

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.

I. P. K. VIDLER,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 26 March, 1969.*

New South Wales



ANNO OCTAVO DECIMO

ELIZABETHÆ II REGINÆ

Act No. , 1969.

An Act to provide that certain enactments of the Parliament of England and of the Parliament of Great Britain and of the Parliament of the United Kingdom of Great Britain and Ireland in force in England at the time of the passing of the Imperial Act 9 George IV Chapter 83 shall continue in force in New South Wales; to replace other enactments of such Parliaments; to repeal other enactments of such Parliaments; to validate certain matters; and for purposes connected therewith.

BE

Imperial Acts Application.

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 "Imperial Acts Application Act, 1969". Short title and commencement.

10 (2) This Act shall, except where otherwise expressly provided, commence upon a day to be appointed by the Governor and notified by proclamation in the Gazette.

2. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to other persons or circumstances shall not be affected. Construction.

20 3. This Act is divided into Parts and Divisions as follows :— Division into Parts and Divisions.

PART I.—PRELIMINARY—ss. 1–3.

PART II.—GENERAL—ss. 4–11.

PART III.—SUBSTITUTED ENACTMENTS—ss. 12–42.

25 DIVISION 1.—*Administration of Estates.*

DIVISION 2.—*Calendar.*

DIVISION 3.—*Charities.*

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DIVISION 5.—*Guardians.*

30 DIVISION 6.—*Insurance—Life, Fire and other Policies.*

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DIVISION 8.—*Justices of the Peace.*

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5 DIVISION 11.—*Libels—Blasphemous and Seditious Libels.*

DIVISION 12.—*Real Property.*

DIVISION 13.—*Recovery of Property on Determination of a Life or Lives.*

DIVISION 14.—*Religious Worship—Disturbance of.*

10 DIVISION 15.—*Sheriff.*

DIVISION 16.—*Sunday.*

DIVISION 17.—*Witnesses—Habeas Corpus for Prisoners.*

PART IV.—PENALTIES—s. 43.

15 SCHEDULES.

PART II.

GENERAL.

4. In the construction of this Act, unless inconsistent with Interpretation.
 the context or subject-matter, the expression "Imperial
 20 enactment" includes any part of the enacted law at any time
 in force in England.

5. (1) Each Imperial enactment mentioned in the First Substitu-
 Schedule to this Act, so far as it was in force in England tion of
 on the twenty-fifth day of July, one thousand eight hundred enactments.
 25 and twenty-eight is declared— (First
 Schedule.)

- (a) to have been in force in New South Wales on that
 day by virtue of the Imperial Act 9 George IV
 Chapter 83 (The Australian Courts Act, 1828);
 and
- 30 (b) to have remained in force in New South Wales
 from that day until the commencement of this Act,
 except so far as affected by State Acts from time
 to time in force.

(2)

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(2) Each Imperial enactment mentioned in the First Schedule to this Act is hereby repealed so far as it applies in New South Wales.

(3) Each provision of Part III of this Act is substituted for the Imperial enactment mentioned in the first column of the First Schedule to this Act opposite the reference to that provision in the second column of that Schedule.

(4) To the extent to which any of the provisions of Part III of this Act are inconsistent with the provisions of any State Act in force at the commencement of this Act, the provisions of the State Act shall prevail.

(5) In construing any of the provisions of Part III of this Act regard may be had to the context (if any) of the Imperial enactment for which the provision is substituted.

(6) In any State Act a reference to any Imperial enactment specified in the first column of the First Schedule to this Act shall, where the case permits, and unless a contrary intention appears, be construed as a reference to the provision of this Act specified opposite that Imperial enactment in the second column of that Schedule.

6. Each Imperial enactment mentioned in Part I of the Second Schedule to this Act, and so much of each Imperial enactment mentioned in the first column of Part II of that Schedule as is specified opposite that Imperial enactment in the second column of the said Part II, so far in either case as it was in force in England on the twenty-fifth day of July, one thousand eight hundred and twenty-eight—

Preserved
Imperial
enactments.
(Second
Schedule.)

(a) is declared to have been in force in New South Wales on that day by virtue of the Imperial Act 9 George IV Chapter 83; and

(b) except so far as affected by any Imperial enactments or State Acts from time to time in force in New South Wales—

(i) is declared to have remained in force in New South Wales from that day;

(ii)

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- (ii) shall from the commencement of this Act be in force in New South Wales; and
- (c) is not repealed by section eight of this Act.

7. Nothing in this Act affects any Imperial enactment set out in the Third Schedule to this Act or any other Imperial enactment which independently of the provisions of the Imperial Act 9 George IV Chapter 83 is made applicable to New South Wales by the express words or necessary intendment of any Imperial enactment.

Enactments not affected by repeal. 28 and 29 Vic. c. 63. Vict. Act No. 3270, s. 5.

8. (1) In addition to the repeals effected by subsection two of section five of this Act all other Imperial enactments (commencing with the Statute of Merton, 20 Henry III A.D. 1235-6) in force in England at the time of the passing of the Imperial Act 9 George IV Chapter 83 are so far as they are in force in New South Wales hereby repealed.

Imperial enactments repealed. Vict. Act No. 3270, s. 7.

(2) The repeal of the Imperial Act 7 George II Chapter 8 (Sir John Barnard's Act) effected by subsection one of this section shall be deemed to have taken effect as on and from the fourteenth day of June, one thousand eight hundred and sixty :

Provided that nothing in this subsection shall affect any transaction in respect of which proceedings in any Court have been taken or commenced on or before the twenty-fifth day of July, one thousand nine hundred and sixty-eight.

9. (1) The repeal by this Act of any Imperial enactment does not—

Savings. cf. 52 & 53, Vic. c. 63, s. 38.

- (a) revive anything not in force or existing at the commencement of this Act;
- (b) affect the previous operation of any Imperial enactment so repealed or anything duly done or suffered under any Imperial enactment so repealed;
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any Imperial enactment so repealed;

(d)

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(d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any Imperial enactment so repealed; or

5 (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, 10 forfeiture or punishment may be imposed and enforced, as if this Act had not been passed.

(2) The repeal by this Act of—

(a) The Imperial Act 43 Elizabeth Chapter 4 (The Charitable Uses Act, 1601) does not affect the 15 established rules of law relating to charity;

(b) section four of the Imperial Act 29 Charles II Chapter 3 (The Statute of Frauds, 1677) does not apply in relation to a promise or agreement made before the commencement of this Act; and

20 (c) any other Imperial enactment does not affect any rules of law or equity not enacted by the repealed enactment.

10. Where any Imperial enactment not repealed by this ^{Saving.} Act has been repealed (whether expressly or impliedly), confirmed, revived, or perpetuated by any Imperial enactment 25 hereby repealed, the first-mentioned repeal, or the confirmation, revivor, or perpetuation shall not be affected by the repeal effected by this Act.

11. (1) The Governor may, by proclamation published 30 in the Gazette, declare that any provision (in this section called “the revived provision”) being the whole or any part of any Imperial enactment repealed by this Act, other than an Imperial enactment mentioned in the First Schedule to this Act, shall be revived as from the date of publication of the 35 proclamation, or a later date to be specified in the proclamation.

(2)

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(2) On and after the date of revival, the revived provision shall, subject to Acts from time to time in force, and subject to subsection three of this section, have such effect in New South Wales as the revived provision had in New South Wales immediately before the commencement of this Act.

(3) The revival under this section of any revived provision shall not—

- 10 (a) affect the previous operation of any repeal worked by section eight of this Act;
- (b) affect anything duly done or suffered before the date of revival;
- 15 (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred before the date of revival, or any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation or liability; or
- 20 (d) make any person liable for any penalty, forfeiture or punishment in respect of anything done or omitted before the date of revival.

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

(5) If either House passes a resolution of which notice has been given at any time within fifteen sitting days after the proclamation has been laid before such House disallowing any proclamation or part thereof, the proclamation or part thereupon ceases to have effect.

PART

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PART III.

SUBSTITUTED ENACTMENTS.

DIVISION 1.—*Administration of Estates.*

5 **12.** In this Division unless inconsistent with the context or subject-matter—

“Administration” means letters of administration whether general, special, or limited, or with the will annexed or otherwise, and includes an order to the Public Trustee to administer.

10 “Estate” includes both real and personal property.

“Personal representative” means the executor original or by representation or administrator for the time being of a deceased person.

“Will” includes codicil.

15 25 Edward III St. 5 c. 5.

13. (1) An executor of a sole or last surviving executor of a testator is the executor of that testator.

20 This provision shall not apply to an executor who does not prove the will of his testator and, in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, it shall cease to apply on such probate being granted.

(2) So long as the chain of such representation is unbroken, the last executor in the chain is the executor of every preceding testator.

(3) The chain of such representation is broken by—

- (a) an intestacy;
- (b) the failure of a testator to appoint an executor; or
- (c) the failure to obtain probate of a will,

30 but is not broken by a temporary grant of administration if probate is subsequently granted.

(4) Every person in the chain of representation to a testator—

- 35 (a) has the same rights in respect of the estate of that testator as the original executor would have had if living; and
- (b)

Interpretation.

Vict. Act No. 6191, s. 5.

Executor of executor represents original testator. cf. 15 Geo. V c. 23, s. 7. Vict. Act No. 6191, s. 17.

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(b) is, to the extent to which the estate of that testator has come to his hands answerable as if he were an original executor.

31 Edward III St. 1 c. 11.

5

1 James II c. 17, s. 6.

14. Every person to whom administration of the estate of a deceased person is granted shall, subject to the limitations (if any) contained in the grant, have the same rights and liabilities and shall be accountable in like manner as if he were the executor of the deceased.

Rights and accountability of administrator.
cf. Vict. Act No. 6191, s. 27.

30 Charles II c. 7.

4 William and Mary c. 24, s. 12.

15. Where a person as personal representative or as executor in his own wrong wastes or converts to his own use any part of the estate of a deceased person and dies, his personal representative shall to the extent of the available assets of the defaulter be liable and chargeable in respect of such waste or conversion in the same manner as the defaulter would have been if living.

Liability for waste.
cf. 15 Geo. V c. 23, s. 29.
Vict. Act No. 6191, s. 33 (2).

DIVISION 2.—*Calendar.*

20

24 George II c. 23—The Calendar (New Style) Act, 1750—
ss. 1, 2 and 3.

16. (1) The first day of January in every year shall be the first day of the year, and each new year shall accordingly commence and be reckoned from the first day of every month of January and all acts, deeds, writings, notes, and other instruments, of what nature or kind soever, hereafter made, executed, or signed shall bear date according to the said method of reckoning, being the reckoning instituted by the Imperial Act 24 George II c. 23, known as The Calendar (New Style) Act, 1750.

Commencement of year.

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(2) The several years two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other hundredth year in time to come, except only every fourth hundredth year, of which the year two thousand shall be the first, shall not be leap years, but shall be common years consisting of three hundred and sixty-five days, and no more; and the years two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundredth year from the said year two thousand inclusive, and also all other years which by the reckoning in use before the first day of January, one thousand seven hundred and fifty-two (being the date for the commencement of the calendar or reckoning instituted by the said Imperial Act, The Calendar (New Style) Act, 1750) would have been leap years, shall in all times to come be leap years, consisting of three hundred and sixty-six days, in the same manner as was before the said first day of January, one thousand seven hundred and fifty-two used with respect to every fourth year.

Hundredth years except every fourth hundredth to be deemed common years consisting of 365 days.

(3) The months, the enumeration of days in the respective months, and the ordering of the days of the week and Easter Day, shall be determined in accordance with the calendar, table and rules annexed to the said Imperial Act, The Calendar (New Style) Act, 1750.

Ordering of months, days of the week and Easter Day.

DIVISION 3.—Charities.

52 George III c. 101—The Charities Procedure Act, 1812.

17. (1) In every case of a breach of any trust or supposed breach of any trust created for charitable purposes, or whenever the direction or order of a court is deemed necessary for the administration of any trust for charitable purposes, any two or more persons may present a petition to the Supreme Court stating such complaint and praying such relief as the nature of the case may require; and the Supreme Court shall hear such petition in a summary way, and upon affidavits or such other evidence as is produced upon such hearing determine the same, and make such other order therein and with respect to the costs of such application as seems just.

Petition in case of a charitable trust and determination thereof in a summary way. Vict. Act No. 3270. s. 39.

(2)

Imperial Acts Application.

(2) Every petition so to be presented shall be signed by the persons preferring the same, in the presence of and shall be attested by the solicitor for such petitioners, and every such petition shall be submitted to and allowed by the Attorney-General or Solicitor-General, and such allowance shall be certified by him before any such petition is presented.

Petitions to be signed by petitioners and their solicitor and by law officer.
Vict. Act No. 3270, s. 40.

DIVISION 4.—Forcible Entries and Detainers.

5 Richard II St. 1 c. 7—The Forcible Entry Act, 1381.

18. No person shall make any entry into any land except where such entry is given by law and, in such case, with no more force than is reasonably necessary.

Forcible entry.
cf. Vict. Act No. 6231, s. 207 (1).

8 Henry VI c. 9—The Forcible Entry Act, 1429.

31 Elizabeth c. 11—The Forcible Entry Act, 1588.

19. No person being in actual possession of land for a period of less than three years by himself or his predecessors shall without colour of right hold possession of it in a manner likely to cause a breach of the peace or a reasonable apprehension of a breach of the peace against a person entitled by law to the possession of the land and able and willing to afford reasonable information as to his being so entitled.

Forcible detainer.
Vict. Act No. 6231, s. 207 (2).

20. Any person who contravenes section eighteen or section nineteen of this Act shall be guilty of a misdemeanour and liable to imprisonment for a term of not more than one year or to a fine of not more than one thousand dollars or to both such imprisonment and fine.

Penalty.

DIVISION 5.—Guardians.

12 Charles II c. 24—The Tenures Abolition Act, 1660—s. 9.

21. A guardian of an infant appointed by deed or will may take into his custody and management to the use of the infant the real and personal estate of the infant till the age of twenty-one years or any lesser time according to the terms of the

Powers of guardian.

Imperial Acts Application.

the appointment of the guardian, and may bring such actions in relation to the real and personal estate of the infant as by law a guardian in common socage might have done, or may bring such other proceedings as may be necessary to give effect to all or any of his powers under this section.

DIVISION 6.—*Insurance—Life, Fire and other Policies.*

14 George III c. 48—The Life Assurance Act, 1774.

22. This Division does not apply to insurances made before the commencement of this Act. Existing insurances not affected by this Division.

10 23. (1) No insurance shall be made by any person on the life of any person or on any other event whatsoever wherein the person for whose use or benefit or on whose account the policy is made has no interest, or by way of gaming or wagering; and every assurance made contrary to this subsection shall be void. No insurance to be made unless insurer has interest. cf. Vict. Act No. 6279, s. 21.

20 (2) It shall not be lawful to make any policy on the life of any person, or on any other event whatsoever, wherein the person effecting the policy has no interest, without inserting in such policy the names of the persons interested therein, or for whose use or benefit or on whose account such policy was made. No policy without inserting names, &c. Vict. Act No. 6279, s. 22.

Davjoyda Estates Pty. Ltd. v. National Insurance Company of New Zealand Ltd. (1965) 85 W.N. (Pt. 1) N.S.W. 184.

25 (3) In all cases where there is an interest in such life or other event, no greater sum shall be recovered or received from the insurer than the amount or value of the interest. How much may be recovered. cf. Vict. Act No. 6279, s. 23.

(4)

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(4) Nothing in this Division shall extend to insurance made by any person on ships or goods, or to contracts of indemnity against loss by fire or loss by other events whatsoever.

Not to extend to ships, contracts of indemnity &c.

cf. Vict. Act No. 6279, s. 24.

Davjoyda Estates Pty. Ltd. v. National Insurance Co., *supra*.

5 DIVISION 7.—*Insurance—Marine.*

19 George II c. 37—The Marine Insurance Act, 1745.

28 George III c. 56—The Marine Insurance Act, 1788.

24. This Division applies to State marine insurance within the limits of New South Wales.

Application of Division.

10 25. This Division does not apply to contracts of marine insurance made before the commencement of this Act.

Existing contracts not affected.

26. (1) Every contract of marine insurance by way of gaming or wagering is void.

Avoidance of wagering or gaming contracts.

15 a (2) A contract of marine insurance is deemed to be a gaming or wagering contract—

6 Edw. VII c. 41, s. 4.
Act No. 11, 1909 (C'wealth), s. 10.

(a) where the assured has not an insurable interest, and the contract is entered into with no expectation of acquiring such an interest; or

20 (b) where the policy is made "interest or no interest", or "without further proof of interest than the policy itself", or "without benefit of salvage to the insurer", or subject to any other like term :

25 Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

27.

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27. Subject to the provisions of any Act, a contract of marine insurance is inadmissible in evidence in an action for the recovery of a loss under the contract unless it is embodied in a marine policy in accordance with this Division. The policy may be executed and issued either at the time when the contract is concluded or afterwards.

Contracts must be embodied in policy.
6 Edw. VII c. 41, s. 22.
Act No. 11, 1909 (C'wealth), s. 28.

28. A marine policy must specify—

- (a) the name of the assured, or of some person who effects the insurance on his behalf;
- 10 (b) the subject-matter insured and the risk insured against;
- (c) the voyage, or period of time, or both as the case may be, covered by the insurance;
- (d) the sum or sums insured; and
- 15 (e) the name or names of the insurers.

What policy must specify.
6 Edw. VII c. 41, s. 23.
Act No. 11, 1909 (C'wealth), s. 29.

DIVISION 8.—*Justices of the Peace.*

1 Edward III St. 2 c. 16.

18 Edward III St. 2 c. 2.

34 Edward III c. 1—The Justices of the Peace Act, 1361.

20 29. The Governor may by commission under the Public Seal of the State appoint justices to keep the peace in the State.

Appoint-ment of justices.

25 30. Justices of the Peace shall have power to restrain offenders and to take of them or of persons not of good fame surety for their good behaviour.

Powers of justices.

DIVISION

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DIVISION 9.—*Landlord and Tenant.*

Use and Occupation.

11 George II c. 19—The Distress for Rent Act, 1737—s. 14.

5 **31.** (1) Where the agreement between the landlord and tenant is not by deed, the landlord may recover a reasonable satisfaction for the lands held or occupied by the defendant in an action of assumpsit for use and occupation. And if in evidence on the trial of such action any parol demise or any agreement (not being by deed) whereon a certain rent was reserved shall appear, the plaintiff shall not be non-suited but may make use thereof as evidence of the quantum of the damages to be recovered.

Vict. Act
No. 6285,
s. 8.
Specktor
v. Lees
[1964]
V.R. 10.
Use and
occupation.

(2) Nothing in subsection one of this section affects actions of debt for use and occupation.

15

Waste.

52 Henry III (Statute of Marlborough) c. 23.

32. (1) A tenant for life or lives or a leasehold tenant shall not commit voluntary waste.

Voluntary
waste.

20 (2) Nothing in subsection one of this section applies to any estate or tenancy without impeachment of waste, or affects any licence or other right to commit waste.

25 (3) In subsection one of this section "leasehold tenant" includes a tenant for a term, a tenant under a periodical tenancy, a tenant under a tenancy to which section one hundred and twenty-seven of the Conveyancing Act, 1919, as amended by subsequent Acts, applies, and a tenant at will.

(4) A tenant who infringes subsection one of this section is liable in damages to his remainderman or reversioner but this section imposes no criminal liability.

(5)

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(5) This section does not affect the operation of any event which may determine a tenancy at will.

DIVISION 10.—Legal Procedure—Actions on Bonds.

8 and 9 William III c. 11—The Administration of Justice
5 Act, 1696—s. 8.

33. (1) In any action on any bond or on any penal sum for non-performance of any covenant or agreement, the plaintiff may assign as many breaches as he thinks fit, and may recover not only such damages as have been usually awarded in such cases, but also damages for such of the said breaches so assigned as the plaintiff proves to have occurred.

In actions on bonds, &c., plaintiff may assign as many breaches as he pleases. Act No. 21, 1899, s. 132.

(2) If interlocutory judgment in any such case is given for the plaintiff by confession or in default of appearance or of pleading, the plaintiff may suggest as many breaches of the covenants and agreements as he thinks fit, and may on proof of such breaches recover damages accordingly.

Vict. Act No. 6279, s. 30.

(3) If the defendant after judgment and before execution pays into the court where the action is brought to the use of the plaintiff such damages together with the costs of the action, or if by reason of any execution the plaintiff is fully paid or satisfied all such damages together with his costs of the action and all reasonable charges and expenses for the said execution, further proceedings on the said judgment shall be stayed. But the judgment shall remain as a further security to answer to the plaintiff such damages as are sustained for further breach of such covenant or agreement, and upon any such breach the plaintiff may summon the defendant to show cause why execution should not be had or awarded upon the said judgment, upon which there shall be the like proceeding or such other proceeding as may be ordered for inquiry as to such breaches and assessing damages thereon; and upon payment or satisfaction in manner as aforesaid of such future damages costs charges and expenses as aforesaid all further proceedings on the said judgment shall to the like extent again be stayed.

Defendant paying damages execution may be stayed.

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4 and 5 Anne c. 3 (or c. 16)—The Administration of Justice Act, 1705—ss. 12 and 13.

34. (1) Where an action is brought upon any bond which has a condition or defeasance to make void the same upon payment of a lesser sum at a day or place certain, if the obligor has before the action brought paid to the obligee the principal and interest due by the defeasance or condition of such bond, though such payment was not made strictly according to the condition or defeasance, it may nevertheless be pleaded in bar of such action; and shall be as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeasance and had been so pleaded.

Action of debt brought on a bond after money paid—such payment may be pleaded in bar. Vict. Act No. 6279, s. 30.

(2) If at any time pending an action upon any such bond with a penalty the defendant brings into court all the principal money and interest due on such bond and also all costs properly chargeable by the plaintiff against the defendant in respect of any proceedings upon such bond, the money so brought in shall be in full satisfaction and discharge of the bond.

Principal and interest on bonds paid into court.

DIVISION 11.—*Libels—Blasphemous and Seditious Libels.*

60 George III and 1 George IV c. 8—The Criminal Libel Act, 1819—ss. 1, 2 and 8.

35. (1) In every case in which any verdict or judgment shall be had against any person for composing, printing, or publishing any blasphemous libel, or any seditious libel tending to bring into hatred or contempt the person of Her Majesty, Her heirs or successors, or the government and constitution of the State of New South Wales as by law established, or either House of Parliament, or to excite Her Majesty's subjects to attempt the alteration of any matter as by law established, otherwise than by lawful means, the judge or the court before whom or in which such verdict shall have been given, or the court in which such judgment shall be had, may make an order for the seizure and carrying away and detaining in safe custody, in such manner as shall be directed in such order, all copies of the libel which shall be in the possession of

After verdict, &c., against any person for composing &c., a blasphemous or seditious libel, the court may make order for the seizure of copies of the libel in possession of such person, &c.

Imperial Acts Application.

the person against whom such verdict or judgment shall have been had, or in the possession of any other person named in the order for his use, evidence upon oath having been previously given to the satisfaction of such court or judge, 5 that a copy or copies of the said libel is or are in the possession of such other person for the use of the person against whom such verdict or judgment shall have been had as aforesaid; and in every such case it shall be lawful for any justice of the peace or for any person acting under any such order, 10 or for any person acting with or in aid of any such justice of the peace, or other person, to search for any copies of such libel in any house, building, or other place whatsoever belonging to or occupied by the person against whom any such verdict or judgment shall have been had, or belonging to or 15 occupied by any other person so named, in whose possession any copies of any such libel, belonging to the person against whom any such verdict or judgment shall have been had, shall be; and in case admission shall be refused or not obtained within a reasonable time after it 20 shall have been first demanded, to enter by force by day into any such house, building, or place whatsoever, and to carry away all copies of the libel there found, and to detain the same in safe custody, until the same shall be restored under the provisions of this section, or disposed of according to any 25 further order made in relation thereto.

(2) If in any such case as aforesaid judgment shall be stayed, or if, after judgment shall have been entered, the same shall be reversed, all copies so seized shall be forthwith returned to the person from whom the same shall have been 30 so taken as aforesaid, free of all charge and expense, and without the payment of any fees whatsoever; and in every case in which final judgment shall be entered upon the verdict so found against the person charged with having composed, printed, or published such libel, then all copies so seized shall 35 be disposed of as the court in which such judgment shall be given shall order and direct.

(3) Any proceeding which shall be brought for any thing done in pursuance of this section, shall be commenced within six months next after the thing done; and the

and search
may there-
upon be
made for
the same.

Copies of
libels so
seized shall
be restored
if judgment
is stayed,
&c., but shall
otherwise
be disposed
of as the
court shall
direct.

Limitation
of actions,
&c.

