

PROOF

ADMINISTRATION OF JUSTICE BILL, 1967

EXPLANATORY NOTE

THE objects of this Bill are—

- (a) to provide that, in certain civil actions, the court or a judge may, on the application of either party, and shall if so required by both parties, order that the action be tried with a jury;
- (b) to make certain provisions with respect to payments into court;
- (c) to provide that the Court of Appeal may, in certain circumstances, exercise its powers relating to substituted verdicts without the consent of the parties;
- (d) to extend the qualifications required for appointment to certain offices, including judicial offices;
- (e) to empower the Court of Appeal to grant bail in certain circumstances;
- (f) to make women liable for jury service unless they elect otherwise;
- (g) to enable a number of convictions or orders whereby a body corporate is adjudged to pay fines, penalties or costs to operate as one order for payment of the total sum adjudged to be paid;
- (h) to enable a default summons to be issued by a court not normally having jurisdiction in the action, subject to the right of the defendant to elect to have the action transferred to a court normally having jurisdiction, and to make other provisions with respect to the issue and service of a default summons;
- (i) to extend the jurisdiction of a District Court in ejectment actions;
- (j) to make various provisions to facilitate the business of the Supreme Court in Equity, District Courts, and Small Debts Courts;
- (k) to make various provisions of an ancillary, procedural, administrative or consequential nature.

1900

1901

ANNALS OF THE ENTOMOLOGICAL SOCIETY OF AMERICA

VOLUME 1

Published by the Entomological Society of America
Washington, D. C.

1910

1911

1912

1913

1914

1915

1916

1917

1918

1919

1920

PROOF

No. , 1967.

A BILL

To amend the law relating to the administration of justice; to make further provision with respect to the mode of trial of certain classes of civil actions; to make further provision with respect to the payment or the provision of security for payment of moneys into court in civil actions; to enable the Court of Appeal, in special circumstances, to substitute its assessment for the verdict of a jury; to make further provision with respect to the liability of women for service on juries; to make amendments of a procedural or administrative nature to various Acts; for these and other purposes to amend the Law Reform

(Miscellaneous

Administration of Justice.

(Miscellaneous Provisions) Act, 1965, and certain Acts amended by that Act, the Matrimonial Causes Act, 1899, and certain other Acts; and for purposes connected therewith.

[MR McCaw—5 December, 1967.]

BE 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:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Administration of Justice Act, 1967". Short title and citation.
- 10 (2) The Acts, as amended by subsequent Acts and by this Act, specified in the first and second columns of the Schedule to this Act may be cited as respectively specified in the third column of that Schedule.
- 15 2. (1) This Part of this Act shall commence on the day upon which the assent of Her Majesty to this Act is signified. Commencement.
- (2) Subject to subsection one of this section this Act shall commence upon such day or days as may be appointed and notified pursuant to subsection three of this section.
- 20 (3) The Governor may, from time to time, appoint and notify by proclamation published in the Gazette the day upon which any Part or provision of this Act specified in the proclamation shall commence and may appoint different days for different Parts or provisions (whether contained in the same Part or section or in different Parts or sections)
- 25 and the Part or provision so specified shall commence accordingly. **3.**

Administration of Justice.

3. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY—*ss.* 1–3.

PART II.—AMENDMENT OF LAW REFORM (MISCELLANEOUS PROVISIONS) ACT, 1965—*s.* 4.

5 PART III.—AMENDMENT OF COMMON LAW PROCEDURE ACT, 1899–1967—*s.* 5.

PART IV.—AMENDMENT OF SUPREME COURT AND CIRCUIT COURTS ACT, 1900–1967—*s.* 6.

10 PART V.—AMENDMENT OF EQUITY ACT, 1901–1965—*s.* 7.

PART VI.—AMENDMENT OF MATRIMONIAL CAUSES ACT, 1899–1965—*s.* 8.

PART VII.—AMENDMENT OF JURY ACT, 1912–1965—*ss.* 9, 10.

15 PART VIII.—AMENDMENT OF JUSTICES ACT, 1902–1967—*s.* 11.

PART IX.—AMENDMENT OF DISTRICT COURTS ACT, 1912–1965—*s.* 12.

20 PART X.—AMENDMENT OF SMALL DEBTS RECOVERY ACT, 1912–1965—*s.* 13.

SCHEDULE.

PART II.

AMENDMENT OF LAW REFORM (MISCELLANEOUS PROVISIONS) ACT, 1965.

25 4. The Law Reform (Miscellaneous Provisions) Act, 1965, is amended—
Amendment
of Act No.
32, 1965.

- (a) (i) by omitting from subsection one of section four the words “instituted after the commencement of this Act” and by inserting in lieu thereof the words “or in a District Court”;
Sec. 4.
(Application
of Part.)
- (ii)

30

Administration of Justice.

- (ii) by omitting from subsection two of the same section the figures "1942-1963" and by inserting in lieu thereof the words and figures "1942, as amended by subsequent Acts";
- 5 (b) by omitting subsections one and two of section five and by inserting in lieu thereof the following sub- sections :—
- Sec. 5.
(Amend-
ment of
procedure as
to trials
by jury.)

10 (1) In any action to which this Part applies the court or a judge may on the application of any party made not later than such time before the trial as may be limited by rules of court, upon being satisfied that circumstances exist which render it desirable to do so and shall, where both parties so apply, order that the action be tried with a jury; but, save as aforesaid, any action to which this Part applies shall, notwithstanding section twenty-nine of the Jury Act, 1912, as amended by subsequent Acts, or section ninety of the District Courts Act, 1912, as amended by subsequent Acts, be tried by a judge without a jury :

25 Provided that the provisions of this section shall be without prejudice to the power of the court or a judge to order, in accordance with rules of court, that different questions of fact arising in any action be tried by different modes of trial, and where any such order is made the provisions of this section shall have effect accordingly.

30 (2) Where an order has been made under subsection one of this section for the trial of an action with a jury any party to that action may apply under section thirty of the Jury Act, 1912, as amended by subsequent Acts, for an order that the trial be had by a jury consisting of twelve persons.

(c)

Administration of Justice.

(c) by inserting next after section five the following new section :— New sec. 5A.

5A. (1) Where an action to which this Part applies was instituted before the commencement of Part II of the Administration of Justice Act, 1967, in the Supreme Court or in a District Court then— Transitional provisions.

(a) if such action is listed in the daily causes list for hearing within one month after such commencement such action may be continued and completed as if Part II of the Administration of Justice Act, 1967, had not been enacted;

(b) if such action is not listed for hearing within one month after such commencement then notwithstanding anything in any Act or in any rule of court relating to the mode of trial of actions, or any steps taken by the parties, the provisions of section five of this Act shall apply to the hearing and determination of such action.

(2) Where an action to which this Part applies is instituted after the commencement of Part II of the Administration of Justice Act, 1967, in the Supreme Court or in a District Court, then, notwithstanding anything in any Act or in any rule of court relating to the mode of trial of actions, the provisions of section five of this Act shall apply to the hearing and determination of such action.

(d) by omitting from section six the words "section five" wherever occurring and by inserting in lieu thereof the words "sections five and 5A"; Sec. 6. (Third party proceedings and contribution.)

(e) by omitting from subsection one of section ten the word, figures, letter and symbols "section 64 (a)" wherever occurring and by inserting in lieu thereof the words "paragraph (a) of subsection one of section sixty-four". Sec. 10. (Statute law revision.)

Administration of Justice.

PART III.

AMENDMENT OF COMMON LAW PROCEDURE ACT,
1899-1967.

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

Amendment
of Act No.
21, 1899.

10 (a) by omitting from subsection one of section 82A
the words "at any time before the joinder of issue"
and by inserting in lieu thereof the words "no later
than fourteen days before the date of hearing or,
with the leave of the Court or a Judge and upon
such terms as the Court or Judge thinks fit, on
some later day before the date of hearing";

Sec. 82A.
(Payment
into Court
at any time
before
joinder of
issue.)

15 (b) by omitting subsection four of section 160A and
by inserting in lieu thereof the following sub-
section :—

Sec. 160A.
(Substituted
verdict.)

