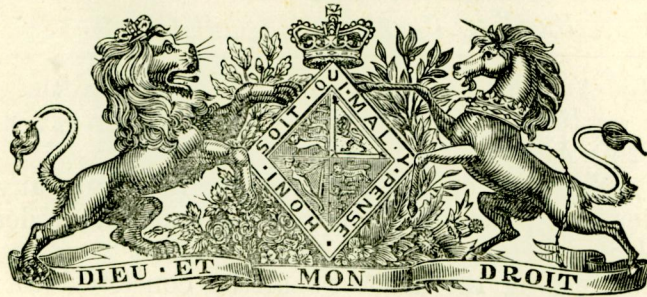


# New South Wales.



ANNO SEXAGESIMO QUARTO.

## VICTORIÆ REGINÆ.

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Act No. 35, 1900,\* as amended by Act No. 27,  
1906.†

An Act to consolidate certain enactments relating to the  
Supreme Court and Circuit Courts.

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. This Act may be cited as the "Supreme Court and Circuit Courts Act, 1900," and is divided into Parts, as follows:—

Short title and  
division.

PART I.—*Preliminary*—ss. 1–3.

PART II.—*The Judges*—ss. 4–15.

PART III.—*Jurisdiction of the Court, and how exercised*—  
ss. 16–21.

PART IV.—*Circuit Courts*—ss. 22–33.

PART V.—*Court Fees*—ss. 34–38.

PART VI.—*Rules*—ss. 39–41.

2. (1) The Acts mentioned in the Schedule to this Act are to  
the extent therein expressed hereby repealed.

Repeal.  
Schedule.

(2) All persons appointed under any enactment hereby  
repealed, and holding office at the time of the passing of this Act, shall  
be deemed to have been appointed hereunder.

Officers under  
repealed Acts.

(3) All commissions issued, and all proclamations, notices,  
rules, orders, and regulations made or given under the authority of  
any enactment hereby repealed, and being in force at the time of the  
passing

Commissions,  
proclamations, rules,  
&c., under repealed  
Acts.

\* Assented to, 19th October, 1900.

† "Judges' Pensions Amendment Act, 1906." Assented to, 12th December, 1906.



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passing of this Act, shall continue in force and have the same effect and validity as if they had been issued, made, or given under the authority of this Act.

Validation of  
proceedings saved.  
55 Vic. No. 3, s. 1.

Jurisdiction of  
Courts and Judges  
saved.

Interpretation.

(4) Nothing herein shall effect the validity of any judgment, decision, order, act, proceeding, or matter rendered or declared valid by any enactment hereby repealed.

(5) Nothing in this Act shall be construed to take away, lessen, or impair any statutory or other jurisdiction, power, authority, right, or privilege of the Court or of any judge, or of any Circuit Court.

3. In this Act, unless the context or subject-matter otherwise indicates or requires,—

“Barrister” means a barrister admitted by the Court, or a barrister of England or Ireland.

“Chief Justice” means Chief Justice of the Court.

“Judge” means Judge of the Court, and includes the Chief Justice.

“The Court” means the Supreme Court of New South Wales.

## PART II.

## THE JUDGES.

*Appointment, qualification, and tenure of office.*

Present Judges to  
retain office.

4. (1) The present Chief Justice and other Judges shall continue to be the Chief Justice and Judges respectively.

(2) The present Chief Judge in Equity, Judge exercising the Matrimonial Causes Jurisdiction of the Court, Judge in Bankruptcy, and Probate Judge shall continue to be the Chief Judge in Equity, the Judge exercising the Matrimonial Causes Jurisdiction of the Court, the Judge in Bankruptcy, and the Probate Judge respectively.

Qualification for  
office of Chief  
Justice.

25 Vic. No. 9, s. 1.

5. The office of Chief Justice may be held by a barrister admitted by the Court in like manner and subject to the like qualifications as to standing at the bar as if he were a barrister of England or Ireland.

Appointment of Chief  
Judge in Equity.

44 Vic. No. 18, s. 1.  
55 Vic. No. 26, s. 4.

Appointment of  
Judge exercising  
Matrimonial Causes  
Jurisdiction.

36 Vic. No. 9, s. 3.

Appointment of  
Probate Judge.

[cf. 1898, No. 13,  
s. 33.]

6. Whenever the office of Chief Judge in Equity becomes vacant, the Governor may appoint one of the Judges to such office.

7. Whenever the office of Judge exercising the Matrimonial Causes Jurisdiction of the Court becomes vacant, the Governor may appoint the Chief Justice, or if he declines such appointment, then one of the other Judges, to such office.

8. Whenever the office of Probate Judge becomes vacant, the Governor may appoint one of the Judges permanently or temporarily to such office.

Appointment of  
Judge in Bankruptcy  
and of Puisne Judges  
generally.

28 Vic. No. 7, s. 1.

45 Vic. No. 1, s. 1.

50 Vic. No. 35, s. 1.

51 Vic. No. 19, s. 128.

9. (1) Whenever—

(a) the office of Judge in Bankruptcy becomes vacant; or

(b) through the office of any other Puisne Judge becoming vacant, the number of Puisne Judges is less than six,

the Governor may, by Commission under the Great Seal, in Her Majesty's name, appoint a fit and proper person to such office.

(2)



*Supreme Court and Circuit Courts.*

(2) Such person shall, from the time of his appointment, be a Judge to all intents and purposes whatsoever, and may, subject to the provisions of this or any other Act, sit as such in any jurisdiction of the Court.

(3) Such person shall be a barrister of not less than five years standing, or, if he be appointed to the office of Judge in Bankruptcy, shall be such barrister or a solicitor of not less than seven years standing: But this subsection shall not apply to a person appointed in succession to any present Judge who has been appointed under the provisions of the Act forty-fifth Victoria number one, or of the Act fiftieth Victoria number thirty-five.

Qualification of such Judges.

25 Vic. No. 9, s. 1.

28 Vic. No. 7, s. 2.

45 Vic. No. 1, s. 1.

50 Vic. No. 35, s. 1.

51 Vic. No. 19, ss.

128, 135.

10. (1) The commission of every Judge shall be, continue, and remain in force during his good behaviour, notwithstanding the demise of Her Majesty, whom may God long preserve.

Tenure of office.

Constitution Act, ss. 38, 39.

28 Vic. No. 7, s. 3.

45 Vic. No. 1, s. 4.

50 Vic. No. 35, s. 4.

51 Vic. No. 19,

s. 128 (3).

(2) Provided that Her Majesty may remove any Judge upon the address of both houses of the legislature.

*Salaries and pensions.*

11. (1) The annual salary of the Chief Justice shall be three thousand five hundred pounds, and the annual salary of every Puisne Judge shall be two thousand six hundred pounds.

Salary.

Constitution Act, s. 40.

(2) Such salary shall be paid to such Chief Justice or Puisne Judge so long as his patent or commission continues and remains in force.

46 Vic. No. 15, s. 1.

50 Vic. No. 35, s. 2.

51 Vic. No. 19,

s. 128 (4).

12. (1) The pension to be paid to a Chief Justice or Puisne Judge appointed before the commencement of the Act number twenty-seven, one thousand nine hundred and six, retiring after fifteen years' service in New South Wales as a Judge, or on permanent disability or infirmity, shall be seven-tenths of his actual salary at the time of such retirement.

Pension.

46 Vic. No. 15,

ss. 2, 3.

50 Vic. No. 35, s. 3.

51 Vic. No. 19,

s. 128 (4).

Amended, Act

No. 27, 1906, s. 2.

(2) Where a Chief Justice or Puisne Judge of the Supreme Court, appointed after the commencement of the Act number twenty-seven, one thousand nine hundred and six, has served in such office for fifteen years, he shall on retiring be entitled to an annual pension at the rate of one-half of his salary.

New subsection,

Act No. 27, 1906, s. 2.

(3) If such Chief Justice or Puisne Judge retires on permanent disability or infirmity, he shall, if he has served in such office for five years, be entitled on retiring to an annual pension at the rate of twenty one-hundredths of his salary, and at the additional rate of three one-hundredths of his salary for each complete year of his service after the expiration of the said five years to the date of his retirement, but so that the rate of his pension shall not exceed one-half of his salary.

New subsection, *ibid.*

(4) Every such pension shall be in every year charged upon and payable out of the Consolidated Revenue Fund.



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*Supreme Court and Circuit Courts.*

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Constitution Act, s.  
51.

(5) If, after the assignment of such pension to a Judge, he accepts any new appointment under the Crown, such pension shall merge or be reduced *pro tanto* during the tenure of such appointment according as the salary or emoluments of such appointment are of a greater or less amount than such pension.

*Acting Judges.*

General power to  
appoint acting  
Judge.  
55 Vic. No. 26, s. 3.

**13.** (1) The Governor may issue a special commission to any Judge of the District Court, or to any barrister or solicitor of not less than seven years' standing, appointing him—

(a) to act as a Judge of the Court for the trial of issues, civil or criminal, at any Circuit Court, or Court of gaol delivery, or at any place or places at which a Judge of the Court could not attend without detriment to the ordinary business of the Court; or

(b) to sit and act as a Judge of the Court at Sydney in any one or more jurisdictions of the Court to be specified in such commission, and for a time not exceeding in any case six months to be specified in like manner.

(2) Thereupon the person so appointed shall, at the place and for the time and subject to the conditions or limitations specified in such commission, have all the power, authorities, privileges, and immunities, and fulfil all the duties of a Judge of the Court.

Acting Judge in  
Bankruptcy.  
51 Vic. No. 19, s. 129.

**14.** (1) Upon leave of absence being granted to the Judge in Bankruptcy, the Governor may appoint an acting Judge in Bankruptcy during such leave of absence.

(2) Thereupon such acting Judge shall have and exercise the same jurisdiction, powers, authorities, and privileges, as the Judge in Bankruptcy.

Acting Judges in  
special jurisdictions.  
36 Vic. No. 9, s. 4.  
44 Vic. No. 18, s. 2.  
48 Vic. No. 3, s. 2.  
50 Vic. No. 36, s. 1.  
51 Vic. No. 19, s. 129.  
54 Vic. No. 25, s. 4.