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the defendant in every such proceeding may plead the general issue, and give this section and the special matter in evidence at any trial to be had thereupon; and if proceedings shall be brought or commenced after the time limited for bringing the same, there shall be a verdict for the defendant.

DIVISION 12.—*Real Property.*

18 Edward I St. 1 (Quia Emptores) cc. 1 and 3.

34 Edward III c. 15.

10 **36.** Land held of the Crown in fee simple may be assured in fee simple without licence and without fine and the person taking under the assurance shall hold the land of the Crown in the same manner as the land was held before the assurance took effect.

Alienation of fee simple.
cf. 17 Edward II, c. 6.
1 Edward III, St. 2, c. 12.

12 Charles II c. 24—The Tenures Abolition Act, 1660—s. 4.

15 **37.** All tenures created by the Crown upon any grant in fee simple made after the commencement of this Act shall be taken to be in free and common socage without any incident of tenure for the benefit of the Crown.

Tenure.

DIVISION 13.—*Recovery of Property on Determination of a Life or Lives.*

20

18 and 19 Charles II c. 11—The Cestui que Vie Act, 1666.

6 Anne c. 72 (or c. 18)—The Cestui que Vie Act, 1707.

25 **38.** (1) Every person having any estate or interest in any property determinable upon a life or lives who, after the determination of such life or lives without the express consent of the person next immediately entitled upon or after such determination, holds over or continues in possession of such property estate or interest, or of the rents, profits or income thereof, shall be liable in damages or to an account for such rents and profits, or both, to the person entitled to such property, estate, interest, rents, profits or income after the determination of such life or lives.

Person wrongfully holding over after the determination of a life to be liable in damages.
Vict. Act No. 6344, s. 274.

(2)

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(2) Where a reversion remainder or other estate or interest in any property is expectant upon the determination of a life or lives, the reversioner remainderman or other person entitled to such reversion remainder or other estate or interest
 5 may in any proceeding claiming relief on the basis that such life or lives has or have determined, adduce evidence of belief that such life or lives has or have been determined and of the grounds of such belief, and thereupon the court may in its discretion order that unless the person or persons on whose
 10 life or lives such reversion remainder or other estate or interest is expectant is or are produced in court or is or are otherwise shown to be living, such person or persons shall for the purposes of such proceedings be accounted as dead, and relief may be given accordingly.

Evidence may be given of belief of determination of a life.

(3) If in such proceedings the lastmentioned person is shown to have remained beyond Australia, or otherwise absented himself from the place in which if in Australia he might be expected to be found, for the space of seven years or upwards, such person, if not proved to be living, shall for
 15 the purposes of such proceedings be accounted as dead, and relief may be given accordingly.

Effect of absence for seven years.

(4) If in any such proceedings judgment has been given against the plaintiff, and afterwards such plaintiff brings subsequent proceedings upon the basis that such life has
 25 determined, the court may make an order staying such proceedings permanently or until further order or for such time as may be thought fit.

Subsequent action may be stayed.

(5) If in consequence of the judgment given in any such proceedings, any person having any estate or interest in
 30 any property determinable on such life or lives has been evicted from or deprived of any property or any estate or interest therein, and afterwards it appears that such person or persons on whose life or lives such estate or interest depends is or are living or was or were living at the time of
 35 such eviction or deprivation, the court may give such relief as is appropriate in the circumstances.

Where supposed dead man proves to be alive relief may be given on that basis.

DIVISION

*Imperial Acts Application.*DIVISION 14.—*Religious Worship—Disturbance of.*

1 William and Mary c. 18—The Toleration Act, 1688—s. 15.

52 George III c. 155—The Places of Religious Worship Act, 1812—s. 12.

- 5 **39.** Any person who wilfully and without lawful justification or excuse, the proof of which lies on him, disquiets or disturbs any meeting of persons lawfully assembled for religious worship, or assaults any person lawfully officiating at any such meeting, or any of the persons there assembled.
- 10 shall be liable upon summary conviction to a penalty not exceeding one hundred dollars or to imprisonment for a term not exceeding two months.
- Disturbing religious worship.
Queensland Code, s. 207.
Vict. Act No. 6337, s. 33.

DIVISION 15.—*Sheriff.*

15 32 George II c. 28—The Debtors Imprisonment Act, 1758—
ss. 1, 3 and 4.

40. (1) Where any sheriff, bailiff, or other officer arrests or has in custody upon mesne process any person in the course of a civil proceeding such officer shall not—

Duties on arrest of civil debtors.
50 & 51
Vic. c. 55,
s. 14.

- 20 (a) convey such person without his free consent to any premises licensed for the sale of intoxicating liquor or any registered club, or to the private house of such officer or any tenant or relative of such officer; nor
- 25 (b) charge such person with any sum for, or procure him to call or pay for, any liquor, food, or thing whatsoever, except what he freely asks for; nor
- 30 (c) take such person to any gaol within twenty-four hours of his arrest, unless such person fails to name or refuses to be carried to some safe and convenient house of his own nomination, being within a reasonable distance of the place at which he was arrested, and not being the private dwelling-house of such person,

35 but shall during such twenty-four hours permit such person to send for and to have brought to him at reasonable times in the day and in reasonable quantities any food or liquor from what

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what place he thinks fit, and also to have and use such bedding, linen, and other necessary things as he has occasion for or is supplied with, and shall not require any payment for the use thereof or restrict the use thereof.

- 5 (2) Where a sheriff, bailiff, or other officer makes an arrest to which this section applies he shall as promptly as reasonably possible inform the person arrested of the effect of subsection one of this section.

DIVISION 16.—*Sunday.*

10 29 Charles II c. 7—The Sunday Observance Act, 1677—s. 6.

41. Service of any writ, process, warrant, order, judgment or decree (except in case of an offence, breach of the peace or any warrant, writ or process for the apprehension of any person) upon a Sunday shall be void. Service of process on Sunday void.

15 DIVISION 17.—*Witnesses—Habeas Corpus for Prisoners.*

44 George III c. 102—The Habeas Corpus Act, 1804.

42. Any Judge of the Supreme Court may award a writ of habeas corpus for bringing any prisoner detained in any gaol or prison before any court, to be there examined as a witness. Writs of habeas corpus ad test.

20

PART IV.

PENALTIES.

43. Any person guilty of any offence under any Imperial enactment included in Part I of the Second Schedule for which no punishment is otherwise provided is liable to imprisonment for a term of not more than five years or to a fine of not more than two thousand dollars, or to both such imprisonment and fine. Offences—penalties.

SCHEDULES.

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SCHEDULES.

FIRST SCHEDULE.

Sec. 5.

5	Imperial enactment.	Substituted provision of this Act.	Division of Part III.
	(1267) 52 Henry III (Statute of Marlborough) c. 23.	s. 32	Division 9.
	(1289-90) 18 Edward I (St. 1) (Quia Emptores) cc. 1 and 3.	s. 36	Division 12.
10	(1326-7) 1 Edward III St. 2 c. 16	s. 29	Division 8.
	(1344) 18 Edward III St. 2 c. 2	s. 29	Division 8.
	(1351-2) 25 Edward III St. 5 c. 5	s. 13	Division 1.
	(1357) 31 Edward III St. 1 c. 11	s. 14	Division 1.
	(1360-1) 34 Edward III c. 1 (The Justices of the Peace Act, 1361).	s. 30	Division 8.
15	(1361) 34 Edward III c. 15	s. 36	Division 12.
	(1381-2) 5 Richard II, St. 1 c. 7 (The Forcible Entry Act, 1381).	s. 18	Division 4.
	(1429) 8 Henry VI c. 9 (The Forcible Entry Act, 1429).	s. 19	Division 4.
20	(1588-9) 31 Elizabeth c. 11 (The Forcible Entry Act, 1588).	s. 19	Division 4.
	(1660) 12 Charles II c. 24 (The Tenures Abolition Act, 1660)—		
25	s. 4	s. 37	Division 12.
	s. 9	s. 21	Division 5.
	(1666) 18 and 19 Charles II c. 11 (The Cestui que Vie Act, 1666).	s. 38	Division 13.
	(1677) 29 Charles II c. 7 (The Sunday Observance Act, 1677), s. 6.	s. 41	Division 16.
30	(1678) 30 Charles II c. 7	s. 15	Division 1.
	(1685) 1 James II c. 17, s. 6	s. 14	Division 1.
	(1688) 1 William and Mary c. 18 (The Toleration Act, 1688), s. 15.	s. 39	Division 14.
35	(1692) 4 William and Mary c. 24, s. 12 ..	s. 15	Division 1.

FIRST

*Imperial Acts Application.*FIRST SCHEDULE—*continued.*

Imperial enactment.	Substituted provision of this Act.	Division of Part III.
5 (1696-7) 8 and 9 William III c. 11 (The Administration of Justice Act, 1696), s. 8.	s. 33	Division 10.
(1705) 4 and 5 Anne c. 3 (or c. 16) (The Administration of Justice Act, 1705) ss. 12 and 13.	s. 34	Division 10.
10 (1707) 6 Anne c. 72 (or c. 18) (The Cestui que Vie Act, 1707).	s. 38	Division 13.
(1737) 11 George II c. 19 (The Distress for Rent Act, 1737), s. 14.	s. 31	Division 9.
15 (1745) 19 George II c. 37 (The Marine Insurance Act, 1745).	s. 26	Division 7.
(1750) 24 George II c. 23 (The Calendar (New Style) Act, 1750), ss. 1, 2 and 3.	s. 16	Division 2.
(1758-9) 32 George II c. 28 (The Debtors Imprisonment Act, 1758) ss. 1, 3 and 4.	s. 40	Division 15.
20 (1774) 14 George III c. 48 (The Life Assurance Act, 1774).	s. 23	Division 6.
(1788) 28 George III c. 56 (The Marine Insurance Act, 1788).	ss. 27, 28	Division 7.
25 (1804) 44 George III c. 102 (The Habeas Corpus Act, 1804).	s. 42	Division 17.
(1812) 52 George III c. 101 (The Charities Procedure Act, 1812).	s. 17	Division 3.
(1812) 52 George III c. 155, (The Places of Religious Worship Act, 1812), s. 12.	s. 39	Division 14.
30 (1819) 60 George III and 1 George IV c. 8 (The Criminal Libel Act, 1819), ss. 1, 2 and 8.	s. 35	Division 11.

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SECOND SCHEDULE.

Sec. 6.

PART I.

Constitutional Enactments.

- (1297) 25 Edward I (Magna Carta) c. 29.
- 5 (1351) 25 Edward III St. 5 c. 4.
- (1354) 28 Edward III c. 3.
- (1368) 42 Edward III c. 3.
- (1623-4) 21 James I c. 3 (The Statute of Monopolies), ss. 1 and 6.
- (1627) 3 Charles I c. 1 (The Petition of Right).
- 10 (1640) 16 Charles I c. 10 (The Habeas Corpus Act, 1640), s. 6.
- (1679) 31 Charles II c. 2 (The Habeas Corpus Act, 1679), ss. 1-8, s. 11 (except the words "and shall incur and sustain" and the following words of the section), and ss. 15-19.
- (1688) 1 William and Mary c. 30 (The Royal Mines Act, 1688), s. 3.
- 15 (1688) 1 William and Mary sess. 2 c. 2 (The Bill of Rights).
- (1700) 12 and 13 William III c. 2 (The Act of Settlement).
- (1702) 1 Anne c. 2 (The Demise of the Crown Act, 1702), s. 4.
- (1702) 1 Anne St. 2 c. 21 (The Treason Act, 1702), s. 3.
- 20 (1707) 6 Anne c. 41 (or 6 Anne c. 7) (The Succession to the Crown Act, 1707), s. 9.
- (1772) 12 George III c. 11 (The Royal Marriages Act, 1772), ss. 1 and 2.
- (1816) 56 George III c. 100 (The Habeas Corpus Act, 1816).

PART II.

Criminal Law—Treason: Piracy.

Sec. 6.

Treason.

- 25 (1351) 25 Edward III St. 5 c. 2 (The Treason Act, 1351). } So far as the same declares what offences shall be adjudged treason, as amended by the following:—
- 30 } 9 George IV c. 31;
- 35 } 11 George IV and 1 William IV c. 66 (The Forgery Act, 1830) adopted by 4 William IV No. 4;
- 40 } 2 and 3 William IV c. 34 adopted by 9 Victoria No. 1.
- 45 } Such provisions of the Acts respectively as relate to the compassing, imagining, inventing, devising, or intending death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment, or restraint of the person of the Sovereign and the expressing, uttering, or declaring of such compassings, imaginations, inventions, devices, or intentions, or any of them. } cf. Act No 40, 1900, s. 11.
- (1795) 36 George III c. 7 (The Treason Act, 1795).
- (1817) 57 George III c. 6 (The Treason Act, 1817)
- (1695) 7 and 8 William III c. 3 (The Treason Act, 1695). } S. 5 (except the words "And that no person" to the end of that section) and s. 6.

*Imperial Acts Application.*SECOND SCHEDULE—*continued.*Part II—*continued.**Piracy.*

- | | | | |
|---|--|---|---|
| 5 | (1536) 28 Henry VIII c. 15*.
(1698-9) 11 and 12 William III (11 William III) c. 7.
(1717-8) 4 George I c. 2 (or c. 11), s. 7
(1721-2) 8 George I c. 24.
(1744-5) 18 George II c. 30* | } | The provisions of each Act except so much of each Act as relates to the punishment of the crime of piracy or of any offence by any of the said Acts declared to be piracy, or of accessories thereto. |
|---|--|---|---|

10 * See Piracy Punishment Act, 1902, s. 3.

THIRD SCHEDULE.

Sec. 7.

Enactments applying irrespective of 9 George IV c. 83(A) *Criminal Law Enactments.*

- | | | |
|----|--|---|
| 15 | (1698-9) 11 William III c. 12 | Crimes by Governors of Colonies. |
| | (1772) 12 George III c. 24 | The Dockyards, &c., Protection Act, 1772. |
| | (1802) 42 George III c. 85, s. 1 | The Criminal Jurisdiction Act, 1802. |
| 20 | (1812) 52 George III c. 156 | The Prisoners of War (Escape) Act, 1812. |
| | (1824) 5 George IV c. 113 | The Slave Trade Act, 1824. |

(B) *Miscellaneous.*

- | | | |
|----|--|--|
| 25 | (1813) 54 George III c. 15, s. 4 | The New South Wales (Debts) Act, 1813. |
| | (1821) 1 and 2 George IV c. 121, ss. 27-29 | The Commissariat Accounts Act, 1821. |

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1969

[25c]

PROOF

IMPERIAL ACTS APPLICATION BILL, 1969

EXPLANATORY NOTE

THIS Bill has been prepared (other than in respect of item (c) hereunder) in accordance with the recommendations of the New South Wales Law Reform Commission in its Report to the Attorney-General pursuant to a reference to the Commission in the following terms:—

“To review all Imperial Acts in force in this State (as a first step towards general Statute Law Revision) and so far as practicable, the preparation of legislation to repeal them as Imperial Acts and re-enact such part of them as should remain part of the law of New South Wales”.

The objects of the Bill are, therefore—

- (a) to provide that all Imperial enactments, commencing with the Statute of Merton, 1235–6, with the exception of—
 - (i) those which are specified in the Bill as not being affected by the Bill's provisions ; and
 - (ii) those which by express words or necessary intendment of any Imperial enactment are made applicable to New South Wales,are to have no further force or effect in this State as from the day appointed by the Governor and notified by proclamation in the Gazette ;
- (b) to substitute certain provisions for those Imperial enactments which are to have no further force or effect in this State, as such, so as to retain such part of them as should remain law in New South Wales ; and
- (c) to provide expressly that Sir John Barnard's Act of 1733–4 shall be deemed not to have applied in this State as from the date of its repeal in England, other than with respect to transactions in respect of which proceedings in any Court have been taken or commence on or before the 25th July, 1968.

THE UNIVERSITY OF CHICAGO

PROOF

No. , 1969.

A BILL

To provide that certain enactments of the Parliament of England and of the Parliament of Great Britain and of the Parliament of the United Kingdom of Great Britain and Ireland in force in England at the time of the passing of the Imperial Act 9 George IV Chapter 83 shall continue in force in New South Wales; to replace other enactments of such Parliaments; to repeal other enactments of such Parliaments; to validate certain matters; and for purposes connected therewith.

[MR McCaw—19 March, 1969.]

BE

Imperial Acts Application.

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 "Imperial Acts Application Act, 1969". Short title and commencement.

10 (2) This Act shall, except where otherwise expressly provided, commence upon a day to be appointed by the Governor and notified by proclamation in the Gazette.

2. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to other persons or circumstances shall not be affected. Construction.

20 3. This Act is divided into Parts and Divisions as follows :— Division into Parts and Divisions.

PART I.—PRELIMINARY—ss. 1–3.

PART II.—GENERAL—ss. 4–11.

PART III.—SUBSTITUTED ENACTMENTS—ss. 12–42.

25 DIVISION 1.—*Administration of Estates.*

DIVISION 2.—*Calendar.*

DIVISION 3.—*Charities.*

DIVISION 4.—*Forcible Entries and Detainers.*

DIVISION 5.—*Guardians.*

30 DIVISION 6.—*Insurance—Life, Fire and other Policies.*

DIVISION 7.—*Insurance—Marine.*

DIVISION

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- DIVISION 8.—*Justices of the Peace.*
- DIVISION 9.—*Landlord and Tenant.*
- DIVISION 10.—*Legal Procedure—Actions on Bonds.*
- 5 DIVISION 11.—*Libels—Blasphemous and Seditious Libels.*
- DIVISION 12.—*Real Property.*
- DIVISION 13.—*Recovery of Property on Determination of a Life or Lives.*
- DIVISION 14.—*Religious Worship—Disturbance of.*
- 10 DIVISION 15.—*Sheriff.*
- DIVISION 16.—*Sunday.*
- DIVISION 17.—*Witnesses—Habeas Corpus for Prisoners.*
- PART IV.—PENALTIES—s. 43.
- 15 SCHEDULES.

PART II.

GENERAL.

- 4. In the construction of this Act, unless inconsistent with Interpretation. the context or subject-matter, the expression "Imperial enactment" includes any part of the enacted law at any time in force in England.
- 20 5. (1) Each Imperial enactment mentioned in the First Schedule to this Act, so far as it was in force in England on the twenty-fifth day of July, one thousand eight hundred and twenty-eight is declared— Substitution of enactments. (First Schedule.)
 - 25 (a) to have been in force in New South Wales on that day by virtue of the Imperial Act 9 George IV Chapter 83 (The Australian Courts Act, 1828); and
 - 30 (b) to have remained in force in New South Wales from that day until the commencement of this Act, except so far as affected by State Acts from time to time in force.

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(2) Each Imperial enactment mentioned in the First Schedule to this Act is hereby repealed so far as it applies in New South Wales.

(3) Each provision of Part III of this Act is substituted for the Imperial enactment mentioned in the first column of the First Schedule to this Act opposite the reference to that provision in the second column of that Schedule.

(4) To the extent to which any of the provisions of Part III of this Act are inconsistent with the provisions of any State Act in force at the commencement of this Act, the provisions of the State Act shall prevail.

(5) In construing any of the provisions of Part III of this Act regard may be had to the context (if any) of the Imperial enactment for which the provision is substituted.

(6) In any State Act a reference to any Imperial enactment specified in the first column of the First Schedule to this Act shall, where the case permits, and unless a contrary intention appears, be construed as a reference to the provision of this Act specified opposite that Imperial enactment in the second column of that Schedule.

6. Each Imperial enactment mentioned in Part I of the Second Schedule to this Act, and so much of each Imperial enactment mentioned in the first column of Part II of that Schedule as is specified opposite that Imperial enactment in the second column of the said Part II, so far in either case as it was in force in England on the twenty-fifth day of July, one thousand eight hundred and twenty-eight—

Preserved
Imperial
enactments.
(Second
Schedule.)

(a) is declared to have been in force in New South Wales on that day by virtue of the Imperial Act 9 George IV Chapter 83; and

(b) except so far as affected by any Imperial enactments or State Acts from time to time in force in New South Wales—

(i) is declared to have remained in force in New South Wales from that day;

(ii)

Imperial Acts Application.

(ii) shall from the commencement of this Act be in force in New South Wales; and

(c) is not repealed by section eight of this Act.

7. Nothing in this Act affects any Imperial enactment set out in the Third Schedule to this Act or any other Imperial enactment which independently of the provisions of the Imperial Act 9 George IV Chapter 83 is made applicable to New South Wales by the express words or necessary intendment of any Imperial enactment.

Enactments not affected by repeal. 28 and 29 Vic. c. 63. Vict. Act No. 3270, s. 5.

8. (1) In addition to the repeals effected by subsection two of section five of this Act all other Imperial enactments (commencing with the Statute of Merton, 20 Henry III A.D. 1235-6) in force in England at the time of the passing of the Imperial Act 9 George IV Chapter 83 are so far as they are in force in New South Wales hereby repealed.

Imperial enactments repealed. Vict. Act No. 3270, s. 7.

(2) The repeal of the Imperial Act 7 George II Chapter 8 (Sir John Barnard's Act) effected by subsection one of this section shall be deemed to have taken effect as on and from the fourteenth day of June, one thousand eight hundred and sixty :

Provided that nothing in this subsection shall affect any transaction in respect of which proceedings in any Court have been taken or commenced on or before the twenty-fifth day of July, one thousand nine hundred and sixty-eight.

9. (1) The repeal by this Act of any Imperial enactment does not—

Savings. cf. 52 & 53, Vic. c. 63, s. 38.

- (a) revive anything not in force or existing at the commencement of this Act;
- (b) affect the previous operation of any Imperial enactment so repealed or anything duly done or suffered under any Imperial enactment so repealed;
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any Imperial enactment so repealed;

(d)

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- (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any Imperial enactment so repealed; or
- 5 (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, 10 forfeiture or punishment may be imposed and enforced, as if this Act had not been passed.

(2) The repeal by this Act of—

- 15 (a) The Imperial Act 43 Elizabeth Chapter 4 (The Charitable Uses Act, 1601) does not affect the established rules of law relating to charity;
- (b) section four of the Imperial Act 29 Charles II Chapter 3 (The Statute of Frauds, 1677) does not apply in relation to a promise or agreement made before the commencement of this Act; and
- 20 (c) any other Imperial enactment does not affect any rules of law or equity not enacted by the repealed enactment.

10. Where any Imperial enactment not repealed by this Saving. Act has been repealed (whether expressly or impliedly), con- 25 firmed, revived, or perpetuated by any Imperial enactment hereby repealed, the first-mentioned repeal, or the confirmation, revivor, or perpetuation shall not be affected by the repeal effected by this Act.

11. (1) The Governor may, by proclamation published 30 in the Gazette, declare that any provision (in this section called "the revived provision") being the whole or any part of any Imperial enactment repealed by this Act, other than an Imperial enactment mentioned in the First Schedule to this Act, shall be revived as from the date of publication of the 35 proclamation, or a later date to be specified in the proclamation.

(2)

Imperial Acts Application.

(2) On and after the date of revival, the revived provision shall, subject to Acts from time to time in force, and subject to subsection three of this section, have such effect in New South Wales as the revived provision had in New South Wales immediately before the commencement of this Act.

(3) The revival under this section of any revived provision shall not—

- 10 (a) affect the previous operation of any repeal worked by section eight of this Act;
- (b) affect anything duly done or suffered before the date of revival;
- 15 (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred before the date of revival, or any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation or liability; or
- 20 (d) make any person liable for any penalty, forfeiture or punishment in respect of anything done or omitted before the date of revival.

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

(5) If either House passes a resolution of which notice has been given at any time within fifteen sitting days after the proclamation has been laid before such House disallowing any proclamation or part thereof, the proclamation or part thereupon ceases to have effect.

Imperial Acts Application.

PART III.

SUBSTITUTED ENACTMENTS.

DIVISION 1.—Administration of Estates.

12. In this Division unless inconsistent with the context
5 or subject-matter—

“Administration” means letters of administration
whether general, special, or limited, or with the will
annexed or otherwise, and includes an order to the
Public Trustee to administer.

10 “Estate” includes both real and personal property.

“Personal representative” means the executor original
or by representation or administrator for the time
being of a deceased person.

“Will” includes codicil.

15 25 Edward III St. 5 c. 5.

13. (1) An executor of a sole or last surviving executor
of a testator is the executor of that testator.

This provision shall not apply to an executor who does not
prove the will of his testator and, in the case of an executor
20 who on his death leaves surviving him some other executor
of his testator who afterwards proves the will of that testator,
it shall cease to apply on such probate being granted.

(2) So long as the chain of such representation is
unbroken, the last executor in the chain is the executor of
25 every preceding testator.

(3) The chain of such representation is broken by—

- (a) an intestacy;
- (b) the failure of a testator to appoint an executor; or
- (c) the failure to obtain probate of a will,

30 but is not broken by a temporary grant of administration if
probate is subsequently granted.

