
cases.)

- (c) by inserting at the end of section nine the following new paragraph:—

Nothing in this section shall be construed as limiting the operation of any other section of this Act.

Sec. 39.  
(Set-off  
and  
counter-  
claim.)

- (d) (i) by omitting from subsection one of section thirty-nine the words "right or claim," and by inserting in lieu thereof the words "equitable or legal right or claim, whether or not connected with the claim of the plaintiff,";

- (ii) by inserting in subsection two of the same section after the words "ought not" the words "in the circumstances of the case";

- (e) by omitting subsection three of section ninety-four and by inserting in lieu thereof the following subsection:—

(3) All rules made under this Act shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

**If**



*Supreme Court Procedure.*

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof such rule or part shall thereupon cease to have effect.

**6.** The Justices Act, 1902, as amended by subsequent Acts, is amended—

Amendment  
of Act No.  
27, 1902.

Sec. 101.

(a) (i) by inserting next after subsection one of section one hundred and one the following new subsection:—

(Party  
dissatisfied  
with  
determina-  
tion of  
Justices on  
point of  
law may  
apply to  
have a case  
stated for  
opinion  
of Supreme  
Court.)

(1A) The application need not be served upon the Justice or Justices personally, but shall be deemed to have been properly made if served upon the clerk of the court at which the determination of the Justice or Justices was made.

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

(3) Written notice that application has been made for a case to be stated and signed pursuant to subsection one of this section shall be given by the appellant to the respondent within the time prescribed by rules of the Supreme Court.

(b) by omitting from subsection one of section one hundred and two the words "Before any such case is stated and delivered to the appellant, he shall enter into a recognizance" and by inserting in lieu thereof the words "The appellant shall, within twenty-eight days after the determination appealed from, enter into a recognizance";

Sec. 102.  
(Before  
case is  
stated  
appellant  
to give  
security.)

(c)



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*Supreme Court Procedure.*

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Substituted  
sec. 105.

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

Appellant  
to transmit  
case to  
Prothono-  
tary and  
give notice.

105. When the appellant has received the case or has been notified in writing that it has been stated and signed and is available, he shall—

- (a) within such period thereafter as may be prescribed by rules of the Supreme Court transmit such case to the Prothonotary of the Supreme Court; and
- (b) within such period and in such manner as may be prescribed by rules of the Supreme Court serve the respondent with such number of copies of the case as may be prescribed by those rules.

Sec. 107.  
(Powers of  
Court may  
be exercised  
by Judge in  
Chambers.)

- (d) (i) by omitting from subsection two of section one hundred and seven the words "Supreme Court" and by inserting in lieu thereof the words "Judges of the Supreme Court or any five of them";

- (ii) by inserting at the end of the same section the following new subsection:—

(3) Rules and orders made under this section shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules and orders; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given  
at



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*Supreme Court Procedure.*

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at any time within fifteen sitting days after the rules and orders have been laid before such House disallowing any rule or order or part thereof, such rule or order or part shall thereupon cease to have effect.

- (e) (i) by omitting from subsection one of section one hundred and twelve the words "apply—  
Sec. 112. (Any person aggrieved by conviction or order may apply for prohibition.)
- (a) in all cases to the Supreme Court, or, in vacation, to a Judge thereof;
- (b) in the following cases, whether in term or in vacation, to a Judge—
- (i) where imprisonment has been directed;
- (ii) where the fine imposed, or the amount ordered to be paid, or the value of the matter adjudicated upon does not exceed thirty pounds,"

and by inserting in lieu thereof the words "apply to the Supreme Court";

- (ii) by inserting at the end of subsection five of the same section the following new paragraph:—

Nothing in this subsection—

- (a) authorises the Supreme Court to be held by one Judge alone for the purpose of exercising the powers and jurisdiction of the Court on the return of any rule or order granted or made under this section;
- (b) affects the construction of sections one hundred and fourteen and one hundred and fifteen of this Act;
- (iii) by omitting subsection six of the same section;

(f)



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*Supreme Court Procedure.*

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Substituted  
sec. 114.

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

Before  
whom rule  
to be  
returnable.