(4) The Court of Appeal shall not exercise the
powers conferred by this section unless it is
satisfied—

20 (a) that it is fully able to assess the damages on
a perusal of the evidence contained in the
documents before it, or on admitted facts,
without seeing or hearing the plaintiff or
defendant or other witnesses; and

25 (b) that one of the following circumstances
exists, namely :—

(i) it is desirable that the power be
exercised to avoid a multiplicity of
trials; or

30 (ii) as a result of an error of law on the
part of the trial judge or a manifest
error on the part of the jury, some
item or items of damages has or
have been wrongly included in or
excluded from the assessment; or

35 (iii) the parties consent.

(c)

Administration of Justice.

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

Subst. sec. 265.

265. All costs of any action not herein or otherwise provided for shall be paid by or apportioned between the parties in such manner as the Court or Judge thinks fit and in default of any special direction shall abide the event of the action or the finding or judgment on any issue, and such costs shall be recoverable accordingly.

Costs in discretion of Judge.

10

PART IV.

AMENDMENT OF SUPREME COURT AND CIRCUIT COURTS ACT, 1900-1967.

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

Amendment of Act No. 35, 1900.

(a) by omitting from subsection three of section nine the words "be a member of the Industrial Commission of New South Wales or a barrister of not less than five years' standing" and by inserting in lieu thereof the following word and new paragraphs :—

Sec. 9. (Puisne Judges.)

20

be—

- (a) a member of the Industrial Commission of New South Wales;
- (b) a barrister of not less than five years' standing;
- (c) a solicitor of not less than seven years' standing; or
- (d) a barrister or a solicitor of less than five years' or seven years' standing, respectively, where at all times during a continuous period of not less than seven years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors;

30

35

(b)

Administration of Justice.

- (b) by inserting at the end of subsection one of section thirteen the following paragraph :—
- For the purposes of this subsection “barrister” and “solicitor” include, respectively, a barrister or solicitor of less than seven years’ standing where during a continuous period of not less than seven years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors.
- (c) by inserting next after paragraph (a) of subsection one of section 21K the following new paragraph :—
- (ai) for the granting of bail, subject to such terms and conditions, if any, as may be imposed, upon the making of a rule or order nisi in respect of any proceedings referred to in paragraphs (a) and (b) of subsection three of section 21F of this Act, where—
- (i) the applicant for the rule or order nisi is in custody; and
- (ii) the granting of bail is not authorised by any Act or rule of Court by which the making of an application for such a rule or order is regulated or empowered.

Sec. 13.
(General power to appoint acting judge.)

Sec. 21K.
(Court may be held in two or more divisions.)

PART V.

AMENDMENT OF EQUITY ACT, 1901–1965.

7. The Equity Act, 1901, as amended by subsequent Acts, is amended—

Amendment of Act No. 24, 1901.

- (a) (i) by inserting in section seventy-one after the word “barrister” the words “or solicitor”;
- (ii)

Sec. 71.
(The Master in Equity.)

Administration of Justice.

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

For the purposes of this section “barrister” and “solicitor” include, respectively, a barrister or solicitor of less than five years standing where during a continuous period of not less than five years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors.

- (b) (i) by inserting next after paragraph (c) of sub-section (1C) of section 71A the following new paragraph :—

(d) For the purposes of paragraph (b) of this subsection, service as Acting Master in Equity shall be deemed to be service as the Master in Equity.

Sec. 71A.
(Tenure of office and pension of the Master.)

- (ii) by inserting next after paragraph (c) of subsection four of the same section the following new paragraph :—

(d) Nothing in this subsection shall be construed as abridging or otherwise affecting any powers, authorities, duties or functions conferred or imposed on a Deputy Master by or under this or any other Act.

- (c) by inserting next after subsection one of section ninety-four the following new subsections :—

(1A) The Judges of the Supreme Court or the Chief Judge in Equity and any two Judges of the Supreme Court may make rules—

Sec. 94.
(General Rules.)

- (a) for empowering the Master or the Deputy Master in Equity to do such things and transact such business and to exercise such authority and jurisdiction in the same as

by

Administration of Justice.

5 by virtue of any statute or custom or by the rules and practice of the Court, or any of them respectively, are done, transacted or exercised by the Judge in chambers and as may be specified in any such rule, except in respect of matters relating to the liberty of the subject;

10 (b) for regulating the attendance of the Master or the Deputy Master in Equity in chambers, the course of practice to be there pursued, and the scale of costs to be there adopted, and for fixing the scale of fees in respect of business transacted before the Master or Deputy Master in Equity.

15 (1B) Every rule made under subsection (1A) of this section shall, subject to subsection three of this section, be of the same force and effect as if it had been inserted in and had formed part of this Act.

20 PART VI.

AMENDMENT OF MATRIMONIAL CAUSES ACT, 1899-1965.

8. The Matrimonial Causes Act 1899, as amended by subsequent Acts, is amended by inserting next after subsection three of section four the following new subsection :—

Amendment of Act No. 14, 1899. Sec. 4. (Composition and jurisdiction of Court.)

25 (4) The registrar, when exercising the jurisdiction and powers conferred upon or delegated to him under this Act, shall be deemed to be exercising the jurisdiction and powers of the Supreme Court.

PART

Administration of Justice.

PART VII.

AMENDMENT OF JURY ACT, 1912-1965.

9. (1) The Jury (Amendment) Act, 1947, as amended by the Mental Health Act, 1958, is amended by omitting section three.

Amendment of Act No. 41, 1947. Sec. 3. (Commencement of section.)

(2) Notwithstanding anything contained in section two of this Act, this section shall commence on the day on which section ten of this Act commences.

10. (1) The Jury Act, 1912, as amended by subsequent Acts, is amended—

Amendment of Act No. 31, 1912.

(a) (i) by omitting from section three the word "man" and by inserting in lieu thereof the word "person";

Sec. 3. (Qualifications of jurors.)

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

(2) The liability imposed by subsection one of this section shall not extend to a woman unless she is qualified and resident in a jurors' district declared by the Governor, by order published in the Gazette, to be a jurors' district for the purposes of this subsection.

(3) A woman who is liable to serve on juries or act as a juror may, by giving to the chief constable of the police district in which she is resident a notification in a form approved by the sheriff, elect not to serve on juries or act as a juror, whether or not—

(a) her liability so to serve arose before or after the commencement of section ten of the Administration of Justice Act, 1967; or

(b) she has, under subsection four of this section, revoked an election previously made by her under this subsection.

(4)

Administration of Justice.

- 5 (4) A woman who, but for having made an election as provided by subsection three of this section, would be liable to serve on juries or act as a juror may, by giving to the chief constable of the police district in which she is resident a notification in a form approved by the sheriff, revoke that election and shall thereupon be subject to the provisions of this Act as if that election had not been made.
- 10 (b) (i) by omitting from section four the word "man" and by inserting in lieu thereof the word "person"; Sec. 4. (Disqualification.)
- 15 (ii) by omitting from paragraph (b) of the same section the word "he" and by inserting in lieu thereof the words "such person";
- (c) (i) by omitting from paragraph (q) of section five the word "and"; Sec. 5. (Exemptions.)
- 20 (ii) by omitting from paragraph (r) of the same section the words "duty of jurymen" and by inserting in lieu thereof the following words and new paragraph :—
duties of a juror; and
- 25 (s) women who have elected, under subsection three of section three of this Act, not to serve on juries or act as a juror and have not under subsection four of that section, revoked that election.
- 30 (d) by omitting from sections nine, thirteen, twenty-seven and fifty-seven the word "men" wherever occurring and by inserting in lieu thereof the word "persons"; Secs. 9, 13, 27 and 57. (Consequential.)
- (e) by omitting from sections ten and fifty-eight the word "man" wherever occurring and by inserting in lieu thereof the word "person"; Secs. 10 and 58. (Consequential.)
- (f)

Administration of Justice.

(f) by inserting next after subsection three of section ten the following new subsection :—

Sec. 10.
(Lists to be prepared by chief constable.)

5 (4) Notwithstanding anything contained in this Act, a chief constable shall not, subject to subsection two of section ten of the Administration of Justice Act, 1967, be required to include the name of a woman in a jury list for any jurors' district unless—

10 (a) he has been given notice in writing by the sheriff that he is to include women in the jury list for that district; and

15 (b) he is satisfied that the woman concerned has been made aware of her right to make the election referred to in subsection three of section three of this Act and has not made such an election.

(g) by omitting the Seventh Schedule.

Seventh Schedule.