(4) Every person in the chain of representation to a
testator—

- 35 (a) has the same rights in respect of the estate of that
testator as the original executor would have had if
living; and
- (b)

Interpre-
tation.
Vict. Act
No. 6191,
s. 5.

Executor of
executor
represents
original
testator.
cf. 15 Geo.
V c. 23,
s. 7.
Vict. Act
No. 6191,
s. 17.

Imperial Acts Application.

(b) is, to the extent to which the estate of that testator has come to his hands answerable as if he were an original executor.

31 Edward III St. 1 c. 11.

5

1 James II c. 17, s. 6.

14. Every person to whom administration of the estate of a deceased person is granted shall, subject to the limitations (if any) contained in the grant, have the same rights and liabilities and shall be accountable in like manner as if he were the executor of the deceased.

Rights and accountability of administrator.
cf. Vict. Act No. 6191, s. 27.

30 Charles II c. 7.

4 William and Mary c. 24, s. 12.

15. Where a person as personal representative or as executor in his own wrong wastes or converts to his own use any part of the estate of a deceased person and dies, his personal representative shall to the extent of the available assets of the defaulter be liable and chargeable in respect of such waste or conversion in the same manner as the defaulter would have been if living.

Liability for waste.
cf. 15 Geo. V c. 23, s. 29.
Vict. Act No. 6191, s. 33 (2).

DIVISION 2.—*Calendar.*

20

24 George II c. 23—The Calendar (New Style) Act, 1750—
ss. 1, 2 and 3.

16. (1) The first day of January in every year shall be the first day of the year, and each new year shall accordingly commence and be reckoned from the first day of every month of January and all acts, deeds, writings, notes, and other instruments, of what nature or kind soever, hereafter made, executed, or signed shall bear date according to the said method of reckoning, being the reckoning instituted by the Imperial Act 24 George II c. 23, known as The Calendar (New Style) Act, 1750.

Commencement of year.

Imperial Acts Application.

(2) The several years two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other hundredth year in time to come, except only every fourth hundredth year, of which the year two thousand shall be the first, shall not be leap years, but shall be common years consisting of three hundred and sixty-five days, and no more; and the years two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundredth year from the said year two thousand inclusive, and also all other years which by the reckoning in use before the first day of January, one thousand seven hundred and fifty-two (being the date for the commencement of the calendar or reckoning instituted by the said Imperial Act, The Calendar (New Style) Act, 1750) would have been leap years, shall in all times to come be leap years, consisting of three hundred and sixty-six days, in the same manner as was before the said first day of January, one thousand seven hundred and fifty-two used with respect to every fourth year.

Hundredth years except every fourth hundredth to be deemed common years consisting of 365 days.

(3) The months, the enumeration of days in the respective months, and the ordering of the days of the week and Easter Day, shall be determined in accordance with the calendar, table and rules annexed to the said Imperial Act, The Calendar (New Style) Act, 1750.

Ordering of months, days of the week and Easter Day.

DIVISION 3.—*Charities.*

52 George III c. 101—The Charities Procedure Act, 1812.

17. (1) In every case of a breach of any trust or supposed breach of any trust created for charitable purposes, or whenever the direction or order of a court is deemed necessary for the administration of any trust for charitable purposes, any two or more persons may present a petition to the Supreme Court stating such complaint and praying such relief as the nature of the case may require; and the Supreme Court shall hear such petition in a summary way, and upon affidavits or such other evidence as is produced upon such hearing determine the same, and make such other order therein and with respect to the costs of such application as seems just.

Petition in case of a charitable trust and determination thereof in a summary way. Vict. Act No. 3270, s. 39.

(2)

Imperial Acts Application.

(2) Every petition so to be presented shall be signed by the persons preferring the same, in the presence of and shall be attested by the solicitor for such petitioners, and every such petition shall be submitted to and allowed by the Attorney-General or Solicitor-General, and such allowance shall be certified by him before any such petition is presented.

Petitions to be signed by petitioners and their solicitor and by law officer.
Vict. Act No. 3270, s. 40.

DIVISION 4.—*Forcible Entries and Detainers.*

5 Richard II St. 1 c. 7—The Forcible Entry Act, 1381.

18. No person shall make any entry into any land except where such entry is given by law and, in such case, with no more force than is reasonably necessary.

Forcible entry.
cf. Vict. Act No. 6231, s. 207 (1).

8 Henry VI c. 9—The Forcible Entry Act, 1429.

31 Elizabeth c. 11—The Forcible Entry Act, 1588.

19. No person being in actual possession of land for a period of less than three years by himself or his predecessors shall without colour of right hold possession of it in a manner likely to cause a breach of the peace or a reasonable apprehension of a breach of the peace against a person entitled by law to the possession of the land and able and willing to afford reasonable information as to his being so entitled.

Forcible detainer.
Vict. Act No. 6231, s. 207 (2).

20. Any person who contravenes section eighteen or section nineteen of this Act shall be guilty of a misdemeanour and liable to imprisonment for a term of not more than one year or to a fine of not more than one thousand dollars or both such imprisonment and fine.

Penalty.

DIVISION 5.—*Guardians.*

12 Charles II c. 24—The Tenures Abolition Act, 1660—s. 9.

21. A guardian of an infant appointed by deed or will may take into his custody and management to the use of the infant the real and personal estate of the infant till the age of twenty-one years or any lesser time according to the terms of the

Powers of guardian.

Imperial Acts Application.

the appointment of the guardian, and may bring such actions in relation to the real and personal estate of the infant as by law a guardian in common socage might have done, or may bring such other proceedings as may be necessary to give effect to all or any of his powers under this section.

DIVISION 6.—*Insurance—Life, Fire and other Policies.*

14 George III c. 48—The Life Assurance Act, 1774.

22. This Division does not apply to insurances made before the commencement of this Act. Existing insurances not affected by this Division.

10 23. (1) No insurance shall be made by any person on the life of any person or on any other event whatsoever wherein the person for whose use or benefit or on whose account the policy is made has no interest, or by way of gaming or wagering; and every assurance made contrary to 15 this subsection shall be void. No insurance to be made unless insurer has interest. cf. Vict. Act No. 6279, s. 21.

(2) It shall not be lawful to make any policy on the life of any person, or on any other event whatsoever, wherein the person effecting the policy has no interest, without inserting in such policy the names of the persons interested therein, or 20 for whose use or benefit or on whose account such policy was made. No policy without inserting names, &c. Vict. Act No. 6279, s. 22. Davjoyda Estates Pty. Ltd. v. National Insurance Company of New Zealand Ltd. (1965) 85 W.N. (Pt. 1) N.S.W. 184.

(3) In all cases where there is an interest in such life or other event, no greater sum shall be recovered or received from the insurer than the amount or value of the 25 interest. How much may be recovered. cf. Vict. Act No. 6279, s. 23.

(4)

Imperial Acts Application.

(4) Nothing in this Division shall extend to insurance made by any person on ships or goods, or to contracts of indemnity against loss by fire or loss by other events whatsoever.

Not to extend to ships, contracts of indemnity &c.

cf. Vict. Act No. 6279, s. 24.

Davjoyda Estates Pty. Ltd. v. National Insurance Co., *supra*.

5 DIVISION 7.—*Insurance—Marine.*

19 George II c. 37—The Marine Insurance Act, 1745.

28 George III c. 56—The Marine Insurance Act, 1788.

24. This Division applies to State marine insurance within the limits of New South Wales.

Application of Division.

10 25. This Division does not apply to contracts of marine insurance made before the commencement of this Act.

Existing contracts not affected.

26. (1) Every contract of marine insurance by way of gaming or wagering is void.

Avoidance of wagering or gaming contracts.

15 a (2) A contract of marine insurance is deemed to be a gaming or wagering contract—

6 Edw. VII c. 41, s. 4. Act No. 11, 1909 (C'wealth), s. 10.

(a) where the assured has not an insurable interest, and the contract is entered into with no expectation of acquiring such an interest; or

20 (b) where the policy is made "interest or no interest", or "without further proof of interest than the policy itself", or "without benefit of salvage to the insurer", or subject to any other like term :

25 Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

27.

Imperial Acts Application.

27. Subject to the provisions of any Act, a contract of marine insurance is inadmissible in evidence in an action for the recovery of a loss under the contract unless it is embodied in a marine policy in accordance with this Division. The policy may be executed and issued either at the time when the contract is concluded or afterwards.

Contracts must be embodied in policy.
6 Edw. VII c. 41, s. 22.
Act No. 11, 1909 (C'wealth), s. 28.

28. A marine policy must specify—
- (a) the name of the assured, or of some person who effects the insurance on his behalf;
 - (b) the subject-matter insured and the risk insured against;
 - (c) the voyage, or period of time, or both as the case may be, covered by the insurance;
 - (d) the sum or sums insured; and
 - (e) the name or names of the insurers.
- What policy must specify.
6 Edw. VII c. 41, s. 23.
Act No. 11, 1909 (C'wealth), s. 29.

DIVISION 8.—*Justices of the Peace.*

1 Edward III St. 2 c. 16.

18 Edward III St. 2 c. 2.

34 Edward III c. 1—The Justices of the Peace Act, 1361.

29. The Governor may by commission under the Public Seal of the State appoint justices to keep the peace in the State.

Appointment of justices.

30. Justices of the Peace shall have power to restrain offenders and to take of them or of persons not of good fame surety for their good behaviour.

Powers of justices.

DIVISION

Imperial Acts Application.

DIVISION 9.—*Landlord and Tenant.*

Use and Occupation.

11 George II c. 19—The Distress for Rent Act, 1737—s. 14.

5 **31.** (1) Where the agreement between the landlord and tenant is not by deed, the landlord may recover a reasonable satisfaction for the lands held or occupied by the defendant in an action of assumpsit for use and occupation. And if in evidence on the trial of such action any parol demise or any agreement (not being by deed) whereon a certain rent was reserved shall appear, the plaintiff shall not be non-suited but may make use thereof as evidence of the quantum of the damages to be recovered.

Vict. Act
 No. 6285,
 s. 8.
 Specktor
 v. Lees
 [1964]
 V.R. 10.
 Use and
 occupation.

(2) Nothing in subsection one of this section affects actions of debt for use and occupation.

15

Waste.

52 Henry III (Statute of Marlborough) c. 23.

32. (1) A tenant for life or lives or a leasehold tenant shall not commit voluntary waste.

Voluntary
 waste.

20 (2) Nothing in subsection one of this section applies to any estate or tenancy without impeachment of waste, or affects any licence or other right to commit waste.

25 (3) In subsection one of this section "leasehold tenant" includes a tenant for a term, a tenant under a periodical tenancy, a tenant under a tenancy to which section one hundred and twenty-seven of the Conveyancing Act, 1919, as amended by subsequent Acts, applies, and a tenant at will.

(4) A tenant who infringes subsection one of this section is liable in damages to his remainderman or reversioner but this section imposes no criminal liability.

(5)

Imperial Acts Application.

(5) This section does not affect the operation of any event which may determine a tenancy at will.

DIVISION 10.—*Legal Procedure—Actions on Bonds.*

8 and 9 William III c. 11—The Administration of Justice
5 Act, 1696—s. 8.

33. (1) In any action on any bond or on any penal sum for non-performance of any covenant or agreement, the plaintiff may assign as many breaches as he thinks fit, and may recover not only such damages as have been usually awarded in such cases, but also damages for such of the said breaches so assigned as the plaintiff proves to have occurred.

In actions on bonds, &c., plaintiff may assign as many breaches as he pleases.

Act No. 21, 1899, s. 132.

(2) If interlocutory judgment in any such case is given for the plaintiff by confession or in default of appearance or of pleading, the plaintiff may suggest as many breaches of the covenants and agreements as he thinks fit, and may on proof of such breaches recover damages accordingly.

Vict. Act No. 6279, s. 30.

(3) If the defendant after judgment and before execution pays into the court where the action is brought to the use of the plaintiff such damages together with the costs of the action, or if by reason of any execution the plaintiff is fully paid or satisfied all such damages together with his costs of the action and all reasonable charges and expenses for the said execution, further proceedings on the said judgment shall be stayed. But the judgment shall remain as a further security to answer to the plaintiff such damages as are sustained for further breach of such covenant or agreement, and upon any such breach the plaintiff may summon the defendant to show cause why execution should not be had or awarded upon the said judgment, upon which there shall be the like proceeding or such other proceeding as may be ordered for inquiry as to such breaches and assessing damages thereon; and upon payment or satisfaction in manner as aforesaid of such future damages costs charges and expenses as aforesaid all further proceedings on the said judgment shall to the like extent again be stayed.

Defendant paying damages execution may be stayed.

Imperial Acts Application.

4 and 5 Anne c. 3 (or c. 16)—The Administration of Justice Act, 1705—ss. 12 and 13.

34. (1) Where an action is brought upon any bond which has a condition or defeasance to make void the same upon payment of a lesser sum at a day or place certain, if the obligor has before the action brought paid to the obligee the principal and interest due by the defeasance or condition of such bond, though such payment was not made strictly according to the condition or defeasance, it may nevertheless be pleaded in bar of such action; and shall be as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeasance and had been so pleaded.

Action of debt brought on a bond after money paid—such payment may be pleaded in bar.
Vict. Act No. 6279, s. 30.

(2) If at any time pending an action upon any such bond with a penalty the defendant brings into court all the principal money and interest due on such bond and also all costs properly chargeable by the plaintiff against the defendant in respect of any proceedings upon such bond, the money so brought in shall be in full satisfaction and discharge of the bond.

Principal and interest on bonds paid into court.

DIVISION 11.—*Libels—Blasphemous and Seditious Libels.*

60 George III and 1 George IV c. 8—The Criminal Libel Act, 1819—ss. 1, 2 and 8.

35. (1) In every case in which any verdict or judgment shall be had against any person for composing, printing, or publishing any blasphemous libel, or any seditious libel tending to bring into hatred or contempt the person of Her Majesty, Her heirs or successors, or the government and constitution of the State of New South Wales as by law established, or either House of Parliament, or to excite Her Majesty's subjects to attempt the alteration of any matter as by law established, otherwise than by lawful means, the judge or the court before whom or in which such verdict shall have been given, or the court in which such judgment shall be had, may make an order for the seizure and carrying away and detaining in safe custody, in such manner as shall be directed in such order, all copies of the libel which shall be in the possession of

After verdict, &c., against any person for composing &c., a blasphemous or seditious libel, the court may make order for the seizure of copies of the libel in possession of such person, &c.

Imperial Acts Application.

the person against whom such verdict or judgment shall have been had, or in the possession of any other person named in the order for his use, evidence upon oath having been previously given to the satisfaction of such court or judge, 5 that a copy or copies of the said libel is or are in the possession of such other person for the use of the person against whom such verdict or judgment shall have been had as aforesaid; and in every such case it shall be lawful for any justice of the peace or for any person acting under any such order, 10 or for any person acting with or in aid of any such justice of the peace, or other person, to search for any copies of such libel in any house, building, or other place whatsoever belonging to or occupied by the person against whom any such verdict or judgment shall have been had, or belonging to or 15 occupied by any other person so named, in whose possession any copies of any such libel, belonging to the person against whom any such verdict or judgment shall have been had, shall be; and in case admission shall be refused or not obtained within a reasonable time after it 20 shall have been first demanded, to enter by force by day into any such house, building, or place whatsoever, and to carry away all copies of the libel there found, and to detain the same in safe custody, until the same shall be restored under the provisions of this section, or disposed of according to any 25 further order made in relation thereto.

and search may thereupon be made for the same.

(2) If in any such case as aforesaid judgment shall be stayed, or if, after judgment shall have been entered, the same shall be reversed, all copies so seized shall be forthwith returned to the person from whom the same shall have been 30 so taken as aforesaid, free of all charge and expense, and without the payment of any fees whatsoever; and in every case in which final judgment shall be entered upon the verdict so found against the person charged with having composed, printed, or published such libel, then all copies so seized shall 35 be disposed of as the court in which such judgment shall be given shall order and direct.

Copies of libels so seized shall be restored if judgment is stayed, &c., but shall otherwise be disposed of as the court shall direct.

(3) Any proceeding which shall be brought for any thing done in pursuance of this section, shall be commenced within six months next after the thing done; and the

Limitation of actions, &c.

Imperial Acts Application.

the defendant in every such proceeding may plead the general issue, and give this section and the special matter in evidence at any trial to be had thereupon; and if proceedings shall be brought or commenced after the time limited for bringing the same, there shall be a verdict for the defendant.

DIVISION 12.—*Real Property.*

18 Edward I St. 1 (Quia Emptores) cc. 1 and 3.

34 Edward III c. 15.

10 **36.** Land held of the Crown in fee simple may be assured in fee simple without licence and without fine and the person taking under the assurance shall hold the land of the Crown in the same manner as the land was held before the assurance took effect.

Alienation of fee simple.

cf. 17 Edward II, c. 6.

1 Edward III, St. 2, c. 12.

12 Charles II c. 24—The Tenures Abolition Act, 1660—s. 4.

15 **37.** All tenures created by the Crown upon any grant in fee simple made after the commencement of this Act shall be taken to be in free and common socage without any incident of tenure for the benefit of the Crown.

Tenure.

DIVISION 13.—*Recovery of Property on Determination of a Life or Lives.*

20

18 and 19 Charles II c. 11—The Cestui que Vie Act, 1666.

6 Anne c. 72 (or c. 18)—The Cestui que Vie Act, 1707.

25 **38.** (1) Every person having any estate or interest in any property determinable upon a life or lives who, after the determination of such life or lives without the express consent of the person next immediately entitled upon or after such determination, holds over or continues in possession of such property estate or interest, or of the rents, profits or income thereof, shall be liable in damages or to an account for such rents and profits, or both, to the person entitled to such property, estate, interest, rents, profits or income after the determination of such life or lives.

Person wrongfully holding over after the determination of a life to be liable in damages.

Vict. Act No. 6344, s. 274.

Imperial Acts Application.

(2) Where a reversion remainder or other estate or interest in any property is expectant upon the determination of a life or lives, the reversioner remainderman or other person entitled to such reversion remainder or other estate or interest 5 may in any proceeding claiming relief on the basis that such life or lives has or have determined, adduce evidence of belief that such life or lives has or have been determined and of the grounds of such belief, and thereupon the court may in its discretion order that unless the person or persons on whose 10 life or lives such reversion remainder or other estate or interest is expectant is or are produced in court or is or are otherwise shown to be living, such person or persons shall for the purposes of such proceedings be accounted as dead, and relief may be given accordingly.

Evidence may be given of belief of determination of a life.

(3) If in such proceedings the lastmentioned person 15 is shown to have remained beyond Australia, or otherwise absented himself from the place in which if in Australia he might be expected to be found, for the space of seven years or upwards, such person, if not proved to be living, shall for 20 the purposes of such proceedings be accounted as dead, and relief may be given accordingly.

Effect of absence for seven years.

(4) If in any such proceedings judgment has been 25 given against the plaintiff, and afterwards such plaintiff brings subsequent proceedings upon the basis that such life has determined, the court may make an order staying such proceedings permanently or until further order or for such time as may be thought fit.

Subsequent action may be stayed.

(5) If in consequence of the judgment given in any such proceedings, any person having any estate or interest in 30 any property determinable on such life or lives has been evicted from or deprived of any property or any estate or interest therein, and afterwards it appears that such person or persons on whose life or lives such estate or interest depends is or are living or was or were living at the time of 35 such eviction or deprivation, the court may give such relief as is appropriate in the circumstances.

Where supposed dead man proves to be alive relief may be given on that basis.

DIVISION

*Imperial Acts Application.*DIVISION 14.—*Religious Worship—Disturbance of.*

1 William and Mary c. 18—The Toleration Act, 1688—s. 15.

52 George III c. 155—The Places of Religious Worship Act,
1812—s. 12.

- 5 39. Any person who wilfully and without lawful justification or excuse, the proof of which lies on him, disquiets or disturbs any meeting of persons lawfully assembled for religious worship, or assaults any person lawfully officiating at any such meeting, or any of the persons there assembled.
- 10 shall be liable upon summary conviction to a penalty not exceeding one hundred dollars or to imprisonment for a term not exceeding two months.
- Disturbing religious worship.
Queensland Code, s. 207.
Vict. Act No. 6337, s. 33.

DIVISION 15.—*Sheriff.*32 George II c. 28—The Debtors Imprisonment Act, 1758—
15 ss. 1, 3 and 4.

40. (1) Where any sheriff, bailiff, or other officer arrests or has in custody upon mesne process any person in the course of a civil proceeding such officer shall not—
- 20 (a) convey such person without his free consent to any premises licensed for the sale of intoxicating liquor or any registered club, or to the private house of such officer or any tenant or relative of such officer; nor
- 25 (b) charge such person with any sum for, or procure him to call or pay for, any liquor, food, or thing whatsoever, except what he freely asks for; nor
- 30 (c) take such person to any gaol within twenty-four hours of his arrest, unless such person fails to name or refuses to be carried to some safe and convenient house of his own nomination, being within a reasonable distance of the place at which he was arrested, and not being the private dwelling-house of such person,
- but shall during such twenty-four hours permit such person
- 35 to send for and to have brought to him at reasonable times in the day and in reasonable quantities any food or liquor from what
- Duties on arrest of civil debtors.
50 & 51
Vic. c. 55, s. 14.
Vict. Act No. 6387, s. 207.

Imperial Acts Application.

what place he thinks fit, and also to have and use such bedding, linen, and other necessary things as he has occasion for or is supplied with, and shall not require any payment for the use thereof or restrict the use thereof.

- 5 (2) Where a sheriff, bailiff, or other officer makes an arrest to which this section applies he shall as promptly as reasonably possible inform the person arrested of the effect of subsection one of this section.

DIVISION 16.—*Sunday.*

- 10 29 Charles II c. 7—The Sunday Observance Act, 1677—s. 6.

41. Service of any writ, process, warrant, order, judgment or decree (except in case of an offence, breach of the peace or any warrant, writ or process for the apprehension of any person) upon a Sunday shall be void. Service of process on Sunday void.

- 15 DIVISION 17.—*Witnesses—Habeas Corpus for Prisoners.*

44 George III c. 102—The Habeas Corpus Act, 1804.

42. Any Judge of the Supreme Court may award a writ of habeas corpus for bringing any prisoner detained in any gaol or prison before any court, to be there examined as a witness. Writs of habeas corpus ad test.

20

PART IV.

PENALTIES.

43. Any person guilty of any offence under any Imperial enactment included in Part I of the Second Schedule for which no punishment is otherwise provided is liable to imprisonment for a term of not more than five years or to a fine of not more than two thousand dollars, or to both such imprisonment and fine. Offences—penalties.

SCHEDULES.

Imperial Acts Application.

SCHEDULES.

FIRST SCHEDULE.

Sec. 5.

	Imperial enactment.	Substituted provision of this Act.	Division of Part III.
5	(1267) 52 Henry III (Statute of Marlborough) c. 23.	s. 32	Division 9.
	(1289-90) 18 Edward I (St. 1) (Quia Emptores) cc. 1 and 3.	s. 36	Division 12.
10	(1326-7) 1 Edward III St. 2 c. 16	s. 29	Division 8.
	(1344) 18 Edward III St. 2 c. 2	s. 29	Division 8.
	(1351-2) 25 Edward III St. 5 c. 5	s. 13	Division 1.
	(1357) 31 Edward III St. 1 c. 11	s. 14	Division 1.
15	(1360-1) 34 Edward III c. 1 (The Justices of the Peace Act, 1361).	s. 30	Division 8.
	(1361) 34 Edward III c. 15	s. 36	Division 12.
	(1381-2) 5 Richard II, St. 1 c. 7 (The Forcible Entry Act, 1381).	s. 18	Division 4.
20	(1429) 8 Henry VI c. 9 (The Forcible Entry Act, 1429).	s. 19	Division 4.
	(1588-9) 31 Elizabeth c. 11 (The Forcible Entry Act, 1588).	s. 19	Division 4.
	(1660) 12 Charles II c. 24 (The Tenures Abolition Act, 1660)—		
25	s. 4	s. 37	Division 12.
	s. 9	s. 21	Division 5.
	(1666) 18 and 19 Charles II c. 11 (The Cestui que Vie Act, 1666).	s. 38	Division 13.
30	(1677) 29 Charles II c. 7 (The Sunday Observance Act, 1677), s. 6.	s. 41	Division 16.
	(1678) 30 Charles II c. 7	s. 15	Division 1.
	(1685) 1 James II c. 17, s. 6	s. 14	Division 1.
	(1688) 1 William and Mary c. 18 (The Toleration Act, 1688), s. 15.	s. 39	Division 14.
35	(1692) 4 William and Mary c. 24, s. 12 ..	s. 15	Division 1.

