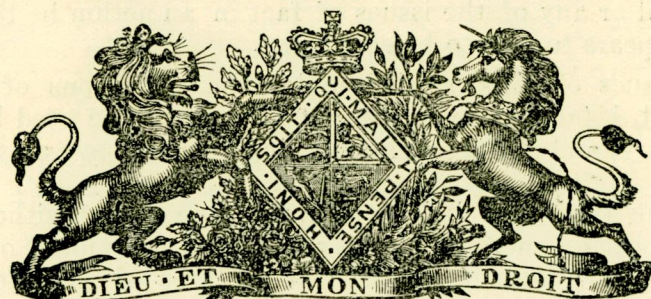


I Certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Legislative Assembly Chamber,
Sydney, 8 November, 1900. }*

*F. W. WEBB,
Clerk of the Legislative Assembly.*

New South Wales.



ANNO SEXAGESIMO QUARTO

VICTORIÆ REGINÆ.

Act No. 49, 1900.

An Act to amend the procedure of the Supreme Court.
[Assented to, 14th November, 1900.]

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:—

1. This Act may be cited as the "Supreme Court Procedure short title. Act, 1900."

2. In the interpretation of this Act, unless the context otherwise indicates or requires, the following words shall have the respective meanings set opposite to them, that is to say:—

"The Court" means Supreme Court.

"Judge" means Judge of the Supreme Court.

"Action" means action in the Supreme Court.

"Prescribed" means prescribed by rules of Court.

"Court."

"Judge."

"Action."

"Prescribed."

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

*J. H. CANN,
Chairman of Committees of the Legislative Assembly.*

Supreme Court Procedure.

Common Law Procedure.

Parties may consent to dispense with a jury.

3. (1) In any action by consent of both parties the whole or any one or more of the issues of fact in question may be tried, or the amount of any damages or compensation may be assessed by a Judge without a jury.

(2) Notwithstanding such consent a Judge may at any time order that all or any of the issues of fact in an action be tried with a jury if it appears to him to be expedient.

Issues under the Real Property Act may be tried by a Judge without a jury.

4. Issues of fact settled under the provisions of the Real Property Act, 1900, may by consent of both parties be tried by a Judge without a jury, and a Judge when so sitting shall have all the powers of a jury.

Finding of Judge to be finding of a jury.

5. The verdict or finding of any Judge sitting without a jury on the trial or assessment of any issue of fact or amount of damages or compensation pursuant to this Act shall be of the like force and effect in all respects as the verdict or finding of a jury.

Applications to the Court under the Real Property Act may be made to the Equity Court.

6. In all cases in which the Real Property Act, 1900, directs applications to be made to the Supreme Court, such applications may be made to the Supreme Court in its equitable jurisdiction, as well as to the Supreme Court holden before three Judges.

Full Court may order nonsuit or verdict to be entered.

7. (1) In any action, if the Court in Banco is of opinion that the plaintiff should have been nonsuited, or that upon the evidence the plaintiff or the defendant is as a matter of law entitled to a verdict in the action or upon any issue therein, the Court may order a nonsuit or such verdict to be entered.

(2) If the Court in Banco orders a new trial of any action, issue, or question which has been tried before a Judge without a jury, it may direct such new trial to be heard before a Judge either with or without a jury.

Defendant may have judgment for excess of set-off.

8. In every action in which the defendant has pleaded by way of set-off or cross-action any debt or demand claimed by him from the plaintiff, such defendant shall be entitled to recover in such action the amount by which such debt or demand is found to exceed the debt or demand proved by the plaintiff, and shall have judgment and execution for the same accordingly.

Foreign attachment against absent defendant.

9. Under section one hundred and eighty-eight, section one hundred and ninety-one, and section one hundred and ninety-four of the Common Law Procedure Act, 1899, the cause of action shall be deemed to have arisen within the jurisdiction in the case of an action arising out of contract if either—

- (a) the contract was made within the jurisdiction, or
- (b) the breach thereof was made or committed within the jurisdiction wherever the contract was made.

Equity

Supreme Court Procedure.

Equity Procedure.

10. (1) It shall not be necessary that persons seeking equitable relief shall in all cases apply by way of statement of claim, but rules of Court shall be made specifying in what cases applications may be made by way of originating summons in chambers, and providing for the course of procedure thereon.

Equitable relief may be given on originating summons.

(2) Appeals from any order made on an originating summons shall be made to the Full Court direct.

11. It shall not be obligatory on the Court or a Judge sitting in equity to make a decree or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person if the questions between the parties can be properly determined without such decree or order.

Equity Court to have discretion to refuse an administration decree.

Rules of Court.

12. The rules and form in the Schedule to this Act shall regulate the practice and procedure hereunder in all matters to which they relate, except so far as they shall hereafter be altered, added to, or rescinded under the power to make rules herein contained.

Rules of Court.

13. Rules of Court regulating the practice and procedure under this Act shall be made by the Judges of the Supreme Court, or any three of them, and such rules may rescind, add to, or alter any of the rules or form contained in the Schedule to this Act, and when so made such rules shall have the same force and effect as if they had formed part of the Schedule to this Act.

Judges to make rules.

14. The Judges of the Court or any three of them may make rules of Court for all or any of the following purposes, that is to say :—

Judges to make rules relating to procedure in the Court generally.

- (a) For the purpose of regulating the manner in which applications to the Court under any statute may be made, and the practice and procedure to be observed upon any such application.
- (b) For the purpose of providing for the verification on oath of all pleas filed in actions arising under a writ specially endorsed under the twenty-fourth section of the Common Law Procedure Act, 1899.
- (c) For the purpose of regulating the sittings of the Court and of the Judges thereof sitting in Chambers, and for the distribution among the Judges of the business of the Court.
- (d) And generally for the purpose of regulating the practice and procedure of the Court.

15. Nothing in any rules of Court to be made under this Act shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries.

Rules not to affect certain matters.

Supreme Court Procedure.

Non-compliance with
rules.

16. Non-compliance with any of the rules of Court in the Schedule to this Act, or made under the authority of this Act, shall not render any proceeding void unless the Court or a Judge thereof so directs, but such proceedings may be set aside either wholly or in part as irregular, or amended or otherwise dealt with in such manner and upon such terms (if any) as appear to be just.

Rules to be laid
before Parliament,
who may disallow
them.

17. All rules of Court made under the powers herein contained shall, immediately after the making thereof, be laid before both Houses of Parliament if then sitting, or if not within ten days of the next sitting thereof; and if either of the said Houses, by any resolution passed within thirty days after such rules have been so laid before it, resolves that any such rule or any part thereof ought not to continue in force, then such rule or part shall immediately cease to be binding.

SCHEDULE

RULES OF COURT.

Appeals from decisions of a single Judge.

Appeals from Judge
on point of law.

1. Appeals from the decision of a single Judge upon any question of law to the Full Court shall be made and prosecuted in the same times and manner in all respects as appeals to the Full Court in the Common Law jurisdiction of the Court from a Judge sitting in chambers.

Originating Summons in Equity.

Questions of account
or administration
may be made on
originating summons.

2. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law of a deceased person, or as cestui que trust under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor, or other person as aforesaid may take out as of course an originating summons returnable in chambers in equity for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case may require, that is to say, the determination without an administration of the estate or trust, of any of the following questions or matters:—

- (a) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or cestui que trust;
- (b) the ascertainment of any class of creditors, legatees, devisees, next of kin, or others;
- (c) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts;
- (d) the payment into Court of any money in the hands of the executors or administrators or trustees;
- (e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;
- (f) the approval of any sale, purchase, compromise, or other transaction;
- (g) the determination of any question arising in the administration of the estate or trust.

Supreme Court Procedure.

3. Any of the persons named in the last preceding rule may, in like manner, **Administration on originating summons.** apply for and obtain an order for—

- (a) The administration of the personal estate of the deceased;
- (b) the administration of the real estate of the deceased;
- (c) the administration of the trust.

4. The persons to be served with the summons under the last two preceding **Parties.** rules in the first instance shall be the following, that is to say—

- A. Where the summons is taken out by an executor or administrator or trustee—
 - (a) for the determination of any question under subsections (a), (e), (f), or (g) of rule 2, the persons or one of the persons whose rights or interests are sought to be affected;
 - (b) for the determination of any question under subsection (b) of rule 2 any member or alleged member of the class;
 - (c) for the determination of any question under subsection (c) of rule 2, any person interested in taking such accounts;
 - (d) for the determination of any question under subsection (d) of rule 2, any person interested in such money;
 - (e) for relief under subsection (a) of rule 3, the residuary, legatees, or next of kin, or some of them;
 - (f) for relief under subsection (b) of rule 3, the residuary, devisees, or next of kin or some of them;
 - (g) for relief under subsection (c) of rule 3, the cestuis que trust or some of them;
 - (h) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur.