20 (2) Where, immediately before the commencement of this section, a woman was qualified and liable to serve on juries or to act as a juror she shall, immediately after that commencement, be deemed to be liable to serve on juries or to act as a juror under the provisions of the Jury Act, 1912, as amended by subsequent Acts and by this Act, and the provisions of that Act, as so amended, subsection two of section three and paragraph (a) of subsection four of section ten
25 tion three and paragraph (a) of subsection four of section ten excepted, shall apply to and in respect of her accordingly.

PART VIII.

AMENDMENT OF JUSTICES ACT, 1902-1967.

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

Amendment of Act No. 27, 1902.

(a) by omitting from subsection (2A) of section eighty-two the words "For such purpose such conviction or order may be entered in the records of the Small Debts Court exercising jurisdiction at the petty sessions

Sec. 82.
(Abolition in all cases of recovery of fine, etc. by levy or distress.)

Administration of Justice.

sessions where such order or conviction was made in such manner as may be prescribed by rules made under the said Acts.”;

5 (b) by inserting next after the same subsection the following new subsections :—

(2B) Where a corporate body referred to in subsection (2A) of this section—

(a) is the subject of only one conviction or order so referred to; or

10 (b) is the subject of more than one such conviction or order—

(i) made at the same petty sessions whether on the same day or on different days; or

15 (ii) made at different petty sessions on the same day or on different days,

the conviction or order or, as the case may be, the convictions or orders may, subject to subsection (2C) of this section, be entered in the records of the Small Debts Court exercising jurisdiction at the petty sessions at which that conviction or order or, as the case may be, any of those convictions or orders was made.

20
25 (2C) Where more than one conviction or order is entered under subsection (2B) of this section, all those convictions or orders shall operate as one order for the payment of the total of all the amounts adjudged to be paid by the convictions or orders so entered, less the amount, if any, paid by the
30 corporate body in reduction thereof.

PART

Administration of Justice.

PART IX.

AMENDMENT OF DISTRICT COURTS ACT, 1912-1965.

12. The District Courts Act, 1912, as amended by subsequent Acts, is amended—

Amendment of Act No. 23, 1912.

5 (a) by omitting subsection five of section 8A;

Sec. 8A.
(Jurisdiction where defendant outside the State.)

(b) by inserting next after section 8A the following new section :—

New sec. 8B.

10 8B. Notwithstanding anything contained in subsection one of section seven, or in section 8A of this Act, where a defendant fails to make an election as provided by section 64A of this Act, the District Court in which the action was instituted shall have jurisdiction in the action.

Jurisdiction in certain circumstances.

15 (c) by inserting at the end of section eleven the following new subsections :—

Sec. 11.
(Powers of judge.)

20 (2) Subject to subsection three of this section, it shall be lawful for a judge of a District Court to hear and determine actions and matters pending in that District Court, at a town or place other than that at which the holding of that District Court has been proclaimed pursuant to subsection one of section four of this Act, during any period in which it is inexpedient or impracticable to hold sittings of the Court at that proclaimed town or place.

25 (3) The jurisdiction conferred by subsection two of this section shall not be exercised unless the town or place first referred to in that subsection—

30 (a) if within the appointed district of the judge, has been specified by order of the judge as the town or place at which the hearing shall be held; or

(b)

Administration of Justice.

5 (b) if beyond the appointed district of the judge has, by order published in the Gazette, been declared by the Governor to be the town or place at which the hearing of all such actions or matters shall be held for the period specified in the order,

and, in the case referred to in paragraph (b) of this subsection, the jurisdiction is exercised within the period specified in the order.

10 (4) A subpoena or other process requiring the appearance of any person at the hearing of any action or matter referred to in subsection two of this section may be made returnable at the town or place specified in an order made pursuant to subsection three of this section.

15 (d) (i) by omitting from subsection one of section Sec. 14. fourteen the words "be a barrister of five years (Appoint-ment and qualification of judges.) or an attorney of seven years standing" and by inserting in lieu thereof the following word and new paragraphs :—

be—

- 20 (a) a barrister of five years' standing;
- (b) a solicitor of seven years' standing;
- or
- 25 (c) a barrister or a solicitor of less than five or seven years' standing, respectively, where during a continuous period of not less than seven years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors;

30 (ii) by omitting from subsection two of the same Sec. 19. section the word "attorney" and by inserting in (Deputy judge.) lieu thereof the word "solicitor";

35 (e) by omitting from section nineteen the word "attorney" and by inserting in lieu thereof the word "solicitor";

(f)

Administration of Justice.

- (f) by omitting from section twenty-four the words "In Sec. 24.
the case of the District Court of the Metropolitan (Assistant
District holden at Sydney the assistant registrar shall registrars.)
be appointed by the Governor. The person who
5 at the commencement of the District Courts
(Amendment) Act, 1949, held office as assistant
registrar of the District Court of the Metropolitan
District holden at Sydney shall be deemed to have
10 been appointed assistant registrar of such court
under the provisions of this section." and by insert-
ing in lieu thereof the following paragraph :—
- In the case of the District Court of the Metro-
politan District holden at Sydney, or of any
15 District Court approved for the purpose by the
Minister, assistant registrars, being not more
than three in number in respect of any one
District Court, may be appointed by the
Governor. Any person who, immediately before
20 the commencement of paragraph (f) of section
twelve of the Administration of Justice Act, 1967,
held office as assistant registrar of the District Court
of the Metropolitan District holden at Sydney shall
continue in that office as if he had been appointed
under the provisions of this section.
- 25 (g) by inserting in subsection one of section thirty-three Sec. 33.
after the words "process of execution" the words (Amount of
"unless the registrar shall otherwise direct"; court fees.)
- (h) by omitting from subsection one of section forty-one Sec. 41.
the words "(except in an action in which title to (Ordinary
30 land is in question, and except in an action of jurisdiction
ejectment)"; of the
courts.)
- (i) by omitting from section forty-three the words "four Sec. 43.
hundred dollars" wherever occurring and by insert- (Jurisdiction
35 ing in lieu thereof the words "six thousand where title
dollars"; to land is in
question.)

Administration of Justice.

- (j) (i) by inserting next after subsection one of section forty-four the following new subsection :—

Sec. 44.
(Ejectment actions.)

5 (1A) Where land in respect of which an action of ejectment is brought or part thereof is in the occupation of a person not named in the summons as a defendant, and the plaintiff does not state in his particulars annexed to the summons that it is not intended to evict such person, a notice in the prescribed form with a copy of the summons annexed thereto shall be served on such person by leaving the same at the premises or part thereof so occupied, addressed to the person in occupation thereof.

- (ii) by omitting paragraph (a) of subsection two of the same section ;

- (k) by inserting next after section sixty-three the following new section :—

New sec.
63A.

20 63A. If the defendant to an action commenced by summons issued pursuant to the provisions of section sixty-two of this Act does not within the prescribed time file a defence, or notice of intention to defend, as provided by the rules of court, the plaintiff may, within three months after the expiration of the time for filing such defence or notice and after due proof of service of the summons, have judgment entered up by the court or registrar against the defendant, limited to the issue of liability.

Entering up of judgment in undefended cases.

30 For the purposes of this section, the rules of court may prescribe—

- (a) the procedures whereby the action shall go to trial as to the amount of the plaintiff's claim ; and
- 35 (b) the scale of costs to be adopted in entering judgment and the scale of fees in respect of any such procedures.

Administration of Justice.

(1) by inserting at the end of section sixty-four the following new subsection :—

Sec. 64.
(Default
summons.)

5 (2) Subject to the provisions of section 64A of this Act, a default summons may be issued notwithstanding that the action has been brought in a District Court other than a District Court having jurisdiction in the action under subsection one of section seven of this Act or, as the case may require, subsection two of section 8A of this Act.

10 (m) by inserting next after section sixty-four the following new section :—

New sec.
64A.

15 64A. (1) Where a default summons has issued in an action brought in a District Court other than a District Court having jurisdiction under subsection one of section seven of this Act, the defendant, or any one of two or more defendants may, when filing notice of grounds of defence pursuant to section sixty-six of this Act, elect as prescribed that subsection one of section seven of this Act shall apply to the action.

Procedure
where
default
summons
issued
by Court
for district
where
defendant
not resi-
dent, &c.

20 (2) Where a defendant has made an election under subsection one of this section, the plaintiff may apply to the registrar of the Court in which the action was brought to transfer the proceedings to the District Court referred to in subsection three of this section and, if he fails to make such an application within three months after the time the notice of grounds of defence was filed, the plaintiff shall be deemed to have discontinued the action.