FIRST

*Imperial Acts Application.*FIRST SCHEDULE—*continued.*

Imperial enactment.	Substituted provision of this Act.	Division of Part III.
5 (1696-7) 8 and 9 William III c. 11 (The Administration of Justice Act, 1696), s. 8.	s. 33	Division 10.
(1705) 4 and 5 Anne c. 3 (or c. 16) (The Administration of Justice Act, 1705) ss. 12 and 13.	s. 34	Division 10.
10 (1707) 6 Anne c. 72 (or c. 18) (The Cestui que Vie Act, 1707).	s. 38	Division 13.
(1737) 11 George II c. 19 (The Distress for Rent Act, 1737), s. 14.	s. 31	Division 9.
(1745) 19 George II c. 37 (The Marine Insurance Act, 1745).	s. 26	Division 7.
15 (1750) 24 George II c. 23 (The Calendar (New Style) Act, 1750), ss. 1, 2 and 3.	s. 16	Division 2.
(1758-9) 32 George II c. 28 (The Debtors Imprisonment Act, 1758) ss. 1, 3 and 4.	s. 40	Division 15.
20 (1774) 14 George III c. 48 (The Life Assurance Act, 1774).	s. 23	Division 6.
(1788) 28 George III c. 56 (The Marine Insurance Act, 1788).	ss. 27, 28	Division 7.
(1804) 44 George III c. 102 (The Habeas Corpus Act, 1804).	s. 42	Division 17.
25 (1812) 52 George III c. 101 (The Charities Procedure Act, 1812).	s. 17	Division 3.
(1812) 52 George III c. 155, (The Places of Religious Worship Act, 1812), s. 12.	s. 39	Division 14.
30 (1819) 60 George III and 1 George IV c. 8 (The Criminal Libel Act, 1819), ss. 1, 2 and 8.	s. 35	Division 11.

Imperial Acts Application.

SECOND SCHEDULE.

Sec. 6.

PART I.

Constitutional Enactments.

- (1297) 25 Edward I (Magna Carta) c. 29.
- 5 (1351) 25 Edward III St. 5 c. 4.
- (1354) 28 Edward III c. 3.
- (1368) 42 Edward III c. 3.
- (1623-4) 21 James I c. 3 (The Statute of Monopolies), ss. 1 and 6.
- (1627) 3 Charles I c. 1 (The Petition of Right).
- 10 (1640) 16 Charles I c. 10 (The Habeas Corpus Act, 1640), s. 6.
- (1679) 31 Charles II c. 2 (The Habeas Corpus Act, 1679), ss. 1-8, s. 11 (except the words "and shall incur and sustain" and the following words of the section), and ss. 15-19.
- (1688) 1 William and Mary c. 30 (The Royal Mines Act, 1688), s. 3.
- 15 (1688) 1 William and Mary sess. 2 c. 2 (The Bill of Rights).
- (1700) 12 and 13 William III c. 2 (The Act of Settlement).
- (1702) 1 Anne c. 2 (The Demise of the Crown Act, 1702), s. 4.
- (1702) 1 Anne St. 2 c. 21 (The Treason Act, 1702), s. 3.
- (1707) 6 Anne c. 41 (or 6 Anne c. 7) (The Succession to the Crown Act, 1707), s. 9.
- 20 (1772) 12 George III c. 11 (The Royal Marriages Act, 1772), ss. 1 and 2.
- (1816) 56 George III c. 100 (The Habeas Corpus Act, 1816).

PART II.

Criminal Law—Treason: Piracy.

Sec. 6.

Treason.

- 25 (1351) 25 Edward III St. 5 c. 2 (The Treason Act, 1351). So far as the same declares what offences shall be adjudged treason, as amended by the following:—
- 30 9 George IV c. 31;
- 11 George IV and 1 William IV c. 66 (The Forgery Act, 1830) adopted by 4 William IV No. 4;
- 2 and 3 William IV c. 34 adopted by 9 Victoria No. 1.
- 35 (1795) 36 George III c. 7 (The Treason Act, 1795). Such provisions of the Acts respectively as relate to the compassing, imagining, inventing, devising, or intending death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment, or restraint of the person of the Sovereign and the expressing, uttering, or declaring of such compassings, imaginations, inventions, devices, or intentions, or any of them. cf. Act No. 40, 1900, s. 11.
- 40 (1817) 57 George III c. 6 (The Treason Act, 1817)
- 45 (1695) 7 and 8 William III c. 3 (The Treason Act, 1695). S. 5 (except the words "And that no person" to the end of that section) and s. 6.

*Imperial Acts Application.*SECOND SCHEDULE—*continued.*Part II—*continued.**Piracy.*

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|---|--|---|---|
| 5 | (1536) 28 Henry VIII c. 15*.
(1698-9) 11 and 12 William III (11 William III) c. 7.
(1717-8) 4 George I c. 2 (or c. 11), s. 7
(1721-2) 8 George I c. 24.
(1744-5) 18 George II c. 30* | } | The provisions of each Act except so much of each Act as relates to the punishment of the crime of piracy or of any offence by any of the said Acts declared to be piracy, or of accessories thereto. |
|---|--|---|---|
- 10 * See Piracy Punishment Act, 1902, s. 3.

THIRD SCHEDULE.

Sec. 7.

Enactments applying irrespective of 9 George IV c. 83(A) *Criminal Law Enactments.*

- | | | | |
|----|---|-------------------------------|---|
| 15 | (1698-9) 11 William III c. 12
(1772) 12 George III c. 24
(1802) 42 George III c. 85, s. 1 |
.. .. .
.. .. . | Crimes by Governors of Colonies.
The Dockyards, &c., Protection Act, 1772.
The Criminal Jurisdiction Act, 1802. |
| 20 | (1812) 52 George III c. 156
(1824) 5 George IV c. 113 |
.. .. . | The Prisoners of War (Escape) Act, 1812.
The Slave Trade Act, 1824. |

(B) *Miscellaneous.*

- | | | | |
|----|--|--------------------|--|
| 25 | (1813) 54 George III c. 15, s. 4
(1821) 1 and 2 George IV c. 121, ss. 27-29 |
.. .. . | The New South Wales (Debts) Act, 1813.
The Commissariat Accounts Act, 1821. |
|----|--|--------------------|--|

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1969
[25c]

No. , 1969.

A BILL

To provide that certain enactments of the Parliament of England and of the Parliament of Great Britain and of the Parliament of the United Kingdom of Great Britain and Ireland in force in England at the time of the passing of the Imperial Act 9 George IV Chapter 83 shall continue in force in New South Wales; to replace other enactments of such Parliaments; to repeal other enactments of such Parliaments; to validate certain matters; and for purposes connected therewith.

[MR McCaw—19 *March*, 1969.]

BE

Imperial Acts Application.

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 "Imperial Acts Application Act, 1969".

and commencement.

10 (2) This Act shall, except where otherwise expressly provided, commence upon a day to be appointed by the Governor and notified by proclamation in the Gazette.

15 2. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to other persons or circumstances shall not be affected.

Construction.

20 3. This Act is divided into Parts and Divisions as follows :—

Division into Parts and Divisions.

PART I.—PRELIMINARY—ss. 1-3.

PART II.—GENERAL—ss. 4-11.

PART III.—SUBSTITUTED ENACTMENTS—ss. 12-42.

25 DIVISION 1.—*Administration of Estates.*

DIVISION 2.—*Calendar.*

DIVISION 3.—*Charities.*

DIVISION 4.—*Forcible Entries and Detainers.*

DIVISION 5.—*Guardians.*

30 DIVISION 6.—*Insurance—Life, Fire and other Policies.*

DIVISION 7.—*Insurance—Marine.*

DIVISION

Imperial Acts Application.

DIVISION 8.—*Justices of the Peace.*

DIVISION 9.—*Landlord and Tenant.*

DIVISION 10.—*Legal Procedure—Actions on Bonds.*

5 DIVISION 11.—*Libels—Blasphemous and Seditious Libels.*

DIVISION 12.—*Real Property.*

DIVISION 13.—*Recovery of Property on Determination of a Life or Lives.*

DIVISION 14.—*Religious Worship—Disturbance of.*

10 DIVISION 15.—*Sheriff.*

DIVISION 16.—*Sunday.*

DIVISION 17.—*Witnesses—Habeas Corpus for Prisoners.*

PART IV.—PENALTIES—s. 43.

15 SCHEDULES.

PART II.

GENERAL.

4. In the construction of this Act, unless inconsistent with Interpretation.
 20 the context or subject-matter, the expression "Imperial enactment" includes any part of the enacted law at any time in force in England.

5. (1) Each Imperial enactment mentioned in the First Substitution of enactments.
 25 Schedule to this Act, so far as it was in force in England on the twenty-fifth day of July, one thousand eight hundred (First Schedule.)
 and twenty-eight is declared—

- (a) to have been in force in New South Wales on that day by virtue of the Imperial Act 9 George IV Chapter 83 (The Australian Courts Act, 1828); and
- 30 (b) to have remained in force in New South Wales from that day until the commencement of this Act, except so far as affected by State Acts from time to time in force.

(2)

Imperial Acts Application.

(2) Each Imperial enactment mentioned in the First Schedule to this Act is hereby repealed so far as it applies in New South Wales.

(3) Each provision of Part III of this Act is substituted for the Imperial enactment mentioned in the first column of the First Schedule to this Act opposite the reference to that provision in the second column of that Schedule.

(4) To the extent to which any of the provisions of Part III of this Act are inconsistent with the provisions of any State Act in force at the commencement of this Act, the provisions of the State Act shall prevail.

(5) In construing any of the provisions of Part III of this Act regard may be had to the context (if any) of the Imperial enactment for which the provision is substituted.

(6) In any State Act a reference to any Imperial enactment specified in the first column of the First Schedule to this Act shall, where the case permits, and unless a contrary intention appears, be construed as a reference to the provision of this Act specified opposite that Imperial enactment in the second column of that Schedule.

6. Each Imperial enactment mentioned in Part I of the Second Schedule to this Act, and so much of each Imperial enactment mentioned in the first column of Part II of that Schedule as is specified opposite that Imperial enactment in the second column of the said Part II, so far in either case as it was in force in England on the twenty-fifth day of July, one thousand eight hundred and twenty-eight—

Preserved
Imperial
enactments.
(Second
Schedule.)

(a) is declared to have been in force in New South Wales on that day by virtue of the Imperial Act 9 George IV Chapter 83; and

(b) except so far as affected by any Imperial enactments or State Acts from time to time in force in New South Wales—

(i) is declared to have remained in force in New South Wales from that day;

(ii)

Imperial Acts Application.

- (ii) shall from the commencement of this Act be in force in New South Wales; and
- (c) is not repealed by section eight of this Act.

7. Nothing in this Act affects any Imperial enactment set out in the Third Schedule to this Act or any other Imperial enactment which independently of the provisions of the Imperial Act 9 George IV Chapter 83 is made applicable to New South Wales by the express words or necessary intendment of any Imperial enactment.

Enactments not affected by repeal. 28 and 29 Vic. c. 63. Vict. Act No. 3270, s. 5.

8. (1) In addition to the repeals effected by subsection two of section five of this Act all other Imperial enactments (commencing with the Statute of Merton, 20 Henry III 1235-6) in force in England at the time of the passing of the Imperial Act 9 George IV Chapter 83 are so far as they are in force in New South Wales hereby repealed.

Imperial enactments repealed. Vict. Act No. 3270, s. 7.

(2) The repeal of the Imperial Act 7 George II Chapter 8 (Sir John Barnard's Act) effected by subsection one of this section shall be deemed to have taken effect as on and from the fourteenth day of June, one thousand eight hundred and sixty :

Provided that nothing in this subsection shall affect any transaction in respect of which proceedings in any Court have been taken or commenced on or before the twenty-fifth day of July, one thousand nine hundred and sixty-eight.

9. (1) The repeal by this Act of any Imperial enactment does not—

Savings. cf. 52 & 53, Vic. c. 63, s. 38.

- (a) revive anything not in force or existing at the commencement of this Act;
- (b) affect the previous operation of any Imperial enactment so repealed or anything duly done or suffered under any Imperial enactment so repealed;
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any Imperial enactment so repealed;

(d)

Imperial Acts Application.

(d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any Imperial enactment so repealed; or

5 (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, 10 forfeiture or punishment may be imposed and enforced, as if this Act had not been passed.

(2) The repeal by this Act of—

15 (a) The Imperial Act 43 Elizabeth Chapter 4 (The Charitable Uses Act, 1601) does not affect the established rules of law relating to charity;

(b) section four of the Imperial Act 29 Charles II Chapter 3 (The Statute of Frauds, 1677) does not apply in relation to a promise or agreement made before the commencement of this Act; and

20 (c) any other Imperial enactment does not affect any rules of law or equity not enacted by the repealed enactment.

10. Where any Imperial enactment not repealed by this ^{Saving.} Act has been repealed (whether expressly or impliedly), confirmed, revived, or perpetuated by any Imperial enactment hereby repealed, the first-mentioned repeal, or the confirmation, revivor, or perpetuation shall not be affected by the repeal effected by this Act.

11. (1) The Governor may, by proclamation published ^{Revival of} in the Gazette, declare that any provision (in this section ^{repealed} called “the revived provision”) being the whole or any part ^{enactments.} of any Imperial enactment repealed by this Act, other than an Imperial enactment mentioned in the First Schedule to this Act, shall be revived as from the date of publication of the 35 proclamation, or a later date to be specified in the proclamation.

(2)

Imperial Acts Application.

(2) On and after the date of revival, the revived provision shall, subject to Acts from time to time in force, and subject to subsection three of this section, have such effect in New South Wales as the revived provision had in New South Wales immediately before the commencement of this Act.

(3) The revival under this section of any revived provision shall not—

- 10 (a) affect the previous operation of any repeal worked by section eight of this Act;
- (b) affect anything duly done or suffered before the date of revival;
- 15 (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred before the date of revival, or any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation or liability; or
- 20 (d) make any person liable for any penalty, forfeiture or punishment in respect of anything done or omitted before the date of revival.

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

(5) If either House passes a resolution of which notice has been given at any time within fifteen sitting days after the proclamation has been laid before such House disallowing any proclamation or part thereof, the proclamation or part thereupon ceases to have effect.

Imperial Acts Application.

PART III.

SUBSTITUTED ENACTMENTS.

DIVISION 1.—Administration of Estates.

12. In this Division unless inconsistent with the context Interpretation.
5 or subject-matter—

“Administration” means letters of administration whether general, special, or limited, or with the will annexed or otherwise, and includes an order to the Public Trustee to administer. Vict. Act No. 6191, s. 5.

10 “Estate” includes both real and personal property.

“Personal representative” means the executor original or by representation or administrator for the time being of a deceased person.

“Will” includes codicil.

15 25 Edward III St. 5 c. 5.

13. (1) An executor of a sole or last surviving executor of a testator is the executor of that testator. Executor of executor represents original testator.

20 This provision shall not apply to an executor who does not prove the will of his testator and, in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, it shall cease to apply on such probate being granted. cf. 15 Geo. V c. 23, s. 7. Vict. Act No. 6191, s. 17.

(2) So long as the chain of such representation is unbroken, the last executor in the chain is the executor of every preceding testator.

(3) The chain of such representation is broken by—

- (a) an intestacy;
- (b) the failure of a testator to appoint an executor; or
- (c) the failure to obtain probate of a will,

30 but is not broken by a temporary grant of administration if probate is subsequently granted.

(4) Every person in the chain of representation to a testator—

- 35 (a) has the same rights in respect of the estate of that testator as the original executor would have had if living; and
- (b)

Imperial Acts Application.

(b) is, to the extent to which the estate of that testator has come to his hands answerable as if he were an original executor.

31 Edward III St. 1 c. 11.

5 1 James II c. 17, s. 6.

14. Every person to whom administration of the estate of a deceased person is granted shall, subject to the limitations (if any) contained in the grant, have the same rights and liabilities and shall be accountable in like manner as if he were the executor of the deceased.

Rights and accountability of administrator. cf. Vict. Act No. 6191, s. 27.

30 Charles II c. 7.

4 William and Mary c. 24, s. 12.

15. Where a person as personal representative or as executor in his own wrong wastes or converts to his own use any part of the estate of a deceased person and dies, his personal representative shall to the extent of the available assets of the defaulter be liable and chargeable in respect of such waste or conversion in the same manner as the defaulter would have been if living.

Liability for waste. cf. 15 Geo. V c. 23, s. 29. Vict. Act No. 6191, s. 33 (2).

DIVISION 2.—*Calendar.*

20 24 George II c. 23—The Calendar (New Style) Act, 1750—
ss. 1, 2 and 3.

16. (1) The first day of January in every year shall be the first day of the year, and each new year shall accordingly commence and be reckoned from the first day of every month of January and all acts, deeds, writings, notes, and other instruments, of what nature or kind soever, hereafter made, executed, or signed shall bear date according to the said method of reckoning, being the reckoning instituted by the Imperial Act 24 George II c. 23, known as The Calendar (New Style) Act, 1750.

Commencement of year.

Imperial Acts Application.

(2) The several years two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other hundredth year in time to come, except only every fourth hundredth year, of which the year two thousand shall be the first, shall not be leap years, but shall be common years consisting of three hundred and sixty-five days, and no more; and the years two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundredth year from the said year two thousand inclusive, and also all other years which by the reckoning in use before the first day of January, one thousand seven hundred and fifty-two (being the date for the commencement of the calendar or reckoning instituted by the said Imperial Act, The Calendar (New Style) Act, 1750) would have been leap years, shall in all times to come be leap years, consisting of three hundred and sixty-six days, in the same manner as was before the said first day of January, one thousand seven hundred and fifty-two used with respect to every fourth year.

Hundredth years except every fourth hundredth to be deemed common years consisting of 365 days.

(3) The months, the enumeration of days in the respective months, and the ordering of the days of the week and Easter Day, shall be determined in accordance with the calendar, table and rules annexed to the said Imperial Act, The Calendar (New Style) Act, 1750.

Ordering of months, days of the week and Easter Day.

DIVISION 3.—*Charities.*

25 52 George III c. 101—The Charities Procedure Act, 1812.

17. (1) In every case of a breach of any trust or supposed breach of any trust created for charitable purposes, or whenever the direction or order of a court is deemed necessary for the administration of any trust for charitable purposes, any two or more persons may present a petition to the Supreme Court stating such complaint and praying such relief as the nature of the case may require; and the Supreme Court shall hear such petition in a summary way, and upon affidavits or such other evidence as is produced upon such hearing determine the same, and make such other order therein and with respect to the costs of such application as seems just.

Petition in case of a charitable trust and determination thereof in a summary way. Vict. Act No. 3270, s. 39.

(2)

Imperial Acts Application.

(2) Every petition so to be presented shall be signed by the persons preferring the same, in the presence of and shall be attested by the solicitor for such petitioners, and every such petition shall be submitted to and allowed by the Attorney-General or Solicitor-General, and such allowance shall be certified by him before any such petition is presented.

Petitions to be signed by petitioners and their solicitor and by law officer.
Vict. Act No. 3270, s. 40.

DIVISION 4.—Forcible Entries and Detainers.

5 Richard II St. 1 c. 7—The Forcible Entry Act, 1381.

18. No person shall make any entry into any land except where such entry is given by law and, in such case, with no more force than is reasonably necessary.

Forcible entry.
cf. Vict. Act No. 6231, s. 207 (1).

8 Henry VI c. 9—The Forcible Entry Act, 1429.

31 Elizabeth c. 11—The Forcible Entry Act, 1588.

19. No person being in actual possession of land for a period of less than three years by himself or his predecessors shall without colour of right hold possession of it in a manner likely to cause a breach of the peace or a reasonable apprehension of a breach of the peace against a person entitled by law to the possession of the land and able and willing to afford reasonable information as to his being so entitled.

Forcible detainer.
Vict. Act No. 6231, s. 207 (2).

20. Any person who contravenes section eighteen or section nineteen of this Act shall be guilty of a misdemeanour and liable to imprisonment for a term of not more than one year or to a fine of not more than one thousand dollars or to both such imprisonment and fine.

Penalty.

DIVISION 5.—Guardians.

12 Charles II c. 24—The Tenures Abolition Act, 1660—s. 9.

21. A guardian of an infant appointed by deed or will may take into his custody and management to the use of the infant the real and personal estate of the infant till the age of twenty-one years or any lesser time according to the terms of the

Powers of guardian.

Imperial Acts Application.

the appointment of the guardian, and may bring such actions in relation to the real and personal estate of the infant as by law a guardian in common socage might have done, or may bring such other proceedings as may be necessary to give effect to all or any of his powers under this section.

DIVISION 6.—Insurance—Life, Fire and other Policies.

14 George III c. 48—The Life Assurance Act, 1774.

22. This Division does not apply to insurances made before the commencement of this Act. Existing insurances not affected by this Division.

10 23. (1) No insurance shall be made by any person on the life of any person or on any other event whatsoever wherein the person for whose use or benefit or on whose account the policy is made has no interest, or by way of gaming or wagering; and every assurance made contrary to 15 this subsection shall be void. No insurance to be made unless insurer has interest. cf. Vict. Act No. 6279, s. 21.

(2) It shall not be lawful to make any policy on the life of any person, or on any other event whatsoever, wherein the person effecting the policy has no interest, without inserting in such policy the names of the persons interested therein, or 20 for whose use or benefit or on whose account such policy was made. No policy without inserting names, &c. Vict. Act No. 6279, s. 22. Davjoyda Estates Pty. Ltd. v. National Insurance Company of New Zealand Ltd. (1965) 85 W.N. (Pt. 1) N.S.W. 184.

(3) In all cases where there is an interest in such life or other event, no greater sum shall be recovered or received from the insurer than the amount or value of the 25 interest. How much may be recovered. cf. Vict. Act No. 6279, s. 23.

(4)

Imperial Acts Application.

(4) Nothing in this Division shall extend to insurance made by any person on ships or goods, or to contracts of indemnity against loss by fire or loss by other events whatsoever.

Not to extend to ships, contracts of indemnity &c.

cf. Vict. Act No. 6279, s. 24.

Davjoyda Estates Pty. Ltd. v. National Insurance Co., *supra*.

5 DIVISION 7.—*Insurance—Marine.*

19 George II c. 37—The Marine Insurance Act, 1745.

28 George III c. 56—The Marine Insurance Act, 1788.

24. This Division applies to State marine insurance within the limits of New South Wales.

Application of Division.

10 25. This Division does not apply to contracts of marine insurance made before the commencement of this Act.

Existing contracts not affected.

26. (1) Every contract of marine insurance by way of gaming or wagering is void.

Avoidance of wagering or gaming contracts.

15 a (2) A contract of marine insurance is deemed to be a gaming or wagering contract—

6 Edw. VII c. 41, s. 4.
Act No. 11, 1909 (C'wealth), s. 10.

(a) where the assured has not an insurable interest, and the contract is entered into with no expectation of acquiring such an interest; or

20 (b) where the policy is made "interest or no interest", or "without further proof of interest than the policy itself", or "without benefit of salvage to the insurer", or subject to any other like term :

25 Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

Imperial Acts Application.

27. Subject to the provisions of any Act, a contract of marine insurance is inadmissible in evidence in an action for the recovery of a loss under the contract unless it is embodied in a marine policy in accordance with this Division. The policy may be executed and issued either at the time when the contract is concluded or afterwards.

Contracts must be embodied in policy.
6 Edw. VII c. 41, s. 22.
Act No. 11, 1909 (C'wealth), s. 28.

28. A marine policy must specify—
- (a) the name of the assured, or of some person who effects the insurance on his behalf;
 - 10 (b) the subject-matter insured and the risk insured against;
 - (c) the voyage, or period of time, or both as the case may be, covered by the insurance;
 - (d) the sum or sums insured; and
 - 15 (e) the name or names of the insurers.
- What policy must specify.
6 Edw. VII c. 41, s. 23.
Act No. 11, 1909 (C'wealth), s. 29.

DIVISION 8.—*Justices of the Peace.*

1 Edward III St. 2 c. 16.

18 Edward III St. 2 c. 2.

34 Edward III c. 1—The Justices of the Peace Act, 1361.

20 29. The Governor may by commission under the Public Seal of the State appoint justices to keep the peace in the State.

Appoint-ment of justices.

30. Justices of the Peace shall have power to restrain offenders and to take of them or of persons not of good fame 5 surety for their good behaviour.

Powers of justices.

DIVISION

Imperial Acts Application.

DIVISION 9.—*Landlord and Tenant.*

Use and Occupation.

11 George II c. 19—The Distress for Rent Act, 1737—s. 14.

5 **31.** (1) Where the agreement between the landlord and tenant is not by deed, the landlord may recover a reasonable satisfaction for the lands held or occupied by the defendant in an action of assumpsit for use and occupation. And if in evidence on the trial of such action any parol demise or any agreement (not being by deed) whereon a certain rent was reserved shall appear, the plaintiff shall not be non-suited but may make use thereof as evidence of the quantum of the damages to be recovered.