B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.

5. Any mortgagee or mortgagor, whether legal or equitable, or any person **Foreclosure, &c., on originating summons** entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons returnable in Chambers in Equity for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case may require, that is to say—delivery of possession by the mortgagor, foreclosure, payment of the mortgage debt and foreclosure, sale, redemption, reconveyance, delivery of possession by the mortgagee.

6. The persons to be served with the summons under the last preceding rule **Parties.** shall be such persons as under the existing practice of the Court in Equity would be the proper parties to a suit for the like relief as that specified by the summons.

7. A vendor or purchaser of real or leasehold estate, or their representatives **Originating summons for decision of question between vendor and purchaser.** respectively, may take out, as of course, an originating summons, returnable in Chambers in Equity, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the Chief Judge in Equity shall make such order upon the application as appears just, and shall order by whom all or any of the costs of and incident to the application shall be borne and paid.

8. The Court in Equity or a Judge in Equity may direct such other persons to be served with an originating summons, as they or he may think fit.

9. (a) Any person claiming to be interested under a deed, will, or other written **Construction of instrument or originating summons.** instrument, may apply, by originating summons, for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested.

(b) The Court in Equity or a Judge in Equity may direct such persons to be served with the summons, as they or he may think fit.

10. The parties served with an originating summons shall, before they are heard, **Appearance to an originating summons.** enter appearances in the office of the Master in Equity, together with an address for service, which shall be not more than one mile from the said office.

11.

Supreme Court Procedure.

- Service.** 11. A defendant shall appear to an originating summons within eight days after service of the summons upon him, inclusive of the day of such service.
- Evidence.** 12. Applications by way of originating summons shall be supported by such evidence as the Court or Judge may require, and directions may be given, as they or he may think just, for the trial of any question arising thereout.
- Settlement of orders.** 13. Orders made on originating summons shall be settled, passed, and entered, and remain of record, and shall be enforced in the same manner in all respects as orders of the Court in Equity.
- Form of summons.** 14. An originating summons shall be in Form A to these rules altered to meet the circumstances of the case.
- Appointment for hearing of summons.** 15. So soon as the defendants have appeared to an originating summons, or have made default in so appearing within the time limited, the plaintiff shall take out in the Equity Office an appointment, before the Chief Judge in Equity, for the hearing of the summons, and shall give the defendants who have appeared two clear days' notice of the date of such appointment.

FORM A.

In the Supreme Court of New South Wales, } No.
in Equity. }

In the matter of the will of, &c. ;
or
In the matter of the estate of, &c. ;
or
In the matter of the trusts of, &c. ;
or
In the matter of the indenture of mortgage dated, &c. ;
or
In the matter of the contract for sale, dated, &c. ;
or as the case may be.

Between A.B., plaintiff, and C.D., defendant.

Originating Summons.

Let of [residence and description] within eight days after service of this summons upon him, inclusive of the day of such service, cause an appearance to be entered for him to this summons which is issued upon the application of of [residence and description] who claims to be [state the nature of the claim] for the determination of the following questions:--

[State the questions.]

Appearance may be entered in the office of the Master in Equity, Chancery-square, Sydney.

Dated the day of , one thousand nine hundred and .
This summons is taken out by the abovenamed [or by the solicitor for the abovenamed .]

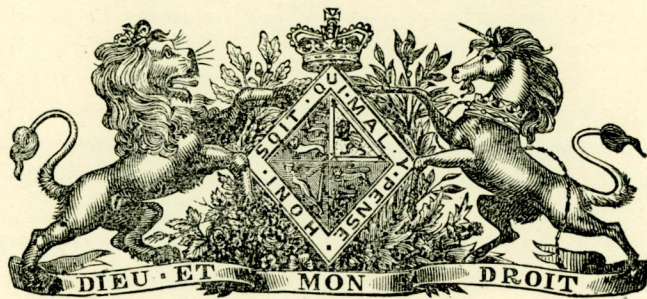
NOTE.—If the defendant does not enter an appearance within the time and at the place above mentioned such order will be made and proceedings taken as the Judge may think fit and expedient.

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

FREDK. M. DARLEY,
Lieutenant-Governor.

*Government House,
Sydney, 14th November, 1900.*

New South Wales.



ANNO SEXAGESIMO QUARTO

VICTORIÆ REGINÆ.

Act No. 49, 1900.

An Act to amend the procedure of the Supreme Court.
[Assented to, 14th November, 1900.]

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:—

1. This Act may be cited as the "Supreme Court Procedure Act, 1900." Short title.

2. In the interpretation of this Act, unless the context otherwise indicates or requires, the following words shall have the respective meanings set opposite to them, that is to say:—

"The Court" means Supreme Court.

"Court."

"Judge" means Judge of the Supreme Court.

"Judge."

"Action" means action in the Supreme Court.

"Action."

"Prescribed" means prescribed by rules of Court.

"Prescribed."

Supreme Court Procedure.

Common Law Procedure.

Parties may consent to dispense with a jury.

3. (1) In any action by consent of both parties the whole or any one or more of the issues of fact in question may be tried, or the amount of any damages or compensation may be assessed by a Judge without a jury.

(2) Notwithstanding such consent a Judge may at any time order that all or any of the issues of fact in an action be tried with a jury if it appears to him to be expedient.

Issues under the Real Property Act may be tried by a Judge without a jury.

4. Issues of fact settled under the provisions of the Real Property Act, 1900, may by consent of both parties be tried by a Judge without a jury, and a Judge when so sitting shall have all the powers of a jury.

Finding of Judge to be finding of a jury.

5. The verdict or finding of any Judge sitting without a jury on the trial or assessment of any issue of fact or amount of damages or compensation pursuant to this Act shall be of the like force and effect in all respects as the verdict or finding of a jury.

Applications to the Court under the Real Property Act may be made to the Equity Court.

6. In all cases in which the Real Property Act, 1900, directs applications to be made to the Supreme Court, such applications may be made to the Supreme Court in its equitable jurisdiction, as well as to the Supreme Court holden before three Judges.

Full Court may order nonsuit or verdict to be entered.

7. (1) In any action, if the Court in Banco is of opinion that the plaintiff should have been nonsuited, or that upon the evidence the plaintiff or the defendant is as a matter of law entitled to a verdict in the action or upon any issue therein, the Court may order a nonsuit or such verdict to be entered.

(2) If the Court in Banco orders a new trial of any action, issue, or question which has been tried before a Judge without a jury, it may direct such new trial to be heard before a Judge either with or without a jury.

Defendant may have judgment for excess of set-off.

8. In every action in which the defendant has pleaded by way of set-off or cross-action any debt or demand claimed by him from the plaintiff, such defendant shall be entitled to recover in such action the amount by which such debt or demand is found to exceed the debt or demand proved by the plaintiff, and shall have judgment and execution for the same accordingly.

Foreign attachment against absent defendant.

9. Under section one hundred and eighty-eight, section one hundred and ninety-one, and section one hundred and ninety-four of the Common Law Procedure Act, 1899, the cause of action shall be deemed to have arisen within the jurisdiction in the case of an action arising out of contract if either—

(a) the contract was made within the jurisdiction, or

(b) the breach thereof was made or committed within the jurisdiction wherever the contract was made.

Equity

*Supreme Court Procedure.**Equity Procedure.*

10. (1) It shall not be necessary that persons seeking equitable relief shall in all cases apply by way of statement of claim, but rules of Court shall be made specifying in what cases applications may be made by way of originating summons in chambers, and providing for the course of procedure thereon. Equitable relief may be given on originating summons.

(2) Appeals from any order made on an originating summons shall be made to the Full Court direct.

11. It shall not be obligatory on the Court or a Judge sitting in equity to make a decree or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person if the questions between the parties can be properly determined without such decree or order. Equity Court to have discretion to refuse an administration decree.

Rules of Court.

12. The rules and form in the Schedule to this Act shall regulate the practice and procedure hereunder in all matters to which they relate, except so far as they shall hereafter be altered, added to, or rescinded under the power to make rules herein contained. Rules of Court.