30 (3) Where application is made under subsection two of this section, the plaintiff shall in his application nominate a District Court for the district—

35 (a) where the defendant, or any one of two or more defendants, as the case may be, is resident or carries on business; or

40 (b) where the debt sued for was contracted, and the registrar shall transfer the proceedings to the District Court so nominated. (4)

Administration of Justice.

5 (4) Where the registrar is required to transfer proceedings in accordance with this section, the provisions of subsections two, three and four of section ten of this Act shall apply as if there had been a change of venue to the District Court to which the proceedings are to be transferred.

10 (5) Where, in the case of a defendant who is not within New South Wales, a default summons has issued in an action in a District Court for a district other than that for which the Court would have jurisdiction under subsection two of section 8A of this Act, this section shall apply as if the references therein to subsection one of section seven were references to subsection two of section 8A and as if the District Court referred to in subsection three of this section were a District Court having jurisdiction under subsection two of section 8A of this Act.

20 (n) by omitting section sixty-five and by inserting in Sec. 65. lieu thereof the following section :—

65. A default summons shall be served in the same manner as is provided by or under section sixty-three of this Act for the service of an ordinary summons. Service of default summons.

- 25 (o) (i) by omitting from section sixty-seven the word "personal" where firstly occurring; Sec. 67. (Judgment in default of defence.)
- 30 (ii) by omitting from the same section the words "or, where service has not been personal, within the prescribed number of days after leave to proceed as aforesaid,";
- (iii) by omitting from the same section the words "three months" and by inserting in lieu thereof the words "twelve months";
- 35 (iv) by omitting from the same section the words "personal service, or of an order of leave to proceed" and by inserting in lieu thereof the word "service";

(p)

Administration of Justice.

- (p) by inserting next after section sixty-seven the following new section :— New sec.
67A.

5 67A. Where, after the commencement of paragraph (p) of section twelve of the Administration of Justice Act, 1967, the defendant to an action for the recovery of a debt or liquidated demand is served, under the provisions of the Service and Execution of Process Act 1901 of the Parliament of the Commonwealth of Australia, or any Act of that Parliament amending or replacing that Act, with an ordinary summons and does not within the prescribed time thereafter, file such defence as is prescribed, the plaintiff may, within three months after the expiration of the time for filing such defence and— Entering up
of judgment
where
defendant
outside
State.

- 10 (a) after obtaining such leave to proceed as is required by that Act of the Parliament of the Commonwealth of Australia or any such replacing or amending Act; and
- 15 (b) on filing an account of what he claims to be due to him verified by the oath of the plaintiff, his attorney or agent,

20 have judgment entered up by the Court or registrar against the defendant for the amount of the claim, and a sum for costs to be prescribed.

25

- (q) by inserting next after section seventy-one the following new section :— New sec.
71A.

30 71A. Where, in an action in a District Court, the solicitor for the plaintiff and the solicitor for the defendant have signed a statement of any agreement as to the judgment to be entered by the Court against the defendant, and as to the terms and conditions, if any, upon which the judgment is to be satisfied, the plaintiff may have judgment entered up by the Court or registrar against the defendant in accordance with that agreement. Judgment
by consent.

35

(r)

Administration of Justice.

- (r) by omitting from subsection one of section seventy-two the words "at least five clear days before the return day" and by inserting in lieu thereof the words "no later than fourteen days before the date of hearing or, with the leave of the judge and upon such terms as the judge thinks fit, on some later day before the date of hearing";
- (s) by inserting next after section seventy-five the following new section :—
- 75A. The judge, on the application of any party to an action in a District Court, and on being satisfied that the whole or any part of any particulars of claim or grounds of defence in that action is frivolous, vexatious, or embarrassing, may order the frivolous, vexatious, or embarrassing matter to be struck out. In any such case the judge may order that the action proceed as though the matter so struck out had not been filed, or may grant time to any party to file amended documents, and may, where grounds of defence are so struck out, order that the plaintiff may have judgment entered up against the defendant.
- (t) by inserting at the end of section 95A the following new subsection :—
- (2) Where at a trial of any cause or issue in a District Court a verdict is returned for an amount in excess of ten thousand dollars, the Court shall, notwithstanding the amount claimed, find and record a verdict for the amount of ten thousand dollars, and the plaintiff shall be entitled to recover the amount of ten thousand dollars or that amount reduced in accordance with section ten of the Law Reform (Miscellaneous Provisions) Act, 1965.

Sec. 72.
(Payment into court of money by defendant.)

New sec. 75A.

Judge may strike out certain matter.

Sec. 95A.
(Amount of verdict exceeding six thousand dollars.)

PART

Administration of Justice.

PART X.

AMENDMENT OF SMALL DEBTS RECOVERY ACT, 1912-1965.

13. The Small Debts Recovery Act, 1912, as amended by subsequent Acts, is amended—

Amendment
of Act No.
33, 1912.

- 5 (a) by omitting subsection four of section 7A;
- Sec. 7A.
(Jurisdiction where defendant outside the State.)
- (b) by inserting next after section thirteen the following new section :—
- 10 13A. Notwithstanding anything contained in section 7A, or subsection one of section thirteen, of this Act, where a defendant fails to make an election as provided by section 25A of this Act, the court in which the action was instituted shall have jurisdiction in the action.
- 15 (c) by inserting at the end of section twenty-five the following new subsection :—
- 20 (2) Subject to subsection three of this section, and section 25A of this Act, a default summons may be issued notwithstanding that the action has been brought in a court other than a court having jurisdiction in the action under subsection one of section thirteen or, as the case may require, subsection one and paragraph (a) of subsection two of section 7A of this Act.
- 25 (3) Nothing in subsection two of this section shall authorise the issue of a default summons by a court within the metropolitan police district in respect of an action that, but for that subsection, would be required to be brought in another court within that district.

New sec.
13A.

Jurisdiction
in certain
cases.

Sec. 25.
(Default
summons.)

(d)

Administration of Justice.

(d) by inserting next after section twenty-five the following new section :—

New sec.
25A.

5 25A. (1) Where a default summons has issued in an action brought in a court other than a court having jurisdiction under subsection one of section thirteen of this Act, the defendant, or any one of two or more defendants may, when filing a notice of grounds of defence pursuant to section twenty-seven of this Act, elect as prescribed that subsection one of section thirteen of this Act shall apply to the action.

Procedure where default summons issued by court for district where defendant not resident, &c.

15 (2) Where a defendant has made an election under subsection one of this section, the plaintiff may apply to the registrar of the court in which the action was brought to transfer the proceedings to the court referred to in subsection three of this section and, if he fails to make such an application within three months after the time the notice of grounds of defence was filed, the plaintiff shall be deemed to have discontinued the action.

25 (3) Where application is made under subsection two of this section, the plaintiff shall in his application nominate a court holden in and for the district where the defendant carries on business or usually resides, or a court holden in and for the district in which the debt sued for was contracted, and the registrar shall transfer the proceedings to the court so nominated.

30 (4) Where the registrar is required to transfer proceedings in accordance with this section, the provisions of subsections three and four of section sixteen of this Act shall apply as if there had been a change of venue to the court to which the proceedings are to be transferred.

(5)

Administration of Justice.

- 5 (5) Where, in the case of a defendant who is not within New South Wales, a default summons has issued in an action in a court holden in and for a district other than that for which the court would have jurisdiction under subsection one and paragraph (a) of subsection two of section 7A of this Act, this section shall apply as if references therein to subsection one of section thirteen were references to subsection one and paragraph (a) of subsection two of section 7A, and as if the court referred to in subsection three of this section were a court having jurisdiction under subsection one and paragraph (a) of subsection two of section 7A of this Act.
- 10
- 15 (e) by omitting section twenty-six and by inserting in lieu thereof the following section :— Subst. sec. 26.
- 20 26. A default summons or duplicate thereof shall be served in the same manner as provided by or under section nineteen of this Act for the service of an ordinary summons. Service of default summons.
- 25 (f) (i) by omitting from section twenty-eight the word "personal" where firstly occurring ; Sec. 28. (Judgment in default of defence.)
- (ii) by omitting from the same section the words "or where service has not been personal within fourteen days after leave to proceed as aforesaid," ;
- (iii) by omitting from the same section the words "three months" and by inserting in lieu thereof the words "twelve months" ;
- 30 (iv) by omitting from the same section the words "personal service, or of an order of leave to proceed" and by inserting in lieu thereof the word "service".