Vict. Act
No. 6285,
s. 8.
Spektor
v. Lees
[1964]
V.R. 10.
Use and
occupation.

(2) Nothing in subsection one of this section affects actions of debt for use and occupation.

Waste.

15

52 Henry III (Statute of Marlborough) c. 23.

32. (1) A tenant for life or lives or a leasehold tenant shall not commit voluntary waste.

Voluntary
waste.

(2) Nothing in subsection one of this section applies to any estate or tenancy without impeachment of waste, or affects any licence or other right to commit waste.

20

(3) In subsection one of this section "leasehold tenant" includes a tenant for a term, a tenant under a periodical tenancy, a tenant under a tenancy to which section one hundred and twenty-seven of the Conveyancing Act, 1919, as amended by subsequent Acts, applies, and a tenant at will.

25

(4) A tenant who infringes subsection one of this section is liable in damages to his remainderman or reversioner but this section imposes no criminal liability.

(5)

Imperial Acts Application.

(5) This section does not affect the operation of any event which may determine a tenancy at will.

DIVISION 10.—Legal Procedure—Actions on Bonds.

8 and 9 William III c. 11—The Administration of Justice Act, 1696—s. 8.

33. (1) In any action on any bond or on any penal sum for non-performance of any covenant or agreement, the plaintiff may assign as many breaches as he thinks fit, and may recover not only such damages as have been usually awarded in such cases, but also damages for such of the said breaches so assigned as the plaintiff proves to have occurred.

In actions on bonds, &c., plaintiff may assign as many breaches as he pleases.

Act No. 21, 1899, s. 132.

(2) If interlocutory judgment in any such case is given for the plaintiff by confession or in default of appearance or of pleading, the plaintiff may suggest as many breaches of the covenants and agreements as he thinks fit, and may on proof of such breaches recover damages accordingly.

Vict. Act No. 6279, s. 30.

(3) If the defendant after judgment and before execution pays into the court where the action is brought to the use of the plaintiff such damages together with the costs of the action, or if by reason of any execution the plaintiff is fully paid or satisfied all such damages together with his costs of the action and all reasonable charges and expenses for the said execution, further proceedings on the said judgment shall be stayed. But the judgment shall remain as a further security to answer to the plaintiff such damages as are sustained for further breach of such covenant or agreement, and upon any such breach the plaintiff may summon the defendant to show cause why execution should not be had or awarded upon the said judgment, upon which there shall be the like proceeding or such other proceeding as may be ordered for inquiry as to such breaches and assessing damages thereon; and upon payment or satisfaction in manner as aforesaid of such future damages costs charges and expenses as aforesaid all further proceedings on the said judgment shall to the like extent again be stayed.

Defendant paying damages execution may be stayed.

Imperial Acts Application.

4 and 5 Anne c. 3 (or c. 16)—The Administration of Justice Act, 1705—ss. 12 and 13.

34. (1) Where an action is brought upon any bond which has a condition or defeasance to make void the same upon payment of a lesser sum at a day or place certain, if the obligor has before the action brought paid to the obligee the principal and interest due by the defeasance or condition of such bond, though such payment was not made strictly according to the condition or defeasance, it may nevertheless be pleaded in bar of such action; and shall be as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeasance and had been so pleaded.

Action of debt brought on a bond after money paid—such payment may be pleaded in bar. Vict. Act No. 6279, s. 30.

(2) If at any time pending an action upon any such bond with a penalty the defendant brings into court all the principal money and interest due on such bond and also all costs properly chargeable by the plaintiff against the defendant in respect of any proceedings upon such bond, the money so brought in shall be in full satisfaction and discharge of the bond.

Principal and interest on bonds paid into court.

DIVISION 11.—*Libels—Blasphemous and Seditious Libels.*

60 George III and 1 George IV c. 8—The Criminal Libel Act, 1819—ss. 1, 2 and 8.

35. (1) In every case in which any verdict or judgment shall be had against any person for composing, printing, or publishing any blasphemous libel, or any seditious libel tending to bring into hatred or contempt the person of Her Majesty, Her heirs or successors, or the government and constitution of the State of New South Wales as by law established, or either House of Parliament, or to excite Her Majesty's subjects to attempt the alteration of any matter as by law established, otherwise than by lawful means, the judge or the court before whom or in which such verdict shall have been given, or the court in which such judgment shall be had, may make an order for the seizure and carrying away and detaining in safe custody, in such manner as shall be directed in such order, all copies of the libel which shall be in the possession of

After verdict, &c., against any person for composing &c., a blasphemous or seditious libel, the court may make order for the seizure of copies of the libel in possession of such person, &c.

Imperial Acts Application.

the person against whom such verdict or judgment shall have been had, or in the possession of any other person named in the order for his use, evidence upon oath having been previously given to the satisfaction of such court or judge,
 5 that a copy or copies of the said libel is or are in the possession of such other person for the use of the person against whom such verdict or judgment shall have been had as aforesaid; and in every such case it shall be lawful for any justice of the peace or for any person acting under any such order,
 10 or for any person acting with or in aid of any such justice of the peace, or other person, to search for any copies of such libel in any house, building, or other place whatsoever belonging to or occupied by the person against whom any such verdict or judgment shall have been had, or belonging to or
 15 occupied by any other person so named, in whose possession any copies of any such libel, belonging to the person against whom any such verdict or judgment shall have been had, shall be; and in case admission shall be refused or not obtained within a reasonable time after it
 20 shall have been first demanded, to enter by force by day into any such house, building, or place whatsoever, and to carry away all copies of the libel there found, and to detain the same in safe custody, until the same shall be restored under the provisions of this section, or disposed of according to any
 25 further order made in relation thereto.

and search may thereupon be made for the same.

(2) If in any such case as aforesaid judgment shall be stayed, or if, after judgment shall have been entered, the same shall be reversed, all copies so seized shall be forthwith returned to the person from whom the same shall have been
 30 so taken as aforesaid, free of all charge and expense, and without the payment of any fees whatsoever; and in every case in which final judgment shall be entered upon the verdict so found against the person charged with having composed, printed, or published such libel, then all copies so seized shall
 35 be disposed of as the court in which such judgment shall be given shall order and direct.

Copies of libels so seized shall be restored if judgment is stayed, &c., but shall otherwise be disposed of as the court shall direct.

(3) Any proceeding which shall be brought for any thing done in pursuance of this section, shall be commenced within six months next after the thing done; and
 the

Limitation of actions, &c.

Imperial Acts Application.

the defendant in every such proceeding may plead the general issue, and give this section and the special matter in evidence at any trial to be had thereupon; and if proceedings shall be brought or commenced after the time limited for bringing the same, there shall be a verdict for the defendant.

DIVISION 12.—*Real Property.*

18 Edward I St. 1 (Quia Emptores) cc. 1 and 3.

34 Edward III c. 15.

10 **36.** Land held of the Crown in fee simple may be assured in fee simple without licence and without fine and the person taking under the assurance shall hold the land of the Crown in the same manner as the land was held before the assurance took effect.

Alienation of fee simple.
cf. 17 Edward II, c. 6.
1 Edward III, St. 2, c. 12.

12 Charles II c. 24—The Tenures Abolition Act, 1660—s. 4.

15 **37.** All tenures created by the Crown upon any grant in fee simple made after the commencement of this Act shall be taken to be in free and common socage without any incident of tenure for the benefit of the Crown.

Tenure.

DIVISION 13.—*Recovery of Property on Determination of a Life or Lives.*

20

18 and 19 Charles II c. 11—The Cestui que Vie Act, 1666.

6 Anne c. 72 (or c. 18)—The Cestui que Vie Act, 1707.

25 **38.** (1) Every person having any estate or interest in any property determinable upon a life or lives who, after the determination of such life or lives without the express consent of the person next immediately entitled upon or after such determination, holds over or continues in possession of such property estate or interest, or of the rents, profits or income thereof, shall be liable in damages or to an account for such rents and profits, or both, to the person entitled to such property, estate, interest, rents, profits or income after the determination of such life or lives.

Person wrongfully holding over after the determination of a life to be liable in damages.
Vict. Act No. 6344, s. 274.

Imperial Acts Application.

(2) Where a reversion remainder or other estate or interest in any property is expectant upon the determination of a life or lives, the reversioner remainderman or other person entitled to such reversion remainder or other estate or interest
5 may in any proceeding claiming relief on the basis that such life or lives has or have determined, adduce evidence of belief that such life or lives has or have been determined and of the grounds of such belief, and thereupon the court may in its discretion order that unless the person or persons on whose
10 life or lives such reversion remainder or other estate or interest is expectant is or are produced in court or is or are otherwise shown to be living, such person or persons shall for the purposes of such proceedings be accounted as dead, and relief may be given accordingly.

Evidence may be given of belief of determination of a life.

15 (3) If in such proceedings the lastmentioned person is shown to have remained beyond Australia, or otherwise absented himself from the place in which if in Australia he might be expected to be found, for the space of seven years or upwards, such person, if not proved to be living, shall for
20 the purposes of such proceedings be accounted as dead, and relief may be given accordingly.

Effect of absence for seven years.

(4) If in any such proceedings judgment has been given against the plaintiff, and afterwards such plaintiff brings
25 subsequent proceedings upon the basis that such life has determined, the court may make an order staying such proceedings permanently or until further order or for such time as may be thought fit.

Subsequent action may be stayed.

(5) If in consequence of the judgment given in any such proceedings, any person having any estate or interest in
30 any property determinable on such life or lives has been evicted from or deprived of any property or any estate or interest therein, and afterwards it appears that such person or persons on whose life or lives such estate or interest depends is or are living or was or were living at the time of
35 such eviction or deprivation, the court may give such relief as is appropriate in the circumstances.

Where supposed dead man proves to be alive relief may be given on that basis.

DIVISION

*Imperial Acts Application.*DIVISION 14.—*Religious Worship—Disturbance of.*

1 William and Mary c. 18—The Toleration Act, 1688—s. 15.
 52 George III c. 155—The Places of Religious Worship Act,
 1812—s. 12.

- 5 **39.** Any person who wilfully and without lawful justifica-
 tion or excuse, the proof of which lies on him, disquiets or
 disturbs any meeting of persons lawfully assembled for
 religious worship, or assaults any person lawfully officiating
 at any such meeting, or any of the persons there assembled.
 10 shall be liable upon summary conviction to a penalty not
 exceeding one hundred dollars or to imprisonment for a term
 not exceeding two months.
- Disturbing
religious
worship.
Queensland
Code, s. 207.
Vict. Act
No. 6337,
s. 33.

DIVISION 15.—*Sheriff.*

15 32 George II c. 28—The Debtors Imprisonment Act, 1758—
 ss. 1, 3 and 4.

- 40.** (1) Where any sheriff, bailiff, or other officer arrests
 or has in custody upon mesne process any person in the course
 of a civil proceeding such officer shall not—
- 20 (a) convey such person without his free consent to any
 premises licensed for the sale of intoxicating liquor
 or any registered club, or to the private house of
 such officer or any tenant or relative of such officer;
 nor
- 25 (b) charge such person with any sum for, or procure
 him to call or pay for, any liquor, food, or thing
 whatsoever, except what he freely asks for; nor
- 30 (c) take such person to any gaol within twenty-four
 hours of his arrest, unless such person fails to name
 or refuses to be carried to some safe and convenient
 house of his own nomination, being within a reason-
 able distance of the place at which he was arrested,
 and not being the private dwelling-house of such
 person,
- 35 but shall during such twenty-four hours permit such person
 to send for and to have brought to him at reasonable times in
 the day and in reasonable quantities any food or liquor from
 what
- Duties on
arrest of
civil debtors.
50 & 51
Vic. c. 55,
s. 14.
Vict. Act
No. 6387,
s. 207.

Imperial Acts Application.

what place he thinks fit, and also to have and use such bedding, linen, and other necessary things as he has occasion for or is supplied with, and shall not require any payment for the use thereof or restrict the use thereof.

- 5 (2) Where a sheriff, bailiff, or other officer makes an arrest to which this section applies he shall as promptly as reasonably possible inform the person arrested of the effect of subsection one of this section.

DIVISION 16.—*Sunday.*

- 10 29 Charles II c. 7—The Sunday Observance Act, 1677—s. 6.

41. Service of any writ, process, warrant, order, judgment or decree (except in case of an offence, breach of the peace or any warrant, writ or process for the apprehension of any person) upon a Sunday shall be void. Service of process on Sunday void.

- 15 DIVISION 17.—*Witnesses—Habeas Corpus for Prisoners.*

44 George III c. 102—The Habeas Corpus Act, 1804.

42. Any Judge of the Supreme Court may award a writ of habeas corpus for bringing any prisoner detained in any gaol or prison before any court, to be there examined as a witness. Writs of habeas corpus ad test.

20

PART IV.

PENALTIES.

43. Any person guilty of any offence under any Imperial enactment included in Part I of the Second Schedule for which no punishment is otherwise provided is liable to imprisonment for a term of not more than five years or to a fine of not more than two thousand dollars, or to both such imprisonment and fine. Offences—penalties.

SCHEDULES.

Imperial Acts Application.

SCHEDULES.

FIRST SCHEDULE.

Sec. 5.

	Imperial enactment.	Substituted provision of this Act.	Division of Part III.
5	(1267) 52 Henry III (Statute of Marlborough) c. 23.	s. 32	Division 9.
	(1289-90) 18 Edward I (St. 1) (Quia Emptores) cc. 1 and 3.	s. 36	Division 12.
10	(1326-7) 1 Edward III St. 2 c. 16	s. 29	Division 8.
	(1344) 18 Edward III St. 2 c. 2	s. 29	Division 8.
	(1351-2) 25 Edward III St. 5 c. 5	s. 13	Division 1.
	(1357) 31 Edward III St. 1 c. 11	s. 14	Division 1.
15	(1360-1) 34 Edward III c. 1 (The Justices of the Peace Act, 1361).	s. 30	Division 8.
	(1361) 34 Edward III c. 15	s. 36	Division 12.
	(1381-2) 5 Richard II, St. 1 c. 7 (The Forcible Entry Act, 1381).	s. 18	Division 4.
20	(1429) 8 Henry VI c. 9 (The Forcible Entry Act, 1429).	s. 19	Division 4.
	(1588-9) 31 Elizabeth c. 11 (The Forcible Entry Act, 1588).	s. 19	Division 4.
	(1660) 12 Charles II c. 24 (The Tenures Abolition Act, 1660)—		
25	s. 4	s. 37	Division 12.
	s. 9	s. 21	Division 5.
	(1666) 18 and 19 Charles II c. 11 (The Cestui que Vie Act, 1666).	s. 38	Division 13.
30	(1677) 29 Charles II c. 7 (The Sunday Observance Act, 1677), s. 6.	s. 41	Division 16.
	(1678) 30 Charles II c. 7	s. 15	Division 1.
	(1685) 1 James II c. 17, s. 6	s. 14	Division 1.
	(1688) 1 William and Mary c. 18 (The Toleration Act, 1688), s. 15.	s. 39	Division 14.
35	(1692) 4 William and Mary c. 24, s. 12 ..	s. 15	Division 1.

FIRST

*Imperial Acts Application.*FIRST SCHEDULE—*continued.*

Imperial enactment.	Substituted provision of this Act.	Division of Part III.
5 (1696-7) 8 and 9 William III c. 11 (The Administration of Justice Act, 1696), s. 8.	s. 33	Division 10.
(1705) 4 and 5 Anne c. 3 (or c. 16) (The Administration of Justice Act, 1705) ss. 12 and 13.	s. 34	Division 10.
10 (1707) 6 Anne c. 72 (or c. 18) (The Cestui que Vie Act, 1707).	s. 38	Division 13.
(1737) 11 George II c. 19 (The Distress for Rent Act, 1737), s. 14.	s. 31	Division 9.
15 (1745) 19 George II c. 37 (The Marine Insurance Act, 1745).	s. 26	Division 7.
(1750) 24 George II c. 23 (The Calendar (New Style) Act, 1750), ss. 1, 2 and 3.	s. 16	Division 2.
(1758-9) 32 George II c. 28 (The Debtors Imprisonment Act, 1758) ss. 1, 3 and 4.	s. 40	Division 15.
20 (1774) 14 George III c. 48 (The Life Assurance Act, 1774).	s. 23	Division 6.
(1788) 28 George III c. 56 (The Marine Insurance Act, 1788).	ss. 27, 28	Division 7.
25 (1804) 44 George III c. 102 (The Habeas Corpus Act, 1804).	s. 42	Division 17.
(1812) 52 George III c. 101 (The Charities Procedure Act, 1812).	s. 17	Division 3.
(1812) 52 George III c. 155, (The Places of Religious Worship Act, 1812), s. 12.	s. 39	Division 14.
30 (1819) 60 George III and 1 George IV c. 8 (The Criminal Libel Act, 1819), ss. 1, 2 and 8.	s. 35	Division 11.

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SECOND SCHEDULE.

Sec. 6

PART I.

Constitutional Enactments.

- (1297) 25 Edward I (Magna Carta) c. 29.
- 5 (1351) 25 Edward III St. 5 c. 4.
- (1354) 28 Edward III c. 3.
- (1368) 42 Edward III c. 3.
- (1623-4) 21 James I c. 3 (The Statute of Monopolies), ss. 1 and 6.
- (1627) 3 Charles I c. 1 (The Petition of Right).
- 10 (1640) 16 Charles I c. 10 (The Habeas Corpus Act, 1640), s. 6.
- (1679) 31 Charles II c. 2 (The Habeas Corpus Act, 1679), ss. 1-8, s. 11 (except the words "and shall incur and sustain" and the following words of the section), and ss. 15-19.
- (1688) 1 William and Mary c. 30 (The Royal Mines Act, 1688), s. 3.
- 15 (1688) 1 William and Mary sess. 2 c. 2 (The Bill of Rights).
- (1700) 12 and 13 William III c. 2 (The Act of Settlement).
- (1702) 1 Anne c. 2 (The Demise of the Crown Act, 1702), s. 4.
- (1702) 1 Anne St. 2 c. 21 (The Treason Act, 1702), s. 3.
- (1707) 6 Anne c. 41 (or 6 Anne c. 7) (The Succession to the Crown Act, 1707), s. 9.
- 20 (1772) 12 George III c. 11 (The Royal Marriages Act, 1772), ss. 1 and 2.
- (1816) 56 George III c. 100 (The Habeas Corpus Act, 1816).

PART II.

Criminal Law—Treason: Piracy.

Sec. 6

Treason.

- 25 (1351) 25 Edward III St. 5 c. 2 (The Treason Act, 1351). So far as the same declares what offences shall be adjudged treason, as amended by the following:—
 cf. Act No. 40, 1900, s. 16.
- 30 9 George IV c. 31;
 11 George IV and 1 William IV c. 66 (The Forgery Act, 1830) adopted by 4 William IV No. 4;
 2 and 3 William IV c. 34 adopted by 9 Victoria No. 1.
- 35 (1795) 36 George III c. 7 (The Treason Act, 1795). Such provisions of the Acts respectively as relate to the compassing, imagining, inventing, devising, or intending death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment, or restraint of the person of the Sovereign and the expressing, uttering, or declaring of such compassings, imaginations, inventions, devices, or intentions, or any of them.
 cf. Act No. 40, 1900, s. 11.
- 40 (1817) 57 George III c. 6 (The Treason Act, 1817)
- 45 (1695) 7 and 8 William III c. 3 (The Treason Act, 1695). S. 5 (except the words "And that no person" to the end of that section) and s. 6.

*Imperial Acts Application.*SECOND SCHEDULE—*continued.*Part II—*continued.**Piracy.*

- | | | | |
|---|--|---|---|
| 5 | (1536) 28 Henry VIII c. 15*.
(1698-9) 11 and 12 William III (11 William III) c. 7.
(1717-8) 4 George I c. 2 (or c. 11), s. 7
(1721-2) 8 George I c. 24.
(1744-5) 18 George II c. 30* | } | The provisions of each Act except so much of each Act as relates to the punishment of the crime of piracy or of any offence by any of the said Acts declared to be piracy, or of accessories thereto. |
|---|--|---|---|
- 10 * See Piracy Punishment Act, 1902, s. 3.

THIRD SCHEDULE.

Sec. 7.

Enactments applying irrespective of 9 George IV c. 83(A) *Criminal Law Enactments.*

- | | | |
|----|--|---|
| 15 | (1698-9) 11 William III c. 12 | Crimes by Governors of Colonies. |
| | (1772) 12 George III c. 24 | The Dockyards, &c., Protection Act, 1772. |
| | (1802) 42 George III c. 85, s. 1 | The Criminal Jurisdiction Act, 1802. |
| 20 | (1812) 52 George III c. 156 | The Prisoners of War (Escape) Act, 1812. |
| | (1824) 5 George IV c. 113 | The Slave Trade Act, 1824. |

(B) *Miscellaneous.*

- | | | |
|----|--|--|
| 25 | (1813) 54 George III c. 15, s. 4 | The New South Wales (Debts) Act, 1813. |
| | (1821) 1 and 2 George IV c. 121, ss. 27-29 | The Commissariat Accounts Act, 1821. |

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1969

New South Wales



ANNO OCTAVO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 30, 1969.

An Act to provide that certain enactments of the Parliament of England and of the Parliament of Great Britain and of the Parliament of the United Kingdom of Great Britain and Ireland in force in England at the time of the passing of the Imperial Act 9 George IV Chapter 83 shall continue in force in New South Wales; to replace other enactments of such Parliaments; to repeal other enactments of such Parliaments; to validate certain matters; and for purposes connected therewith. [Assented to, 9th April, 1969.]

BE

Imperial Acts Application.

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.

Short title
and com-
mencement.

1. (1) This Act may be cited as the "Imperial Acts Application Act, 1969".

(2) This Act shall, except where otherwise expressly provided, commence upon a day to be appointed by the Governor and notified by proclamation in the Gazette.

Construc-
tion.

2. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to other persons or circumstances shall not be affected.

Division
into Parts
and
Divisions.

3. This Act is divided into Parts and Divisions as follows :—

PART I.—PRELIMINARY—ss. 1–3.

PART II.—GENERAL—ss. 4–11.

PART III.—SUBSTITUTED ENACTMENTS—ss. 12–42.

DIVISION 1.—*Administration of Estates.*

DIVISION 2.—*Calendar.*

DIVISION 3.—*Charities.*

DIVISION 4.—*Forcible Entries and Detainers.*

DIVISION 5.—*Guardians.*

DIVISION 6.—*Insurance—Life, Fire and other Policies.*

DIVISION 7.—*Insurance—Marine.*

DIVISION

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DIVISION 8.—*Justices of the Peace.*

DIVISION 9.—*Landlord and Tenant.*

DIVISION 10.—*Legal Procedure—Actions on Bonds.*

DIVISION 11.—*Libels—Blasphemous and Seditious Libels.*

DIVISION 12.—*Real Property.*

DIVISION 13.—*Recovery of Property on Determination of a Life or Lives.*

DIVISION 14.—*Religious Worship—Disturbance of.*

DIVISION 15.—*Sheriff.*

DIVISION 16.—*Sunday.*

DIVISION 17.—*Witnesses—Habeas Corpus for Prisoners.*

PART IV.—PENALTIES—s. 43.

SCHEDULES.

PART II.

GENERAL.

4. In the construction of this Act, unless inconsistent with the context or subject-matter, the expression “Imperial enactment” includes any part of the enacted law at any time in force in England. Interpretation.

5. (1) Each Imperial enactment mentioned in the First Schedule to this Act, so far as it was in force in England on the twenty-fifth day of July, one thousand eight hundred and twenty-eight is declared— Substitution of enactments. (First Schedule.)

(a) to have been in force in New South Wales on that day by virtue of the Imperial Act 9 George IV Chapter 83 (The Australian Courts Act, 1828); and

(b) to have remained in force in New South Wales from that day until the commencement of this Act, except so far as affected by State Acts from time to time in force.

(2)

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(2) Each Imperial enactment mentioned in the First Schedule to this Act is hereby repealed so far as it applies in New South Wales.

(3) Each provision of Part III of this Act is substituted for the Imperial enactment mentioned in the first column of the First Schedule to this Act opposite the reference to that provision in the second column of that Schedule.

(4) To the extent to which any of the provisions of Part III of this Act are inconsistent with the provisions of any State Act in force at the commencement of this Act, the provisions of the State Act shall prevail.

(5) In construing any of the provisions of Part III of this Act regard may be had to the context (if any) of the Imperial enactment for which the provision is substituted.

(6) In any State Act a reference to any Imperial enactment specified in the first column of the First Schedule to this Act shall, where the case permits, and unless a contrary intention appears, be construed as a reference to the provision of this Act specified opposite that Imperial enactment in the second column of that Schedule.

Preserved
Imperial
enactments.
(Second
Schedule.)