**15.** Where under any Act any jurisdiction, power, or authority is vested in the Chief Judge in Equity, the Judge exercising the Matrimonial Causes Jurisdiction of the Court, the Judge in Bankruptcy, or the Probate Judge, then—

(a) at the request of such Judge or of the Chief Justice; or

(b) during the illness of such Judge or his absence from Sydney;  
or

(c) for any other reasonable cause,  
any other Judge may exercise such jurisdiction, power, or authority in all respects as such Judge in whom the same is so vested might have done, and shall while so acting have co-ordinate jurisdiction with and all the power and authority of such Judge, subject to the same right of appeal.



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*Supreme Court and Circuit Courts.*

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## PART III.

## JURISDICTION OF THE COURT, AND HOW EXERCISED.

16. Where any Imperial Act in force in England on the first day of March, in the year of our Lord one thousand eight hundred and twenty-nine, and applicable to New South Wales, or any Imperial Act adopted and directed to be applied in New South Wales, authorises and directs any proceeding, act, matter, or thing to be had, done, performed or executed by or before Her Majesty's Courts at Westminster or the respective Judges thereof in the administration of justice, every such proceeding, act, matter, and thing shall be, and the same is hereby authorised and directed to be, had, done, executed, and performed by the Court and the respective Judges thereof in like manner as if the same had been in and by such Imperial Act expressly authorised and directed to be had, done, executed, and performed by the Court or the respective Judges thereof.

Court authorised to perform certain acts required to be performed by courts in England.

6 W. IV. No. 12, s. 1.

17. Subject to the provisions of this Act, or of any other Act in force for the time being, every power, jurisdiction, or authority conferred on or entrusted to or vested in the Court or the Judges collectively may lawfully be exercised by two or more of the Judges.

Two or more Judges may exercise jurisdiction of Court.

4 Vic. No. 22, s. 19.

45 Vic. No. 1, s. 5.

18. (1) No Judge shall sit on the hearing of an appeal from or on a motion to set aside any judgment, order, decree, ruling, or decision made by him in any jurisdiction of the Court.

Constitution of Court on appeals from Judges.

36 Vic. No. 9, s. 49.

45 Vic. No. 1, s. 5.

48 Vic. No. 13, ss. 1, 2, 3.

51 Vic. No. 19, s. 135.

(2) The Court on the hearing of any such appeal or motion shall consist of not less than three Judges.

(3) This section shall not apply to—

- (a) any judgment, order, decree, ruling, or decision pronounced or made *pro forma* by consent of parties; or
- (b) any motion for a rule nisi only; or
- (c) the hearing of an appeal or motion before two Judges only where the parties consent thereto.

19. The Court may be held by one Judge alone for the disposal of—

Court held by one Judge in certain cases.

22 Vic. No. 14, s. 7.

(a) returns of fines and estreated recognisances; and  
(b) applications for and returns to writs of *habeas corpus*, notwithstanding that it may be term time, or that the Court held before two or more Judges may be at the same time sitting in banco.

20. In order to prevent the delay and consequent mischief which might otherwise ensue:—

Powers of single Judge in vacation.

4 Vic. No. 22, s. 27.

- (1) Every Judge shall in vacation have power to make all such orders and grant all such writs as can only under ordinary circumstances be made or granted respectively by the Court:

Provided that no such order or writ shall continue in force after the first day of the next ensuing term unless the Court shall then otherwise direct.

(2)



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And in certain cases  
in term.

4 Vic. No. 22, s. 27.

Court may be held  
in two or more  
divisions.

55 Vic. No. 3, s. 2.

- (2) The like power may be also exercised by any Judge in cases of exigency in term :

Provided that no order made or writ granted as last aforesaid shall continue in force after the then next ensuing sitting day in banco of the Court.

21. (1) Two or more Courts, each consisting of two or more Judges, may during term be held simultaneously in banco.

(2) Subject to the provisions of this Act, each such Court shall have power to exercise the full jurisdiction of the Court hitherto possessed while sitting in banco.

## PART IV.

## CIRCUIT COURTS.

Circuit districts.

5 Vic. No. 4, s. 1.

Proclamation of  
Circuit Courts.

4 Vic. No. 22, s. 16.

Court to be holden  
by a Judge.

4 Vic. No. 22, s. 17.

Officers.

*Ibid.*

Nature of Courts  
defined.

*Ibid.*

5 Vic. No. 4, s. 1.

General powers and  
jurisdiction.

4 Vic. No. 22, s. 17.

Jurisdiction in civil  
actions.

*Ibid.*

5 Vic. No. 4, s. 2.

22. The Governor may by proclamation apportion and divide New South Wales into three or more circuit districts, and ascertain and fix the boundaries and limits of every such district, and alter such boundaries and limits from time to time as occasion may require.

23. The Governor may by proclamation direct Circuit Courts to be holden in or at such towns and places as he thinks fit to appoint, and fix from time to time, and vary or alter, as occasion may require, the times and places for holding the said Courts respectively.

24. Every Circuit Court shall be holden by a Judge.

25. Every Circuit Court shall have such ministerial officers as may be required.

26. Every Circuit Court shall be—

- (a) a court of record; and
- (b) a court of oyer and terminer and of assize and nisi prius for New South Wales; and
- (c) a court of gaol delivery in and for the particular district only within which it is appointed to be holden.

27. Every Circuit Court shall have the same powers and jurisdiction as courts of oyer and terminer, and gaol delivery, and of nisi prius in England had respectively at the time of the passing of the Act fourth Victoria number twenty-two, and shall stand in the same relation to the Court as such courts respectively stood in with respect to Her Majesty's Superior Courts of Record at Westminster at the time of the passing of the said Act.

28. Every Circuit Court may—

- (a) try and determine all issues of fact joined in any action or other proceeding commenced or pending in the Court; and
- (b) inquire into and assess damages in any such action.

29.



*Supreme Court and Circuit Courts.*

29. Every Circuit Court may, upon information exhibited therein—  
 (a) by and in the name of Her Majesty's Attorney or Solicitor General; or

Criminal jurisdiction.  
 4 Vic. No. 22, s. 17.  
 5 Vic. No. 4, s. 10.

(b) in case of their absence from such Court, by and in the name of such other person as the Governor appoints in that behalf, hear and determine all cases of crimes and misdemeanours committed in New South Wales.

30. Every person convicted in any Circuit Court of any crime or offence cognizable therein shall be liable to the same penalties and punishments as by law could be inflicted on such person if convicted in the Court of such crime or offence.

Jurisdiction as to punishment.  
 5 Vic. No. 4, s. 2.

31. Every Circuit Court shall proceed in all cases according to the form and manner observed and established by law in the Court in similar cases.

Procedure.  
 4 Vic. No. 22, s. 17.

32. If in any case the Judge does not arrive at any such circuit town or place in time to open the Circuit Court, or does not actually open such Court on the day for that purpose appointed by any such proclamation as aforesaid, the subsequent holding of such Court shall not for that reason be or be taken to be illegal, but the same may be opened and holden, either by the same Judge or by any other Judge, on any following day:

Delay in opening Circuit Court.  
*Ibid.* s. 18.

Provided that every such Circuit Court shall be actually opened and holden on the day so appointed except in cases of unavoidable accident, and that then such Court shall be opened and holden as soon afterwards as possible.

33. The records of every Circuit Court shall be taken to belong to and shall be kept in the Supreme Court, and the Prothonotary shall have their legal custody:

Custody of records.  
 46 Vic. No. 17, s. 359.

Provided that during the sitting of any Circuit Court the Judge's Associate, or other officer there acting as Clerk of Assize, shall in respect of all proceedings at such sitting have the custody of such records.

PART V.

COURT FEES.

34. (1) The Governor may, by notice in the Gazette, direct that after the day specified in the notice all or any of the fees to be demanded and paid in the Court or in any Circuit Court shall be collected by means of stamps.

Governor may direct fees to be collected by means of stamps.  
 60 Vic. No. 19, s. 3.

(2) After the day so specified, the fees mentioned in the notice shall be received by stamps denoting the sums payable, and not in money.

(3)



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*Supreme Court and Circuit Courts.*

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(3) All or any of the stamps shall be impressed or adhesive as may be directed in the notice.

Document, book, or  
record to be stamped.  
60 Vic. No. 19, s. 4.

**35.** (1) Where any fee mentioned in such notice is payable in respect of a document, the stamps denoting the fee shall be affixed to or impressed upon the document, or such other document, book, or record as may be prescribed by regulations made under the authority of this Act.

(2) Where any fee mentioned in such notice is payable otherwise than in respect of a document, the stamps denoting the fee shall be affixed to or impressed on such document, book, or record as may be prescribed as aforesaid.

(3) The Governor may make regulations prescribing the document, book, or record to be stamped as aforesaid.

Document to be  
stamped before  
being filed.  
*Ibid.* s. 5.

**36.** No judge or officer of any Court shall allow any such document as aforesaid to be filed, received, or used, although no exception be taken thereto, until the document has been first duly stamped. And if the document is through mistake or inadvertence filed, received, or used in any Court without having been first duly stamped, the said Court or a Judge may order that it be duly stamped.

Officers to see that  
stamps are affixed or  
impressed and duly  
cancelled.  
*Ibid.* s. 6.

**37.** Every officer whose duty it is to receive any fees, which under the authority of this Act are required to be collected by means of stamps, shall see that the proper stamps have been affixed to or impressed on the document, book, or record required to be stamped, and that when adhesive stamps are used the same are duly cancelled.

Provisions of Stamp  
Acts to apply.  
*Ibid.*

**38.** The provisions of the Stamp Duties Act, 1893, and of any Act amending the same shall, so far as applicable, extend and apply to and in respect of all stamps required under this Act to be used.

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PART VI.

RULES.

Power to make rules.  
4 Vic. No. 22, s. 23.  
15 Vic. No. 17, s. 1.  
60 Vic. No. 19, s. 2.

**39.** The Judges may make all such general rules and orders as to them seem meet—

- (a) for the regulation of practice and pleadings in the Court in all respects in the several branches of its jurisdiction; and
- (b) for facilitating, or more fully carrying into effect, all or any of the provisions and objects of Part IV of this Act; and
- (c) for fixing the amount of fees and costs to be allowed in respect of all matters at any time pending in the Court to the practitioners therein; and
- (d) for fixing the fees to be demanded and paid in the Court and in the Circuit Courts; and

(e)



*Supreme Court and Circuit Courts.*

(e) for the government and conduct of the officers and ministers of the Court and of the Circuit Courts.