13. Rules of Court regulating the practice and procedure under this Act shall be made by the Judges of the Supreme Court, or any three of them, and such rules may rescind, add to, or alter any of the rules or form contained in the Schedule to this Act, and when so made such rules shall have the same force and effect as if they had formed part of the Schedule to this Act. Judges to make rules.

14. The Judges of the Court or any three of them may make rules of Court for all or any of the following purposes, that is to say :— Judges to make rules relating to procedure in the Court generally.

- (a) For the purpose of regulating the manner in which applications to the Court under any statute may be made, and the practice and procedure to be observed upon any such application.
- (b) For the purpose of providing for the verification on oath of all pleas filed in actions arising under a writ specially endorsed under the twenty-fourth section of the Common Law Procedure Act, 1899.
- (c) For the purpose of regulating the sittings of the Court and of the Judges thereof sitting in Chambers, and for the distribution among the Judges of the business of the Court.
- (d) And generally for the purpose of regulating the practice and procedure of the Court.

15. Nothing in any rules of Court to be made under this Act shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries. Rules not to affect certain matters.

Supreme Court Procedure.

Non-compliance with rules.

16. Non-compliance with any of the rules of Court in the Schedule to this Act, or made under the authority of this Act, shall not render any proceeding void unless the Court or a Judge thereof so directs, but such proceedings may be set aside either wholly or in part as irregular, or amended or otherwise dealt with in such manner and upon such terms (if any) as appear to be just.

Rules to be laid before Parliament, who may disallow them.

17. All rules of Court made under the powers herein contained shall, immediately after the making thereof, be laid before both Houses of Parliament if then sitting, or if not within ten days of the next sitting thereof; and if either of the said Houses, by any resolution passed within thirty days after such rules have been so laid before it, resolves that any such rule or any part thereof ought not to continue in force, then such rule or part shall immediately cease to be binding.

SCHEDULE.

RULES OF COURT.

Appeals from decisions of a single Judge.

Appeals from Judge on point of law.

1. Appeals from the decision of a single Judge upon any question of law to the Full Court shall be made and prosecuted in the same times and manner in all respects as appeals to the Full Court in the Common Law jurisdiction of the Court from a Judge sitting in chambers.

Originating Summons in Equity.

Questions of account or administration may be made on originating summons.

2. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law of a deceased person, or as cestui que trust under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor, or other person as aforesaid may take out as of course an originating summons returnable in chambers in equity for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case may require, that is to say, the determination without an administration of the estate or trust, of any of the following questions or matters:—

- (a) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or cestui que trust;
- (b) the ascertainment of any class of creditors, legatees, devisees, next of kin, or others;
- (c) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts;
- (d) the payment into Court of any money in the hands of the executors or administrators or trustees;
- (e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;
- (f) the approval of any sale, purchase, compromise, or other transaction;
- (g) the determination of any question arising in the administration of the estate or trust.

Supreme Court Procedure.

3. Any of the persons named in the last preceding rule may, in like manner, Administration on originating summons apply for and obtain an order for—

- (a) The administration of the personal estate of the deceased;
- (b) the administration of the real estate of the deceased;
- (c) the administration of the trust.

4. The persons to be served with the summons under the last two preceding Parties. rules in the first instance shall be the following, that is to say—

A. Where the summons is taken out by an executor or administrator or trustee—

- (a) for the determination of any question under subsections (a), (e), (f), or (g) of rule 2, the persons or one of the persons whose rights or interests are sought to be affected;
- (b) for the determination of any question under subsection (b) of rule 2 any member or alleged member of the class;
- (c) for the determination of any question under subsection (c) of rule 2, any person interested in taking such accounts;
- (d) for the determination of any question under subsection (d) of rule 2, any person interested in such money;
- (e) for relief under subsection (a) of rule 3, the residuary, legatees, or next of kin, or some of them;
- (f) for relief under subsection (b) of rule 3, the residuary, devisees, or next of kin or some of them;
- (g) for relief under subsection (c) of rule 3, the cestuis que trust or some of them;
- (h) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur.

B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.

5. Any mortgagee or mortgagor, whether legal or equitable, or any person Foreclosure, &c., on originating summons. entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons returnable in Chambers in Equity for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case may require, that is to say—delivery of possession by the mortgagor, foreclosure, payment of the mortgage debt and foreclosure, sale, redemption, reconveyance, delivery of possession by the mortgagee.

6. The persons to be served with the summons under the last preceding rule Parties. shall be such persons as under the existing practice of the Court in Equity would be the proper parties to a suit for the like relief as that specified by the summons.

7. A vendor or purchaser of real or leasehold estate, or their representatives Originating summons for decision of question between vendor and purchaser. respectively, may take out, as of course, an originating summons, returnable in Chambers in Equity, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the Chief Judge in Equity shall make such order upon the application as appears just, and shall order by whom all or any of the costs of and incident to the application shall be borne and paid.

8. The Court in Equity or a Judge in Equity may direct such other persons to be served with an originating summons, as they or he may think fit.

9. (a) Any person claiming to be interested under a deed, will, or other written Construction of instrument or originating summons. instrument, may apply, by originating summons, for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested.

(b) The Court in Equity or a Judge in Equity may direct such persons to be served with the summons, as they or he may think fit.

10. The parties served with an originating summons shall, before they are heard, Appearance to an originating summons. enter appearances in the office of the Master in Equity, together with an address for service, which shall be not more than one mile from the said office.

Supreme Court Procedure.

- Service. 11. A defendant shall appear to an originating summons within eight days after service of the summons upon him, inclusive of the day of such service.
- Evidence. 12. Applications by way of originating summons shall be supported by such evidence as the Court or Judge may require, and directions may be given, as they or he may think just, for the trial of any question arising thereout.
- Settlement of orders. 13. Orders made on originating summons shall be settled, passed, and entered, and remain of record, and shall be enforced in the same manner in all respects as orders of the Court in Equity.
- Form of summons. 14. An originating summons shall be in Form A to these rules altered to meet the circumstances of the case.
- Appointment for hearing of summons. 15. So soon as the defendants have appeared to an originating summons, or have made default in so appearing within the time limited, the plaintiff shall take out in the Equity Office an appointment, before the Chief Judge in Equity, for the hearing of the summons, and shall give the defendants who have appeared two clear days' notice of the date of such appointment.

FORM A.

In the Supreme Court of New South Wales, }
in Equity. } No.

In the matter of the will of, &c. ;
or
In the matter of the estate of, &c. ;
or
In the matter of the trusts of, &c. ;
or
In the matter of the indenture of mortgage dated, &c. ;
or
In the matter of the contract for sale, dated, &c. ;
or as the case may be.

Between A.B., plaintiff, and C.D., defendant.

Originating Summons.

Let of [residence and description] within eight days after service of this summons upon him, inclusive of the day of such service, cause an appearance to be entered for him to this summons which is issued upon the application of of [residence and description] who claims to be [state the nature of the claim] for the determination of the following questions:—

[State the questions.]

Appearance may be entered in the office of the Master in Equity, Chancery-square, Sydney.

Dated the day of , one thousand nine hundred and .
This summons is taken out by the abovenamed [or by] the solicitor for the abovenamed .]

NOTE.—If the defendant does not enter an appearance within the time and at the place above mentioned such order will be made and proceedings taken as the Judge may think fit and expedient.

SUPREME COURT PROCEDURE BILL.

SCHEDULE showing the Legislative Assembly's Amendments upon the Legislative Council's Amendments, referred to in Message of 7th November, 1900.

F. W. WEBB,
Clerk of the Legislative Assembly.

Page 3, clause 14. *Omit* subsection (a)—

(a) For the purpose of abridging or enlarging the time fixed by any statute for the taking of any step in any proceeding in the Court.

Page 4, clause 14, lines 1 to 5. *Omit* "preventing the filing of pleas for the object
" of delay, or of striking out such pleas when so filed, or of putting any
" party who has filed such a plea upon terms as to his defence in respect
" of any cause of action as to which the writ of summons might be " *insert*
" providing for the verification on oath of all pleas filed in actions arising
" under a writ "

Page 4, clause 14. *Omit* subsection (d)—

(d) For the purpose of providing how costs shall be awarded upon any application under any statute where such statute makes no provision as to how such costs are to be awarded.

Page 4, clause 14. *Omit* subsection (2)—

(2) Such rules when so made shall, unless and until disallowed, annulled, or altered, regulate all matters to which they extend, notwithstanding the existence at the passing of this Act of any statutory or other provision inconsistent therewith.