6. Each Imperial enactment mentioned in Part I of the Second Schedule to this Act, and so much of each Imperial enactment mentioned in the first column of Part II of that Schedule as is specified opposite that Imperial enactment in the second column of the said Part II, so far in either case as it was in force in England on the twenty-fifth day of July, one thousand eight hundred and twenty-eight—

- (a) is declared to have been in force in New South Wales on that day by virtue of the Imperial Act 9 George IV Chapter 83; and
- (b) except so far as affected by any Imperial enactments or State Acts from time to time in force in New South Wales—
 - (i) is declared to have remained in force in New South Wales from that day;

(ii)

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(ii) shall from the commencement of this Act be in force in New South Wales; and

(c) is not repealed by section eight of this Act.

7. Nothing in this Act affects any Imperial enactment set out in the Third Schedule to this Act or any other Imperial enactment which independently of the provisions of the Imperial Act 9 George IV Chapter 83 is made applicable to New South Wales by the express words or necessary intention of any Imperial enactment.

Enactments not affected by repeal.
28 and 29 Vic. c. 63.
Vict. Act No. 3270, s. 5.

8. (1) In addition to the repeals effected by subsection two of section five of this Act all other Imperial enactments (commencing with the Statute of Merton, 20 Henry III A.D. 1235-6) in force in England at the time of the passing of the Imperial Act 9 George IV Chapter 83 are so far as they are in force in New South Wales hereby repealed.

Imperial enactments repealed.
Vict. Act No. 3270, s. 7.

(2) The repeal of the Imperial Act 7 George II Chapter 8 (Sir John Barnard's Act) effected by subsection one of this section shall be deemed to have taken effect as on and from the fourteenth day of June, one thousand eight hundred and sixty :

Provided that nothing in this subsection shall affect any transaction in respect of which proceedings in any Court have been taken or commenced on or before the twenty-fifth day of July, one thousand nine hundred and sixty-eight.

9. (1) The repeal by this Act of any Imperial enactment does not—

Savings.
cf. 52 & 53, Vic. c. 63, s. 38.

- (a) revive anything not in force or existing at the commencement of this Act;
- (b) affect the previous operation of any Imperial enactment so repealed or anything duly done or suffered under any Imperial enactment so repealed;
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any Imperial enactment so repealed;

(d)

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- (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any Imperial enactment so repealed; or
- (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture or punishment may be imposed and enforced, as if this Act had not been passed.

(2) The repeal by this Act of—

- (a) The Imperial Act 43 Elizabeth Chapter 4 (The Charitable Uses Act, 1601) does not affect the established rules of law relating to charity;
- (b) section four of the Imperial Act 29 Charles II Chapter 3 (The Statute of Frauds, 1677) does not apply in relation to a promise or agreement made before the commencement of this Act; and
- (c) any other Imperial enactment does not affect any rules of law or equity not enacted by the repealed enactment.

Saving.

10. Where any Imperial enactment not repealed by this Act has been repealed (whether expressly or impliedly), confirmed, revived, or perpetuated by any Imperial enactment hereby repealed, the first-mentioned repeal, or the confirmation, revivor, or perpetuation shall not be affected by the repeal effected by this Act.

Revival of
repealed
enactments.

11. (1) The Governor may, by proclamation published in the Gazette, declare that any provision (in this section called "the revived provision") being the whole or any part of any Imperial enactment repealed by this Act, other than an Imperial enactment mentioned in the First Schedule to this Act, shall be revived as from the date of publication of the proclamation, or a later date to be specified in the proclamation.

(2)

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(2) On and after the date of revival, the revived provision shall, subject to Acts from time to time in force, and subject to subsection three of this section, have such effect in New South Wales as the revived provision had in New South Wales immediately before the commencement of this Act.

(3) The revival under this section of any revived provision shall not—

- (a) affect the previous operation of any repeal worked by section eight of this Act;
- (b) affect anything duly done or suffered before the date of revival;
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred before the date of revival, or any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation or liability; or
- (d) make any person liable for any penalty, forfeiture or punishment in respect of anything done or omitted before the date of revival.

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

(5) If either House passes a resolution of which notice has been given at any time within fifteen sitting days after the proclamation has been laid before such House disallowing any proclamation or part thereof, the proclamation or part thereupon ceases to have effect.

PART

Imperial Acts Application.

PART III.

SUBSTITUTED ENACTMENTS.

DIVISION 1.—*Administration of Estates.*

Interpre-
tation.
Vict. Act
No. 6191,
s. 5.

12. In this Division unless inconsistent with the context or subject-matter—

“Administration” means letters of administration whether general, special, or limited, or with the will annexed or otherwise, and includes an order to the Public Trustee to administer.

“Estate” includes both real and personal property.

“Personal representative” means the executor original or by representation or administrator for the time being of a deceased person.

“Will” includes codicil.

25 Edward III St. 5 c. 5.

Executor of
executor
represents
original
testator.
cf. 15 Geo.
V c. 23,
s. 7.
Vict. Act
No. 6191,
s. 17.

13. (1) An executor of a sole or last surviving executor of a testator is the executor of that testator.

This provision shall not apply to an executor who does not prove the will of his testator and, in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, it shall cease to apply on such probate being granted.

(2) So long as the chain of such representation is unbroken, the last executor in the chain is the executor of every preceding testator.

(3) The chain of such representation is broken by—

- (a) an intestacy;
- (b) the failure of a testator to appoint an executor; or
- (c) the failure to obtain probate of a will,

but is not broken by a temporary grant of administration if probate is subsequently granted.

(4) Every person in the chain of representation to a testator—

- (a) has the same rights in respect of the estate of that testator as the original executor would have had if living; and
- (b)

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- (b) is, to the extent to which the estate of that testator has come to his hands answerable as if he were an original executor.

31 Edward III St. 1 c. 11.

1 James II c. 17, s. 6.

- 14.** Every person to whom administration of the estate of a deceased person is granted shall, subject to the limitations (if any) contained in the grant, have the same rights and liabilities and shall be accountable in like manner as if he were the executor of the deceased.

Rights and accountability of administrator.
cf. Vict. Act No. 6191, s. 27.

30 Charles II c. 7.

4 William and Mary c. 24, s. 12.

- 15.** Where a person as personal representative or as executor in his own wrong wastes or converts to his own use any part of the estate of a deceased person and dies, his personal representative shall to the extent of the available assets of the defaulter be liable and chargeable in respect of such waste or conversion in the same manner as the defaulter would have been if living.

Liability for waste.
cf. 15 Geo. V c. 23, s. 29.
Vict. Act No. 6191, s. 33 (2).

DIVISION 2.—*Calendar.*

24 George II c. 23—The Calendar (New Style) Act, 1750—
ss. 1, 2 and 3.

- 16.** (1) The first day of January in every year shall be the first day of the year, and each new year shall accordingly commence and be reckoned from the first day of every month of January and all acts, deeds, writings, notes, and other instruments, of what nature or kind soever, hereafter made, executed, or signed shall bear date according to the said method of reckoning, being the reckoning instituted by the Imperial Act 24 George II c. 23, known as The Calendar (New Style) Act, 1750.

Commencement of year.

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Hundredth years except every fourth hundredth to be deemed common years consisting of 365 days.

(2) The several years two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other hundredth year in time to come, except only every fourth hundredth year, of which the year two thousand shall be the first, shall not be leap years, but shall be common years consisting of three hundred and sixty-five days, and no more; and the years two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundredth year from the said year two thousand inclusive, and also all other years which by the reckoning in use before the first day of January, one thousand seven hundred and fifty-two (being the date for the commencement of the calendar or reckoning instituted by the said Imperial Act, The Calendar (New Style) Act, 1750) would have been leap years, shall in all times to come be leap years, consisting of three hundred and sixty-six days, in the same manner as was before the said first day of January, one thousand seven hundred and fifty-two used with respect to every fourth year.

Ordering of months, days of the week and Easter Day.

(3) The months, the enumeration of days in the respective months, and the ordering of the days of the week and Easter Day, shall be determined in accordance with the calendar, table and rules annexed to the said Imperial Act, The Calendar (New Style) Act, 1750.

DIVISION 3.—*Charities.*

52 George III c. 101—The Charities Procedure Act, 1812.

Petition in case of a charitable trust and determination thereof in a summary way.

Vict. Act No. 3270, s. 39.

17. (1) In every case of a breach of any trust or supposed breach of any trust created for charitable purposes, or whenever the direction or order of a court is deemed necessary for the administration of any trust for charitable purposes, any two or more persons may present a petition to the Supreme Court stating such complaint and praying such relief as the nature of the case may require; and the Supreme Court shall hear such petition in a summary way, and upon affidavits or such other evidence as is produced upon such hearing determine the same, and make such other order therein and with respect to the costs of such application as seems just.

(2)

Imperial Acts Application.

(2) Every petition so to be presented shall be signed by the persons preferring the same, in the presence of and shall be attested by the solicitor for such petitioners, and every such petition shall be submitted to and allowed by the Attorney-General or Solicitor-General, and such allowance shall be certified by him before any such petition is presented.

Petitions to be signed by petitioners and their solicitor and by law officer.

Vict. Act No. 3270, s. 40.

DIVISION 4.—*Forcible Entries and Detainers.*

5 Richard II St. 1 c. 7—The Forcible Entry Act, 1381.

18. No person shall make any entry into any land except where such entry is given by law and, in such case, with no more force than is reasonably necessary.

Forcible entry.
cf. Vict. Act No. 6231, s. 207 (1).

8 Henry VI c. 9—The Forcible Entry Act, 1429.

31 Elizabeth c. 11—The Forcible Entry Act, 1588.

19. No person being in actual possession of land for a period of less than three years by himself or his predecessors shall without colour of right hold possession of it in a manner likely to cause a breach of the peace or a reasonable apprehension of a breach of the peace against a person entitled by law to the possession of the land and able and willing to afford reasonable information as to his being so entitled.

Forcible detainer.
Vict. Act No. 6231, s. 207 (2).

20. Any person who contravenes section eighteen or section nineteen of this Act shall be guilty of a misdemeanour and liable to imprisonment for a term of not more than one year or to a fine of not more than one thousand dollars or to both such imprisonment and fine.

Penalty.

DIVISION 5.—*Guardians.*

12 Charles II c. 24—The Tenures Abolition Act, 1660—s. 9.

21. A guardian of an infant appointed by deed or will may take into his custody and management to the use of the infant the real and personal estate of the infant till the age of twenty-one years or any lesser time according to the terms of the

Powers of guardian.

Imperial Acts Application.

the appointment of the guardian, and may bring such actions in relation to the real and personal estate of the infant as by law a guardian in common socage might have done, or may bring such other proceedings as may be necessary to give effect to all or any of his powers under this section.

DIVISION 6.—*Insurance—Life, Fire and other Policies.*

14 George III c. 48—The Life Assurance Act, 1774.

Existing insurances not affected by this Division.

22. This Division does not apply to insurances made before the commencement of this Act.

No insurance to be made unless insurer has interest.
cf. Vict. Act No. 6279, s. 21.

23. (1) No insurance shall be made by any person on the life of any person or on any other event whatsoever wherein the person for whose use or benefit or on whose account the policy is made has no interest, or by way of gaming or wagering; and every assurance made contrary to this subsection shall be void.

No policy without inserting names, &c.
Vict. Act No. 6279, s. 22.

(2) It shall not be lawful to make any policy on the life of any person, or on any other event whatsoever, wherein the person effecting the policy has no interest, without inserting in such policy the names of the persons interested therein, or for whose use or benefit or on whose account such policy was made.

Davjoyda Estates Pty. Ltd. v. National Insurance Company of New Zealand Ltd. (1965) 85 W.N. (Pt. 1) N.S.W. 184.
How much may be recovered.
cf. Vict. Act No. 6279, s. 23.

(3) In all cases where there is an interest in such life or other event, no greater sum shall be recovered or received from the insurer than the amount or value of the interest.

(4)

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(4) Nothing in this Division shall extend to insurance made by any person on ships or goods, or to contracts of indemnity against loss by fire or loss by other events whatsoever.

Not to extend to ships, contracts of indemnity &c.

cf. Vict. Act No. 6279, s. 24.

Davjoyda Estates Pty. Ltd. v. National Insurance Co., *supra*.

DIVISION 7.—*Insurance—Marine.*

19 George II c. 37—The Marine Insurance Act, 1745.

28 George III c. 56—The Marine Insurance Act, 1788.

24. This Division applies to State marine insurance within the limits of New South Wales.

Application of Division.

25. This Division does not apply to contracts of marine insurance made before the commencement of this Act.

Existing contracts not affected.

26. (1) Every contract of marine insurance by way of gaming or wagering is void.

Avoidance of wagering or gaming contracts.

(2) A contract of marine insurance is deemed to be a gaming or wagering contract—

6 Edw. VII c. 41, s. 4.
Act No. 11, 1909 (C'wealth), s. 10.

(a) where the assured has not an insurable interest, and the contract is entered into with no expectation of acquiring such an interest; or

(b) where the policy is made “interest or no interest”, or “without further proof of interest than the policy itself”, or “without benefit of salvage to the insurer”, or subject to any other like term :

Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

Imperial Acts Application.

Contracts must be embodied in policy.
6 Edw. VII c. 41, s. 22.
Act No. 11, 1909 (C'wealth), s. 28.

27. Subject to the provisions of any Act, a contract of marine insurance is inadmissible in evidence in an action for the recovery of a loss under the contract unless it is embodied in a marine policy in accordance with this Division. The policy may be executed and issued either at the time when the contract is concluded or afterwards.

What policy must specify.
6 Edw. VII c. 41, s. 23.
Act No. 11, 1909 (C'wealth), s. 29.

28. A marine policy must specify—

- (a) the name of the assured, or of some person who effects the insurance on his behalf;
- (b) the subject-matter insured and the risk insured against;
- (c) the voyage, or period of time, or both as the case may be, covered by the insurance;
- (d) the sum or sums insured; and
- (e) the name or names of the insurers.

DIVISION 8.—*Justices of the Peace.*

1 Edward III St. 2 c. 16.

18 Edward III St. 2 c. 2.

34 Edward III c. 1—The Justices of the Peace Act, 1361.

Appoint-ment of justices.

29. The Governor may by commission under the Public Seal of the State appoint justices to keep the peace in the State.

Powers of justices.

30. Justices of the Peace shall have power to restrain offenders and to take of them or of persons not of good fame surety for their good behaviour.

DIVISION

Imperial Acts Application.

DIVISION 9.—*Landlord and Tenant.*

Use and Occupation.

11 George II c. 19—The Distress for Rent Act, 1737—s. 14.

31. (1) Where the agreement between the landlord and tenant is not by deed, the landlord may recover a reasonable satisfaction for the lands held or occupied by the defendant in an action of assumpsit for use and occupation. And if in evidence on the trial of such action any parol demise or any agreement (not being by deed) whereon a certain rent was reserved shall appear, the plaintiff shall not be non-suited but may make use thereof as evidence of the quantum of the damages to be recovered.

Vict. Act
No. 6285,
s. 8.
Spektor
v. Lees
[1964]
V.R. 10.
Use and
occupation.

(2) Nothing in subsection one of this section affects actions of debt for use and occupation.

Waste.

52 Henry III (Statute of Marlborough) c. 23.

32. (1) A tenant for life or lives or a leasehold tenant shall not commit voluntary waste.

Voluntary
waste.

(2) Nothing in subsection one of this section applies to any estate or tenancy without impeachment of waste, or affects any licence or other right to commit waste.

(3) In subsection one of this section "leasehold tenant" includes a tenant for a term, a tenant under a periodical tenancy, a tenant under a tenancy to which section one hundred and twenty-seven of the Conveyancing Act, 1919, as amended by subsequent Acts, applies, and a tenant at will.

(4) A tenant who infringes subsection one of this section is liable in damages to his remainderman or reversioner but this section imposes no criminal liability.

(5)

Imperial Acts Application.

(5) This section does not affect the operation of any event which may determine a tenancy at will.

DIVISION 10.—*Legal Procedure—Actions on Bonds.*

8 and 9 William III c. 11—The Administration of Justice Act, 1696—s. 8.

In actions on bonds, &c., plaintiff may assign as many breaches as he pleases.

Act No. 21, 1899, s. 132.

Vict. Act No. 6279, s. 30.

Defendant paying damages execution may be stayed.

33. (1) In any action on any bond or on any penal sum for non-performance of any covenant or agreement, the plaintiff may assign as many breaches as he thinks fit, and may recover not only such damages as have been usually awarded in such cases, but also damages for such of the said breaches so assigned as the plaintiff proves to have occurred.

(2) If interlocutory judgment in any such case is given for the plaintiff by confession or in default of appearance or of pleading, the plaintiff may suggest as many breaches of the covenants and agreements as he thinks fit, and may on proof of such breaches recover damages accordingly.

(3) If the defendant after judgment and before execution pays into the court where the action is brought to the use of the plaintiff such damages together with the costs of the action, or if by reason of any execution the plaintiff is fully paid or satisfied all such damages together with his costs of the action and all reasonable charges and expenses for the said execution, further proceedings on the said judgment shall be stayed. But the judgment shall remain as a further security to answer to the plaintiff such damages as are sustained for further breach of such covenant or agreement, and upon any such breach the plaintiff may summon the defendant to show cause why execution should not be had or awarded upon the said judgment, upon which there shall be the like proceeding or such other proceeding as may be ordered for inquiry as to such breaches and assessing damages thereon; and upon payment or satisfaction in manner as aforesaid of such future damages costs charges and expenses as aforesaid all further proceedings on the said judgment shall to the like extent again be stayed.

Imperial Acts Application.

4 and 5 Anne c. 3 (or c. 16)—The Administration of Justice Act, 1705—ss. 12 and 13.

34. (1) Where an action is brought upon any bond which has a condition or defeasance to make void the same upon payment of a lesser sum at a day or place certain, if the obligor has before the action brought paid to the obligee the principal and interest due by the defeasance or condition of such bond, though such payment was not made strictly according to the condition or defeasance, it may nevertheless be pleaded in bar of such action; and shall be as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeasance and had been so pleaded.

Action of debt brought on a bond after money paid—such payment may be pleaded in bar. Vict. Act No. 6279, s. 30.

(2) If at any time pending an action upon any such bond with a penalty the defendant brings into court all the principal money and interest due on such bond and also all costs properly chargeable by the plaintiff against the defendant in respect of any proceedings upon such bond, the money so brought in shall be in full satisfaction and discharge of the bond.

Principal and interest on bonds paid into court.

DIVISION 11.—Libels—Blasphemous and Seditious Libels.

60 George III and 1 George IV c. 8—The Criminal Libel Act, 1819—ss. 1, 2 and 8.

35. (1) In every case in which any verdict or judgment shall be had against any person for composing, printing, or publishing any blasphemous libel, or any seditious libel tending to bring into hatred or contempt the person of Her Majesty, Her heirs or successors, or the government and constitution of the State of New South Wales as by law established, or either House of Parliament, or to excite Her Majesty's subjects to attempt the alteration of any matter as by law established, otherwise than by lawful means, the judge or the court before whom or in which such verdict shall have been given, or the court in which such judgment shall be had, may make an order for the seizure and carrying away and detaining in safe custody, in such manner as shall be directed in such order, all copies of the libel which shall be in the possession of

After verdict, &c., against any person for composing &c., a blasphemous or seditious libel, the court may make order for the seizure of copies of the libel in possession of such person, &c.

Imperial Acts Application.

the person against whom such verdict or judgment shall have been had, or in the possession of any other person named in the order for his use, evidence upon oath having been previously given to the satisfaction of such court or judge, that a copy or copies of the said libel is or are in the possession of such other person for the use of the person against whom such verdict or judgment shall have been had as aforesaid; and in every such case it shall be lawful for any justice of the peace or for any person acting under any such order, or for any person acting with or in aid of any such justice of the peace, or other person, to search for any copies of such libel in any house, building, or other place whatsoever belonging to or occupied by the person against whom any such verdict or judgment shall have been had, or belonging to or occupied by any other person so named, in whose possession any copies of any such libel, belonging to the person against whom any such verdict or judgment shall have been had, shall be; and in case admission shall be refused or not obtained within a reasonable time after it shall have been first demanded, to enter by force by day into any such house, building, or place whatsoever, and to carry away all copies of the libel there found, and to detain the same in safe custody, until the same shall be restored under the provisions of this section, or disposed of according to any further order made in relation thereto.

and search
may there-
upon be
made for
the same.

Copies of
libels so
seized shall
be restored
if judgment
is stayed,
&c., but shall
otherwise
be disposed
of as the
court shall
direct.

(2) If in any such case as aforesaid judgment shall be stayed, or if, after judgment shall have been entered, the same shall be reversed, all copies so seized shall be forthwith returned to the person from whom the same shall have been so taken as aforesaid, free of all charge and expense, and without the payment of any fees whatsoever; and in every case in which final judgment shall be entered upon the verdict so found against the person charged with having composed, printed, or published such libel, then all copies so seized shall be disposed of as the court in which such judgment shall be given shall order and direct.

Limitation
of actions,
&c.

(3) Any proceeding which shall be brought for any thing done in pursuance of this section, shall be commenced within six months next after the thing done; and the

Imperial Acts Application.

the defendant in every such proceeding may plead the general issue, and give this section and the special matter in evidence at any trial to be had thereupon; and if proceedings shall be brought or commenced after the time limited for bringing the same, there shall be a verdict for the defendant.

DIVISION 12.—*Real Property.*

18 Edward I St. 1 (Quia Emptores) cc. 1 and 3.

34 Edward III c. 15.

36. Land held of the Crown in fee simple may be assured in fee simple without licence and without fine and the person taking under the assurance shall hold the land of the Crown in the same manner as the land was held before the assurance took effect.

Alienation of fee simple.
cf. 17 Edward II, c. 6.
1 Edward III, St. 2, c. 12.

12 Charles II c. 24—The Tenures Abolition Act, 1660—s. 4.

37. All tenures created by the Crown upon any grant in fee simple made after the commencement of this Act shall be taken to be in free and common socage without any incident of tenure for the benefit of the Crown.

Tenure.

DIVISION 13.—*Recovery of Property on Determination of a Life or Lives.*

18 and 19 Charles II c. 11—The Cestui que Vie Act, 1666.

6 Anne c. 72 (or c. 18)—The Cestui que Vie Act, 1707.

38. (1) Every person having any estate or interest in any property determinable upon a life or lives who, after the determination of such life or lives without the express consent of the person next immediately entitled upon or after such determination, holds over or continues in possession of such property estate or interest, or of the rents, profits or income thereof, shall be liable in damages or to an account for such rents and profits, or both, to the person entitled to such property, estate, interest, rents, profits or income after the determination of such life or lives.

Person wrongfully holding over after the determination of a life to be liable in damages.
Vict. Act No. 6344, s. 274.

Imperial Acts Application.

Evidence may be given of belief of determination of a life.

(2) Where a reversion remainder or other estate or interest in any property is expectant upon the determination of a life or lives, the reversioner remainderman or other person entitled to such reversion remainder or other estate or interest may in any proceeding claiming relief on the basis that such life or lives has or have determined, adduce evidence of belief that such life or lives has or have been determined and of the grounds of such belief, and thereupon the court may in its discretion order that unless the person or persons on whose life or lives such reversion remainder or other estate or interest is expectant is or are produced in court or is or are otherwise shown to be living, such person or persons shall for the purposes of such proceedings be accounted as dead, and relief may be given accordingly.

Effect of absence for seven years.

(3) If in such proceedings the lastmentioned person is shown to have remained beyond Australia, or otherwise absented himself from the place in which if in Australia he might be expected to be found, for the space of seven years or upwards, such person, if not proved to be living, shall for the purposes of such proceedings be accounted as dead, and relief may be given accordingly.

Subsequent action may be stayed.

(4) If in any such proceedings judgment has been given against the plaintiff, and afterwards such plaintiff brings subsequent proceedings upon the basis that such life has determined, the court may make an order staying such proceedings permanently or until further order or for such time as may be thought fit.

Where supposed dead man proves to be alive relief may be given on that basis.

(5) If in consequence of the judgment given in any such proceedings, any person having any estate or interest in any property determinable on such life or lives has been evicted from or deprived of any property or any estate or interest therein, and afterwards it appears that such person or persons on whose life or lives such estate or interest depends is or are living or was or were living at the time of such eviction or deprivation, the court may give such relief as is appropriate in the circumstances.

DIVISION

Imperial Acts Application.

DIVISION 14.—*Religious Worship—Disturbance of.*

1 William and Mary c. 18—The Toleration Act, 1688—s. 15.
 52 George III c. 155—The Places of Religious Worship Act,
 1812—s. 12.

39. Any person who wilfully and without lawful justification or excuse, the proof of which lies on him, disquiets or disturbs any meeting of persons lawfully assembled for religious worship, or assaults any person lawfully officiating at any such meeting, or any of the persons there assembled, shall be liable upon summary conviction to a penalty not exceeding one hundred dollars or to imprisonment for a term not exceeding two months.