114. Subject to any rules of court made by the Judges of the Supreme Court or any five of them, any rule or order granted or made by the Court or a Judge under section one hundred and twelve of this Act may be made returnable before the Court or any such Judge.

Substituted  
sec. 116.

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

Certain  
rules and  
writs made  
by a Judge  
may be  
reviewed  
by the  
Court.

116. (1) Where so provided by rules of court made by the Judges of the Supreme Court or any five of them, any person aggrieved by any decision or determination by one Judge alone made pursuant to sections one hundred and fourteen and one hundred and fifteen of this Act may appeal therefrom to the Court. Any such appeal shall be in accordance with rules of court made by the Judges of the Supreme Court or any five of them.

(2) A Judge before whom any rule or order is made returnable pursuant to section one hundred and fourteen of this Act may, at any stage of the proceedings, refer the matter to the Court to be determined.

New  
sec. 117A.

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

Publication,  
commence-  
ment and  
disallowance  
of rules.

117A. The provisions of subsection three of section one hundred and seven of this Act apply to and in respect of rules of court made under this Division of this Part.

(i)



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*Supreme Court Procedure.*

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- (i) (i) by inserting next after subsection two of section one hundred and twenty-two the following new subsection:—

Sec. 122.  
(Appeal to  
Quarter  
Sessions.)

(2A) Where but for the provisions of this subsection an appeal may not proceed by reason only that—

(a) the appellant was not served with notice of the time and place of hearing of the appeal; and

(b) the Court is not satisfied that—

(i) the appellant had knowledge of such time and place; or

(ii) where the Court is satisfied that he had such knowledge, he would not be prejudiced by the non-service,

the appeal may nevertheless proceed if the Court is satisfied that the appellant is evading service of the notice or cannot, after diligent search and inquiry, be found.

- (ii) by inserting in subsection four of the same section after the word “hearing” the words “or, where a later address has been notified by any such person or his attorney to the Clerk of the Peace, to the last address so notified”.

**7.** The Commercial Causes Act, 1903, is amended—

Amendment  
of Act No.  
19, 1903.

- (a) by omitting from section three the word “include” and by inserting in lieu thereof the word “mean”.

Sec. 3.  
(Commercial  
causes.)

(b)



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*Supreme Court Procedure.*

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Sec. 6.  
(Direc-  
tions.)

- (b) (i) by inserting at the end of paragraph (d) of section six the words—

“or lists of documents to be exchanged and inspection allowed”;

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

(g) order the trial to be either with or without a jury or that special issues be tried by a jury.

Sec. 8.  
(Rules of  
Court.)

- (c) (i) by omitting from section eight the word “three” and by inserting in lieu thereof the word “five”;

- (ii) by inserting at the end of the same section the following new subsection:—

(2) All such rules of court shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the rules; and

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.



*Supreme Court Procedure.*

8. The Matrimonial Causes Act 1899, as amended by subsequent Acts, is amended by omitting subsection four of section ninety-one and by inserting in lieu thereof the following subsection:—

Amendment  
of Act No.  
14, 1899.  
Sec. 91.  
(Power to  
make rules.)

(4) All rules made under this section shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

9. The Supreme Court Procedure Act, 1900, as amended by subsequent Acts, is amended by omitting section seventeen and by inserting in lieu thereof the following section:—

Amendment  
of Act No.  
49, 1900.  
Substituted  
sec. 17.

17. All rules of court made under the powers herein contained shall—

Rules to  
be published  
in Gazette  
and laid  
before  
Parliament,  
&c.

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If



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*Supreme Court Procedure.*

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If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

Amendment  
of Act  
No. 31,  
1912.  
Sec. 55.  
(Challenge  
in criminal  
cases.)

**10.** The Jury Act, 1912, as amended by subsequent Acts, is amended by inserting in subsection two of section fifty-five after the word "capital" the words "or murder".

Amendment  
of Act No.  
40, 1900.  
Sec. 568.  
(Jurisdic-  
tion, &c., of  
Courts of  
Quarter  
Sessions.)

**11.** The Crimes Act, 1900, as amended by subsequent Acts, is amended by omitting from subsection three of section five hundred and sixty-eight the words "not punishable with death," and by inserting in lieu thereof the words "(other than a crime or misdemeanour which is punishable with death or which was so punishable immediately before the commencement of the Crimes (Amendment) Act, 1955),".