40. Every rule and order so made shall be of the same force and effect as if the same had been inserted in and had formed part of this Act.

Rules to have force of law.  
4 Vic. No. 22, s. 23.

41. Nothing in this part of this Act shall affect the provisions of any Act in force for the time being, by which power to make rules or orders is conferred upon the Court or any Judge.

Power to make rules under other Acts saved.

## SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
6 Wm. IV No. 12	An Act to remove doubts respecting the power of the Supreme Court of New South Wales to do and perform certain acts which are required to be done and performed by His Majesty's Courts in England.	The whole.
4 Vic. No. 22 ...	An Act to provide for the more effectual administration of justice in New South Wales and its dependencies.	Sections 1, 2, 3, 13, 16, 17, 18, 19, 23, 24, 25, and 27.
5 Vic. No. 4 ...	An Act to make further provision for the trial of cases in the Circuit Courts of New South Wales, and to amend in certain respects the Act providing for trial by jury in such Courts.	Sections 1, 2, and 10.
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Sections 1 to 11 inclusive.
15 Vic. No. 17 ...	An Act to repeal so much of the Imperial Act ninth George the Fourth, chapter eighty-three, and the Colonial Act fourth Victoria number twenty-two as vests a power of taxation in the Judges of the Supreme Court.	The whole.
17 Vic. No. 12 ..	An Act to amend the law respecting fees taken by officers of the Supreme Court.	The whole.
	The Constitution Act ... ..	Sections 38, 39, 40, and so much of section 51 as relates to Judges.
22 Vic. No. 14 ...	Equity and Banco Business Expediting Act.	Sections 4, 5, 6, and section 7 except in so far as it relates to cases under the Justices Acts.
25 Vic. No. 9 ...	An Act to amend the law as to the qualification for certain judicial and other offices.	So much as refers to the offices of Chief Justice and of the Puisne Justices.



*Supreme Court and Circuit Courts.*

## SCHEDULE—continued.

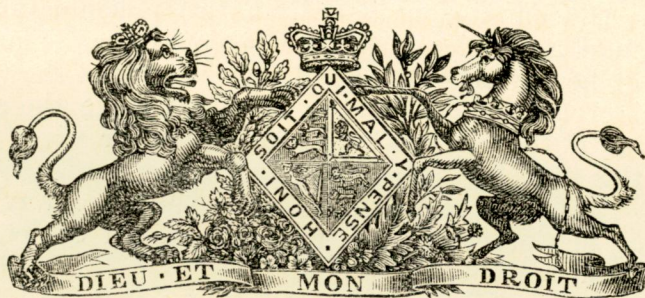
Reference to Act.	Title or short title.	Extent of repeal.
28 Vic. No. 7 ...	An Act to authorise the appointment of an additional Judge of the Supreme Court.	The whole.
36 Vic. No. 9 ...	Matrimonial Causes Act ...	Sections 3 and 4.
44 Vic. No. 18 ...	Equity Act of 1880 ...	So much of section 1 as relates to appointment, and section 2.
45 Vic. No. 1 ...	An Act to authorise the appointment of an additional Judge of the Supreme Court.	The whole.
46 Vic. No. 15 ...	Judges' Salaries and Pensions Act of 1883	The whole.
46 Vic. No. 17 ...	Criminal Law Amendment Act of 1883 ...	Section 359.
46 Vic. No. 19 ...	Retired Judges' Pensions Act of 1883 ...	The whole.
48 Vic. No. 3 ...	Matrimonial Causes Act Amendment Act of 1884.	The unrepealed portion.
48 Vic. No. 13 ...	An Act to regulate appeals to and the Constitution of the Supreme Court sitting in banco.	The whole.
50 Vic. No. 35 ...	Supreme Court (Sixth Judge) Act of 1887	The whole.
50 Vic. No. 36 ...	An Act to enable any Judge of the Supreme Court to hear and determine matters in the Equity, Ecclesiastical, and Divorce jurisdiction of the Court.	The whole.
51 Vic. No. 19 ...	Bankruptcy Act, 1887 ...	The unrepealed portion.
55 Vic. No. 3 ...	Supreme Court Procedure Act of 1891 ...	The whole.
55 Vic. No. 26 ...	Judicial Offices Act of 1892 ...	Section 3.
60 Vic. No. 19 ...	Supreme Court Fees Act, 1896 ...	The whole.

By Authority: WILLIAM APPLEGATE GULLICK, Government Printer, Sydney, 1907.

[9d.]



# New South Wales.



ANNO SEXAGESIMO QUARTO

## VICTORIÆ REGINÆ.

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### Act No. 35, 1900.

An Act to consolidate certain enactments relating to the Supreme Court and Circuit Courts. [Assented to, 19th October, 1900.]

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

#### PART I.

##### PRELIMINARY.

1. This Act may be cited as the "Supreme Court and Circuit Courts Act, 1900," and is divided into Parts, as follows:—

Short title and  
division.

PART I.—*Preliminary*—ss. 1-3.

PART II.—*The Judges*—ss. 4-15.

PART III.—*Jurisdiction of the Court, and how exercised*—  
ss. 16-21.

A

PART



*Supreme Court and Circuit Courts.*PART IV.—*Circuit Courts—ss. 22-33.*PART V.—*Court Fees—ss. 34-38.*PART VI.—*Rules—ss. 39-41.*

Repeal.  
Schedule.

Officers under  
repealed Acts.

Commissions,  
proclamations, rules,  
&c., under repealed  
Acts.

Validation of  
proceedings saved.  
55 Vic. No. 3, s. 1.

Jurisdiction of  
Courts and Judges  
saved.

Interpretation.

2. (1) The Acts mentioned in the Schedule to this Act are to the extent therein expressed hereby repealed.

(2) All persons appointed under any enactment hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed hereunder.

(3) All commissions issued, and all proclamations, notices, rules, orders, and regulations made or given under the authority of any enactment hereby repealed, and being in force at the time of the passing of this Act, shall continue in force and have the same effect and validity as if they had been issued, made, or given under the authority of this Act.

(4) Nothing herein shall affect the validity of any judgment, decision, order, act, proceeding, or matter rendered or declared valid by any enactment hereby repealed.

(5) Nothing in this Act shall be construed to take away, lessen, or impair any statutory or other jurisdiction, power, authority, right, or privilege of the Court or of any Judge, or of any Circuit Court.

3. In this Act, unless the context or subject-matter otherwise indicates or requires:—

“Barrister” means a barrister admitted by the Court, or a barrister of England or Ireland.

“Chief Justice” means Chief Justice of the Court.

“Judge” means Judge of the Court, and includes the Chief Justice.

“The Court” means the Supreme Court of New South Wales.

## PART II.

## THE JUDGES.

*Appointment, qualification, and tenure of office.*

Present Judges to  
retain office.

4. (1) The present Chief Justice and other Judges shall continue be the Chief Justice and Judges respectively.

(2) The present Chief Judge in Equity, Judge exercising the Matrimonial Causes Jurisdiction of the Court, Judge in Bankruptcy, and Probate Judge shall continue to be the Chief Judge in Equity, the Judge exercising the Matrimonial Causes Jurisdiction of the Court, the Judge in Bankruptcy, and the Probate Judge respectively.

Qualification for  
office of Chief  
Justice.

25 Vic. No. 9, s. 1.

5. The office of Chief Justice may be held by a barrister admitted by the Court in like manner and subject to the like qualifications as to standing at the bar as if he were a barrister of England or Ireland.

6.



*Supreme Court and Circuit Courts.*

6. Whenever the office of Chief Judge in Equity becomes vacant, the Governor may appoint one of the Judges to such office.

7. Whenever the office of Judge exercising the Matrimonial Causes Jurisdiction of the Court becomes vacant, the Governor may appoint the Chief Justice, or if he declines such appointment, then one of the other Judges, to such office.

8. Whenever the office of Probate Judge becomes vacant, the Governor may appoint one of the Judges permanently or temporarily to such office.

9. (1) Whenever—

(a) the office of Judge in Bankruptcy becomes vacant; or

(b) through the office of any other Puisne Judge becoming vacant, the number of Puisne Judges is less than six, the Governor may, by Commission under the Great Seal, in Her Majesty's name, appoint a fit and proper person to such office.

(2) Such person shall, from the time of his appointment, be a Judge to all intents and purposes whatsoever, and may, subject to the provisions of this or any other Act, sit as such in any jurisdiction of the Court.

(3) Such person shall be a barrister of not less than five years standing, or, if he be appointed to the office of Judge in Bankruptcy, shall be such barrister or a solicitor of not less than seven years standing: But this subsection shall not apply to a person appointed in succession to any present Judge who has been appointed under the provisions of the Act forty-fifth Victoria number one, or of the Act fiftieth Victoria number thirty-five.

10. (1) The commission of every Judge shall be, continue, and remain in force during his good behaviour, notwithstanding the demise of Her Majesty, whom may God long preserve.

(2) Provided that Her Majesty may remove any Judge upon the address of both houses of the legislature.

*Salaries and pensions.*

11. (1) The annual salary of the Chief Justice shall be three thousand five hundred pounds, and the annual salary of every Puisne Judge shall be two thousand six hundred pounds.

(2) Such salary shall be paid to such Chief Justice or Puisne Judge so long as his patent or commission continues and remains in force.

12. (1) The pension to be paid to a Chief Justice or Puisne Judge retiring after fifteen years' service in New South Wales as a Judge, or on permanent disability or infirmity, shall be seven-tenths of his actual salary at the time of such retirement.

(2) Every such pension shall be in every year charged upon and payable out of the Consolidated Revenue Fund.

Appointment of Chief Judge in Equity.

44 Vic. No. 13, s. 1.

55 Vic. No. 20, s. 4.

Appointment of Judge exercising Matrimonial Causes Jurisdiction.

36 Vic. No. 9, s. 3.

Appointment of Probate Judge.

[cf. 1898, No. 13, s. 33.]

Appointment of Judge in Bankruptcy and of Puisne Judges generally.

28 Vic. No. 7, s. 1.

45 Vic. No. 1, s. 1.

50 Vic. No. 35, s. 1.

51 Vic. No. 19, s. 128.

Qualification of such Judges.

25 Vic. No. 9, s. 1.

28 Vic. No. 7, s. 2.

45 Vic. No. 1, s. 1.

50 Vic. No. 35, s. 1.

51 Vic. No. 19, ss. 128, 135.

Tenure of office.