Disturbing
religious
worship.
Queensland
Code, s. 207
Vict. Act
No. 6337,
s. 33.

DIVISION 15.—*Sheriff.*

32 George II c. 28—The Debtors Imprisonment Act, 1758—
 ss. 1, 3 and 4.

40. (1) Where any sheriff, bailiff, or other officer arrests or has in custody upon mesne process any person in the course of a civil proceeding such officer shall not—

Duties on
arrest of
civil debtors.
50 & 51
Vic. c. 55,
s. 14.
Vict. Act
No. 6387,
s. 207.

(a) convey such person without his free consent to any premises licensed for the sale of intoxicating liquor or any registered club, or to the private house of such officer or any tenant or relative of such officer; nor

(b) charge such person with any sum for, or procure him to call or pay for, any liquor, food, or thing whatsoever, except what he freely asks for; nor

(c) take such person to any gaol within twenty-four hours of his arrest, unless such person fails to name or refuses to be carried to some safe and convenient house of his own nomination, being within a reasonable distance of the place at which he was arrested, and not being the private dwelling-house of such person.

but shall during such twenty-four hours permit such person to send for and to have brought to him at reasonable times in the day and in reasonable quantities any food or liquor from
 what

Imperial Acts Application.

what place he thinks fit, and also to have and use such bedding, linen, and other necessary things as he has occasion for or is supplied with, and shall not require any payment for the use thereof or restrict the use thereof.

(2) Where a sheriff, bailiff, or other officer makes an arrest to which this section applies he shall as promptly as reasonably possible inform the person arrested of the effect of subsection one of this section.

DIVISION 16.—*Sunday.*

29 Charles II c. 7—The Sunday Observance Act, 1677—s. 6.

Service of
process on
Sunday
void.

41. Service of any writ, process, warrant, order, judgment or decree (except in case of an offence, breach of the peace or any warrant, writ or process for the apprehension of any person) upon a Sunday shall be void.

DIVISION 17.—*Witnesses—Habeas Corpus for Prisoners.*

44 George III c. 102—The Habeas Corpus Act, 1804.

Writs of
habeas
corpus
ad test.

42. Any Judge of the Supreme Court may award a writ of habeas corpus for bringing any prisoner detained in any gaol or prison before any court, to be there examined as a witness.

PART IV.

PENALTIES.

Offences—
penalties.

43. Any person guilty of any offence under any Imperial enactment included in Part I of the Second Schedule for which no punishment is otherwise provided is liable to imprisonment for a term of not more than five years or to a fine of not more than two thousand dollars, or to both such imprisonment and fine.

SCHEDULES.

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SCHEDULES.

FIRST SCHEDULE.

Sec. 5.

Imperial enactment.	Substituted provision of this Act.	Division of Part III.
(1267) 52 Henry III (Statute of Marlborough) c. 23.	s. 32	Division 9.
(1289-90) 18 Edward I (St. 1) (Quia Emptores) cc. 1 and 3.	s. 36	Division 12.
(1326-7) 1 Edward III St. 2 c. 16	s. 29	Division 8.
(1344) 18 Edward III St. 2 c. 2	s. 29	Division 8.
(1351-2) 25 Edward III St. 5 c. 5	s. 13	Division 1.
(1357) 31 Edward III St. 1 c. 11	s. 14	Division 1.
(1360-1) 34 Edward III c. 1 (The Justices of the Peace Act, 1361).	s. 30	Division 8.
(1361) 34 Edward III c. 15	s. 36	Division 12.
(1381-2) 5 Richard II, St. 1 c. 7 (The Forcible Entry Act, 1381).	s. 18	Division 4.
(1429) 8 Henry VI c. 9 (The Forcible Entry Act, 1429).	s. 19	Division 4.
(1588-9) 31 Elizabeth c. 11 (The Forcible Entry Act, 1588).	s. 19	Division 4.
(1660) 12 Charles II c. 24 (The Tenures Abolition Act, 1660)—		
s. 4	s. 37	Division 12.
s. 9	s. 21	Division 5.
(1666) 18 and 19 Charles II c. 11 (The Cestui que Vie Act, 1666).	s. 38	Division 13.
(1677) 29 Charles II c. 7 (The Sunday Observance Act, 1677), s. 6.	s. 41	Division 16.
(1678) 30 Charles II c. 7	s. 15	Division 1.
(1685) 1 James II c. 17, s. 6	s. 14	Division 1.
(1688) 1 William and Mary c. 18 (The Toleration Act, 1688), s. 15.	s. 39	Division 14.
(1692) 4 William and Mary c. 24, s. 12 ..	s. 15	Division 1.

FIRST

*Imperial Acts Application.*FIRST SCHEDULE—*continued.*

Imperial enactment.	Substituted provision of this Act.	Division of Part III.
(1696-7) 8 and 9 William III c. 11 (The Administration of Justice Act, 1696), s. 8.	s. 33	Division 10.
(1705) 4 and 5 Anne c. 3 (or c. 16) (The Administration of Justice Act, 1705) ss. 12 and 13.	s. 34	Division 10.
(1707) 6 Anne c. 72 (or c. 18) (The Cestui que Vie Act, 1707).	s. 38	Division 13.
(1737) 11 George II c. 19 (The Distress for Rent Act, 1737), s. 14.	s. 31	Division 9.
(1745) 19 George II c. 37 (The Marine Insurance Act, 1745).	s. 26	Division 7.
(1750) 24 George II c. 23 (The Calendar (New Style) Act, 1750), ss. 1, 2 and 3.	s. 16	Division 2.
(1758-9) 32 George II c. 28 (The Debtors Imprisonment Act, 1758) ss. 1, 3 and 4.	s. 40	Division 15.
(1774) 14 George III c. 48 (The Life Assurance Act, 1774).	s. 23	Division 6.
(1788) 28 George III c. 56 (The Marine Insurance Act, 1788).	ss. 27, 28	Division 7.
(1804) 44 George III c. 102 (The Habeas Corpus Act, 1804).	s. 42	Division 17.
(1812) 52 George III c. 101 (The Charities Procedure Act, 1812).	s. 17	Division 3.
(1812) 52 George III c. 155, (The Places of Religious Worship Act, 1812), s. 12.	s. 39	Division 14.
(1819) 60 George III and 1 George IV c. 8 (The Criminal Libel Act, 1819), ss. 1, 2 and 8.	s. 35	Division 11.

Imperial Acts Application.

SECOND SCHEDULE.

Sec. 6.

PART I.

Constitutional Enactments.

- (1297) 25 Edward I (Magna Carta) c. 29.
- (1351) 25 Edward III St. 5 c. 4.
- (1354) 28 Edward III c. 3.
- (1368) 42 Edward III c. 3.
- (1623-4) 21 James I c. 3 (The Statute of Monopolies), ss. 1 and 6.
- (1627) 3 Charles I c. 1 (The Petition of Right).
- (1640) 16 Charles I c. 10 (The Habeas Corpus Act, 1640), s. 6.
- (1679) 31 Charles II c. 2 (The Habeas Corpus Act, 1679), ss. 1-8, s. 11 (except the words "and shall incur and sustain" and the following words of the section), and ss. 15-19.
- (1688) 1 William and Mary c. 30 (The Royal Mines Act, 1688), s. 3.
- (1688) 1 William and Mary sess. 2 c. 2 (The Bill of Rights).
- (1700) 12 and 13 William III c. 2 (The Act of Settlement).
- (1702) 1 Anne c. 2 (The Demise of the Crown Act, 1702), s. 4.
- (1702) 1 Anne St. 2 c. 21 (The Treason Act, 1702), s. 3.
- (1707) 6 Anne c. 41 (or 6 Anne c. 7) (The Succession to the Crown Act, 1707), s. 9.
- (1772) 12 George III c. 11 (The Royal Marriages Act, 1772), ss. 1 and 2.
- (1816) 56 George III c. 100 (The Habeas Corpus Act, 1816).

PART II.

Criminal Law—Treason: Piracy.

Sec. 6.

Treason.

- | | |
|--|---|
| <p>(1351) 25 Edward III St. 5 c. 2 (The Treason Act, 1351).</p> | <p>So far as the same declares what offences shall be adjudged treason, as amended by the following:—</p> <ul style="list-style-type: none"> 9 George IV c. 31; 11 George IV and 1 William IV c. 66 (The Forgery Act, 1830) adopted by 4 William IV No. 4; 2 and 3 William IV c. 34 adopted by 9 Victoria No. 1. |
| <p>(1795) 36 George III c. 7 (The Treason Act, 1795).</p> <p>(1817) 57 George III c. 6 (The Treason Act, 1817)</p> | <p>Such provisions of the Acts respectively as relate to compassing, imagining, inventing, devising, or intending death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment, or restraint of the person of the Sovereign and the expressing, uttering, or declaring of such compassings, imaginations, inventions, devices, or intentions, or any of them.</p> |
| <p>(1695) 7 and 8 William III c. 3 (The Treason Act, 1695).</p> | <p>cf. Act No. 40, 1900, s. 16.</p> <p>cf. Act No. 40, 1900, s. 11.</p> <p>cf. Act No. 40, 1900, s. 11.</p> <p>S. 5 (except the words "And that no person" to the end of that section) and s. 6.</p> |

Imperial Acts Application.

SECOND SCHEDULE—*continued.*Part II—*continued.**Piracy.*

(1536) 28 Henry VIII c. 15*	} The provisions of each Act except so much of each Act as relates to the punishment of the crime of piracy or of any offence by any of the said Acts declared to be piracy, or of accessories thereto.
(1698-9) 11 and 12 William III (11 William III) c. 7.	
(1717-8) 4 George I c. 2 (or c. 11), s. 7	
(1721-2) 8 George I c. 24.	
(1744-5) 18 George II c. 30*	

* See Piracy Punishment Act, 1902, s. 3.

Sec. 7.

THIRD SCHEDULE.

Enactments applying irrespective of 9 George IV c. 83(A) *Criminal Law Enactments.*

(1698-9)	11 William III c. 12	Crimes by Governors of Colonies.
(1772)	12 George III c. 24	The Dockyards, &c., Protection Act, 1772.
(1802)	42 George III c. 85, s. 1	The Criminal Jurisdiction Act, 1802.
(1812)	52 George III c. 156	The Prisoners of War (Escape) Act, 1812.
(1824)	5 George IV c. 113	The Slave Trade Act, 1824.

(B) *Miscellaneous.*

(1813)	54 George III c. 15, s. 4	The New South Wales (Debts) Act, 1813.
(1821)	1 and 2 George IV c. 121, ss. 27-29	The Commissariat Accounts Act, 1821.

 BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1972

Imperial Acts Application.

- (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any Imperial enactment so repealed; or
- (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture or punishment may be imposed and enforced, as if this Act had not been passed.

(2) The repeal by this Act of—

- (a) The Imperial Act 43 Elizabeth Chapter 4 (The Charitable Uses Act, 1601) does not affect the established rules of law relating to charity;
- (b) section four of the Imperial Act 29 Charles II Chapter 3 (The Statute of Frauds, 1677) does not apply in relation to a promise or agreement made before the commencement of this Act; and
- (c) any other Imperial enactment does not affect any rules of law or equity not enacted by the repealed enactment.

Saving. **10.** Where any Imperial enactment not repealed by this Act has been repealed (whether expressly or impliedly), confirmed, revived, or perpetuated by any Imperial enactment hereby repealed, the first-mentioned repeal, or the confirmation, revivor, or perpetuation shall not be affected by the repeal effected by this Act.

**Revival of
repealed
enactments.**

11. (1) The Governor may, by proclamation published in the Gazette, declare that any provision (in this section called "the revived provision") being the whole or any part of any Imperial enactment repealed by this Act, other than an Imperial enactment mentioned in the First Schedule to this Act, shall be revived as from the date of publication of the proclamation, or a later date to be specified in the proclamation.

(2)

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.

I. P. K. VIDLER,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 1 April, 1969.*

New South Wales



ANNO OCTAVO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 30, 1969.

An Act to provide that certain enactments of the Parliament of England and of the Parliament of Great Britain and of the Parliament of the United Kingdom of Great Britain and Ireland in force in England at the time of the passing of the Imperial Act 9 George IV Chapter 83 shall continue in force in New South Wales; to replace other enactments of such Parliaments; to repeal other enactments of such Parliaments; to validate certain matters; and for purposes connected therewith. [Assented to, 9th April, 1969.]

BE

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

L. A. PUNCH,
Chairman of Committees of the Legislative Assembly.

Imperial Acts Application.

(5) This section does not affect the operation of any event which may determine a tenancy at will.

DIVISION 10.—*Legal Procedure—Actions on Bonds.*

8 and 9 William III c. 11—The Administration of Justice Act, 1696—s. 8.

In actions on bonds, &c., plaintiff may assign as many breaches as he pleases.

Act No. 21, 1899, s. 132.

Vict. Act No. 6279, s. 30.

Defendant paying damages execution may be stayed.

33. (1) In any action on any bond or on any penal sum for non-performance of any covenant or agreement, the plaintiff may assign as many breaches as he thinks fit, and may recover not only such damages as have been usually awarded in such cases, but also damages for such of the said breaches so assigned as the plaintiff proves to have occurred.

(2) If interlocutory judgment in any such case is given for the plaintiff by confession or in default of appearance or of pleading, the plaintiff may suggest as many breaches of the covenants and agreements as he thinks fit, and may on proof of such breaches recover damages accordingly.

(3) If the defendant after judgment and before execution pays into the court where the action is brought to the use of the plaintiff such damages together with the costs of the action, or if by reason of any execution the plaintiff is fully paid or satisfied all such damages together with his costs of the action and all reasonable charges and expenses for the said execution, further proceedings on the said judgment shall be stayed. But the judgment shall remain as a further security to answer to the plaintiff such damages as are sustained for further breach of such covenant or agreement, and upon any such breach the plaintiff may summon the defendant to show cause why execution should not be had or awarded upon the said judgment, upon which there shall be the like proceeding or such other proceeding as may be ordered for inquiry as to such breaches and assessing damages thereon; and upon payment or satisfaction in manner as aforesaid of such future damages costs charges and expenses as aforesaid all further proceedings on the said judgment shall to the like extent again be stayed.

Imperial Acts Application.

DIVISION 8.—*Justices of the Peace.*

DIVISION 9.—*Landlord and Tenant.*

DIVISION 10.—*Legal Procedure—Actions on Bonds.*

DIVISION 11.—*Libels—Blasphemous and Seditious Libels.*

DIVISION 12.—*Real Property.*

DIVISION 13.—*Recovery of Property on Determination of a Life or Lives.*

DIVISION 14.—*Religious Worship—Disturbance of.*

DIVISION 15.—*Sheriff.*

DIVISION 16.—*Sunday.*

DIVISION 17.—*Witnesses—Habeas Corpus for Prisoners.*

PART IV.—PENALTIES—s. 43.

SCHEDULES.

PART II.

GENERAL.

4. In the construction of this Act, unless inconsistent with the context or subject-matter, the expression "Imperial enactment" includes any part of the enacted law at any time in force in England. Interpretation.

5. (1) Each Imperial enactment mentioned in the First Schedule to this Act, so far as it was in force in England on the twenty-fifth day of July, one thousand eight hundred and twenty-eight is declared— Substitution of enactments. (First Schedule.)

- (a) to have been in force in New South Wales on that day by virtue of the Imperial Act 9 George IV Chapter 83 (The Australian Courts Act, 1828); and
- (b) to have remained in force in New South Wales from that day until the commencement of this Act, except so far as affected by State Acts from time to time in force.

(2)

Imperial Acts Application.

Contracts must be embodied in policy.
6 Edw. VII c. 41, s. 22.
Act No. 11, 1909 (C'wealth), s. 28.

27. Subject to the provisions of any Act, a contract of marine insurance is inadmissible in evidence in an action for the recovery of a loss under the contract unless it is embodied in a marine policy in accordance with this Division. The policy may be executed and issued either at the time when the contract is concluded or afterwards.

What policy must specify.
6 Edw. VII c. 41, s. 23.
Act No. 11, 1909 (C'wealth), s. 29.

28. A marine policy must specify—

- (a) the name of the assured, or of some person who effects the insurance on his behalf;
- (b) the subject-matter insured and the risk insured against;
- (c) the voyage, or period of time, or both as the case may be, covered by the insurance;
- (d) the sum or sums insured; and
- (e) the name or names of the insurers.

DIVISION 8.—Justices of the Peace.

1 Edward III St. 2 c. 16.

18 Edward III St. 2 c. 2.

34 Edward III c. 1—The Justices of the Peace Act, 1361.

Appoint-ment of justices.

29. The Governor may by commission under the Public Seal of the State appoint justices to keep the peace in the State.

Powers of justices.

30. Justices of the Peace shall have power to restrain offenders and to take of them or of persons not of good fame surety for their good behaviour.

DIVISION

Imperial Acts Application.

- (ii) shall from the commencement of this Act be in force in New South Wales; and
- (c) is not repealed by section eight of this Act.

7. Nothing in this Act affects any Imperial enactment set out in the Third Schedule to this Act or any other Imperial enactment which independently of the provisions of the Imperial Act 9 George IV Chapter 83 is made applicable to New South Wales by the express words or necessary intention of any Imperial enactment.

Enactments not affected by repeal. 28 and 29 Vic. c. 63. Vict. Act No. 3270, s. 5.

8. (1) In addition to the repeals effected by subsection two of section five of this Act all other Imperial enactments (commencing with the Statute of Merton, 20 Henry III A.D. 1235-6) in force in England at the time of the passing of the Imperial Act 9 George IV Chapter 83 are so far as they are in force in New South Wales hereby repealed.

Imperial enactments repealed. Vict. Act No. 3270, s. 7.

(2) The repeal of the Imperial Act 7 George II Chapter 8 (Sir John Barnard's Act) effected by subsection one of this section shall be deemed to have taken effect as on and from the fourteenth day of June, one thousand eight hundred and sixty :

Provided that nothing in this subsection shall affect any transaction in respect of which proceedings in any Court have been taken or commenced on or before the twenty-fifth day of July, one thousand nine hundred and sixty-eight.

9. (1) The repeal by this Act of any Imperial enactment does not—

Savings. cf. 52 & 53, Vic. c. 63, s. 38.

- (a) revive anything not in force or existing at the commencement of this Act;
- (b) affect the previous operation of any Imperial enactment so repealed or anything duly done or suffered under any Imperial enactment so repealed;
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any Imperial enactment so repealed;

(d)

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(2) On and after the date of revival, the revived provision shall, subject to Acts from time to time in force, and subject to subsection three of this section, have such effect in New South Wales as the revived provision had in New South Wales immediately before the commencement of this Act.

(3) The revival under this section of any revived provision shall not—

- (a) affect the previous operation of any repeal worked by section eight of this Act;
- (b) affect anything duly done or suffered before the date of revival;
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred before the date of revival, or any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation or liability; or
- (d) make any person liable for any penalty, forfeiture or punishment in respect of anything done or omitted before the date of revival.

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

(5) If either House passes a resolution of which notice has been given at any time within fifteen sitting days after the proclamation has been laid before such House disallowing any proclamation or part thereof, the proclamation or part thereupon ceases to have effect.

PART

Imperial Acts Application.

PART III.

SUBSTITUTED ENACTMENTS.

DIVISION 1.—*Administration of Estates.*

Interpre-
tation.
Vict. Act
No. 6191,
s. 5.

12. In this Division unless inconsistent with the context or subject-matter—

“Administration” means letters of administration whether general, special, or limited, or with the will annexed or otherwise, and includes an order to the Public Trustee to administer.

“Estate” includes both real and personal property.

“Personal representative” means the executor original or by representation or administrator for the time being of a deceased person.

“Will” includes codicil.

25 Edward III St. 5 c. 5.

Executor of
executor
represents
original
testator.
cf. 15 Geo.
V c. 23,
s. 7.
Vict. Act
No. 6191,
s. 17.

13. (1) An executor of a sole or last surviving executor of a testator is the executor of that testator.

This provision shall not apply to an executor who does not prove the will of his testator and, in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, it shall cease to apply on such probate being granted.

(2) So long as the chain of such representation is unbroken, the last executor in the chain is the executor of every preceding testator.

(3) The chain of such representation is broken by—

- (a) an intestacy;
- (b) the failure of a testator to appoint an executor; or
- (c) the failure to obtain probate of a will,

but is not broken by a temporary grant of administration if probate is subsequently granted.

(4) Every person in the chain of representation to a testator—

- (a) has the same rights in respect of the estate of that testator as the original executor would have had if living; and
- (b)

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- (b) is, to the extent to which the estate of that testator has come to his hands answerable as if he were an original executor.

31 Edward III St. 1 c. 11.
1 James II c. 17, s. 6.

14. Every person to whom administration of the estate of a deceased person is granted shall, subject to the limitations (if any) contained in the grant, have the same rights and liabilities and shall be accountable in like manner as if he were the executor of the deceased.
- Rights and accountability of administrator.
cf. Vict. Act No. 6191, s. 27.

30 Charles II c. 7.
4 William and Mary c. 24, s. 12.

15. Where a person as personal representative or as executor in his own wrong wastes or converts to his own use any part of the estate of a deceased person and dies, his personal representative shall to the extent of the available assets of the defaulter be liable and chargeable in respect of such waste or conversion in the same manner as the defaulter would have been if living.
- Liability for waste.
cf. 15 Geo. V c. 23, s. 29.
Vict. Act No. 6191, s. 33 (2).

DIVISION 2.—Calendar.

24 George II c. 23—The Calendar (New Style) Act, 1750—
ss. 1, 2 and 3.

16. (1) The first day of January in every year shall be the first day of the year, and each new year shall accordingly commence and be reckoned from the first day of every month of January and all acts, deeds, writings, notes, and other instruments, of what nature or kind soever, hereafter made, executed, or signed shall bear date according to the said method of reckoning, being the reckoning instituted by the Imperial Act 24 George II c. 23, known as The Calendar (New Style) Act, 1750.
- Commencement of year.

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Hundredth years except every fourth hundredth to be deemed common years consisting of 365 days.

(2) The several years two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other hundredth year in time to come, except only every fourth hundredth year, of which the year two thousand shall be the first, shall not be leap years, but shall be common years consisting of three hundred and sixty-five days, and no more; and the years two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundredth year from the said year two thousand inclusive, and also all other years which by the reckoning in use before the first day of January, one thousand seven hundred and fifty-two (being the date for the commencement of the calendar or reckoning instituted by the said Imperial Act, The Calendar (New Style) Act, 1750) would have been leap years, shall in all times to come be leap years, consisting of three hundred and sixty-six days, in the same manner as was before the said first day of January, one thousand seven hundred and fifty-two used with respect to every fourth year.

Ordering of months, days of the week and Easter Day.

(3) The months, the enumeration of days in the respective months, and the ordering of the days of the week and Easter Day, shall be determined in accordance with the calendar, table and rules annexed to the said Imperial Act, The Calendar (New Style) Act, 1750.

DIVISION 3.—*Charities.*

52 George III c. 101—The Charities Procedure Act, 1812.

Petition in case of a charitable trust and determination thereof in a summary way. Vict. Act No. 3270, s. 39.

17. (1) In every case of a breach of any trust or supposed breach of any trust created for charitable purposes, or whenever the direction or order of a court is deemed necessary for the administration of any trust for charitable purposes, any two or more persons may present a petition to the Supreme Court stating such complaint and praying such relief as the nature of the case may require; and the Supreme Court shall hear such petition in a summary way, and upon affidavits or such other evidence as is produced upon such hearing determine the same, and make such other order therein and with respect to the costs of such application as seems just.

(2)

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(2) Every petition so to be presented shall be signed by the persons preferring the same, in the presence of and shall be attested by the solicitor for such petitioners, and every such petition shall be submitted to and allowed by the Attorney-General or Solicitor-General, and such allowance shall be certified by him before any such petition is presented.

Petitions to be signed by petitioners and their solicitor and by law officer.
Vict. Act No. 3270, s. 40.

DIVISION 4.—Forcible Entries and Detainers.

5 Richard II St. 1 c. 7—The Forcible Entry Act, 1381.

18. No person shall make any entry into any land except where such entry is given by law and, in such case, with no more force than is reasonably necessary.

Forcible entry.
cf. Vict. Act No. 6231, s. 207 (1).

8 Henry VI c. 9—The Forcible Entry Act, 1429.

31 Elizabeth c. 11—The Forcible Entry Act, 1588.

19. No person being in actual possession of land for a period of less than three years by himself or his predecessors shall without colour of right hold possession of it in a manner likely to cause a breach of the peace or a reasonable apprehension of a breach of the peace against a person entitled by law to the possession of the land and able and willing to afford reasonable information as to his being so entitled.

Forcible detainer.
Vict. Act No. 6231, s. 207 (2).