SUPREME COURT PROCEEDINGS BILL

COMMITTEE REPORTING THE PROCEEDINGS BILL TO THE SENATE
COMMITTEE REPORTING TO THE SENATE OF THE HOUSE OF REPRESENTATIVES

W. W. WARR
Clerk of the Legislative Assembly

Page 1, clause 1. (a) For the purpose of extending or enlarging the time fixed by any statute for the taking of any step in any proceeding in the Court, the taking of any step in any proceeding in the Court, "preventing the filing of plans for the object of delay, or of striking out such plans when so filed, or of putting any party who has filed such a plan upon terms as to his defence in respect of any cause of action as to which the writ of summons might be issued" in the verification on each of all plans filed in action arising under a writ.

Page 1, clause 1. (b) For the purpose of providing that costs shall be awarded upon any application under any statute where such statute makes no provision as to how costs are to be awarded.

Page 1, clause 1. (c) In cases where an appeal shall, unless and until dissolved, annulled, or allowed, require all parties to exhibit their affidavits notwithstanding the existence of the provisions of the Act of any Statute or other provision inconsistent therewith.

SUPREME COURT PROCEDURE BILL.

SCHEDULE of the Amendments referred to in Message of 1st November, 1900.

- Page 2, line 1. *Omit* "Trials by Judge, without a jury" *insert* "**Common Law Procedure**"
Page 2. *After* clause 8 *insert* new clause 9.
Page 3, line 1. *Omit* "Originating summons in Equity" *insert* "**Equity procedure**"
Page 3, clause ~~12~~ **13**. *Omit* sub-sections (2) and (3).
Page 3. *After* clause ~~12~~ **13** *insert* new clauses **14, 15, 16, and 17.**
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THE SOUTH CHINA SEA



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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.

*Legislative Assembly Chamber,
Sydney, 13 September, 1900, A.M. }*

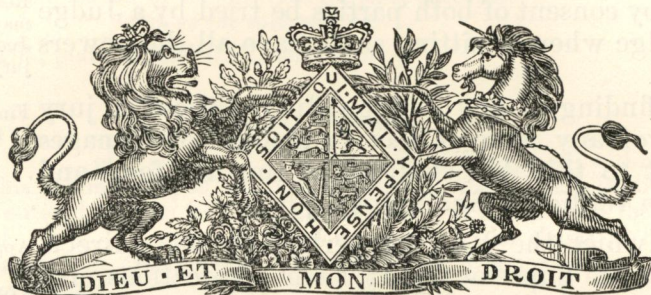
*F. W. WEBB,
Clerk of the Legislative Assembly.*

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

*Legislative Council Chamber,
Sydney, 1st November, 1900. }*

*JOHN J. CALVERT,
Clerk of the Parliaments.*

New South Wales.



ANNO SEXAGESIMO QUARTO

VICTORIÆ REGINÆ.

Act No. , 1900.

An Act to amend the procedure of the Supreme Court.

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:—

5 1. This Act may be cited as the "Supreme Court Procedure Short title.
Act, 1900."

2. In the interpretation of this Act, unless the context other- Interpretation.
wise indicates or requires, the following words shall have the respective
meanings set opposite to them, that is to say:—

10 "The Court" means Supreme Court.

"Court."

"Judge" means Judge of the Supreme Court.

"Judge."

"Action" means action in the Supreme Court.

"Action."

"Prescribed" means prescribed by rules of Court.

"Prescribed."

297—

Trials—

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

Supreme Court Procedure.

~~Trials by Judge without a jury.~~ **Common Law Procedure.**

3. (1) In any action by consent of both parties the whole or any one or more of the issues of fact in question may be tried, or the amount of any damages or compensation may be assessed by a Judge without a jury. Parties may consent to dispense with a jury.

(2) Notwithstanding such consent a Judge may at any time order that all or any of the issues of fact in an action be tried with a jury if it appears to him to be expedient.

4. Issues of fact settled under the provisions of the Real Property Act, 1900, may by consent of both parties be tried by a Judge without a jury, and a Judge when so sitting shall have all the powers of a jury. Issues under the Real Property Act may be tried by a Judge without a jury.

5. The verdict or finding of any Judge sitting without a jury on the trial or assessment of any issue of fact or amount of damages or compensation pursuant to this Act shall be of the like force and effect in all respects as the verdict or finding of a jury. Finding of Judge to be finding of a jury.

6. In all cases in which the Real Property Act, 1900, directs applications to be made to the Supreme Court, such applications may be made to the Supreme Court in its equitable jurisdiction, as well as to the Supreme Court holden before three Judges. Applications to the Court under the Real Property Act may be made to the Equity Court.

7. (1) In any action, if the Court in Banco is of opinion that the plaintiff should have been nonsuited, or that upon the evidence the plaintiff or the defendant is as a matter of law entitled to a verdict in the action or upon any issue therein, the Court may order a nonsuit or such verdict to be entered. Full Court may order nonsuit or verdict to be entered.

(2) If the Court in Banco orders a new trial of any action, issue, or question which has been tried before a Judge without a jury, it may direct such new trial to be heard before a Judge either with or without a jury.

8. In every action in which the defendant has pleaded by way of set-off or cross-action any debt or demand claimed by him from the plaintiff, such defendant shall be entitled to recover in such action the amount by which such debt or demand is found to exceed the debt or demand proved by the plaintiff, and shall have judgment and execution for the same accordingly. Defendant may have judgment for excess of set-off.

9. Under section one hundred and eighty-eight, section one hundred and ninety-one, and section one hundred and ninety-four of the Common Law Procedure Act, 1899, the cause of action shall be deemed to have arisen within the jurisdiction in the case of an action arising out of contract if either—

- (a) the contract was made within the jurisdiction, or
- (b) the breach thereof was made or committed within the jurisdiction wherever the contract was made.

Originating—

Supreme Court Procedure.~~Originating Summons in Equity.~~ **Equity Procedure.**

9. 10. (1) It shall not be necessary that persons seeking equitable relief shall in all cases apply by way of statement of claim, but rules of Court shall be made specifying in what cases applications may be made by way of originating summons in chambers, and providing for the course of procedure thereon. Equitable relief may be given on originating summons.

(2) Appeals from any order made on an originating summons shall be made to the Full Court direct.

10. 11. It shall not be obligatory on the Court or a Judge sitting in equity to make a decree or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person if the questions between the parties can be properly determined without such decree or order. Equity Court to have discretion to refuse an administration decree.

Rules of Court.

11. 12. The rules and form in the Schedule to this Act shall regulate the practice and procedure hereunder in all matters to which they relate, except so far as they shall hereafter be altered, added to, or rescinded under the power to make rules herein contained. Rules of Court.

12. 13. (1) Rules of Court regulating the practice and procedure under this Act shall be made by the Judges of the Supreme Court, or any three of them, and such rules may rescind, add to, or alter any of the rules or form contained in the Schedule to this Act, and when so made such rules shall have the same force and effect as if they had formed part of the Schedule to this Act. Judges to make rules.

(2) So much of this Act as empowers rules to be made hereunder shall come into force immediately on the passing of this Act.

(3) All rules of Court made under the powers herein contained shall immediately after the making thereof be laid before both Houses of Parliament if then sitting, or if not within ten days after the next sitting thereof, and if either of the said Houses, by any resolution passed within thirty days after such rules have been so laid before it, resolves that any such rule or any part thereof ought not to continue in force then such rule or part shall immediately cease to be binding. Rules to be laid before Parliament.

14. (1) The Judges of the Court or any three of them may make rules of Court for all or any of the following purposes, that is to say:— Judges to make rules relating to procedure in the Court generally.

(a) For the purpose of abridging or enlarging the time fixed by any statute for the taking of any step in any proceeding in the Court.

(b) For the purpose of regulating the manner in which applications to the Court under any statute may be made, and the practice and procedure to be observed upon any such application.

(c)

Supreme Court Procedure.