Administration of Justice.

SCHEDULE.

Sec. 1.

Reference to Act.	Short Title.	Citation.
5 No. 32, 1965.	Law Reform (Miscellaneous Provisions) Act, 1965.	Law Reform (Miscellaneous Provisions) Act, 1965-1967.
No. 21, 1899.	Common Law Procedure Act, 1899.	Common Law Procedure Act, 1899-1967.
10 No. 35, 1900.	Supreme Court and Circuit Courts Act, 1900.	Supreme Court and Circuit Courts Act, 1900-1967.
No. 24, 1901.	Equity Act, 1901.	Equity Act, 1901-1967.
15 No. 14, 1899.	Matrimonial Causes Act 1899.	Matrimonial Causes Act, 1899-1967.
No. 31, 1912.	Jury Act, 1912.	Jury Act, 1912-1967.
20 No. 27, 1902.	Justices Act, 1902.	Justices Act, 1902-1967.
No. 23, 1912.	District Courts Act, 1912.	District Courts Act, 1912-1967.
25 No. 33, 1912.	Small Debts Recovery Act, 1912.	Small Debts Recovery Act, 1912-1967.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1967

No. , 1967.

A BILL

To amend the law relating to the administration of justice; to make further provision with respect to the mode of trial of certain classes of civil actions; to make further provision with respect to the payment or the provision of security for payment of moneys into court in civil actions; to enable the Court of Appeal, in special circumstances, to substitute its assessment for the verdict of a jury; to make further provision with respect to the liability of women for service on juries; to make amendments of a procedural or administrative nature to various Acts; for these and other purposes to amend the Law Reform

(Miscellaneous

Administration of Justice.

(Miscellaneous Provisions) Act, 1965, and certain Acts amended by that Act, the Matrimonial Causes Act, 1899, and certain other Acts; and for purposes connected therewith.

[MR McCaw—5 December, 1967.]

BE 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 :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Administration of Justice Act, 1967". Short title and citation.

10 (2) The Acts, as amended by subsequent Acts and by this Act, specified in the first and second columns of the Schedule to this Act may be cited as respectively specified in the third column of that Schedule.

15 2. (1) This Part of this Act shall commence on the day upon which the assent of Her Majesty to this Act is signified. Commencement.

(2) Subject to subsection one of this section this Act shall commence upon such day or days as may be appointed and notified pursuant to subsection three of this section.

20 (3) The Governor may, from time to time, appoint and notify by proclamation published in the Gazette the day upon which any Part or provision of this Act specified in the proclamation shall commence and may appoint different days for different Parts or provisions (whether contained in the same Part or section or in different Parts or sections) and the Part or provision so specified shall commence accordingly. **3.**

Administration of Justice.

3. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY—ss. 1-3.

PART II.—AMENDMENT OF LAW REFORM (MISCELLANEOUS PROVISIONS) ACT, 1965—s. 4.

5 PART III.—AMENDMENT OF COMMON LAW PROCEDURE ACT, 1899-1967—s. 5.

PART IV.—AMENDMENT OF SUPREME COURT AND CIRCUIT COURTS ACT, 1900-1967—s. 6.

10 PART V.—AMENDMENT OF EQUITY ACT, 1901-1965—s. 7.

PART VI.—AMENDMENT OF MATRIMONIAL CAUSES ACT, 1899-1965—s. 8.

PART VII.—AMENDMENT OF JURY ACT, 1912-1965—ss. 9, 10.

15 PART VIII.—AMENDMENT OF JUSTICES ACT, 1902-1967—s. 11.

PART IX.—AMENDMENT OF DISTRICT COURTS ACT, 1912-1965—s. 12.

20 PART X.—AMENDMENT OF SMALL DEBTS RECOVERY ACT, 1912-1965—s. 13.

SCHEDULE.

PART II.

AMENDMENT OF LAW REFORM (MISCELLANEOUS PROVISIONS) ACT, 1965.

25 4. The Law Reform (Miscellaneous Provisions) Act, 1965, is amended—

Amendment
of Act No.
32, 1965.

(a) (i) by omitting from subsection one of section four the words "instituted after the commencement of this Act" and by inserting in lieu thereof the words "or in a District Court";

Sec. 4.
(Application
of Part.)

30

(ii)

Administration of Justice.

(ii) by omitting from subsection two of the same section the figures "1942-1963" and by inserting in lieu thereof the words and figures "1942, as amended by subsequent Acts";

5 (b) by omitting subsections one and two of section five and by inserting in lieu thereof the following sub-
sections :— Sec. 5.
(Amend-
ment of
procedure as
to trials
by jury.)

10 (1) In any action to which this Part applies the court or a judge may on the application of any party made not later than such time before the trial as may be limited by rules of court, upon being satisfied that circumstances exist which render it desirable to do so and shall, where both parties so apply, order that the action be tried with a jury;
15 but, save as aforesaid, any action to which this Part applies shall, notwithstanding section twenty-nine of the Jury Act, 1912, as amended by subsequent Acts, or section ninety of the District Courts Act, 1912, as amended by subsequent Acts, be tried by a judge
20 without a jury :

25 Provided that the provisions of this section shall be without prejudice to the power of the court or a judge to order, in accordance with rules of court, that different questions of fact arising in any action be tried by different modes of trial, and where any such order is made the provisions of this section shall have effect accordingly.

30 (2) Where an order has been made under subsection one of this section for the trial of an action with a jury any party to that action may apply under section thirty of the Jury Act, 1912, as amended by subsequent Acts, for an order that the trial be had by a jury consisting of twelve persons.

(c)

Administration of Justice.

- (c) by inserting next after section five the following new section :— New sec. 5A.

5A. (1) Where an action to which this Part applies was instituted before the commencement of Part II of the Administration of Justice Act, 1967, in the Supreme Court or in a District Court then— Transitional provisions.

(a) if such action is listed in the daily causes list for hearing within one month after such commencement such action may be continued and completed as if Part II of the Administration of Justice Act, 1967, had not been enacted;

(b) if such action is not listed for hearing within one month after such commencement then notwithstanding anything in any Act or in any rule of court relating to the mode of trial of actions, or any steps taken by the parties, the provisions of section five of this Act shall apply to the hearing and determination of such action.

(2) Where an action to which this Part applies is instituted after the commencement of Part II of the Administration of Justice Act, 1967, in the Supreme Court or in a District Court, then, notwithstanding anything in any Act or in any rule of court relating to the mode of trial of actions, the provisions of section five of this Act shall apply to the hearing and determination of such action.

(d) by omitting from section six the words “section five” wherever occurring and by inserting in lieu thereof the words “sections five and 5A”; Sec. 6.
(Third party proceedings and contribution.)

(e) by omitting from subsection one of section ten the word, figures, letter and symbols “section 64 (a)” wherever occurring and by inserting in lieu thereof the words “paragraph (a) of subsection one of section sixty-four”. Sec. 10.
(Statute law revision.)

PART

Administration of Justice.

PART III.

AMENDMENT OF COMMON LAW PROCEDURE ACT,
1899-1967.

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

Amendment
of Act No.
21, 1899.

10 (a) by omitting from subsection one of section 82A
the words "at any time before the joinder of issue"
and by inserting in lieu thereof the words "no later
than fourteen days before the date of hearing or,
with the leave of the Court or a Judge and upon
such terms as the Court or Judge thinks fit, on
some later day before the date of hearing";

Sec. 82A.
(Payment
into Court
at any time
before
joinder of
issue.)

15 (b) by omitting subsection four of section 160A and
by inserting in lieu thereof the following sub-
section :—

Sec. 160A.
(Substituted
verdict.)

(4) The Court of Appeal shall not exercise the
powers conferred by this section unless it is
satisfied—

20 (a) that it is fully able to assess the damages on
a perusal of the evidence contained in the
documents before it, or on admitted facts,
without seeing or hearing the plaintiff or
defendant or other witnesses; and

25 (b) that one of the following circumstances
exists, namely :—

(i) it is desirable that the power be
exercised to avoid a multiplicity of
trials; or

30 (ii) as a result of an error of law on the
part of the trial judge or a manifest
error on the part of the jury, some
item or items of damages has or
have been wrongly included in or
excluded from the assessment; or

35 (iii) the parties consent.