20. Any person who contravenes section eighteen or section nineteen of this Act shall be guilty of a misdemeanour and liable to imprisonment for a term of not more than one year or to a fine of not more than one thousand dollars or to both such imprisonment and fine.

Penalty.

DIVISION 5.—Guardians.

12 Charles II c. 24—The Tenures Abolition Act, 1660—s. 9.

21. A guardian of an infant appointed by deed or will may take into his custody and management to the use of the infant the real and personal estate of the infant till the age of twenty-one years or any lesser time according to the terms of the

Powers of guardian.

Imperial Acts Application.

the appointment of the guardian, and may bring such actions in relation to the real and personal estate of the infant as by law a guardian in common socage might have done, or may bring such other proceedings as may be necessary to give effect to all or any of his powers under this section.

DIVISION 6.—*Insurance—Life, Fire and other Policies.*

14 George III c. 48—The Life Assurance Act, 1774.

Existing insurances not affected by this Division.

22. This Division does not apply to insurances made before the commencement of this Act.

No insurance to be made unless insurer has interest.

cf. Vict. Act No. 6279, s. 21.

23. (1) No insurance shall be made by any person on the life of any person or on any other event whatsoever wherein the person for whose use or benefit or on whose account the policy is made has no interest, or by way of gaming or wagering; and every assurance made contrary to this subsection shall be void.

No policy without inserting names, &c.

Vict. Act No. 6279, s. 22.

Davjoyda Estates Pty. Ltd. v. National Insurance Company of New Zealand Ltd. (1965) 85 W.N. (Pt. 1) N.S.W. 184.

(2) It shall not be lawful to make any policy on the life of any person, or on any other event whatsoever, wherein the person effecting the policy has no interest, without inserting in such policy the names of the persons interested therein, or for whose use or benefit or on whose account such policy was made.

How much may be recovered.

cf. Vict. Act No. 6279, s. 23.

(3) In all cases where there is an interest in such life or other event, no greater sum shall be recovered or received from the insurer than the amount or value of the interest.

(4)

Imperial Acts Application.

(2) Each Imperial enactment mentioned in the First Schedule to this Act is hereby repealed so far as it applies in New South Wales.

(3) Each provision of Part III of this Act is substituted for the Imperial enactment mentioned in the first column of the First Schedule to this Act opposite the reference to that provision in the second column of that Schedule.

(4) To the extent to which any of the provisions of Part III of this Act are inconsistent with the provisions of any State Act in force at the commencement of this Act, the provisions of the State Act shall prevail.

(5) In construing any of the provisions of Part III of this Act regard may be had to the context (if any) of the Imperial enactment for which the provision is substituted.

(6) In any State Act a reference to any Imperial enactment specified in the first column of the First Schedule to this Act shall, where the case permits, and unless a contrary intention appears, be construed as a reference to the provision of this Act specified opposite that Imperial enactment in the second column of that Schedule.

Preserved
Imperial
enactments.
(Second
Schedule.)

6. Each Imperial enactment mentioned in Part I of the Second Schedule to this Act, and so much of each Imperial enactment mentioned in the first column of Part II of that Schedule as is specified opposite that Imperial enactment in the second column of the said Part II, so far in either case as it was in force in England on the twenty-fifth day of July, one thousand eight hundred and twenty-eight—

(a) is declared to have been in force in New South Wales on that day by virtue of the Imperial Act 9 George IV Chapter 83; and

(b) except so far as affected by any Imperial enactments or State Acts from time to time in force in New South Wales—

(i) is declared to have remained in force in New South Wales from that day;

(ii)

Imperial Acts Application.

(4) Nothing in this Division shall extend to insurance made by any person on ships or goods, or to contracts of indemnity against loss by fire or loss by other events whatsoever.

Not to extend to ships, contracts of indemnity &c.

cf. Vict. Act No. 6279, s. 24.

Davjoyda Estates Pty. Ltd. v. National Insurance Co., supra.

DIVISION 7.—*Insurance—Marine.*

19 George II c. 37—The Marine Insurance Act, 1745.

28 George III c. 56—The Marine Insurance Act, 1788.

24. This Division applies to State marine insurance within the limits of New South Wales.

Application of Division.

25. This Division does not apply to contracts of marine insurance made before the commencement of this Act.

Existing contracts not affected.

26. (1) Every contract of marine insurance by way of gaming or wagering is void.

Avoidance of wagering or gaming contracts.

(2) A contract of marine insurance is deemed to be a gaming or wagering contract—

6 Edw. VII c. 41, s. 4.

(a) where the assured has not an insurable interest, and the contract is entered into with no expectation of acquiring such an interest; or

Act No. 11, 1909 (C'wealth), s. 10.

(b) where the policy is made "interest or no interest", or "without further proof of interest than the policy itself", or "without benefit of salvage to the insurer", or subject to any other like term :

Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

27.

Imperial Acts Application.

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.**

Short title
and com-
mencement.

1. (1) This Act may be cited as the "Imperial Acts Application Act, 1969".

(2) This Act shall, except where otherwise expressly provided, commence upon a day to be appointed by the Governor and notified by proclamation in the Gazette.

Construc-
tion.

2. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to other persons or circumstances shall not be affected.

Division
into Parts
and
Divisions.

3. This Act is divided into Parts and Divisions as follows:—

PART I.—PRELIMINARY—ss. 1–3.

PART II.—GENERAL—ss. 4–11.

PART III.—SUBSTITUTED ENACTMENTS—ss. 12–42.

DIVISION 1.—*Administration of Estates.*

DIVISION 2.—*Calendar.*

DIVISION 3.—*Charities.*

DIVISION 4.—*Forcible Entries and Detainers.*

DIVISION 5.—*Guardians.*

DIVISION 6.—*Insurance—Life, Fire and other Policies.*

DIVISION 7.—*Insurance—Marine.*

DIVISION

Imperial Acts Application.

DIVISION 9.—*Landlord and Tenant.*

Use and Occupation.

11 George II c. 19—The Distress for Rent Act, 1737—s. 14.

31. (1) Where the agreement between the landlord and tenant is not by deed, the landlord may recover a reasonable satisfaction for the lands held or occupied by the defendant in an action of assumpsit for use and occupation. And if in evidence on the trial of such action any parol demise or any agreement (not being by deed) whereon a certain rent was reserved shall appear, the plaintiff shall not be non-suited but may make use thereof as evidence of the quantum of the damages to be recovered.

Vict. Act
No. 6285,
s. 8.
Specktor
v. Lees
[1964]
V.R. 10.
Use and
occupation.

(2) Nothing in subsection one of this section affects actions of debt for use and occupation.

Waste.

52 Henry III (Statute of Marlborough) c. 23.

32. (1) A tenant for life or lives or a leasehold tenant shall not commit voluntary waste.

Voluntary
waste.

(2) Nothing in subsection one of this section applies to any estate or tenancy without impeachment of waste, or affects any licence or other right to commit waste.

(3) In subsection one of this section "leasehold tenant" includes a tenant for a term, a tenant under a periodical tenancy, a tenant under a tenancy to which section one hundred and twenty-seven of the Conveyancing Act, 1919, as amended by subsequent Acts, applies, and a tenant at will.

(4) A tenant who infringes subsection one of this section is liable in damages to his remainderman or reversioner but this section imposes no criminal liability.

(5)

Imperial Acts Application.

4 and 5 Anne c. 3 (or c. 16)—The Administration of Justice Act, 1705—ss. 12 and 13.

34. (1) Where an action is brought upon any bond which has a condition or defeasance to make void the same upon payment of a lesser sum at a day or place certain, if the obligor has before the action brought paid to the obligee the principal and interest due by the defeasance or condition of such bond, though such payment was not made strictly according to the condition or defeasance, it may nevertheless be pleaded in bar of such action; and shall be as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeasance and had been so pleaded.

Action of debt brought on a bond after money paid—such payment may be pleaded in bar. Vict. Act No. 6279, s. 30.

(2) If at any time pending an action upon any such bond with a penalty the defendant brings into court all the principal money and interest due on such bond and also all costs properly chargeable by the plaintiff against the defendant in respect of any proceedings upon such bond, the money so brought in shall be in full satisfaction and discharge of the bond.

Principal and interest on bonds paid into court.

DIVISION 11.—Libels—Blasphemous and Seditious Libels.

60 George III and 1 George IV c. 8—The Criminal Libel Act, 1819—ss. 1, 2 and 8.

35. (1) In every case in which any verdict or judgment shall be had against any person for composing, printing, or publishing any blasphemous libel, or any seditious libel tending to bring into hatred or contempt the person of Her Majesty, Her heirs or successors, or the government and constitution of the State of New South Wales as by law established, or either House of Parliament, or to excite Her Majesty's subjects to attempt the alteration of any matter as by law established, otherwise than by lawful means, the judge or the court before whom or in which such verdict shall have been given, or the court in which such judgment shall be had, may make an order for the seizure and carrying away and detaining in safe custody, in such manner as shall be directed in such order, all copies of the libel which shall be in the possession of the

After verdict, &c., against any person for composing &c., a blasphemous or seditious libel, the court may make order for the seizure of copies of the libel in possession of such person, &c.

Imperial Acts Application.

and search
may there-
upon be
made for
the same.

the person against whom such verdict or judgment shall have been had, or in the possession of any other person named in the order for his use, evidence upon oath having been previously given to the satisfaction of such court or judge, that a copy or copies of the said libel is or are in the possession of such other person for the use of the person against whom such verdict or judgment shall have been had as aforesaid; and in every such case it shall be lawful for any justice of the peace or for any person acting under any such order, or for any person acting with or in aid of any such justice of the peace, or other person, to search for any copies of such libel in any house, building, or other place whatsoever belonging to or occupied by the person against whom any such verdict or judgment shall have been had, or belonging to or occupied by any other person so named, in whose possession any copies of any such libel, belonging to the person against whom any such verdict or judgment shall have been had, shall be; and in case admission shall be refused or not obtained within a reasonable time after it shall have been first demanded, to enter by force by day into any such house, building, or place whatsoever, and to carry away all copies of the libel there found, and to detain the same in safe custody, until the same shall be restored under the provisions of this section, or disposed of according to any further order made in relation thereto.

Copies of
libels so
seized shall
be restored
if judgment
is stayed,
&c., but shall
otherwise
be disposed
of as the
court shall
direct.

(2) If in any such case as aforesaid judgment shall be stayed, or if, after judgment shall have been entered, the same shall be reversed, all copies so seized shall be forthwith returned to the person from whom the same shall have been so taken as aforesaid, free of all charge and expense, and without the payment of any fees whatsoever; and in every case in which final judgment shall be entered upon the verdict so found against the person charged with having composed, printed, or published such libel, then all copies so seized shall be disposed of as the court in which such judgment shall be given shall order and direct.

Limitation
of actions,
&c.

(3) Any proceeding which shall be brought for any thing done in pursuance of this section, shall be commenced within six months next after the thing done; and the

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the defendant in every such proceeding may plead the general issue, and give this section and the special matter in evidence at any trial to be had thereupon; and if proceedings shall be brought or commenced after the time limited for bringing the same, there shall be a verdict for the defendant.

DIVISION 12.—*Real Property.*

18 Edward I St. 1 (Quia Emptores) cc. 1 and 3.

34 Edward III c. 15.

36. Land held of the Crown in fee simple may be assured in fee simple without licence and without fine and the person taking under the assurance shall hold the land of the Crown in the same manner as the land was held before the assurance took effect.

Alienation
of fee
simple.
cf. 17
Edward II,
c. 6.
1 Edward
III, St. 2,
c. 12.

12 Charles II c. 24—The Tenures Abolition Act, 1660—s. 4.

37. All tenures created by the Crown upon any grant in fee simple made after the commencement of this Act shall be taken to be in free and common socage without any incident of tenure for the benefit of the Crown.

Tenure.

DIVISION 13.—*Recovery of Property on Determination of a Life or Lives.*

18 and 19 Charles II c. 11—The Cestui que Vie Act, 1666.

6 Anne c. 72 (or c. 18)—The Cestui que Vie Act, 1707.

38. (1) Every person having any estate or interest in any property determinable upon a life or lives who, after the determination of such life or lives without the express consent of the person next immediately entitled upon or after such determination, holds over or continues in possession of such property estate or interest, or of the rents, profits or income thereof, shall be liable in damages or to an account for such rents and profits, or both, to the person entitled to such property, estate, interest, rents, profits or income after the determination of such life or lives.

Person
wrongfully
holding over
after the
determina-
tion of a life
to be liable
in damages.
Vict. Act
No. 6344,
s. 274.

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Evidence may be given of belief of determination of a life.

(2) Where a reversion remainder or other estate or interest in any property is expectant upon the determination of a life or lives, the reversioner remainderman or other person entitled to such reversion remainder or other estate or interest may in any proceeding claiming relief on the basis that such life or lives has or have determined, adduce evidence of belief that such life or lives has or have been determined and of the grounds of such belief, and thereupon the court may in its discretion order that unless the person or persons on whose life or lives such reversion remainder or other estate or interest is expectant is or are produced in court or is or are otherwise shown to be living, such person or persons shall for the purposes of such proceedings be accounted as dead, and relief may be given accordingly.

Effect of absence for seven years.

(3) If in such proceedings the lastmentioned person is shown to have remained beyond Australia, or otherwise absented himself from the place in which if in Australia he might be expected to be found, for the space of seven years or upwards, such person, if not proved to be living, shall for the purposes of such proceedings be accounted as dead, and relief may be given accordingly.

Subsequent action may be stayed.

(4) If in any such proceedings judgment has been given against the plaintiff, and afterwards such plaintiff brings subsequent proceedings upon the basis that such life has determined, the court may make an order staying such proceedings permanently or until further order or for such time as may be thought fit.

Where supposed dead man proves to be alive relief may be given on that basis.

(5) If in consequence of the judgment given in any such proceedings, any person having any estate or interest in any property determinable on such life or lives has been evicted from or deprived of any property or any estate or interest therein, and afterwards it appears that such person or persons on whose life or lives such estate or interest depends is or are living or was or were living at the time of such eviction or deprivation, the court may give such relief as is appropriate in the circumstances.

DIVISION

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 DIVISION 14.—*Religious Worship—Disturbance of.*

1 William and Mary c. 18—The Toleration Act, 1688—s. 15.
 52 George III c. 155—The Places of Religious Worship Act,
 1812—s. 12.

39. Any person who wilfully and without lawful justification or excuse, the proof of which lies on him, disquiets or disturbs any meeting of persons lawfully assembled for religious worship, or assaults any person lawfully officiating at any such meeting, or any of the persons there assembled, shall be liable upon summary conviction to a penalty not exceeding one hundred dollars or to imprisonment for a term not exceeding two months.

Disturbing
religious
worship.
Queensland
Code, s. 207.
Vict. Act
No. 6337,
s. 33.

 DIVISION 15.—*Sheriff.*

32 George II c. 28—The Debtors Imprisonment Act, 1758—
 ss. 1, 3 and 4.

40. (1) Where any sheriff, bailiff, or other officer arrests or has in custody upon mesne process any person in the course of a civil proceeding such officer shall not—

Duties on
arrest of
civil debtors.
50 & 51
Vic. c. 55,
s. 14.
Vict. Act
No. 6387,
s. 207.

(a) convey such person without his free consent to any premises licensed for the sale of intoxicating liquor or any registered club, or to the private house of such officer or any tenant or relative of such officer; nor

(b) charge such person with any sum for, or procure him to call or pay for, any liquor, food, or thing whatsoever, except what he freely asks for; nor

(c) take such person to any gaol within twenty-four hours of his arrest, unless such person fails to name or refuses to be carried to some safe and convenient house of his own nomination, being within a reasonable distance of the place at which he was arrested, and not being the private dwelling-house of such person,

but shall during such twenty-four hours permit such person to send for and to have brought to him at reasonable times in the day and in reasonable quantities any food or liquor from
 what

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what place he thinks fit, and also to have and use such bedding, linen, and other necessary things as he has occasion for or is supplied with, and shall not require any payment for the use thereof or restrict the use thereof.

(2) Where a sheriff, bailiff, or other officer makes an arrest to which this section applies he shall as promptly as reasonably possible inform the person arrested of the effect of subsection one of this section.

DIVISION 16.—*Sunday.*

29 Charles II c. 7—The Sunday Observance Act, 1677—s. 6.

Service of
process on
Sunday
void.

41. Service of any writ, process, warrant, order, judgment or decree (except in case of an offence, breach of the peace or any warrant, writ or process for the apprehension of any person) upon a Sunday shall be void.

DIVISION 17.—*Witnesses—Habeas Corpus for Prisoners.*

44 George III c. 102—The Habeas Corpus Act, 1804.

Writs of
habeas
corpus
ad test.

42. Any Judge of the Supreme Court may award a writ of habeas corpus for bringing any prisoner detained in any gaol or prison before any court, to be there examined as a witness.

PART IV.

PENALTIES.

Offences—
penalties.

43. Any person guilty of any offence under any Imperial enactment included in Part I of the Second Schedule for which no punishment is otherwise provided is liable to imprisonment for a term of not more than five years or to a fine of not more than two thousand dollars, or to both such imprisonment and fine.

SCHEDULES.

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SCHEDULES.

FIRST SCHEDULE.

Sec. 5.

Imperial enactment.	Substituted provision of this Act.	Division of Part III.
(1267) 52 Henry III (Statute of Marlborough) c. 23.	s. 32	Division 9.
(1289-90) 18 Edward I (St. 1) (Quia Emptores) cc. 1 and 3.	s. 36	Division 12.
(1326-7) 1 Edward III St. 2 c. 16	s. 29	Division 8.
(1344) 18 Edward III St. 2 c. 2	s. 29	Division 8.
(1351-2) 25 Edward III St. 5 c. 5	s. 13	Division 1.
(1357) 31 Edward III St. 1 c. 11	s. 14	Division 1.
(1360-1) 34 Edward III c. 1 (The Justices of the Peace Act, 1361).	s. 30	Division 8.
(1361) 34 Edward III c. 15	s. 36	Division 12.
(1381-2) 5 Richard II, St. 1 c. 7 (The Forcible Entry Act, 1381).	s. 18	Division 4.
(1429) 8 Henry VI c. 9 (The Forcible Entry Act, 1429).	s. 19	Division 4.
(1588-9) 31 Elizabeth c. 11 (The Forcible Entry Act, 1588).	s. 19	Division 4.
(1660) 12 Charles II c. 24 (The Tenures Abolition Act, 1660)—		
s. 4	s. 37	Division 12.
s. 9	s. 21	Division 5.
(1666) 18 and 19 Charles II c. 11 (The Cestui que Vie Act, 1666).	s. 38	Division 13.
(1677) 29 Charles II c. 7 (The Sunday Observance Act, 1677), s. 6.	s. 41	Division 16.
(1678) 30 Charles II c. 7	s. 15	Division 1.
(1685) 1 James II c. 17, s. 6	s. 14	Division 1.
(1688) 1 William and Mary c. 18 (The Toleration Act, 1688), s. 15.	s. 39	Division 14.
(1692) 4 William and Mary c. 24, s. 12 ..	s. 15	Division 1.

FIRST

*Imperial Acts Application.*FIRST SCHEDULE—*continued.*

Imperial enactment.	Substituted provision of this Act.	Division of Part III.
(1696-7) 8 and 9 William III c. 11 (The Administration of Justice Act, 1696), s. 8.	s. 33	Division 10.
(1705) 4 and 5 Anne c. 3 (or c. 16) (The Administration of Justice Act, 1705) ss. 12 and 13.	s. 34	Division 10.
(1707) 6 Anne c. 72 (or c. 18) (The Cestui que Vie Act, 1707).	s. 38	Division 13.
(1737) 11 George II c. 19 (The Distress for Rent Act, 1737), s. 14.	s. 31	Division 9.
(1745) 19 George II c. 37 (The Marine Insurance Act, 1745).	s. 26	Division 7.
(1750) 24 George II c. 23 (The Calendar (New Style) Act, 1750), ss. 1, 2 and 3.	s. 16	Division 2.
(1758-9) 32 George II c. 28 (The Debtors Imprisonment Act, 1758) ss. 1, 3 and 4.	s. 40	Division 15.
(1774) 14 George III c. 48 (The Life Assurance Act, 1774).	s. 23	Division 6.
(1788) 28 George III c. 56 (The Marine Insurance Act, 1788).	ss. 27, 28	Division 7.
(1804) 44 George III c. 102 (The Habeas Corpus Act, 1804).	s. 42	Division 17.
(1812) 52 George III c. 101 (The Charities Procedure Act, 1812).	s. 17	Division 3.
(1812) 52 George III c. 155, (The Places of Religious Worship Act, 1812), s. 12.	s. 39	Division 14.
(1819) 60 George III and 1 George IV c. 8 (The Criminal Libel Act, 1819), ss. 1, 2 and 8.	s. 35	Division 11.

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SECOND SCHEDULE.

Sec. 6.

PART I.

Constitutional Enactments.

- (1297) 25 Edward I (Magna Carta) c. 29.
- (1351) 25 Edward III St. 5 c. 4.
- (1354) 28 Edward III c. 3.
- (1368) 42 Edward III c. 3.
- (1623-4) 21 James I c. 3 (The Statute of Monopolies), ss. 1 and 6.
- (1627) 3 Charles I c. 1 (The Petition of Right).
- (1640) 16 Charles I c. 10 (The Habeas Corpus Act, 1640), s. 6.
- (1679) 31 Charles II c. 2 (The Habeas Corpus Act, 1679), ss. 1-8, s. 11 (except the words "and shall incur and sustain" and the following words of the section), and ss. 15-19.
- (1688) 1 William and Mary c. 30 (The Royal Mines Act, 1688), s. 3.
- (1688) 1 William and Mary sess. 2 c. 2 (The Bill of Rights).
- (1700) 12 and 13 William III c. 2 (The Act of Settlement).
- (1702) 1 Anne c. 2 (The Demise of the Crown Act, 1702), s. 4.
- (1702) 1 Anne St. 2 c. 21 (The Treason Act, 1702), s. 3.
- (1707) 6 Anne c. 41 (or 6 Anne c. 7) (The Succession to the Crown Act, 1707), s. 9.
- (1772) 12 George III c. 11 (The Royal Marriages Act, 1772), ss. 1 and 2.
- (1816) 56 George III c. 100 (The Habeas Corpus Act, 1816).

PART II.

Criminal Law—Treason: Piracy.

Sec. 6.

Treason.

- (1351) 25 Edward III St. 5 c. 2 (The Treason Act, 1351). } So far as the same declares what offences shall be adjudged treason, as amended by the following:—
 - 9 George IV c. 31;
 - 11 George IV and 1 William IV c. 66 (The Forgery Act, 1830) adopted by 4 William IV No. 4;
 - 2 and 3 William IV c. 34 adopted by 9 Victoria No. 1.
- (1795) 36 George III c. 7 (The Treason Act, 1795). } Such provisions of the Acts respectively as relate to the compassing, imagining, inventing, devising, or intending death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment, or restraint of the person of the Sovereign and the expressing, uttering, or declaring of such compassings, imaginations, inventions, devices, or intentions, or any of them. } cf. Act No. 40, 1900, s. 11.
- (1817) 57 George III c. 6 (The Treason Act, 1817)
- (1695) 7 and 8 William III c. 3 (The Treason Act, 1695). } S. 5 (except the words "And that no person" to the end of that section) and s. 6.

SECOND

Imperial Acts Application.

SECOND SCHEDULE—*continued.*Part II—*continued.**Piracy.*

(1536) 28 Henry VIII c. 15*	} The provisions of each Act except so much of each Act as relates to the punishment of the crime of piracy or of any offence by any of the said Acts declared to be piracy, or of accessories thereto.
(1698-9) 11 and 12 William III (11 William III) c. 7.	
(1717-8) 4 George I c. 2 (or c. 11), s. 7	
(1721-2) 8 George I c. 24.	
(1744-5) 18 George II c. 30*	

* See Piracy Punishment Act, 1902, s. 3.

Sec. 7.

THIRD SCHEDULE.

Enactments applying irrespective of 9 George IV c. 83(A) *Criminal Law Enactments.*

(1698-9) 11 William III c. 12	Crimes by Governors of Colonies.
(1772) 12 George III c. 24	The Dockyards, &c., Protection Act, 1772.
(1802) 42 George III c. 85, s. 1	The Criminal Jurisdiction Act, 1802.
(1812) 52 George III c. 156	The Prisoners of War (Escape) Act, 1812.
(1824) 5 George IV c. 113	The Slave Trade Act, 1824.

(B) *Miscellaneous.*

(1813) 54 George III c. 15, s. 4	The New South Wales (Debts) Act, 1813.
(1821) 1 and 2 George IV c. 121, ss. 27-29	The Commissariat Accounts Act, 1821.

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

A. R. CUTLER,
Governor.

*Government House,
Sydney, 9th April, 1969.*