- 5 (c) For the purpose of preventing the filing of pleas for the object of delay, or of striking out such pleas when so filed, or of putting any party who has filed such a plea upon terms as to his defence in respect of any cause of action as to which the writ of summons might be specially endorsed under the twenty-fourth section of the Common Law Procedure Act, 1899.
- 10 (d) For the purpose of providing how costs shall be awarded upon any application under any statute where such statute makes no provision as to how such costs are to be awarded.
- (e) For the purpose of regulating the sittings of the Court and of the Judges thereof sitting in Chambers, and for the distribution among the Judges of the business of the Court.
- 15 (f) And generally for the purpose of regulating the practice and procedure of the Court.
- (2) Such rules when so made shall, unless and until disallowed, annulled, or altered, regulate all matters to which they extend, notwithstanding the existence at the passing of this Act of any statutory or other provision inconsistent therewith.
- 20 15. Nothing in any rules of Court to be made under this Act shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries. Rules not to affect certain matters.
- 25 16. Non-compliance with any of the rules of Court in the Schedule to this Act, or made under the authority of this Act, shall not render any proceeding void unless the Court or a Judge thereof so directs, but such proceedings may be set aside either wholly or in part as irregular, or amended or otherwise dealt with in such manner and upon such terms (if any) as appear to be just. Non-compliance with rules.
- 30 17. All rules of Court made under the powers herein contained shall, immediately after the making thereof, be laid before both Houses of Parliament if then sitting, or if not within ten days of the next sitting thereof; and if either of the said Houses, by any resolution passed within thirty days after such rules have been so laid before it, shall resolve that any such rule or any part thereof ought not to continue in force, then such rule or part shall immediately cease to be binding. Rules to be laid before Parliament, who may disallow them.
- 35

Supreme Court Procedure.

SCHEDULE.

RULES OF COURT.

Appeals from decisions of a single Judge.

1. Appeals from the decision of a single Judge upon any question of law to Appeals from Judge
 5 the Full Court shall be made and prosecuted in the same times and manner in all respects on point of law.
 as appeals to the Full Court in the Common Law jurisdiction of the Court from a
 Judge sitting in chambers.

Originating Summons in Equity.

2. The executors or administrators of a deceased person or any of them, and Questions of account
 10 the trustees under any deed or instrument, or any of them, and any person claiming to or administration
 be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law may be made on
 of a deceased person, or as cestui que trust under the trust of any deed or instrument, originating summons.
 or as claiming by assignment or otherwise under any such creditor, or other person as
 aforesaid may take out as of course an originating summons returnable in chambers in
 15 equity for such relief of the nature or kind following as may by the summons be
 specified and as the circumstances of the case may require, that is to say, the determi-
 nation without an administration of the estate or trust, of any of the following questions
 or matters:—

- 20 (a) any question affecting the rights or interests of the person claiming to be
 creditor, devisee, legatee, next of kin, or heir-at-law, or cestui que trust;
- (b) the ascertainment of any class of creditors, legatees, devisees, next of kin, or
 others;
- (c) the furnishing of any particular accounts by the executors or administrators or
 trustees, and the vouching (when necessary) of such accounts;
- 25 (d) the payment into Court of any money in the hands of the executors or
 administrators or trustees;
- (e) directing the executors or administrators or trustees to do or abstain from
 doing any particular act in their character as such executors or administrators
 or trustees;
- 30 (f) the approval of any sale, purchase, compromise, or other transaction;
- (g) the determination of any question arising in the administration of the estate
 or trust.

3. Any of the persons named in the last preceding rule may, in like manner, Administration on
 apply for and obtain an order for— originating summons.
 35 (a) The administration of the personal estate of the deceased;

- (b) the administration of the real estate of the deceased;
- (c) the administration of the trust.

4. The persons to be served with the summons under the last two preceding Parties.
 rules in the first instance shall be the following, that is to say—

- 40 A. Where the summons is taken out by an executor or administrator or trustee—
- (a) for the determination of any question under subsections (a), (e), (f), or (g)
 of rule 2, the persons or one of the persons whose rights or interests are
 sought to be affected;
- 45 (b) for the determination of any question under subsection (b) of rule 2 any
 member or alleged member of the class;
- (c) for the determination of any question under subsection (c) of rule 2, any
 person interested in taking such accounts;
- (d) for the determination of any question under subsection (d) of rule 2, any
 person interested in such money;
- 50 (e) for relief under subsection (a) of rule 3, the residuary, legatees, or next of
 kin, or some of them;
- (f) for relief under subsection (b) of rule 3, the residuary, devisees, or next of
 kin or some of them;

(g)

Supreme Court Procedure.

- (g) for relief under subsection (c) of rule 3, the cestuis que trust or some of them ;
- (h) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur.
- 5 B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.
5. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons returnable in Chambers in Equity for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case may require, that is to say—delivery of possession by the mortgagor, foreclosure, payment of the mortgage debt and foreclosure, sale, redemption, reconveyance, delivery of possession by the mortgagee. Foreclosure, &c., on originating summons.
- 10 6. The persons to be served with the summons under the last preceding rule shall be such persons as under the existing practice of the Court in Equity would be the proper parties to a suit for the like relief as that specified by the summons. Parties.
- 15 7. A vendor or purchaser of real or leasehold estate, or their representatives respectively, may take out, as of course, an originating summons, returnable in Chambers in Equity, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the Chief Judge in Equity shall make such order upon the application as appears just, and shall order by whom all or any of the costs of and incident to the application shall be borne and paid. Originating summons for decision of question between vendor and purchaser.
- 20 8. The Court in Equity or a Judge in Equity may direct such other persons to be served with an originating summons, as they or he may think fit.
- 25 9. (a) Any person claiming to be interested under a deed, will, or other written instrument, may apply, by originating summons, for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested. Construction of instrument or originating summons.
- 30 (b) The Court in Equity or a Judge in Equity may direct such persons to be served with the summons, as they or he may think fit.
10. The parties served with an originating summons shall, before they are heard, enter appearances in the office of the Master in Equity, together with an address for service, which shall be not more than one mile from the said office. Appearance to an originating summons.
- 35 11. A defendant shall appear to an originating summons within eight days after service of the summons upon him, inclusive of the day of such service. Service.
12. Applications by way of originating summons shall be supported by such evidence as the Court or Judge may require, and directions may be given, as they or he may think just, for the trial of any question arising thereout. Evidence.
- 40 13. Orders made on originating summons shall be settled, passed, and entered, and remain of record, and shall be enforced in the same manner in all respects as orders of the Court in Equity. Settlement of orders.
14. An originating summons shall be in Form A to these rules altered to meet the circumstances of the case. Form of summons.
- 45 15. So soon as the defendants have appeared to an originating summons, or have made default in so appearing within the time limited, the plaintiff shall take out in Equity Office an appointment, before the Chief Judge in Equity, for the hearing of the summons, and shall give the defendants who have appeared two clear days' notice of the date of such appointment. Appointment for hearing of summons.
- 50

Supreme Court Procedure.

FORM A.

In the Supreme Court of New South Wales, }
 in Equity. } No.

5 In the matter of the will of, &c. ;
or
 In the matter of the estate of, &c. ;
or
 In the matter of the trusts of, &c. ;
or
 10 In the matter of the indenture of mortgage dated, &c. ;
or
 In the matter of the contract for sale, dated, &c. ;
or as the case may be.

Between A.B., plaintiff, and C.D., defendant.

15 *Originating Summons.*

Let of [residence and description] within eight days
 after service of this summons upon him, inclusive of the day of such service, cause an
 appearance to be entered for him to this summons which is issued upon the application
 of of [residence and description] who claims to be [state the
 20 nature of the claim] for the determination of the following questions:—
 [State the questions.]

Appearance may be entered in the office of the Master in Equity, Chancery-square,
 Sydney.

Dated the day of , one thousand nine hundred and .
 25 This summons is taken out by the abovenamed [or by the
 solicitor for the abovenamed .]

NOTE.—If the defendant does not enter an appearance within the time and at the place above
 mentioned such order will be made and proceedings taken as the Judge may think fit and expedient.

Statement of Accounts

To the Hon. Secy.

In the name of the Government of India

for the year ending 31st March 1950

and for the period from 1st April 1949 to 31st March 1950

of the Department of Public Works

and the Public Works Department

of the Government of India

for the year ending 31st March 1950

and for the period from 1st April 1949 to 31st March 1950

of the Department of Public Works

and the Public Works Department

of the Government of India

for the year ending 31st March 1950

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for the year ending 31st March 1950

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of the Department of Public Works

and the Public Works Department

of the Government of India

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.

*Legislative Assembly Chamber,
Sydney, 13 September, 1900, A.M. }*

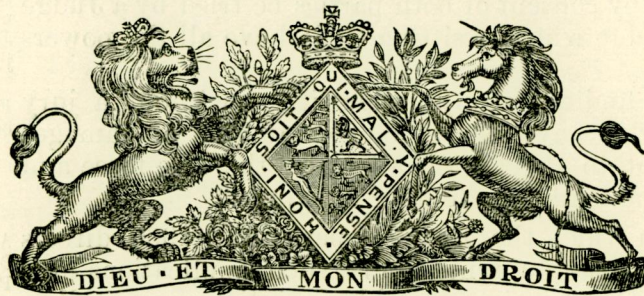
*F. W. WEBB,
Clerk of the Legislative Assembly.*

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

*Legislative Council Chamber,
Sydney, November, 1900. }*

Clerk of the Parliaments.