Constitution Act, ss. 38, 39.

28 Vic. No. 7, s. 3.

45 Vic. No. 1, s. 4.

50 Vic. No. 35, s. 4.

51 Vic. No. 19, s. 128 (3).

Salary.

Constitution Act, s. 40.

46 Vic. No. 15, s. 1.

50 Vic. No. 35, s. 2.

51 Vic. No. 19, s. 128 (4).

Pension.

46 Vic. No. 15, ss. 2, 3.

50 Vic. No. 35, s. 3.

51 Vic. No. 19, s. 128 (4).

(3)



*Supreme Court and Circuit Courts.*

Constitution Act, s.  
51.

(3) If, after the assignment of such pension to a Judge, he accepts any new appointment under the Crown, such pension shall merge or be reduced *pro tanto* during the tenure of such appointment according as the salary or emoluments of such appointment are of a greater or less amount than such pension.

*Acting Judges.*

General power to  
appoint acting  
Judge.  
55 Vic. No. 26, s. 3.

**13.** (1) The Governor may issue a special commission to any Judge of the District Court, or to any barrister or solicitor of not less than seven years' standing, appointing him—

(a) to act as a Judge of the Court for the trial of issues, civil or criminal, at any Circuit Court, or Court of gaol delivery, or at any place or places at which a Judge of the Court could not attend without detriment to the ordinary business of the Court; or

(b) to sit and act as a Judge of the Court at Sydney in any one or more jurisdictions of the Court to be specified in such commission, and for a time not exceeding in any case six months to be specified in like manner.

(2) Thereupon the person so appointed shall, at the place and for the time and subject to the conditions or limitations specified in such commission, have all the power, authorities, privileges, and immunities, and fulfil all the duties of a Judge of the Court.

Acting Judge in  
Bankruptcy.  
51 Vic. No. 19, s. 129.

**14.** (1) Upon leave of absence being granted to the Judge in Bankruptcy, the Governor may appoint an acting Judge in Bankruptcy during such leave of absence.

(2) Thereupon such acting Judge shall have and exercise the same jurisdiction, powers, authorities, and privileges, as the Judge in Bankruptcy.

Acting Judges in  
special jurisdictions.  
36 Vic. No. 9, s. 4.  
44 Vic. No. 18, s. 2.  
48 Vic. No. 3, s. 2.  
50 Vic. No. 36, s. 1.  
51 Vic. No. 19, s. 129.  
54 Vic. No. 25, s. 4.

**15.** Where under any Act any jurisdiction, power, or authority is vested in the Chief Judge in Equity, the Judge exercising the Matrimonial Causes Jurisdiction of the Court, the Judge in Bankruptcy, or the Probate Judge, then—

(a) at the request of such Judge or of the Chief Justice; or

(b) during the illness of such Judge or his absence from Sydney;

or

(c) for any other reasonable cause,  
any other Judge may exercise such jurisdiction, power, or authority in all respects as such Judge in whom the same is so vested might have done, and shall while so acting have co-ordinate jurisdiction with and all the power and authority of such Judge, subject to the same right of appeal.



*Supreme Court and Circuit Courts.*

## PART III.

## JURISDICTION OF THE COURT, AND HOW EXERCISED.

16. Where any Imperial Act in force in England on the first day of March, in the year of our Lord one thousand eight hundred and twenty-nine, and applicable to New South Wales, or any Imperial Act adopted and directed to be applied in New South Wales, authorises and directs any proceeding, act, matter, or thing to be had, done, performed or executed by or before Her Majesty's Courts at Westminster or the respective Judges thereof in the administration of justice, every such proceeding, act, matter, and thing shall be, and the same is hereby authorised and directed to be, had, done, executed, and performed by the Court and the respective Judges thereof in like manner as if the same had been in and by such Imperial Act expressly authorised and directed to be had, done, executed, and performed by the Court or the respective Judges thereof.

Court authorised to perform certain acts required to be performed by courts in England.

6 W. IV. No. 12, s. 1.

17. Subject to the provisions of this Act, or of any other Act in force for the time being, every power, jurisdiction, or authority conferred on or entrusted to or vested in the Court or the Judges collectively may lawfully be exercised by two or more of the Judges.

Two or more Judges may exercise jurisdiction of Court.

4 Vic. No. 22, s. 19.

45 Vic. No. 1, s. 5.

18. (1) No Judge shall sit on the hearing of an appeal from or on a motion to set aside any judgment, order, decree, ruling, or decision made by him in any jurisdiction of the Court.

Constitution of Court on appeals from Judges.

36 Vic. No. 9, s. 49.

45 Vic. No. 1, s. 5.

48 Vic. No. 13, ss. 1, 2, 3.

51 Vic. No. 19, s. 135.

(2) The Court on the hearing of any such appeal or motion shall consist of not less than three Judges.

(3) This section shall not apply to—

- (a) any judgment, order, decree, ruling, or decision pronounced or made *pro formâ* by consent of parties; or
- (b) any motion for a rule nisi only; or
- (c) the hearing of an appeal or motion before two Judges only where the parties consent thereto.

19. The Court may be held by one Judge alone for the disposal of—

Court held by one Judge in certain cases.

22 Vic. No. 14, s. 7.

(a) returns of fines and estreated recognisances; and  
(b) applications for and returns to writs of *habeas corpus*, notwithstanding that it may be term time, or that the Court held before two or more Judges may be at the same time sitting in banco.

20. In order to prevent the delay and consequent mischief which might otherwise ensue:—

Powers of single Judge in vacation.

4 Vic. No. 22, s. 27.

- (1) Every Judge shall in vacation have power to make all such orders and grant all such writs as can only under ordinary circumstances be made or granted respectively by the Court:

Provided that no such order or writ shall continue in force after the first day of the next ensuing term unless the Court shall then otherwise direct.

(2)



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*Supreme Court and Circuit Courts.*


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And in certain cases  
in term.

4 Vic. No. 22, s. 27.

Court may be held  
in two or more  
divisions.

55 Vic. No. 3, s. 2.

- (2) The like power may be also exercised by any Judge in cases of exigency in term :

Provided that no order made or writ granted as last aforesaid shall continue in force after the then next ensuing sitting day in banco of the Court.

21. (1) Two or more Courts, each consisting of two or more Judges, may during term be held simultaneously in banco.

(2) Subject to the provisions of this Act, each such Court shall have power to exercise the full jurisdiction of the Court hitherto possessed while sitting in banco.

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PART IV.

CIRCUIT COURTS.

Circuit districts.

5 Vic. No. 4, s. 1.

22. The Governor may by proclamation apportion and divide New South Wales into three or more circuit districts, and ascertain and fix the boundaries and limits of every such district, and alter such boundaries and limits from time to time as occasion may require.

Proclamation of  
Circuit Courts.

4 Vic. No. 22, s. 16.

23. The Governor may by proclamation direct Circuit Courts to be holden in or at such towns and places as he thinks fit to appoint, and fix from time to time, and vary or alter, as occasion may require, the times and places for holding the said Courts respectively.

Court to be holden  
by a Judge.

4 Vic. No. 22, s. 17.

24. Every Circuit Court shall be holden by a Judge.

Officers.

*Ibid.*

Nature of Courts  
defined.

*Ibid.*

5 Vic. No. 4, s. 1.

25. Every Circuit Court shall have such ministerial officers as may be required.

26. Every Circuit Court shall be—

- (a) a court of record; and
- (b) a court of oyer and terminer and of assize and nisi prius for New South Wales; and
- (c) a court of gaol delivery in and for the particular district only within which it is appointed to be holden.

General powers and  
jurisdiction.

4 Vic. No. 22, s. 17.

27. Every Circuit Court shall have the same powers and jurisdiction as courts of oyer and terminer, and gaol delivery, and of nisi prius in England had respectively at the time of the passing of the Act fourth Victoria number twenty-two, and shall stand in the same relation to the Court as such courts respectively stood in with respect to Her Majesty's Superior Courts of Record at Westminster at the time of the passing of the said Act.

Jurisdiction in civil  
actions.

*Ibid.*

5 Vic. No. 4, s. 2.

28. Every Circuit Court may—

- (a) try and determine all issues of fact joined in any action or other proceeding commenced or pending in the Court; and
- (b) inquire into and assess damages in any such action.



*Supreme Court and Circuit Courts.*

29. Every Circuit Court may, upon information exhibited therein—  
 (a) by and in the name of Her Majesty's Attorney or Solicitor General; or  
 (b) in case of their absence from such Court, by and in the name of such other person as the Governor appoints in that behalf,  
 hear and determine all cases of crimes and misdemeanours committed in New South Wales.

Criminal jurisdiction.  
 4 Vic. No. 22, s. 17.  
 5 Vic. No. 4, s. 10.

30. Every person convicted in any Circuit Court of any crime or offence cognizable therein shall be liable to the same penalties and punishments as by law could be inflicted on such person if convicted in the Court of such crime or offence.

Jurisdiction as to punishment.  
 5 Vic. No. 4, s. 2.

31. Every Circuit Court shall proceed in all cases according to the form and manner observed and established by law in the Court in similar cases.

Procedure.  
 4 Vic. No. 22, s. 17.

32. If in any case the Judge does not arrive at any such circuit town or place in time to open the Circuit Court, or does not actually open such Court on the day for that purpose appointed by any such proclamation as aforesaid, the subsequent holding of such Court shall not for that reason be or be taken to be illegal, but the same may be opened and holden, either by the same Judge or by any other Judge, on any following day :

Delay in opening Circuit Court.  
*Ibid.* s. 18.

Provided that every such Circuit Court shall be actually opened and holden on the day so appointed except in cases of unavoidable accident, and that then such Court shall be opened and holden as soon afterwards as possible.

33. The records of every Circuit Court shall be taken to belong to and shall be kept in the Supreme Court, and the Prothonotary shall have their legal custody :

Custody of records.  
 46 Vic. No. 17, s. 359.

Provided that during the sitting of any Circuit Court the Judge's Associate, or other officer there acting as Clerk of Assize, shall in respect of all proceedings at such sitting have the custody of such records.

PART V.  
 COURT FEES.

34. (1) The Governor may, by notice in the Gazette, direct that after the day specified in the notice all or any of the fees to be demanded and paid in the Court or in any Circuit Court shall be collected by means of stamps.