Amendment  
of Act No.  
10, 1921.

**12.** The Land and Valuation Court Act, 1921, as amended by subsequent Acts, is amended—

Sec. 4.  
(Constitu-  
tion of  
Land and  
Valuation  
Court and  
appointment  
of judge.)

- (a) (i) by inserting in subsection three of section four after the word "powers" the word ", immunities";
  - (ii) by inserting in subsection (3A) of the same section after the word "powers" the word ", immunities";
  - (iii) by omitting the proviso to paragraph (a) of subsection five of the same section;
  - (iv) by omitting the proviso to paragraph (a) of subsection six of the same section;
- (b)



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*Supreme Court Procedure.*

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(b) by inserting next after section nine the following new section:—

New  
sec. 9A.

9A. (1) The court may in every case obtain the assistance of conveyancing counsel, accountants, engineers, actuaries, or other scientific persons the better to enable it to determine any matter at issue in any proceeding before it and may act upon the certificate of any such person.

Assistance  
of scientific  
persons.  
cf. Act. No.  
24, 1901,  
s. 7.

(2) The allowance in respect of fees to such persons shall be regulated by the registrar, subject to an appeal to the court.

**13.** The Acts (as amended by subsequent Acts, if any) specified in the first and second columns of the First Schedule to this Act are amended as respectively specified in the third column of that Schedule.

Amendment  
of Acts  
specified  
in First  
Schedule.

**14.** (1) Rules of court, general rules and orders, rules, orders or regulations made or promulgated by the Supreme Court of New South Wales or any Judge or Judges thereof by virtue of any power howsoever conferred on such Supreme Court, Judge or Judges, and in force at the commencement of this Act, shall not be affected by the repeal and substitution by this Act of any provision under which they were made, or by any alteration in the number of Judges authorised to make them, or by the provisions of this Act requiring them to be published in the Gazette and laid before both Houses of Parliament and making them subject to disallowance by resolution of either House of Parliament but may be amended, repealed or replaced by rules of court, general rules and orders, rules, orders or regulations, as the case may be, lawfully made after that commencement.

Savings.

(2) Unless the contrary intention appears, the repeal of any enactment by this Act shall not revive anything not in force or existing at the time at which the repeal takes effect.



*Supreme Court Procedure.*

Sec. 13.

## FIRST SCHEDULE.

Reference to Act.	Short Title.	Amendment.
No. 21, 1899	Common Law Procedure Act, 1899.	<p>Section 1— Omit the matter relating to Part XV.</p> <p>Section 4, subsection (1)— (a) Insert after the words "jurisdiction of the Court" the words "or if the defendant is a corporation residing or incorporated or registered within the jurisdiction of the Court or if the defendant is a corporation registered under Part VI of the Companies Act, 1936, as amended by subsequent Acts". (b) Omit the words "Form No. 1 contained in the Second Schedule to this Act" and insert in lieu thereof the words "form prescribed".</p> <p>Section 4, subsection (2)— Omit the subsection.</p> <p>Section 10— Omit the words "Form No. 2 contained in the Second Schedule hereto, or to the like effect" and insert in lieu thereof the words "the form prescribed".</p> <p>Section 11— Omit the word "six" and insert in lieu thereof the word "twelve".</p> <p>Section 12, subsection (1)— (a) Omit the word "six" and insert in lieu thereof the word "twelve". (b) Omit the words "including the day of such date".</p> <p>Section 12, subsection (2)— (a) Omit the word "six" and insert in lieu thereof the word "twelve".</p>

FIRST



*Supreme Court Procedure.***FIRST SCHEDULE—continued.**

Reference to Act.	Short Title.	Amendment.
		<p>Section 12, subsection (2)—<i>continued.</i></p> <p>(b) Omit the words “by being marked by the proper officer with the date of such renewal upon delivery to him by the plaintiff or his attorney of a praecipe in such form as before the commencement of the Common Law Procedure Act of 1853 was required to be delivered upon the obtaining of an alias writ” and insert in lieu thereof the words “by being marked as prescribed”.</p> <p>Section 14—</p> <p>Omit the words “by the proper officer”.</p> <p>Sections 17, 18 and 19—</p> <p>Omit these sections and insert in lieu thereof the following sections:—</p> <p>17. The service of a writ of summons shall, wherever it is practicable, be personal, but where prompt personal service cannot be effected substituted service may be effected as prescribed.</p> <p>18. (1) In any action against a defendant who—</p> <p>(a) being a corporation is not resident incorporated or registered within the jurisdiction of the Court and is not registered under Part VI of the Companies Act, 1936, as amended by subsequent Acts; or</p> <p>(b) being any other person is not resident within the jurisdiction of the Court,</p> <p>the plaintiff may issue a writ of summons in the form prescribed.</p>