(c)

Administration of Justice.

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

Subst. sec. 265.

5

265. All costs of any action not herein or otherwise provided for shall be paid by or apportioned between the parties in such manner as the Court or Judge thinks fit and in default of any special direction shall abide the event of the action or the finding or judgment on any issue, and such costs shall be recoverable accordingly.

Costs in discretion of Judge.

10

PART IV.

AMENDMENT OF SUPREME COURT AND CIRCUIT COURTS ACT, 1900-1967.

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

Amendment of Act No. 35, 1900.

15

(a) by omitting from subsection three of section nine the words "be a member of the Industrial Commission of New South Wales or a barrister of not less than five years' standing" and by inserting in lieu thereof the following word and new paragraphs :—

Sec. 9. (Puisne Judges.)

20

be—

25

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

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

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

30

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

35

(b)

Administration of Justice.

- (b) by inserting at the end of subsection one of section thirteen the following paragraph :—
- For the purposes of this subsection “barrister” and “solicitor” include, respectively, a barrister or solicitor of less than seven years’ standing where during a continuous period of not less than seven years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors.
- (c) by inserting next after paragraph (a) of subsection one of section 21K the following new paragraph :—
- (ai) for the granting of bail, subject to such terms and conditions, if any, as may be imposed, upon the making of a rule or order nisi in respect of any proceedings referred to in paragraphs (a) and (b) of subsection three of section 21F of this Act, where—
- (i) the applicant for the rule or order nisi is in custody; and
- (ii) the granting of bail is not authorised by any Act or rule of Court by which the making of an application for such a rule or order is regulated or empowered.

PART V.

AMENDMENT OF EQUITY ACT, 1901-1965.

7. The Equity Act, 1901, as amended by subsequent Acts, is amended—
- (a) (i) by inserting in section seventy-one after the word “barrister” the words “or solicitor”;
- (ii)

Administration of Justice.

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

5 For the purposes of this section “barrister” and “solicitor” include, respectively, a barrister or solicitor of less than five years standing where during a continuous period of not less than five years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors.

(b) (i) by inserting next after paragraph (c) of subsection (1C) of section 71A the following new paragraph :—

15 (d) For the purposes of paragraph (b) of this subsection, service as Acting Master in Equity shall be deemed to be service as the Master in Equity.

Sec. 71A.
(Tenure of office and pension of the Master.)

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

20 (d) Nothing in this subsection shall be construed as abridging or otherwise affecting any powers, authorities, duties or functions conferred or imposed on a Deputy Master by or under this or any other Act.

(c) by inserting next after subsection one of section ninety-four the following new subsections :—

30 (1A) The Judges of the Supreme Court or the Chief Judge in Equity and any two Judges of the Supreme Court may make rules—

Sec. 94.
(General Rules.)

(a) for empowering the Master or the Deputy Master in Equity to do such things and transact such business and to exercise such authority and jurisdiction in the same as

by

Administration of Justice.

by virtue of any statute or custom or by the rules and practice of the Court, or any of them respectively, are done, transacted or exercised by the Judge in chambers and as may be specified in any such rule, except in respect of matters relating to the liberty of the subject;

5

(b) for regulating the attendance of the Master or the Deputy Master in Equity in chambers, the course of practice to be there pursued, and the scale of costs to be there adopted, and for fixing the scale of fees in respect of business transacted before the Master or Deputy Master in Equity.

10

15

(1B) Every rule made under subsection (1A) of this section shall, subject to subsection three of this section, be of the same force and effect as if it had been inserted in and had formed part of this Act.

20

PART VI.

AMENDMENT OF MATRIMONIAL CAUSES ACT, 1899-1965.

8. The Matrimonial Causes Act 1899, as amended by subsequent Acts, is amended by inserting next after subsection three of section four the following new subsection :—

Amendment of Act No. 14, 1899.

Sec. 4.

(Composition and jurisdiction of Court.)

25

(4) The registrar, when exercising the jurisdiction and powers conferred upon or delegated to him under this Act, shall be deemed to be exercising the jurisdiction and powers of the Supreme Court.

PART

Administration of Justice.

PART VII.

AMENDMENT OF JURY ACT, 1912-1965.

9. (1) The Jury (Amendment) Act, 1947, as amended by the Mental Health Act, 1958, is amended by omitting section three.

Amendment of Act No. 41, 1947. Sec. 3. (Commencement of section.)

(2) Notwithstanding anything contained in section two of this Act, this section shall commence on the day on which section ten of this Act commences.

10. (1) The Jury Act, 1912, as amended by subsequent Acts, is amended—

Amendment of Act No. 31, 1912.

(a) (i) by omitting from section three the word "man" and by inserting in lieu thereof the word "person";

Sec. 3. (Qualifications of jurors.)

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

(2) The liability imposed by subsection one of this section shall not extend to a woman unless she is qualified and resident in a jurors' district declared by the Governor, by order published in the Gazette, to be a jurors' district for the purposes of this subsection.

(3) A woman who is liable to serve on juries or act as a juror may, by giving to the chief constable of the police district in which she is resident a notification in a form approved by the sheriff, elect not to serve on juries or act as a juror, whether or not—

(a) her liability so to serve arose before or after the commencement of section ten of the Administration of Justice Act, 1967; or

(b) she has, under subsection four of this section, revoked an election previously made by her under this subsection.

(4)

Administration of Justice.

- 5 (4) A woman who, but for having made an election as provided by subsection three of this section, would be liable to serve on juries or act as a juror may, by giving to the chief constable of the police district in which she is resident a notification in a form approved by the sheriff, revoke that election and shall thereupon be subject to the provisions of this Act as if that election had not been made.
- 10 (b) (i) by omitting from section four the word "man" and by inserting in lieu thereof the word "person"; Sec. 4. (Disqualification.)
- 15 (ii) by omitting from paragraph (b) of the same section the word "he" and by inserting in lieu thereof the words "such person";
- (c) (i) by omitting from paragraph (q) of section five the word "and"; Sec. 5. (Exemptions.)
- 20 (ii) by omitting from paragraph (r) of the same section the words "duty of jurymen" and by inserting in lieu thereof the following words and new paragraph :—
duties of a juror; and
- 25 (s) women who have elected, under subsection three of section three of this Act, not to serve on juries or act as a juror and have not under subsection four of that section, revoked that election.
- 30 (d) by omitting from sections nine, thirteen, twenty-seven and fifty-seven the word "men" wherever occurring and by inserting in lieu thereof the word "persons"; Secs. 9, 13, 27 and 57. (Consequential.)
- (e) by omitting from sections ten and fifty-eight the word "man" wherever occurring and by inserting in lieu thereof the word "person"; Secs. 10 and 58. (Consequential.)
- (f)

Administration of Justice.

(f) by inserting next after subsection three of section ten the following new subsection :—

Sec. 10.
(Lists to be prepared by chief constable.)

5 (4) Notwithstanding anything contained in this Act, a chief constable shall not, subject to subsection two of section ten of the Administration of Justice Act, 1967, be required to include the name of a woman in a jury list for any jurors' district unless—

10 (a) he has been given notice in writing by the sheriff that he is to include women in the jury list for that district; and

15 (b) he is satisfied that the woman concerned has been made aware of her right to make the election referred to in subsection three of section three of this Act and has not made such an election.

(g) by omitting the Seventh Schedule.

Seventh Schedule.

20 (2) Where, immediately before the commencement of this section, a woman was qualified and liable to serve on juries or to act as a juror she shall, immediately after that commencement, be deemed to be liable to serve on juries or to act as a juror under the provisions of the Jury Act, 1912, as amended by subsequent Acts and by this Act, and the provisions of that Act, as so amended, subsection two of section three and paragraph (a) of subsection four of section ten
25 excepted, shall apply to and in respect of her accordingly.

PART VIII.

AMENDMENT OF JUSTICES ACT, 1902-1967.

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

Amendment of Act No. 27, 1902.

(a) by omitting from subsection (2A) of section eighty-two the words "For such purpose such conviction or order may be entered in the records of the Small Debts Court exercising jurisdiction at the petty sessions

Sec. 82.
(Abolition in all cases of recovery of fine, etc. by levy or distress.)