Governor may direct fees to be collected by means of stamps.  
 60 Vic. No. 19, s. 3.

(2) After the day so specified, the fees mentioned in the notice shall be received by stamps denoting the sums payable, and not in money.

(3)



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*Supreme Court and Circuit Courts.*

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(3) All or any of the stamps shall be impressed or adhesive as may be directed in the notice.

Document, book, or  
record to be stamped.  
60 Vic. No. 19, s. 4.

**35.** (1) Where any fee mentioned in such notice is payable in respect of a document, the stamps denoting the fee shall be affixed to or impressed upon the document, or such other document, book, or record as may be prescribed by regulations made under the authority of this Act.

(2) Where any fee mentioned in such notice is payable otherwise than in respect of a document, the stamps denoting the fee shall be affixed to or impressed on such document, book, or record as may be prescribed as aforesaid.

(3) The Governor may make regulations prescribing the document, book, or record to be stamped as aforesaid.

Document to be  
stamped before  
being filed.  
*Ibid.* s. 5.

**36.** No judge or officer of any Court shall allow any such document as aforesaid to be filed, received, or used, although no exception be taken thereto, until the document has been first duly stamped. And if the document is through mistake or inadvertence filed, received, or used in any Court without having been first duly stamped, the said Court or a Judge may order that it be duly stamped.

Officers to see that  
stamps are affixed or  
impressed and duly  
cancelled.  
*Ibid.* s. 6.

**37.** Every officer whose duty it is to receive any fees, which under the authority of this Act are required to be collected by means of stamps, shall see that the proper stamps have been affixed to or impressed on the document, book, or record required to be stamped, and that when adhesive stamps are used the same are duly cancelled.

Provisions of Stamp  
Acts to apply.  
*Ibid.*

**38.** The provisions of the Stamp Duties Act, 1898, and of any Act amending the same shall, so far as applicable, extend and apply to and in respect of all stamps required under this Act to be used.

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PART VI.

RULES.

Power to make rules.  
4 Vic. No. 22, s. 23.  
15 Vic. No. 17, s. 1.  
60 Vic. No. 19, s. 2.

**39.** The Judges may make all such general rules and orders as to them seem meet—

- (a) for the regulation of practice and pleadings in the Court in all respects in the several branches of its jurisdiction; and
- (b) for facilitating, or more fully carrying into effect, all or any of the provisions and objects of Part IV of this Act; and
- (c) for fixing the amount of fees and costs to be allowed in respect of all matters at any time pending in the Court to the practitioners therein; and
- (d) for fixing the fees to be demanded and paid in the Court and in the Circuit Courts; and

(e)



*Supreme Court and Circuit Courts.*

(e) for the government and conduct of the officers and ministers of the Court and of the Circuit Courts.

40. Every rule and order so made shall be of the same force and effect as if the same had been inserted in and had formed part of this Act. Rules to have force of law.  
4 Vic. No. 22, s. 23.

41. Nothing in this part of this Act shall affect the provisions of any Act in force for the time being, by which power to make rules or orders is conferred upon the Court or any Judge. Power to make rules under other Acts saved.

## SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
6 Wm. IV No. 12	An Act to remove doubts respecting the power of the Supreme Court of New South Wales to do and perform certain acts which are required to be done and performed by His Majesty's Courts in England.	The whole.
4 Vic. No. 22 ...	An Act to provide for the more effectual administration of justice in New South Wales and its dependencies.	Sections 1, 2, 3, 13, 16, 17, 18, 19, 23, 24, 25, and 27.
5 Vic. No. 4 ...	An Act to make further provision for the trial of cases in the Circuit Courts of New South Wales, and to amend in certain respects the Act providing for trial by jury in such Courts.	Sections 1, 2, and 10.
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Sections 1 to 11 inclusive.
15 Vic. No. 17 ...	An Act to repeal so much of the Imperial Act ninth George the Fourth, chapter eighty-three, and the Colonial Act fourth Victoria number twenty-two as vests a power of taxation in the Judges of the Supreme Court.	The whole.
17 Vic. No. 12 ...	An Act to amend the law respecting fees taken by officers of the Supreme Court.	The whole.
	The Constitution Act ... ..	Sections 38, 39, 40, and so much of section 51 as relates to Judges.
22 Vic. No. 14 ...	Equity and Banco Business Expediting Act.	Sections 4, 5, 6, and section 7 except in so far as it relates to cases under the Justices Acts.
25 Vic. No. 9 ...	An Act to amend the law as to the qualification for certain judicial and other offices.	So much as refers to the offices of Chief Justice and of the Puisne Justices.



*Supreme Court and Circuit Courts.*SCHEDULE—*continued.*

Reference to Act.	Title or short title.	Extent of repeal.
28 Vic. No. 7 ...	An Act to authorise the appointment of an additional Judge of the Supreme Court.	The whole.
36 Vic. No. 9 ...	Matrimonial Causes Act ... ..	Sections 3 and 4.
44 Vic. No. 18 ...	Equity Act of 1880 ... ..	So much of section 1 as relates to appointment, and section 2.
45 Vic. No. 1 ...	An Act to authorise the appointment of an additional Judge of the Supreme Court.	The whole.
46 Vic. No. 15 ...	Judges' Salaries and Pensions Act of 1883	The whole.
46 Vic. No. 17 ...	Criminal Law Amendment Act of 1883 ...	Section 359.
46 Vic. No. 19 ...	Retired Judges' Pensions Act of 1883 ...	The whole.
48 Vic. No. 3 ...	Matrimonial Causes Act Amendment Act of 1884.	The unrepealed portion.
48 Vic. No. 13 ...	An Act to regulate appeals to and the Constitution of the Supreme Court sitting in banco.	The whole.
50 Vic. No. 35 ...	Supreme Court (Sixth Judge) Act of 1887	The whole.
50 Vic. No. 36 ...	An Act to enable any Judge of the Supreme Court to hear and determine matters in the Equity, Ecclesiastical, and Divorce jurisdiction of the Court.	The whole.
51 Vic. No. 19 ...	Bankruptcy Act, 1887 ... ..	The unrepealed portion.
55 Vic. No. 3 ...	Supreme Court Procedure Act of 1891 ...	The whole.
55 Vic. No. 26 ...	Judicial Offices Act of 1892 ... ..	Section 3.
60 Vic. No. 19 ...	Supreme Court Fees Act, 1896 ... ..	The whole.

By Authority: WILLIAM APPELATE GULLICK, Government Printer, Sydney, 1900.

[9d.]

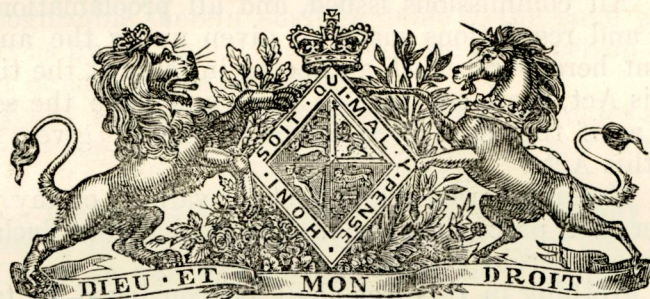


*I Certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Legislative Council Chamber,  
Sydney, 12th September, 1900.* }

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

## New South Wales.



ANNO SEXAGESIMO QUARTO

## VICTORIÆ REGINÆ.

\*\*\*\*\*

### Act No. 35, 1900.

An Act to consolidate certain enactments relating to the Supreme Court and Circuit Courts. [Assented to, 19th October, 1900.]

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

#### PART I.

##### PRELIMINARY.

1. This Act may be cited as the "Supreme Court and Circuit Courts Act, 1900," and is divided into Parts, as follows:—

Short title and  
division.

PART I.—*Preliminary*—ss. 1-3.

PART II.—*The Judges*—ss. 4-15.

PART III.—*Jurisdiction of the Court, and how exercised*—  
ss. 16-21.

PART



*Supreme Court and Circuit Courts.*PART IV.—*Circuit Courts—ss. 22-33.*PART V.—*Court Fees—ss. 34-38.*PART VI.—*Rules—ss. 39-41.*

Repeal.  
Schedule.

Officers under  
repealed Acts.

Commissions,  
proclamations, rules,  
&c., under repealed  
Acts.

Validation of  
proceedings saved.  
55 Vic. No. 3, s. 1.

Jurisdiction of  
Courts and Judges  
saved.

Interpretation.

2. (1) The Acts mentioned in the Schedule to this Act are to the extent therein expressed hereby repealed.

(2) All persons appointed under any enactment hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed hereunder.

(3) All commissions issued, and all proclamations, notices, rules, orders, and regulations made or given under the authority of any enactment hereby repealed, and being in force at the time of the passing of this Act, shall continue in force and have the same effect and validity as if they had been issued, made, or given under the authority of this Act.

(4) Nothing herein shall affect the validity of any judgment, decision, order, act, proceeding, or matter rendered or declared valid by any enactment hereby repealed.

(5) Nothing in this Act shall be construed to take away, lessen, or impair any statutory or other jurisdiction, power, authority, right, or privilege of the Court or of any Judge, or of any Circuit Court.

3. In this Act, unless the context or subject-matter otherwise indicates or requires:—

“Barrister” means a barrister admitted by the Court, or a barrister of England or Ireland.

“Chief Justice” means Chief Justice of the Court.

“Judge” means Judge of the Court, and includes the Chief Justice.

“The Court” means the Supreme Court of New South Wales.

## PART II.

## THE JUDGES.

*Appointment, qualification, and tenure of office.*

Present Judges to  
retain office.

4. (1) The present Chief Justice and other Judges shall continue to be the Chief Justice and Judges respectively.

(2) The present Chief Judge in Equity, Judge exercising the Matrimonial Causes Jurisdiction of the Court, Judge in Bankruptcy, and Probate Judge shall continue to be the Chief Judge in Equity, the Judge exercising the Matrimonial Causes Jurisdiction of the Court, the Judge in Bankruptcy, and the Probate Judge respectively.

Qualification for  
office of Chief  
Justice.  
25 Vic. No. 9, s. 1.

5. The office of Chief Justice may be held by a barrister admitted by the Court in like manner and subject to the like qualifications as to standing at the bar as if he were a barrister of England or Ireland.

6.