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Sections 17, 18 and 19—<i>continued.</i></p> <p>(2) Either the writ of summons or a notice thereof in the form prescribed shall be served upon the defendant as may be prescribed.</p> <p>(3) Until otherwise prescribed the writ of summons shall be served in the following cases :—</p> <p>(a) Where the writ of summons may be served under the provisions of the Service and Execution of Process Act 1901 (as amended by subsequent Acts) of the Parliament of the Commonwealth.</p> <p>(b) Where the defendant is a British subject or being a corporation is incorporated in the United Kingdom or in Australia or in any of the other realms and territories of Her Majesty the Queen.</p> <p>(c) Where the defendant is in the United Kingdom or in Australia or in any of the other realms and territories of Her Majesty the Queen.</p> <p>(4) If the defendant does not appear to the writ of summons within the time prescribed, a Judge, upon being satisfied—</p> <p>(a) that there is a cause of action which arose within the jurisdiction, or in respect of the breach of a contract made within the jurisdiction; and</p>



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Sections 17, 18 and 19—<i>continued.</i></p> <p>(b) that service of the writ or notice thereof, as the case may be, was duly effected or that the writ or the notice thereof came to the defendant's knowledge,</p> <p>may, if he thinks fit, by order, permit the plaintiff to proceed to sign final or interlocutory judgment in such manner and subject to such conditions as may be prescribed or as he in all the circumstances may deem fit.</p> <p>Section 20—</p> <p>Insert after the word "by" the words "or under".</p> <p>Section 21—</p> <p>Omit the words "If either of the Forms of writ of summons Nos. 1, 3, and 4, contained in the Second Schedule hereto," and insert in lieu thereof the words "If one of the prescribed forms of writ of summons".</p> <p>Section 23—</p> <p>Omit the section.</p> <p>Section 24, subsection (1)—</p> <p>(a) Insert after the word "Court" the words "or being a corporation is resident or incorporated or registered within that jurisdiction or is registered under Part VI of the Companies Act, 1936, as amended by subsequent Acts".</p> <p>(b) Omit the words "Form No. 5 contained in the Second Schedule hereto, or to the like effect" and insert in lieu thereof the words "form prescribed".</p>

FIRST



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
Mode of appearance.		<p>Section 25, subsection (1)— Omit the words "Form No. 6 contained in the Second Schedule hereto" and insert in lieu thereof the words "form prescribed".</p> <p>Section 29— Omit the section and insert in lieu thereof the following section :— 29. Appearance to a writ of summons or under the authority of this Act shall be entered by filing a notice of appearance in the form and manner prescribed.</p> <p>Sections 32 and 33— Omit the sections.</p> <p>Section 51, subsection (1)— Insert at the end thereof the words "in the manner prescribed".</p> <p>Section 51, subsections (2) and (3)— Omit the subsections.</p> <p>Section 69— After the word "shall" insert the words ", unless a Judge otherwise orders,".</p> <p>Sections 70 and 71— Omit the sections and insert in lieu thereof the following section :— 70. Every declaration shall commence and conclude in the forms prescribed.</p> <p>Section 73— Omit the section and insert in lieu thereof the following section :— 73. The defendant shall plead to the plaintiff's declaration within the time and in the manner prescribed.</p> <p>Section 76— Omit the section.</p> <p>Section 81— Omit the section.</p>
Commence- ment and conclusion of declaration.		
Time for pleading to declaration.		