Administration of Justice.

sessions where such order or conviction was made in such manner as may be prescribed by rules made under the said Acts.”;

5 (b) by inserting next after the same subsection the following new subsections :—

(2B) Where a corporate body referred to in subsection (2A) of this section—

(a) is the subject of only one conviction or order so referred to; or

10 (b) is the subject of more than one such conviction or order—

(i) made at the same petty sessions whether on the same day or on different days; or

15 (ii) made at different petty sessions on the same day or on different days,

the conviction or order or, as the case may be, the convictions or orders may, subject to subsection (2C) of this section, be entered in the records of the Small Debts Court exercising jurisdiction at the petty sessions at which that conviction or order or, as the case may be, any of those convictions or orders was made.

25 (2C) Where more than one conviction or order is entered under subsection (2B) of this section, all those convictions or orders shall operate as one order for the payment of the total of all the amounts adjudged to be paid by the convictions or orders so entered, less the amount, if any, paid by the corporate body in reduction thereof.

30

PART

Administration of Justice.

PART IX.

AMENDMENT OF DISTRICT COURTS ACT, 1912-1965.

12. The District Courts Act, 1912, as amended by subsequent Acts, is amended—

Amendment of Act No. 23, 1912.

5 (a) by omitting subsection five of section 8A;

Sec. 8A. (Jurisdiction where defendant outside the State.)

(b) by inserting next after section 8A the following new section :—

New sec. 8B.

10 8B. Notwithstanding anything contained in subsection one of section seven, or in section 8A of this Act, where a defendant fails to make an election as provided by section 64A of this Act, the District Court in which the action was instituted shall have jurisdiction in the action.

Jurisdiction in certain circumstances.

15 (c) by inserting at the end of section eleven the following new subsections :—

Sec. 11. (Powers of judge.)

20 (2) Subject to subsection three of this section, it shall be lawful for a judge of a District Court to hear and determine actions and matters pending in that District Court, at a town or place other than that at which the holding of that District Court has been proclaimed pursuant to subsection one of section four of this Act, during any period in which it is inexpedient or impracticable to hold sittings of the Court at that proclaimed town or place.

25 (3) The jurisdiction conferred by subsection two of this section shall not be exercised unless the town or place first referred to in that subsection—

30 (a) if within the appointed district of the judge, has been specified by order of the judge as the town or place at which the hearing shall be held; or

(b)

Administration of Justice.

5 (b) if beyond the appointed district of the judge has, by order published in the Gazette, been declared by the Governor to be the town or place at which the hearing of all such actions or matters shall be held for the period specified in the order,

and, in the case referred to in paragraph (b) of this subsection, the jurisdiction is exercised within the period specified in the order.

10 (4) A subpoena or other process requiring the appearance of any person at the hearing of any action or matter referred to in subsection two of this section may be made returnable at the town or place specified in an order made pursuant to subsection three of this section.

15 (d) (i) by omitting from subsection one of section Sec. 14. fourteen the words "be a barrister of five years or an attorney of seven years standing" and by inserting in lieu thereof the following word (Appointment and qualification of judges.) and new paragraphs :—

- 20 be—
- (a) a barrister of five years' standing;
- (b) a solicitor of seven years' standing;
- or
- 25 (c) a barrister or a solicitor of less than five or seven years' standing, respectively, where during a continuous period of not less than seven years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors;

30 (ii) by omitting from subsection two of the same section the word "attorney" and by inserting in lieu thereof the word "solicitor";

35 (e) by omitting from section nineteen the word "attorney" and by inserting in lieu thereof the word (Deputy judge.) "solicitor";

(f)

Administration of Justice.

- (f) by omitting from section twenty-four the words “In the case of the District Court of the Metropolitan District holden at Sydney the assistant registrar shall be appointed by the Governor. The person who at the commencement of the District Courts (Amendment) Act, 1949, held office as assistant registrar of the District Court of the Metropolitan District holden at Sydney shall be deemed to have been appointed assistant registrar of such court under the provisions of this section.” and by inserting in lieu thereof the following paragraph :—
- In the case of the District Court of the Metropolitan District holden at Sydney, or of any District Court approved for the purpose by the Minister, assistant registrars, being not more than three in number in respect of any one District Court, may be appointed by the Governor. Any person who, immediately before the commencement of paragraph (f) of section twelve of the Administration of Justice Act, 1967, held office as assistant registrar of the District Court of the Metropolitan District holden at Sydney shall continue in that office as if he had been appointed under the provisions of this section.
- (g) by inserting in subsection one of section thirty-three after the words “process of execution” the words “unless the registrar shall otherwise direct”;
- (h) by omitting from subsection one of section forty-one the words “(except in an action in which title to land is in question, and except in an action of ejectment)”;
- (i) by omitting from section forty-three the words “four hundred dollars” wherever occurring and by inserting in lieu thereof the words “six thousand dollars”;

Sec. 24.
(Assistant registrars.)

Sec. 33.
(Amount of court fees.)

Sec. 41.
(Ordinary jurisdiction of the courts.)

Sec. 43.
(Jurisdiction where title to land is in question.)

Administration of Justice.

- (j) (i) by inserting next after subsection one of section forty-four the following new subsection :—

Sec. 44.
(Ejectment actions.)

5

10

15

(1A) Where land in respect of which an action of ejectment is brought or part thereof is in the occupation of a person not named in the summons as a defendant, and the plaintiff does not state in his particulars annexed to the summons that it is not intended to evict such person, a notice in the prescribed form with a copy of the summons annexed thereto shall be served on such person by leaving the same at the premises or part thereof so occupied, addressed to the person in occupation thereof.

- (ii) by omitting paragraph (a) of subsection two of the same section;

- (k) by inserting next after section sixty-three the following new section :—

New sec.
63A.

20

25

30

63A. If the defendant to an action commenced by summons issued pursuant to the provisions of section sixty-two of this Act does not within the prescribed time file a defence, or notice of intention to defend, as provided by the rules of court, the plaintiff may, within three months after the expiration of the time for filing such defence or notice and after due proof of service of the summons, have judgment entered up by the court or registrar against the defendant, limited to the issue of liability.

Entering up of judgment in undefended cases.

For the purposes of this section, the rules of court may prescribe—

35

- (a) the procedures whereby the action shall go to trial as to the amount of the plaintiff's claim; and
(b) the scale of costs to be adopted in entering judgment and the scale of fees in respect of any such procedures.

(1)

Administration of Justice.

(1) by inserting at the end of section sixty-four the following new subsection :—

Sec. 64.
(Default
summons.)

5 (2) Subject to the provisions of section 64A of this Act, a default summons may be issued notwithstanding that the action has been brought in a District Court other than a District Court having jurisdiction in the action under subsection one of section seven of this Act or, as the case may require, subsection two of section 8A of this Act.

10 (m) by inserting next after section sixty-four the following new section :—

New sec.
64A.

15 64A. (1) Where a default summons has issued in an action brought in a District Court other than a District Court having jurisdiction under subsection one of section seven of this Act, the defendant, or any one of two or more defendants may, when filing notice of grounds of defence pursuant to section sixty-six of this Act, elect as prescribed that subsection one of section seven of this Act shall apply to the action.

Procedure
where
default
summons
issued
by Court
for district
where
defendant
not resi-
dent, &c.

25 (2) Where a defendant has made an election under subsection one of this section, the plaintiff may apply to the registrar of the Court in which the action was brought to transfer the proceedings to the District Court referred to in subsection three of this section and, if he fails to make such an application within three months after the time the notice of grounds of defence was filed, the plaintiff shall be deemed to have discontinued the action.

30 (3) Where application is made under subsection two of this section, the plaintiff shall in his application nominate a District Court for the district—

35 (a) where the defendant, or any one of two or more defendants, as the case may be, is resident or carries on business; or

40 (b) where the debt sued for was contracted, and the registrar shall transfer the proceedings to the District Court so nominated. (4)

Administration of Justice.

5 (4) Where the registrar is required to transfer proceedings in accordance with this section, the provisions of subsections two, three and four of section ten of this Act shall apply as if there had been a change of venue to the District Court to which the proceedings are to be transferred.

10 (5) Where, in the case of a defendant who is not within New South Wales, a default summons has issued in an action in a District Court for a district other than that for which the Court would have jurisdiction under subsection two of section 8A of this Act, this section shall apply as if the references therein to subsection one of section seven were references to subsection two of section 8A and as if the District Court referred to in subsection three of this section were a District Court having jurisdiction under subsection two of section 8A of this Act.