New South Wales.



ANNO SEXAGESIMO QUARTO

VICTORIÆ REGINÆ.

Act No. , 1900.

An Act to amend the procedure of the Supreme Court.

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:—

5 1. This Act may be cited as the "Supreme Court Procedure Short title. Act, 1900."

2. In the interpretation of this Act, unless the context otherwise indicates or requires, the following words shall have the respective meanings set opposite to them, that is to say:—

10 "The Court" means Supreme Court.

"Court."

 "Judge" means Judge of the Supreme Court.

"Judge."

 "Action" means action in the Supreme Court.

"Action."

 "Prescribed" means prescribed by rules of Court.

"Prescribed."

297—

Trials—

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

Supreme Court Procedure.~~Trials by Judge without a jury.~~ **Common Law Procedure.**

3. (1) In any action by consent of both parties the whole or any one or more of the issues of fact in question may be tried, or the amount of any damages or compensation may be assessed by a Judge without a jury. Parties may consent to dispense with a jury.

(2) Notwithstanding such consent a Judge may at any time order that all or any of the issues of fact in an action be tried with a jury if it appears to him to be expedient.

4. Issues of fact settled under the provisions of the Real Property Act, 1900, may by consent of both parties be tried by a Judge without a jury, and a Judge when so sitting shall have all the powers of a jury. Issues under the Real Property Act may be tried by a Judge without a jury.

5. The verdict or finding of any Judge sitting without a jury on the trial or assessment of any issue of fact or amount of damages or compensation pursuant to this Act shall be of the like force and effect in all respects as the verdict or finding of a jury. Finding of Judge to be finding of a jury.

6. In all cases in which the Real Property Act, 1900, directs applications to be made to the Supreme Court, such applications may be made to the Supreme Court in its equitable jurisdiction, as well as to the Supreme Court holden before three Judges. Applications to the Court under the Real Property Act may be made to the Equity Court.

7. (1) In any action, if the Court in Banco is of opinion that the plaintiff should have been nonsuited, or that upon the evidence the plaintiff or the defendant is as a matter of law entitled to a verdict in the action or upon any issue therein, the Court may order a nonsuit or such verdict to be entered. Full Court may order nonsuit or verdict to be entered.

(2) If the Court in Banco orders a new trial of any action, issue, or question which has been tried before a Judge without a jury, it may direct such new trial to be heard before a Judge either with or without a jury.

8. In every action in which the defendant has pleaded by way of set-off or cross-action any debt or demand claimed by him from the plaintiff, such defendant shall be entitled to recover in such action the amount by which such debt or demand is found to exceed the debt or demand proved by the plaintiff, and shall have judgment and execution for the same accordingly. Defendant may have judgment for excess of set-off.

9. Under section one hundred and eighty-eight, section one hundred and ninety-one, and section one hundred and ninety-four of the Common Law Procedure Act, 1899, the cause of action shall be deemed to have arisen within the jurisdiction in the case of an action arising out of contract if either— Foreign attachment against absent defendant.

- (a) the contract was made within the jurisdiction, or
- (b) the breach thereof was made or committed within the jurisdiction wherever the contract was made.

Originating—

Supreme Court Procedure.~~Originating Summons in Equity.~~ **Equity Procedure.**

9. 10. (1) It shall not be necessary that persons seeking equitable relief shall in all cases apply by way of statement of claim, but rules of Court shall be made specifying in what cases applications may be made by way of originating summons in chambers, and providing for the course of procedure thereon. Equitable relief may be given on originating summons.

(2) Appeals from any order made on an originating summons shall be made to the Full Court direct.

10. 11. It shall not be obligatory on the Court or a Judge sitting in equity to make a decree or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person if the questions between the parties can be properly determined without such decree or order. Equity Court to have discretion to refuse an administration decree.

Rules of Court.

15. ~~11.~~ 12. The rules and form in the Schedule to this Act shall regulate the practice and procedure hereunder in all matters to which they relate, except so far as they shall hereafter be altered, added to, or rescinded under the power to make rules herein contained. Rules of Court.

20. ~~12.~~ 13. (1) Rules of Court regulating the practice and procedure under this Act shall be made by the Judges of the Supreme Court, or any three of them, and such rules may rescind, add to, or alter any of the rules or form contained in the Schedule to this Act, and when so made such rules shall have the same force and effect as if they had formed part of the Schedule to this Act. Judges to make rules.

25. (2) So much of this Act as empowers rules to be made hereunder shall come into force immediately on the passing of this Act.

30. (3) All rules of Court made under the powers herein contained shall immediately after the making thereof be laid before both Houses of Parliament if then sitting, or if not within ten days after the next sitting thereof, and if either of the said Houses, by any resolution passed within thirty days after such rules have been so laid before it, resolves that any such rule or any part thereof ought not to continue in force then such rule or part shall immediately cease to be binding. Rules to be laid before Parliament.

35. 14. (1) The Judges of the Court or any three of them may make rules of Court for all or any of the following purposes, that is to say:— Judges to make rules relating to procedure in the Court generally.

40. (a) For the purpose of abridging or enlarging the time fixed by any statute for the taking of any step in any proceeding in the Court.

(b) For the purpose of regulating the manner in which applications to the Court under any statute may be made, and the practice and procedure to be observed upon any such application.

(c)

Supreme Court Procedure.

- 5 (c) For the purpose of preventing the filing of pleas for the object of delay, or of striking out such pleas when so filed, or of putting any party who has filed such a plea upon terms as to his defence in respect of any cause of action as to which the writ of summons might be specially endorsed under the twenty-fourth section of the Common Law Procedure Act, 1899.
- 10 (d) For the purpose of providing how costs shall be awarded upon any application under any statute where such statute makes no provision as to how such costs are to be awarded.
- (e) For the purpose of regulating the sittings of the Court and of the Judges thereof sitting in Chambers, and for the distribution among the Judges of the business of the Court.
- 15 (f) And generally for the purpose of regulating the practice and procedure of the Court.
- (2) Such rules when so made shall, unless and until disallowed, annulled, or altered, regulate all matters to which they extend, notwithstanding the existence at the passing of this Act of any statutory or other provision inconsistent therewith.
- 20 15. Nothing in any rules of Court to be made under this Act shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to juries. Rules not to affect certain matters.
- 25 16. Non-compliance with any of the rules of Court in the Schedule to this Act, or made under the authority of this Act, shall not render any proceeding void unless the Court or a Judge thereof so directs, but such proceedings may be set aside either wholly or in part as irregular, or amended or otherwise dealt with in such manner and upon such terms (if any) as appear to be just. Non-compliance with rules.
- 30 17. All rules of Court made under the powers herein contained shall, immediately after the making thereof, be laid before both Houses of Parliament if then sitting, or if not within ten days of the next sitting thereof; and if either of the said Houses, by any resolution passed within thirty days after such rules have been so laid before it, Rules to be laid before Parliament, who may disallow them.
- 35 resolves that any such rule or any part thereof ought not to continue in force, then such rule or part shall immediately cease to be binding.

Supreme Court Procedure.

SCHEDULE.

RULES OF COURT.

Appeals from decisions of a single Judge.

1. Appeals from the decision of a single Judge upon any question of law to Appeals from Judge
 5 the Full Court shall be made and prosecuted in the same times and manner in all respects on point of law.
 as appeals to the Full Court in the Common Law jurisdiction of the Court from a
 Judge sitting in chambers.

Originating Summons in Equity.

2. The executors or administrators of a deceased person or any of them, and Questions of account
 10 the trustees under any deed or instrument, or any of them, and any person claiming to or administration
 be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law may be made on
 of a deceased person, or as cestui que trust under the trust of any deed or instrument, originating summons.
 or as claiming by assignment or otherwise under any such creditor, or other person as
 aforesaid may take out as of course an originating summons returnable in chambers in
 15 equity for such relief of the nature or kind following as may by the summons be
 specified and as the circumstances of the case may require, that is to say, the determi-
 nation without an administration of the estate or trust, of any of the following questions
 or matters:—

- (a) any question affecting the rights or interests of the person claiming to be
 20 creditor, devisee, legatee, next of kin, or heir-at-law, or cestui que trust;
 (b) the ascertainment of any class of creditors, legatees, devisees, next of kin, or
 others;
 (c) the furnishing of any particular accounts by the executors or administrators or
 25 trustees, and the vouching (when necessary) of such accounts;
 (d) the payment into Court of any money in the hands of the executors or
 administrators or trustees;
 (e) directing the executors or administrators or trustees to do or abstain from
 doing any particular act in their character as such executors or administrators
 30 or trustees;
 (f) the approval of any sale, purchase, compromise, or other transaction;
 (g) the determination of any question arising in the administration of the estate
 or trust.