*Supreme Court Procedure.***FIRST SCHEDULE—continued.**

Reference to Act.	Short Title.	Amendment.
		<p>Section 88, subsection (1)— Omit the words "Form No. 15 contained in the Second Schedule hereto, or to the like effect" and insert in lieu thereof the words "form prescribed".</p> <p>Section 100, subsection (1)— Omit the words "Form No. 16 contained in the Second Schedule hereto, or to the like effect," and insert in lieu thereof the words "form prescribed".</p> <p>Section 100, subsection (3)— Omit the words "Form No. 17 contained in the said Schedule, or to the like effect" and insert in lieu thereof the words "form prescribed".</p> <p>Section 104, subsection (1)— Omit the words ", or by so many and such of the persons summoned as jurors for the trial as may be thought desirable,".</p> <p>Sections 121 to 128 inclusive— Omit the sections.</p> <p>Section 129, subsection (1)— Omit the words "it shall not be necessary to issue a writ of inquiry, but".</p> <p>Section 129, subsection (2)— Omit "in the same manner as before a jury upon a writ of inquiry".</p> <p>Section 133— Omit the section and insert in lieu thereof the following section:— 133. A party in whose favour a verdict has been given, a nonsuit granted or a judgment directed to be entered may sign judgment in the manner and time prescribed.</p>



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Execution  
after  
judgment  
signed.

Reference to Act.	Short Title.	Amendment.
		Section 134— Omit the section and insert in lieu thereof the following section:— 134. A party in whose favour judgment has been signed may issue execution thereon unless a Judge otherwise orders: Provided that where ten years have elapsed since judgment was signed or any change has taken place by death or otherwise in the parties entitled or liable to execution, execution shall not issue without the leave of a Judge. The party alleging himself to be entitled to execution may apply for such leave in the manner prescribed.
		Part XV— Omit the Part.
		Section 156— Omit the words “, so as such judgment be entered within two terms after such verdict”.
		Section 157, subsections (3), (4) and (5)— Omit the subsections and insert in lieu thereof the following subsection:— (3) In any such case the action may be maintained by the executor or administrator mentioned in subsection one of this section or against the executor or administrator mentioned in subsection two of this section or by the firstmentioned executor or administrator against the secondmentioned executor or administrator, as the case may be, upon the filing of a suggestion of the death of the plaintiff or defendant or both, as the case may be, and



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 157, subsections (3), (4) and (5)—<i>continued.</i></p> <p>representation. A copy of any suggestion so filed shall be served upon all other parties to the action and the truth of the suggestion shall not be in issue unless notice of such issue is given to the person filing the suggestion within fourteen days of service of such copy or within such time as may be prescribed.</p> <p>Section 159, subsection (2)— Omit the words “or writ of revivor pursuant to this Act”.</p> <p>Section 184, subsection (1)— Omit the word “writ” and insert in lieu thereof the word “summons”.</p> <p>Section 184, subsection (2)— Omit the subsection and insert in lieu thereof the following subsection :— (2) Such summons shall be issued, and the procedure thereon shall be, in the manner prescribed.</p> <p>Section 186— Omit the section.</p> <p>Section 210, subsection (1)— (a) Omit the words “Form No. 21 contained in the Second Schedule hereto, or to the like effect” and insert in lieu thereof the words “form prescribed”. (b) Omit the words “sixteen days” and insert in lieu thereof the words “the time prescribed”.</p>



*Supreme Court Procedure.***FIRST SCHEDULE—continued.**Service of  
writ.

Reference to Act.	Short Title.	Amendment.
		<p>Section 210, subsection (2)— Omit the word “three” and insert in lieu thereof the word “twelve”.</p> <p>Section 212— Omit the section and insert in lieu thereof the following section:— 212. The writ shall, wherever practicable, be served personally on the persons named therein but where prompt personal service cannot be effected substituted service may be effected in the manner prescribed or in such manner as may be provided for the purpose by any other Act.</p> <p>Section 219— (a) Insert after the word “judgment” where firstly occurring the words “in the form prescribed”. (b) Omit the words “Such judgment if for all may be in the Form No. 22 contained in the Second Schedule hereto, or to the like effect, and if for part may be in the Form No. 23 contained in the said Schedule, or to the like effect.”</p> <p>Section 220, subsection (2)— Omit the subsection and insert in lieu thereof the following subsection:— (2) Such issue may be in the form prescribed.</p> <p>Section 221— Omit the words “used before the commencement of the Common Law Procedure Act of 1853” and insert in lieu thereof the word “prescribed”.</p> <p>Section 223— Omit the section.</p>