*Supreme Court and Circuit Courts.*

6. Whenever the office of Chief Judge in Equity becomes vacant, the Governor may appoint one of the Judges to such office.

7. Whenever the office of Judge exercising the Matrimonial Causes Jurisdiction of the Court becomes vacant, the Governor may appoint the Chief Justice, or if he declines such appointment, then one of the other Judges, to such office.

8. Whenever the office of Probate Judge becomes vacant, the Governor may appoint one of the Judges permanently or temporarily to such office.

9. (1) Whenever—

(a) the office of Judge in Bankruptcy becomes vacant; or

(b) through the office of any other Puisne Judge becoming vacant, the number of Puisne Judges is less than six,

the Governor may, by Commission under the Great Seal, in Her Majesty's name, appoint a fit and proper person to such office.

(2) Such person shall, from the time of his appointment, be a Judge to all intents and purposes whatsoever, and may, subject to the provisions of this or any other Act, sit as such in any jurisdiction of the Court.

(3) Such person shall be a barrister of not less than five years standing, or, if he be appointed to the office of Judge in Bankruptcy, shall be such barrister or a solicitor of not less than seven years standing: But this subsection shall not apply to a person appointed in succession to any present Judge who has been appointed under the provisions of the Act forty-fifth Victoria number one, or of the Act fiftieth Victoria number thirty-five.

10. (1) The commission of every Judge shall be, continue, and remain in force during his good behaviour, notwithstanding the demise of Her Majesty, whom may God long preserve.

(2) Provided that Her Majesty may remove any Judge upon the address of both houses of the legislature.

*Salaries and pensions.*

11. (1) The annual salary of the Chief Justice shall be three thousand five hundred pounds, and the annual salary of every Puisne Judge shall be two thousand six hundred pounds.

(2) Such salary shall be paid to such Chief Justice or Puisne Judge so long as his patent or commission continues and remains in force.

12. (1) The pension to be paid to a Chief Justice or Puisne Judge retiring after fifteen years' service in New South Wales as a Judge, or on permanent disability or infirmity, shall be seven-tenths of his actual salary at the time of such retirement.

(2) Every such pension shall be in every year charged upon and payable out of the Consolidated Revenue Fund.

(3)

Appointment of Chief Judge in Equity.

44 Vic. No. 18, s. 1.

55 Vic. No. 20, s. 4.

Appointment of Judge exercising Matrimonial Causes Jurisdiction.

36 Vic. No. 9, s. 3.

Appointment of Probate Judge.

[cf. 1898, No. 13, s. 33.]

Appointment of Judge in Bankruptcy and of Puisne Judges generally.

28 Vic. No. 7, s. 1.

45 Vic. No. 1, s. 1.

50 Vic. No. 35, s. 1.

51 Vic. No. 19, s. 128.

Qualification of such Judges.

25 Vic. No. 9, s. 1.

28 Vic. No. 7, s. 2.

45 Vic. No. 1, s. 1.

50 Vic. No. 35, s. 1.

51 Vic. No. 19, ss.

128, 135.

Tenure of office.

Constitution Act, ss. 38, 39.

28 Vic. No. 7, s. 3.

45 Vic. No. 1, s. 4.

50 Vic. No. 35, s. 4.

51 Vic. No. 19, s.

128 (3).

Salary.

Constitution Act, s. 40.

46 Vic. No. 15, s. 1.

50 Vic. No. 35, s. 2.

51 Vic. No. 19, s.

128 (4).

Pension.

46 Vic. No. 15, ss.

2, 3.

50 Vic. No. 35, s. 3.

51 Vic. No. 19, s.

128 (4).



*Supreme Court and Circuit Courts.*

Constitution Act, s.  
51.

(3) If, after the assignment of such pension to a Judge, he accepts any new appointment under the Crown, such pension shall merge or be reduced *pro tanto* during the tenure of such appointment according as the salary or emoluments of such appointment are of a greater or less amount than such pension.

*Acting Judges.*

General power to  
appoint acting  
Judge.  
55 Vic. No. 26, s. 3.

13. (1) The Governor may issue a special commission to any Judge of the District Court, or to any barrister or solicitor of not less than seven years' standing, appointing him—

- (a) to act as a Judge of the Court for the trial of issues, civil or criminal, at any Circuit Court, or Court of gaol delivery, or at any place or places at which a Judge of the Court could not attend without detriment to the ordinary business of the Court; or
- (b) to sit and act as a Judge of the Court at Sydney in any one or more jurisdictions of the Court to be specified in such commission, and for a time not exceeding in any case six months to be specified in like manner.

(2) Thereupon the person so appointed shall, at the place and for the time and subject to the conditions or limitations specified in such commission, have all the power, authorities, privileges, and immunities, and fulfil all the duties of a Judge of the Court.

Acting Judge in  
Bankruptcy.  
51 Vic. No. 19, s. 129.

14. (1) Upon leave of absence being granted to the Judge in Bankruptcy, the Governor may appoint an acting Judge in Bankruptcy during such leave of absence.

(2) Thereupon such acting Judge shall have and exercise the same jurisdiction, powers, authorities, and privileges, as the Judge in Bankruptcy.

Acting Judges in  
special jurisdictions.  
36 Vic. No. 9, s. 4.  
44 Vic. No. 18, s. 2.  
48 Vic. No. 3, s. 2.  
50 Vic. No. 36, s. 1.  
51 Vic. No. 19, s. 129.  
54 Vic. No. 25, s. 4.

15. Where under any Act any jurisdiction, power, or authority is vested in the Chief Judge in Equity, the Judge exercising the Matrimonial Causes Jurisdiction of the Court, the Judge in Bankruptcy, or the Probate Judge, then—

- (a) at the request of such Judge or of the Chief Justice; or
  - (b) during the illness of such Judge or his absence from Sydney; or
  - (c) for any other reasonable cause,
- any other Judge may exercise such jurisdiction, power, or authority in all respects as such Judge in whom the same is so vested might have done, and shall while so acting have co-ordinate jurisdiction with and all the power and authority of such Judge, subject to the same right of appeal.



*Supreme Court and Circuit Courts.*

PART III.

JURISDICTION OF THE COURT, AND HOW EXERCISED.

16. Where any Imperial Act in force in England on the first day of March, in the year of our Lord one thousand eight hundred and twenty-nine, and applicable to New South Wales, or any Imperial Act adopted and directed to be applied in New South Wales, authorises and directs any proceeding, act, matter, or thing to be had, done, performed or executed by or before Her Majesty's Courts at Westminster or the respective Judges thereof in the administration of justice, every such proceeding, act, matter, and thing shall be, and the same is hereby authorised and directed to be, had, done, executed, and performed by the Court and the respective Judges thereof in like manner as if the same had been in and by such Imperial Act expressly authorised and directed to be had, done, executed, and performed by the Court or the respective Judges thereof.

Court authorised to perform certain acts required to be performed by courts in England.  
6 W. IV. No. 12, s. 1.

17. Subject to the provisions of this Act, or of any other Act in force for the time being, every power, jurisdiction, or authority conferred on or entrusted to or vested in the Court or the Judges collectively may lawfully be exercised by two or more of the Judges.

Two or more Judges may exercise jurisdiction of Court.  
4 Vic. No. 22, s. 19.  
45 Vic. No. 1, s. 5.

18. (1) No Judge shall sit on the hearing of an appeal from or on a motion to set aside any judgment, order, decree, ruling, or decision made by him in any jurisdiction of the Court.

Constitution of Court on appeals from Judges.  
36 Vic. No. 9, s. 49.  
45 Vic. No. 1, s. 5.  
48 Vic. No. 13, ss. 1, 2, 3.  
51 Vic. No. 19, s. 135.

(2) The Court on the hearing of any such appeal or motion shall consist of not less than three Judges.

(3) This section shall not apply to—

- (a) any judgment, order, decree, ruling, or decision pronounced or made *pro forma* by consent of parties; or
- (b) any motion for a rule nisi only; or
- (c) the hearing of an appeal or motion before two Judges only where the parties consent thereto.

19. The Court may be held by one Judge alone for the disposal of—

Court held by one Judge in certain cases.  
22 Vic. No. 14, s. 7.

- (a) returns of fines and estreated recognisances; and
- (b) applications for and returns to writs of *habeas corpus*, notwithstanding that it may be term time, or that the Court held before two or more Judges may be at the same time sitting in banco.

20. In order to prevent the delay and consequent mischief which might otherwise ensue:—

Powers of single Judge in vacation.  
4 Vic. No. 22, s. 27.

- (1) Every Judge shall in vacation have power to make all such orders and grant all such writs as can only under ordinary circumstances be made or granted respectively by the Court:

Provided that no such order or writ shall continue in force after the first day of the next ensuing term unless the Court shall then otherwise direct.

(2)



*Supreme Court and Circuit Courts.*

And in certain cases  
in term.

4 Vic. No. 22, s. 27.

Court may be held  
in two or more  
divisions.

55 Vic. No. 3, s. 2.

- (2) The like power may be also exercised by any Judge in cases of exigency in term :

Provided that no order made or writ granted as last aforesaid shall continue in force after the then next ensuing sitting day in banco of the Court.

21. (1) Two or more Courts, each consisting of two or more Judges, may during term be held simultaneously in banco.

(2) Subject to the provisions of this Act, each such Court shall have power to exercise the full jurisdiction of the Court hitherto possessed while sitting in banco.

## PART IV.

## CIRCUIT COURTS.

Circuit districts.

5 Vic. No. 4, s. 1.

22. The Governor may by proclamation apportion and divide New South Wales into three or more circuit districts, and ascertain and fix the boundaries and limits of every such district, and alter such boundaries and limits from time to time as occasion may require.

Proclamation of  
Circuit Courts.

4 Vic. No. 22, s. 16.

23. The Governor may by proclamation direct Circuit Courts to be holden in or at such towns and places as he thinks fit to appoint, and fix from time to time, and vary or alter, as occasion may require, the times and places for holding the said Courts respectively.

Court to be holden  
by a Judge.

4 Vic. No. 22, s. 17.

24. Every Circuit Court shall be holden by a Judge.

Officers.

*Ibid.*

Nature of Courts  
defined.

*Ibid.*

5 Vic. No. 4, s. 1.

25. Every Circuit Court shall have such ministerial officers as may be required.

26. Every Circuit Court shall be—

- (a) a court of record; and
- (b) a court of oyer and terminer and of assize and nisi prius for New South Wales; and
- (c) a court of gaol delivery in and for the particular district only within which it is appointed to be holden.