3. Any of the persons named in the last preceding rule may, in like manner, Administration on
 35 apply for and obtain an order for— originating summons.
 (a) The administration of the personal estate of the deceased;
 (b) the administration of the real estate of the deceased;
 (c) the administration of the trust.

4. The persons to be served with the summons under the last two preceding Parties.
 rules in the first instance shall be the following, that is to say—

- 40 A. Where the summons is taken out by an executor or administrator or trustee—
 (a) for the determination of any question under subsections (a), (e), (f), or (g)
 of rule 2, the persons or one of the persons whose rights or interests are
 sought to be affected;
 45 (b) for the determination of any question under subsection (b) of rule 2 any
 member or alleged member of the class;
 (c) for the determination of any question under subsection (c) of rule 2, any
 person interested in taking such accounts;
 (d) for the determination of any question under subsection (d) of rule 2, any
 50 person interested in such money;
 (e) for relief under subsection (a) of rule 3, the residuary, legatees, or next of
 kin, or some of them;
 (f) for relief under subsection (b) of rule 3, the residuary, devisees, or next of
 kin or some of them;

(g)

Supreme Court Procedure.

- (g) for relief under subsection (c) of rule 3, the cestuis que trust or some of them ;
- (h) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur.
- 5 B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.
5. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons returnable in Chambers in Equity for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case may require, that is to say—delivery of possession by the mortgagor, foreclosure, payment of the mortgage debt and foreclosure, sale, redemption, reconveyance, delivery of possession by the mortgagee. Foreclosure, &c., on originating summons.
- 10
6. The persons to be served with the summons under the last preceding rule shall be such persons as under the existing practice of the Court in Equity would be the proper parties to a suit for the like relief as that specified by the summons. Parties.
- 15
7. A vendor or purchaser of real or leasehold estate, or their representatives respectively, may take out, as of course, an originating summons, returnable in Chambers in Equity, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the Chief Judge in Equity shall make such order upon the application as appears just, and shall order by whom all or any of the costs of and incident to the application shall be borne and paid. Originating summons for decision of question between vendor and purchaser.
- 20
8. The Court in Equity or a Judge in Equity may direct such other persons to be served with an originating summons, as they or he may think fit.
- 25
9. (a) Any person claiming to be interested under a deed, will, or other written instrument, may apply, by originating summons, for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested. Construction of instrument or originating summons.
- 30
- (b) The Court in Equity or a Judge in Equity may direct such persons to be served with the summons, as they or he may think fit.
10. The parties served with an originating summons shall, before they are heard, enter appearances in the office of the Master in Equity, together with an address for service, which shall be not more than one mile from the said office. Appearance to an originating summons.
- 35
11. A defendant shall appear to an originating summons within eight days after service of the summons upon him, inclusive of the day of such service. Service.
12. Applications by way of originating summons shall be supported by such evidence as the Court or Judge may require, and directions may be given, as they or he may think just, for the trial of any question arising thereout. Evidence.
- 40
13. Orders made on originating summons shall be settled, passed, and entered, and remain of record, and shall be enforced in the same manner in all respects as orders of the Court in Equity. Settlement of orders.
14. An originating summons shall be in Form A to these rules altered to meet the circumstances of the case. Form of summons.
- 45
15. So soon as the defendants have appeared to an originating summons, or have made default in so appearing within the time limited, the plaintiff shall take out in the Equity Office an appointment, before the Chief Judge in Equity, for the hearing of the summons, and shall give the defendants who have appeared two clear days' notice of the date of such appointment. Appointment for hearing of summons.
- 50

Supreme Court Procedure.

FORM A.

In the Supreme Court of New South Wales, } No.
in Equity. }

- 5 In the matter of the will of, &c.;
or
In the matter of the estate of, &c.;
or
In the matter of the trusts of, &c.;
10 In the matter of the indenture of mortgage dated, &c.;
or
In the matter of the contract for sale, dated, &c.;
or as the case may be.

Between A.B., plaintiff, and C.D., defendant.

15 Originating Summons.

Let of [residence and description] within eight days
after service of this summons upon him, inclusive of the day of such service, cause an
appearance to be entered for him to this summons which is issued upon the application
of of [residence and description] who claims to be [state the
20 nature of the claim] for the determination of the following questions:—
[State the questions.]

Appearance may be entered in the office of the Master in Equity, Chancery-square,
Sydney.
Dated the day of , one thousand nine hundred and .
25 This summons is taken out by the abovenamed [or by the
solicitor for the abovenamed .]

NOTE.—If the defendant does not enter an appearance within the time and at the place above
mentioned such order will be made and proceedings taken as the Judge may think fit and expedient.

Form A.

In the presence of the undersigned, the following persons have appeared and acknowledged to me that they are the true and lawful owners of the within and described premises, to-wit:

6

In the presence of the undersigned, the following persons have appeared and acknowledged to me that they are the true and lawful owners of the within and described premises, to-wit:

In the presence of the undersigned, the following persons have appeared and acknowledged to me that they are the true and lawful owners of the within and described premises, to-wit:

In the presence of the undersigned, the following persons have appeared and acknowledged to me that they are the true and lawful owners of the within and described premises, to-wit:

10

In the presence of the undersigned, the following persons have appeared and acknowledged to me that they are the true and lawful owners of the within and described premises, to-wit:

In the presence of the undersigned, the following persons have appeared and acknowledged to me that they are the true and lawful owners of the within and described premises, to-wit:

In the presence of the undersigned, the following persons have appeared and acknowledged to me that they are the true and lawful owners of the within and described premises, to-wit:

15

Continued on reverse.

after the expiration of the term of years therein expressed, the premises shall revert to the grantor or his heirs, assigns and assigns forever. And the said parties have acknowledged to me that they are the true and lawful owners of the within and described premises, to-wit:

20

In the presence of the undersigned, the following persons have appeared and acknowledged to me that they are the true and lawful owners of the within and described premises, to-wit:

And the said parties have acknowledged to me that they are the true and lawful owners of the within and described premises, to-wit:

25

In the presence of the undersigned, the following persons have appeared and acknowledged to me that they are the true and lawful owners of the within and described premises, to-wit:

30

None - All the foregoing have appeared and acknowledged to me that they are the true and lawful owners of the within and described premises, to-wit:

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.

Legislative Assembly Chamber,
Sydney, 13 September, 1900, A.M. }

F. W. WEBB,
Clerk of the Legislative Assembly.

New South Wales.



ANNO SEXAGESIMO QUARTO

VICTORIÆ REGINÆ.

Act No. , 1900.

An Act to amend the procedure of the Supreme Court.

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:—

5 **1.** This Act may be cited as the "Supreme Court Procedure Short title.
Act, 1900."

2. In the interpretation of this Act, unless the context other- Interpretation.
wise indicates or requires, the following words shall have the respective
meanings set opposite to them, that is to say:—

10 "The Court" means Supreme Court.

 "Judge" means Judge of the Supreme Court.

 "Action" means action in the Supreme Court.

 "Prescribed" means prescribed by rules of Court.

"Court."

"Judge."

"Action."

"Prescribed."

Supreme Court Procedure.

Trials by Judge without a jury.

3. (1) In any action by consent of both parties the whole or any one or more of the issues of fact in question may be tried, or the amount of any damages or compensation may be assessed by a Judge without a jury. Parties may consent to dispense with a jury.

(2) Notwithstanding such consent a Judge may at any time order that all or any of the issues of fact in an action be tried with a jury if it appears to him to be expedient.

4. Issues of fact settled under the provisions of the Real Property Act, 1900, may by consent of both parties be tried by a Judge without a jury, and a Judge when so sitting shall have all the powers of a jury. Issues under the Real Property Act may be tried by a Judge without a jury.

5. The verdict or finding of any Judge sitting without a jury on the trial or assessment of any issue of fact or amount of damages or compensation pursuant to this Act shall be of the like force and effect in all respects as the verdict or finding of a jury. Finding of Judge to be finding of a jury.