**FIRST**



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>Section 229—</p> <p>Omit the words “within such time as the Court or Judge before whom the cause is tried shall order, and if no such order be made then on the fifth day in term after the verdict or within fourteen days after such verdict whichever shall first happen” and insert in lieu thereof the words “at such time as may be prescribed and in the manner prescribed”.</p> <p>Section 243—</p> <p>Omit the section and insert in lieu thereof the following section :—</p> <p>243. The claimant may at any time discontinue the action as to one or more of the defendants in the manner prescribed.</p> <p>Section 245—</p> <p>Omit the section and insert in lieu thereof the following section :—</p> <p>245. Where an appearance has been entered and the claimant omits to set the action down for trial in the manner and within the time prescribed the defendant may give him such notice as may be prescribed to set the action down within a time prescribed for this purpose and if the claimant fails so to do the defendant may suggest such failure and sign judgment in the manner prescribed.</p> <p>Section 246—</p> <p>Omit the words “Form No. 28 contained in the Second Schedule hereto, or to the like effect” and insert in lieu thereof the words “form prescribed”.</p>



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
Application for order nisi for writ of habeas corpus.		Sections 252, 253 and 254— Omit the sections and insert in lieu thereof the following sections:— 252. Every application for an order nisi for a writ of habeas corpus shall be made to a Judge. Such application may be made ex parte in the manner prescribed. 253. (1) Every order nisi for a writ of habeas corpus shall be returnable before a Judge sitting in public chambers whether in Term or not unless the Judge considers that it should be returnable before the Full Court. (2) On the return of such order the Judge or the Court may dispose of the case as the circumstances appear to require and may make such order as to costs as the Judge or Court thinks fit.
Return of order nisi.		254. Any order made by a Judge under section two hundred and fifty-two or two hundred and fifty-three of this Act shall be subject to appeal to the Full Court within the same time and in the same manner as prescribed for motions for a new trial.
Appeal.		Section 263— Omit the section. Section 266— Omit the words "The lowest scale shall extend to all cases not exceeding fifty pounds, the second scale to all cases above fifty and not exceeding one hundred pounds, and the highest scale to all other cases." Section 268, subsections (1) and (2)— After the words "The Judges" insert the words "or any five of them".



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
No. 29, 1902	Arbitration Act, 1902.	Sections 269 and 270— Omit the sections. Second Schedule— Omit the Schedule. Section 10— Insert after the words "submission may" the words ", by leave of a Judge,".
No. 24, 1902	Arrest on Mesne Process Act, 1902.	Section 5, paragraph (b)— Omit the word "twenty" and insert in lieu thereof the words "two hundred". Section 11— Omit the section and insert in lieu thereof the following section :—  11. (1) Any person in respect of whom a special order is made under section five of this Act may apply to a Judge for an order on the plaintiff to show cause why the special order and any writ issued thereunder should not be set aside and for an order staying proceedings on the special order and any such writ in the meantime.  (2) Any person arrested upon a writ of capias may apply to a Judge at any time after such arrest for an order on the plaintiff to show cause why such person should not be discharged out of custody. Section 12— Omit the section and insert in lieu thereof the following section :—  12. Any Judge may, upon the hearing of the application, make such order therein as he thinks fit and direct that the costs of the application be paid by either party.



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
No. 8, 1901	Judgment Creditors' Remedies Act, 1901.	<p>Section 13— Omit "such order" and insert in lieu thereof the words "order made under section twelve of this Act".</p> <p>Section 27, subsection (1)— (a) After the words "the Supreme Court" insert the words "or in a District Court". (b) Omit the words "of the said Court" and insert in lieu thereof the words "of the Supreme Court or the District Court, as the case may be,".</p> <p>Section 31— Omit the words "of the said Court" and insert in lieu thereof the words "of the Supreme Court or the District Court, as the case may be".</p>
No. 35, 1900	Supreme and Circuit Courts Act, 1900.	<p>Section 1— Omit the matter relating to Parts IV and V and insert in lieu thereof the following matter :— PART IV.—<i>Sittings of Court elsewhere than at Sydney—</i> ss. 22-33. PART IVA.—<i>Gaol Delivery—</i> s. 33A.</p> <p>Section 19, paragraph (b)— Omit the paragraph. Insert in Part IV immediately before section 22 the heading "SITTINGS OF COURT ELSEWHERE THAN AT SYDNEY." Insert next after Part IV the following new Part :— PART IVA. GAOL DELIVERY.</p>