General powers and  
jurisdiction.

4 Vic. No. 22, s. 17.

27. Every Circuit Court shall have the same powers and jurisdiction as courts of oyer and terminer, and gaol delivery, and of nisi prius in England had respectively at the time of the passing of the Act fourth Victoria number twenty-two, and shall stand in the same relation to the Court as such courts respectively stood in with respect to Her Majesty's Superior Courts of Record at Westminster at the time of the passing of the said Act.

Jurisdiction in civil  
actions.

*Ibid.*

5 Vic. No. 4, s. 2.

28. Every Circuit Court may—

- (a) try and determine all issues of fact joined in any action or other proceeding commenced or pending in the Court; and
- (b) inquire into and assess damages in any such action.



*Supreme Court and Circuit Courts.*

**29.** Every Circuit Court may, upon information exhibited therein—

(a) by and in the name of Her Majesty's Attorney or Solicitor General; or

(b) in case of their absence from such Court, by and in the name of such other person as the Governor appoints in that behalf,

Criminal jurisdiction.

4 Vic. No. 22, s. 17.

5 Vic. No. 4, s. 10.

hear and determine all cases of crimes and misdemeanours committed in New South Wales.

**30.** Every person convicted in any Circuit Court of any crime or offence cognizable therein shall be liable to the same penalties and punishments as by law could be inflicted on such person if convicted in the Court of such crime or offence.

Jurisdiction as to punishment.

5 Vic. No. 4, s. 2.

**31.** Every Circuit Court shall proceed in all cases according to the form and manner observed and established by law in the Court in similar cases.

Procedure.

4 Vic. No. 22, s. 17.

**32.** If in any case the Judge does not arrive at any such circuit town or place in time to open the Circuit Court, or does not actually open such Court on the day for that purpose appointed by any such proclamation as aforesaid, the subsequent holding of such Court shall not for that reason be or be taken to be illegal, but the same may be opened and holden, either by the same Judge or by any other Judge, on any following day:

Delay in opening Circuit Court.

*Ibid.* s. 18.

Provided that every such Circuit Court shall be actually opened and holden on the day so appointed except in cases of unavoidable accident, and that then such Court shall be opened and holden as soon afterwards as possible.

**33.** The records of every Circuit Court shall be taken to belong to and shall be kept in the Supreme Court, and the Prothonotary shall have their legal custody:

Custody of records.

46 Vic. No. 17, s. 359.

Provided that during the sitting of any Circuit Court the Judge's Associate, or other officer there acting as Clerk of Assize, shall in respect of all proceedings at such sitting have the custody of such records.

## PART V.

## COURT FEES.

**34.** (1) The Governor may, by notice in the Gazette, direct that after the day specified in the notice all or any of the fees to be demanded and paid in the Court or in any Circuit Court shall be collected by means of stamps.

Governor may direct fees to be collected by means of stamps.

60 Vic. No. 19, s. 3.

(2) After the day so specified, the fees mentioned in the notice shall be received by stamps denoting the sums payable, and not in money.

(3)



*Supreme Court and Circuit Courts.*

(3) All or any of the stamps shall be impressed or adhesive as may be directed in the notice.

Document, book, or  
record to be stamped.  
60 Vic. No. 19, s. 4.

**35.** (1) Where any fee mentioned in such notice is payable in respect of a document, the stamps denoting the fee shall be affixed to or impressed upon the document, or such other document, book, or record as may be prescribed by regulations made under the authority of this Act.

(2) Where any fee mentioned in such notice is payable otherwise than in respect of a document, the stamps denoting the fee shall be affixed to or impressed on such document, book, or record as may be prescribed as aforesaid.

(3) The Governor may make regulations prescribing the document, book, or record to be stamped as aforesaid.

Document to be  
stamped before  
being filed.

*Ibid.* s. 5.

**36.** No judge or officer of any Court shall allow any such document as aforesaid to be filed, received, or used, although no exception be taken thereto, until the document has been first duly stamped. And if the document is through mistake or inadvertence filed, received, or used in any Court without having been first duly stamped, the said Court or a Judge may order that it be duly stamped.

Officers to see that  
stamps are affixed or  
impressed and duly  
cancelled.

*Ibid.* s. 6.

**37.** Every officer whose duty it is to receive any fees, which under the authority of this Act are required to be collected by means of stamps, shall see that the proper stamps have been affixed to or impressed on the document, book, or record required to be stamped, and that when adhesive stamps are used the same are duly cancelled.

Provisions of Stamp  
Acts to apply.

*Ibid.*

**38.** The provisions of the Stamp Duties Act, 1893, and of any Act amending the same shall, so far as applicable, extend and apply to and in respect of all stamps required under this Act to be used.

## PART VI.

## RULES.

Power to make rules.

4 Vic. No. 22, s. 23.

15 Vic. No. 17, s. 1.

60 Vic. No. 19, s. 2.

**39.** The Judges may make all such general rules and orders as to them seem meet—

- (a) for the regulation of practice and pleadings in the Court in all respects in the several branches of its jurisdiction; and
- (b) for facilitating, or more fully carrying into effect, all or any of the provisions and objects of Part IV of this Act; and
- (c) for fixing the amount of fees and costs to be allowed in respect of all matters at any time pending in the Court to the practitioners therein; and
- (d) for fixing the fees to be demanded and paid in the Court and in the Circuit Courts; and

(e)



*Supreme Court and Circuit Courts.*

(e) for the government and conduct of the officers and ministers of the Court and of the Circuit Courts.

40. Every rule and order so made shall be of the same force and effect as if the same had been inserted in and had formed part of this Act. Rules to have force of law.  
4 Vic. No. 22, s. 23.

41. Nothing in this part of this Act shall affect the provisions of any Act in force for the time being, by which power to make rules or orders is conferred upon the Court or any Judge. Power to make rules under other Acts saved.

## SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
6 Wm. IV No. 12	An Act to remove doubts respecting the power of the Supreme Court of New South Wales to do and perform certain acts which are required to be done and performed by His Majesty's Courts in England.	The whole.
4 Vic. No. 22 ...	An Act to provide for the more effectual administration of justice in New South Wales and its dependencies.	Sections 1, 2, 3, 13, 16, 17, 18, 19, 23, 24, 25, and 27.
5 Vic. No. 4 ...	An Act to make further provision for the trial of cases in the Circuit Courts of New South Wales, and to amend in certain respects the Act providing for trial by jury in such Courts.	Sections 1, 2, and 10.
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Sections 1 to 11 inclusive.
15 Vic. No. 17 ...	An Act to repeal so much of the Imperial Act ninth George the Fourth, chapter eighty-three, and the Colonial Act fourth Victoria number twenty-two as vests a power of taxation in the Judges of the Supreme Court.	The whole.
17 Vic. No. 12 ...	An Act to amend the law respecting fees taken by officers of the Supreme Court.	The whole.
	The Constitution Act ... ..	Sections 38, 39, 40, and so much of section 51 as relates to Judges.
22 Vic. No. 14 ...	Equity and Banco Business Expediting Act.	Sections 4, 5, 6, and section 7 except in so far as it relates to cases under the Justices Acts.
25 Vic. No. 9 ...	An Act to amend the law as to the qualification for certain judicial and other offices.	So much as refers to the offices of Chief Justice and of the Puisne Justices.



*Supreme Court and Circuit Courts.*

## SCHEDULE—continued.

Reference to Act.	Title or short title.	Extent of repeal.
28 Vic. No. 7 ...	An Act to authorise the appointment of an additional Judge of the Supreme Court.	The whole.
36 Vic. No. 9 ...	Matrimonial Causes Act ... ..	Sections 3 and 4.
44 Vic. No. 18 ...	Equity Act of 1880 ... ..	So much of section 1 as relates to appointment, and section 2.
45 Vic. No. 1 ...	An Act to authorise the appointment of an additional Judge of the Supreme Court.	The whole.
46 Vic. No. 15 ...	Judges' Salaries and Pensions Act of 1883	The whole.
46 Vic. No. 17 ...	Criminal Law Amendment Act of 1883 ...	Section 359.
46 Vic. No. 19 ...	Retired Judges' Pensions Act of 1883 ...	The whole.
48 Vic. No. 3 ...	Matrimonial Causes Act Amendment Act of 1884.	The unrepealed portion.
48 Vic. No. 13 ...	An Act to regulate appeals to and the Constitution of the Supreme Court sitting in banco.	The whole.
50 Vic. No. 35 ...	Supreme Court (Sixth Judge) Act of 1887	The whole.
50 Vic. No. 36 ...	An Act to enable any Judge of the Supreme Court to hear and determine matters in the Equity, Ecclesiastical, and Divorce jurisdiction of the Court.	The whole.
51 Vic. No. 19 ...	Bankruptcy Act, 1887 ... ..	The unrepealed portion
55 Vic. No. 3 ...	Supreme Court Procedure Act of 1891 ...	The whole.
55 Vic. No. 26 ...	Judicial Offices Act of 1892 ... ..	Section 3.
60 Vic. No. 19 ...	Supreme Court Fees Act, 1896 ... ..	The whole.

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

*Government House,  
Sydney, 19th October, 1900.*

BEAUCHAMP,  
Governor.

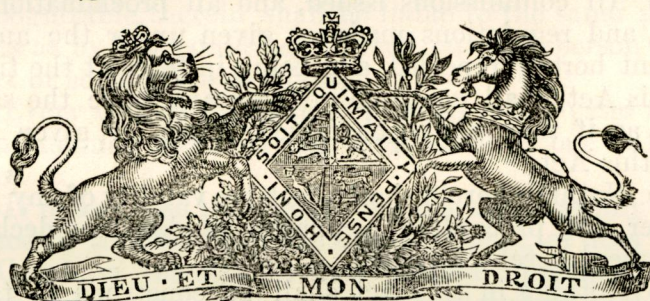


*I Certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Legislative Council Chamber,  
Sydney, 12th September, 1900. }*

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

## New South Wales.



ANNO SEXAGESIMO QUARTO

# VICTORIÆ REGINÆ.

\*\*\*\*\*

Act No. 35, 1900.

An Act to consolidate certain enactments relating to the Supreme Court and Circuit Courts. [Assented to, 19th October, 1900.]