20 (n) by omitting section sixty-five and by inserting in Sec. 65. lieu thereof the following section :—

65. A default summons shall be served in the same manner as is provided by or under section sixty-three of this Act for the service of an ordinary summons. Service of default summons.

25 (o) (i) by omitting from section sixty-seven the word "personal" where firstly occurring; Sec. 67. (Judgment in default of defence.)

(ii) by omitting from the same section the words "or, where service has not been personal, within the prescribed number of days after leave to proceed as aforesaid,";

30 (iii) by omitting from the same section the words "three months" and by inserting in lieu thereof the words "twelve months";

(iv) by omitting from the same section the words "personal service, or of an order of leave to proceed" and by inserting in lieu thereof the word "service";

(p)

Administration of Justice.

(p) by inserting next after section sixty-seven the following new section :— New sec. 67A.

5 67A. Where, after the commencement of paragraph (p) of section twelve of the Administration of Justice Act, 1967, the defendant to an action for the recovery of a debt or liquidated demand is served, under the provisions of the Service and Execution of Process Act 1901 of the Parliament of the Commonwealth of Australia, or any Act of that Parliament amending or replacing that Act, with an ordinary summons and does not within the prescribed time thereafter, file such defence as is prescribed, the plaintiff may, within three months after the expiration of the time for filing such defence and— Entering up of judgment where defendant outside State.

10 (a) after obtaining such leave to proceed as is required by that Act of the Parliament of the Commonwealth of Australia or any such replacing or amending Act; and

15 (b) on filing an account of what he claims to be due to him verified by the oath of the plaintiff, his attorney or agent,

20 have judgment entered up by the Court or registrar against the defendant for the amount of the claim, and a sum for costs to be prescribed.

25 (q) by inserting next after section seventy-one the following new section :— New sec. 71A.

30 71A. Where, in an action in a District Court, the solicitor for the plaintiff and the solicitor for the defendant have signed a statement of any agreement as to the judgment to be entered by the Court against the defendant, and as to the terms and conditions, if any, upon which the judgment is to be satisfied, the plaintiff may have judgment entered up by the Court or registrar against the defendant in accordance with that agreement. Judgment by consent.

(r)

Administration of Justice.

- (r) by omitting from subsection one of section seventy-
two the words "at least five clear days before the
return day" and by inserting in lieu thereof the
words "no later than fourteen days before the date
of hearing or, with the leave of the judge and
upon such terms as the judge thinks fit, on some
later day before the date of hearing";
- (s) by inserting next after section seventy-five the
following new section :—
- 75A. The judge, on the application of any party
to an action in a District Court, and on being
satisfied that the whole or any part of any particulars
of claim or grounds of defence in that action is
frivolous, vexatious, or embarrassing, may order the
frivolous, vexatious, or embarrassing matter to be
struck out. In any such case the judge may order
that the action proceed as though the matter so
struck out had not been filed, or may grant time
to any party to file amended documents, and may,
where grounds of defence are so struck out, order
that the plaintiff may have judgment entered up
against the defendant.
- (t) by inserting at the end of section 95A the following
new subsection :—
- (2) Where at a trial of any cause or issue in a
District Court a verdict is returned for an amount
in excess of ten thousand dollars, the Court shall,
notwithstanding the amount claimed, find and
record a verdict for the amount of ten thousand
dollars, and the plaintiff shall be entitled to recover
the amount of ten thousand dollars or that amount
reduced in accordance with section ten of the
Law Reform (Miscellaneous Provisions) Act,
1965.

PART

Administration of Justice.

PART X.

AMENDMENT OF SMALL DEBTS RECOVERY ACT, 1912-1965.

13. The Small Debts Recovery Act, 1912, as amended by subsequent Acts, is amended— Amendment of Act No. 33, 1912.

5 (a) by omitting subsection four of section 7A; Sec. 7A. (Jurisdiction where defendant outside the State.)

(b) by inserting next after section thirteen the following new section :— New sec. 13A.

10 13A. Notwithstanding anything contained in section 7A, or subsection one of section thirteen, of this Act, where a defendant fails to make an election as provided by section 25A of this Act, the court in which the action was instituted shall have jurisdiction in the action. Jurisdiction in certain cases.

15 (c) by inserting at the end of section twenty-five the following new subsection :— Sec. 25. (Default summons.)

20 (2) Subject to subsection three of this section, and section 25A of this Act, a default summons may be issued notwithstanding that the action has been brought in a court other than a court having jurisdiction in the action under subsection one of section thirteen or, as the case may require, subsection one and paragraph (a) of subsection two of section 7A of this Act.

25 (3) Nothing in subsection two of this section shall authorise the issue of a default summons by a court within the metropolitan police district in respect of an action that, but for that subsection, would be required to be brought in another court within that district.

(d)

Administration of Justice.

(d) by inserting next after section twenty-five the following new section :— New sec. 25A.

5 25A. (1) Where a default summons has issued in an action brought in a court other than a court having jurisdiction under subsection one of section thirteen of this Act, the defendant, or any one of two or more defendants may, when filing a notice of grounds of defence pursuant to section twenty-seven of this Act, elect as prescribed that subsection one of section thirteen of this Act shall apply to the action. Procedure where default summons issued by court for district where defendant not resident, &c.

10

15 (2) Where a defendant has made an election under subsection one of this section, the plaintiff may apply to the registrar of the court in which the action was brought to transfer the proceedings to the court referred to in subsection three of this section and, if he fails to make such an application within three months after the time the notice of grounds of defence was filed, the plaintiff shall be deemed to have discontinued the action.

20

25 (3) Where application is made under subsection two of this section, the plaintiff shall in his application nominate a court holden in and for the district where the defendant carries on business or usually resides, or a court holden in and for the district in which the debt sued for was contracted, and the registrar shall transfer the proceedings to the court so nominated.

30 (4) Where the registrar is required to transfer proceedings in accordance with this section, the provisions of subsections three and four of section sixteen of this Act shall apply as if there had been a change of venue to the court to which the proceedings are to be transferred.

(5)

Administration of Justice.

- 5 (5) Where, in the case of a defendant who is not within New South Wales, a default summons has issued in an action in a court holden in and for a district other than that for which the court would have jurisdiction under subsection one and paragraph (a) of subsection two of section 7A of this Act, this section shall apply as if references therein to subsection one of section thirteen were references to subsection one and paragraph (a) of subsection two of section 7A, and as if the court referred to in subsection three of this section were a court having jurisdiction under subsection one and paragraph (a) of subsection two of section 7A of this Act.
- 10
- 15 (e) by omitting section twenty-six and by inserting in lieu thereof the following section :— Subst. sec. 26.
- 20 26. A default summons or duplicate thereof shall be served in the same manner as provided by or under section nineteen of this Act for the service of an ordinary summons. Service of default summons.
- (f) (i) by omitting from section twenty-eight the word "personal" where firstly occurring; Sec. 28.
- 25 (ii) by omitting from the same section the words "or where service has not been personal within fourteen days after leave to proceed as aforesaid,"; (Judgment in default of defence.)
- (iii) by omitting from the same section the words "three months" and by inserting in lieu thereof the words "twelve months";
- 30 (iv) by omitting from the same section the words "personal service, or of an order of leave to proceed" and by inserting in lieu thereof the word "service".

Administration of Justice.

SCHEDULE.

Sec. 1.

Reference to Act.	Short Title.	Citation.
5 No. 32, 1965.	Law Reform (Miscellaneous Provisions) Act, 1965.	Law Reform (Miscellaneous Provisions) Act, 1965-1967.
No. 21, 1899.	Common Law Procedure Act, 1899.	Common Law Procedure Act, 1899-1967.
10 No. 35, 1900.	Supreme Court and Circuit Courts Act, 1900.	Supreme Court and Circuit Courts Act, 1900-1967.
No. 24, 1901.	Equity Act, 1901.	Equity Act, 1901-1967.
15 No. 14, 1899.	Matrimonial Causes Act 1899.	Matrimonial Causes Act, 1899-1967.
No. 31, 1912.	Jury Act, 1912.	Jury Act, 1912-1967.
20 No. 27, 1902.	Justices Act, 1902.	Justices Act, 1902-1967.
No. 23, 1912.	District Courts Act, 1912.	District Courts Act, 1912-1967.
25 No. 33, 1912.	Small Debts Recovery Act, 1912.	Small Debts Recovery Act, 1912-1967.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES-1967
[25c]