**FIRST**



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
		<p>33A. The governor of each prison shall, at the times prescribed by rules of court, make returns in writing to the Supreme Court, Sydney, as to all persons detained in such prison, otherwise than in pursuance of a sentence, giving the particulars required by such rules. If he fails to make such returns, he may be ordered by the Court to pay a fine not exceeding five hundred pounds.</p> <p>The Court shall, after the receipt of such returns with respect to a prison, deliver such prison.</p> <p>For the purpose aforesaid the Court may be constituted by one Judge sitting in open court in the exercise of the criminal jurisdiction of the court.</p> <p>Except as aforesaid, it shall not be obligatory on the Court or a Judge to deliver any prison, or for a governor of a prison, unless so directed by the Court or a Judge, to make any such returns.</p> <p>Part V— Omit the Part.</p> <p>Section 39— Omit the word "three" and insert in lieu thereof the word "five".</p> <p>Section 39A, paragraph (a)— Omit the word "now".</p>
No. 9, 1912	Supreme Court and Circuit Courts (Amendment) Act, 1912.	Section 8— Omit the section.



*Supreme Court Procedure.*FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
No. 10, 1921	Land and Valuation Court Act, 1921.	Section 13, subsection (1)— Omit the subsection and insert in lieu thereof the following subsection :— (1) All process issuing out of the court shall be in the form prescribed, and be signed by the officer issuing the process and marked with the court office stamp.
No. 16, 1900	Sheriff Act, 1900	Section I— Omit the matter relating to Part IV. Part IV— Omit the Part.
No. 49, 1900	Supreme Court Procedure Act, 1900.	Sections 12 and 13— Omit these sections. Section 14— Omit the word "three" and insert in lieu thereof the word "five". Section 16— Omit the words "in the Schedule to this Act, or". Schedule— Omit the Schedule.
No. 31, 1912	Jury Act, 1912.	Section 32, subsection (2)— (a) Omit the words "and seal". (b) Insert at the end thereof the words "or of the prothonotary thereof". Section 32, subsection (3)— Omit the words "and seal". Fifth Schedule— Omit the words "and seal".
No. 42, 1924	Administration of Justice Act, 1924.	Section 14— Omit the section. Schedule— Omit the Schedule.



*Supreme Court Procedure.*

## SECOND SCHEDULE.

Sec. 2.

## CITATION OF ACTS.

First Column.	Second Column.
Administration of Justice Act, 1924.	Administration of Justice Act, 1924-1957.
Arbitration Act, 1902.	Arbitration Act, 1902-1957.
Arrest on Mesne Process Act, 1902.	Arrest on Mesne Process Act, 1902-1957.
Commercial Causes Act, 1903.	Commercial Causes Act, 1903-1957.
Common Law Procedure Act, 1899.	Common Law Procedure Act, 1899-1957.
Equity Act, 1901.	Equity Act, 1901-1957.
Judgment Creditors' Remedies Act, 1901.	Judgment Creditors' Remedies Act, 1901-1957.
Jury Act, 1912.	Jury Act, 1912-1957.
Justices Act, 1902.	Justices Act, 1902-1957.
Land and Valuation Court Act, 1921.	Land and Valuation Court Act, 1921-1957.
Matrimonial Causes Act 1899.	Matrimonial Causes Act, 1899-1957.
Sheriff Act, 1900.	Sheriff Act, 1900-1957.
Supreme Court and Circuit Courts Act, 1900.	Supreme Court and Circuit Courts Act, 1900-1957.
Supreme Court Procedure Act, 1900.	Supreme Court Procedure Act, 1900-1957.

*In the name and on behalf of Her Majesty I assent to this Act.*

J. NORTHCOTT,  
Governor.

*Government House,  
Sydney, 8th April, 1957.*