6. In all cases in which the Real Property Act, 1900, directs applications to be made to the Supreme Court, such applications may be made to the Supreme Court in its equitable jurisdiction, as well as to the Supreme Court holden before three Judges. Applications to the Court under the Real Property Act may be made to the Equity Court.

7. (1) In any action, if the Court in Banco is of opinion that the plaintiff should have been nonsuited, or that upon the evidence the plaintiff or the defendant is as a matter of law entitled to a verdict in the action or upon any issue therein, the Court may order a nonsuit or such verdict to be entered. Full Court may order nonsuit or verdict to be entered.

(2) If the Court in Banco orders a new trial of any action, issue, or question which has been tried before a Judge without a jury, it may direct such new trial to be heard before a Judge either with or without a jury.

8. In every action in which the defendant has pleaded by way of set-off or cross-action any debt or demand claimed by him from the plaintiff, such defendant shall be entitled to recover in such action the amount by which such debt or demand is found to exceed the debt or demand proved by the plaintiff, and shall have judgment and execution for the same accordingly. Defendant may have judgment for excess of set-off.

Originating Summons in Equity.

9. (1) It shall not be necessary that persons seeking equitable relief shall in all cases apply by way of statement of claim, but rules of Court shall be made specifying in what cases applications may be made by way of originating summons in chambers, and providing for the course of procedure thereon. Equitable relief may be given on originating summons.

(2) Appeals from any order made on an originating summons shall be made to the Full Court direct.

Supreme Court Procedure.

10. It shall not be obligatory on the Court or a Judge sitting in equity to make a decree or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person if the questions between the parties can be properly determined without such decree or order.

Equity Court to have discretion to refuse an administration decree.

Rules of Court.

11. The rules and form in the Schedule to this Act shall regulate the practice and procedure hereunder in all matters to which they relate, except so far as they shall hereafter be altered, added to, or rescinded under the power to make rules herein contained.

Rules of Court.

12. (1) Rules of Court regulating the practice and procedure under this Act shall be made by the Judges of the Supreme Court, or any three of them, and such rules may rescind, add to, or alter any of the rules or form contained in the Schedule to this Act, and when so made such rules shall have the same force and effect as if they had formed part of the Schedule to this Act.

Judges to make rules.

(2) So much of this Act as empowers rules to be made hereunder shall come into force immediately on the passing of this Act.

(3) All rules of Court made under the powers herein contained shall immediately after the making thereof be laid before both Houses of Parliament if then sitting, or if not within ten days after the next sitting thereof, and if either of the said Houses, by any resolution passed within thirty days after such rules have been so laid before it, resolves that any such rule or any part thereof ought not to continue in force then such rule or part shall immediately cease to be binding.

Rules to be laid before Parliament.

SCHEDULE.

RULES OF COURT.

30 *Appeals from decisions of a single Judge.*

1. Appeals from the decision of a single Judge upon any question of law to the Full Court shall be made and prosecuted in the same times and manner in all respects as appeals to the Full Court in the Common Law jurisdiction of the Court from a Judge sitting in chambers.

Appeals from Judge on point of law.

35 *Originating Summons in Equity.*

2. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law of a deceased person, or as cestui que trust under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor, or other person as aforesaid may take out as of course an originating summons returnable in chambers in equity for such relief of the nature or kind following as may by the summons be specified

Questions of account or administration may be made on originating summons.

Supreme Court Procedure.

specified and as the circumstances of the case may require, that is to say, the determination without an administration of the estate or trust, of any of the following questions or matters:—

- 5 (a) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or cestui que trust;
- (b) the ascertainment of any class of creditors, legatees, devisees, next of kin, or others;
- (c) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts;
- 10 (d) the payment into Court of any money in the hands of the executors or administrators or trustees;
- (e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;
- 15 (f) the approval of any sale, purchase, compromise, or other transaction;
- (g) the determination of any question arising in the administration of the estate or trust.

3. Any of the persons named in the last preceding rule may, in like manner, **Administration on originating summons.** apply for and obtain an order for—

- 20 (a) The administration of the personal estate of the deceased;
- (b) the administration of the real estate of the deceased;
- (c) the administration of the trust.

4. The persons to be served with the summons under the last two preceding **Parties.** rules in the first instance shall be the following, that is to say—

- 25 A. Where the summons is taken out by an executor or administrator or trustee—
 - (a) for the determination of any question under subsections (a), (c), (f), or (g) of rule 2, the persons or one of the persons whose rights or interests are sought to be affected;
 - (b) for the determination of any question under subsection (b) of rule 2 any member or alleged member of the class;
 - 30 (c) for the determination of any question under subsection (c) of rule 2, any person interested in taking such accounts;
 - (d) for the determination of any question under subsection (d) of rule 2, any person interested in such money;
 - 35 (e) for relief under subsection (a) of rule 3, the residuary, legatees, or next of kin, or some of them;
 - (f) for relief under subsection (b) of rule 3, the residuary, devisees, or next of kin or some of them;
 - (g) for relief under subsection (c) of rule 3, the cestuis que trust or some of them;
 - 40 (h) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur.

B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.

- 45 5. Any mortgagee or mortgagor, whether legal or equitable, or any person **Foreclosure, &c., on originating summons.** entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons returnable in Chambers in Equity for such relief of the nature or kind following as may by the summons be specified and as
 - 50 the circumstances of the case may require, that is to say—delivery of possession by the mortgagor, foreclosure, payment of the mortgage debt and foreclosure, sale, redemption, reconveyance, delivery of possession by the mortgagee.

6. The persons to be served with the summons under the last preceding rule **Parties.** shall be such persons as under the existing practice of the Court in Equity would be the proper parties to a suit for the like relief as that specified by the summons.

Supreme Court Procedure.

7. A vendor or purchaser of real or leasehold estate, or their representatives respectively, may take out, as of course, an originating summons, returnable in Chambers in Equity, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the Chief Judge in Equity shall make such order upon the application as appears just, and shall order by whom all or any of the costs of and incident to the application shall be borne and paid. Originating summons for decision of question between vendor and purchaser.
8. The Court in Equity or a Judge in Equity may direct such other persons to be served with an originating summons, as they or he may think fit.
9. (a) Any person claiming to be interested under a deed, will, or other written instrument, may apply, by originating summons, for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested. Construction of instrument or originating summons.
- (b) The Court in Equity or a Judge in Equity may direct such persons to be served with the summons, as they or he may think fit.
10. The parties served with an originating summons shall, before they are heard, enter appearances in the office of the Master in Equity, together with an address for service, which shall be not more than one mile from the said office. Appearance to an originating summons.
11. A defendant shall appear to an originating summons within eight days after service of the summons upon him, inclusive of the day of such service. Service.
12. Applications by way of originating summons shall be supported by such evidence as the Court or Judge may require, and directions may be given, as they or he may think just, for the trial of any question arising thereout. Evidence.
13. Orders made on originating summons shall be settled, passed, and entered, and remain of record, and shall be enforced in the same manner in all respects as orders of the Court in Equity. Settlement of orders.
14. An originating summons shall be in Form A to these rules altered to meet the circumstances of the case. Form of summons.
15. So soon as the defendants have appeared to an originating summons, or have made default in so appearing within the time limited, the plaintiff shall take out in the Equity Office an appointment, before the Chief Judge in Equity, for the hearing of the summons, and shall give the defendants who have appeared two clear days' notice of the date of such appointment. Appointment for hearing of summons.

FORM A.

35 In the Supreme Court of New South Wales, }
in Equity. } No.

In the matter of the will of, &c. ;
or
In the matter of the estate of, &c. ;
40 or
In the matter of the trusts of, &c. ;
or
In the matter of the indenture of mortgage dated, &c. ;
or
45 In the matter of the contract for sale, dated, &c. ;
or as the case may be.

Between A.B., plaintiff, and C.D., defendant.

B

Originating

Supreme Court Procedure.

Originating Summons.

Let of [residence and description] within eight days after service of this summons upon him, inclusive of the day of such service, cause an appearance to be entered for him to this summons which is issued upon the application of of [residence and description] who claims to be [state the nature of the claim] for the determination of the following questions:--

[State the questions.]

Appearance may be entered in the office of the Master in Equity, Chancery-square, Sydney.
10 Dated the day of , one thousand nine hundred and .
This summons is taken out by the abovenamed [or by the solicitor for the abovenamed .]

NOTE.—If the defendant does not enter an appearance within the time and at the place above mentioned such order will be made and proceedings taken as the Judge may think fit and expedient.

Sydney : William Applegate Gullick, Government Printer.—1900.

[6d.]