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

### PART I.

#### PRELIMINARY.

1. This Act may be cited as the "Supreme Court and Circuit Courts Act, 1900," and is divided into Parts, as follows:—

PART I.—*Preliminary*—ss. 1–3.

PART II.—*The Judges*—ss. 4–15.

PART III.—*Jurisdiction of the Court, and how exercised*—  
ss. 16–21.

PART



*Supreme Court and Circuit Courts.*PART IV.—*Circuit Courts—ss. 22-33.*PART V.—*Court Fees—ss. 34-38.*PART VI.—*Rules—ss. 39-41.*

Repeal.  
Schedule.

Officers under  
repealed Acts.

Commissions,  
proclamations, rules,  
&c., under repealed  
Acts.

Validation of  
proceedings saved.  
55 Vic. No. 3, s. 1.

Jurisdiction of  
Courts and Judges  
saved.

Interpretation.

2. (1) The Acts mentioned in the Schedule to this Act are to the extent therein expressed hereby repealed.

(2) All persons appointed under any enactment hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed hereunder.

(3) All commissions issued, and all proclamations, notices, rules, orders, and regulations made or given under the authority of any enactment hereby repealed, and being in force at the time of the passing of this Act, shall continue in force and have the same effect and validity as if they had been issued, made, or given under the authority of this Act.

(4) Nothing herein shall affect the validity of any judgment, decision, order, act, proceeding, or matter rendered or declared valid by any enactment hereby repealed.

(5) Nothing in this Act shall be construed to take away, lessen, or impair any statutory or other jurisdiction, power, authority, right, or privilege of the Court or of any Judge, or of any Circuit Court.

3. In this Act, unless the context or subject-matter otherwise indicates or requires:—

“Barrister” means a barrister admitted by the Court, or a barrister of England or Ireland.

“Chief Justice” means Chief Justice of the Court.

“Judge” means Judge of the Court, and includes the Chief Justice.

“The Court” means the Supreme Court of New South Wales.

## PART II.

## THE JUDGES.

*Appointment, qualification, and tenure of office.*

Present Judges to  
retain office.

4. (1) The present Chief Justice and other Judges shall continue to be the Chief Justice and Judges respectively.

(2) The present Chief Judge in Equity, Judge exercising the Matrimonial Causes Jurisdiction of the Court, Judge in Bankruptcy, and Probate Judge shall continue to be the Chief Judge in Equity, the Judge exercising the Matrimonial Causes Jurisdiction of the Court, the Judge in Bankruptcy, and the Probate Judge respectively.

Qualification for  
office of Chief  
Justice.  
25 Vic. No. 9, s. 1.

5. The office of Chief Justice may be held by a barrister admitted by the Court in like manner and subject to the like qualifications as to standing at the bar as if he were a barrister of England or Ireland.



*Supreme Court and Circuit Courts.*

6. Whenever the office of Chief Judge in Equity becomes vacant, the Governor may appoint one of the Judges to such office.

Appointment of Chief Judge in Equity.

44 Vic. No. 18, s. 1.  
55 Vic. No. 26, s. 4.

7. Whenever the office of Judge exercising the Matrimonial Causes Jurisdiction of the Court becomes vacant, the Governor may appoint the Chief Justice, or if he declines such appointment, then one of the other Judges, to such office.

Appointment of Judge exercising Matrimonial Causes Jurisdiction.

36 Vic. No. 9, s. 3.

8. Whenever the office of Probate Judge becomes vacant, the Governor may appoint one of the Judges permanently or temporarily to such office.

Appointment of Probate Judge.

[cf. 1898, No. 13, s. 33.]

9. (1) Whenever—

(a) the office of Judge in Bankruptcy becomes vacant; or

Appointment of Judge in Bankruptcy and of Puisne Judges generally.

(b) through the office of any other Puisne Judge becoming vacant, the number of Puisne Judges is less than six,

28 Vic. No. 7, s. 1.

the Governor may, by Commission under the Great Seal, in Her Majesty's name, appoint a fit and proper person to such office.

45 Vic. No. 1, s. 1.

50 Vic. No. 35, s. 1.

51 Vic. No. 19, s. 128.

(2) Such person shall, from the time of his appointment, be a Judge to all intents and purposes whatsoever, and may, subject to the provisions of this or any other Act, sit as such in any jurisdiction of the Court.

(3) Such person shall be a barrister of not less than five years standing, or, if he be appointed to the office of Judge in Bankruptcy, shall be such barrister or a solicitor of not less than seven years standing: But this subsection shall not apply to a person appointed in succession to any present Judge who has been appointed under the provisions of the Act forty-fifth Victoria number one, or of the Act fiftieth Victoria number thirty-five.

Qualification of such Judges.

25 Vic. No. 9, s. 1.

28 Vic. No. 7, s. 2.

45 Vic. No. 1, s. 1.

50 Vic. No. 35, s. 1.

51 Vic. No. 19, s.

128, 135.

10. (1) The commission of every Judge shall be, continue, and remain in force during his good behaviour, notwithstanding the demise of Her Majesty, whom may God long preserve.

Tenure of office.

Constitution Act, ss. 38, 39.

(2) Provided that Her Majesty may remove any Judge upon the address of both houses of the legislature.

28 Vic. No. 7, s. 3.

45 Vic. No. 1, s. 4.

50 Vic. No. 35, s. 4.

51 Vic. No. 19, s.

128 (3).

*Salaries and pensions.*

11. (1) The annual salary of the Chief Justice shall be three thousand five hundred pounds, and the annual salary of every Puisne Judge shall be two thousand six hundred pounds.

Salary.

Constitution Act, s. 40.

(2) Such salary shall be paid to such Chief Justice or Puisne Judge so long as his patent or commission continues and remains in force.

46 Vic. No. 15, s. 1.

50 Vic. No. 35, s. 2.

51 Vic. No. 19, s.

128 (4).

12. (1) The pension to be paid to a Chief Justice or Puisne Judge retiring after fifteen years' service in New South Wales as a Judge, or on permanent disability or infirmity, shall be seven-tenths of his actual salary at the time of such retirement.

Pension.

46 Vic. No. 15, ss. 2, 3.

50 Vic. No. 35, s. 3.

51 Vic. No. 19, s.

128 (4).

(2) Every such pension shall be in every year charged upon and payable out of the Consolidated Revenue Fund.

(3)



*Supreme Court and Circuit Courts.*

Constitution Act, s.  
51.

(3) If, after the assignment of such pension to a Judge, he accepts any new appointment under the Crown, such pension shall merge or be reduced *pro tanto* during the tenure of such appointment according as the salary or emoluments of such appointment are of a greater or less amount than such pension.

*Acting Judges.*

General power to  
appoint acting  
Judge.  
55 Vic. No. 26, s. 3.

**13.** (1) The Governor may issue a special commission to any Judge of the District Court, or to any barrister or solicitor of not less than seven years' standing, appointing him—

- (a) to act as a Judge of the Court for the trial of issues, civil or criminal, at any Circuit Court, or Court of gaol delivery, or at any place or places at which a Judge of the Court could not attend without detriment to the ordinary business of the Court; or
- (b) to sit and act as a Judge of the Court at Sydney in any one or more jurisdictions of the Court to be specified in such commission, and for a time not exceeding in any case six months to be specified in like manner.

(2) Thereupon the person so appointed shall, at the place and for the time and subject to the conditions or limitations specified in such commission, have all the power, authorities, privileges, and immunities, and fulfil all the duties of a Judge of the Court.

Acting Judge in  
Bankruptcy.  
51 Vic. No. 19, s. 129.

**14.** (1) Upon leave of absence being granted to the Judge in Bankruptcy, the Governor may appoint an acting Judge in Bankruptcy during such leave of absence.

(2) Thereupon such acting Judge shall have and exercise the same jurisdiction, powers, authorities, and privileges, as the Judge in Bankruptcy.

Acting Judges in  
special jurisdictions.  
36 Vic. No. 9, s. 4.  
44 Vic. No. 18, s. 2.  
48 Vic. No. 3, s. 2.  
50 Vic. No. 36, s. 1.  
51 Vic. No. 19, s. 129.  
54 Vic. No. 25, s. 4.

**15.** Where under any Act any jurisdiction, power, or authority is vested in the Chief Judge in Equity, the Judge exercising the Matrimonial Causes Jurisdiction of the Court, the Judge in Bankruptcy, or the Probate Judge, then—

- (a) at the request of such Judge or of the Chief Justice; or
- (b) during the illness of such Judge or his absence from Sydney;

or

(c) for any other reasonable cause,  
any other Judge may exercise such jurisdiction, power, or authority in all respects as such Judge in whom the same is so vested might have done, and shall while so acting have co-ordinate jurisdiction with and all the power and authority of such Judge, subject to the same right of appeal.



*Supreme Court and Circuit Courts.*

## PART III.

## JURISDICTION OF THE COURT, AND HOW EXERCISED.

16. Where any Imperial Act in force in England on the first day of March, in the year of our Lord one thousand eight hundred and twenty-nine, and applicable to New South Wales, or any Imperial Act adopted and directed to be applied in New South Wales, authorises and directs any proceeding, act, matter, or thing to be had, done, performed or executed by or before Her Majesty's Courts at Westminster or the respective Judges thereof in the administration of justice, every such proceeding, act, matter, and thing shall be, and the same is hereby authorised and directed to be, had, done, executed, and performed by the Court and the respective Judges thereof in like manner as if the same had been in and by such Imperial Act expressly authorised and directed to be had, done, executed, and performed by the Court or the respective Judges thereof.

Court authorised to perform certain acts required to be performed by courts in England.  
6 W. IV. No. 12, s. 1.

17. Subject to the provisions of this Act, or of any other Act in force for the time being, every power, jurisdiction, or authority conferred on or entrusted to or vested in the Court or the Judges collectively may lawfully be exercised by two or more of the Judges.

Two or more Judges may exercise jurisdiction of Court.  
4 Vic. No. 22, s. 19.  
45 Vic. No. 1, s. 5.

18. (1) No Judge shall sit on the hearing of an appeal from or on a motion to set aside any judgment, order, decree, ruling, or decision made by him in any jurisdiction of the Court.

Constitution of Court on appeals from Judges.

(2) The Court on the hearing of any such appeal or motion shall consist of not less than three Judges.

36 Vic. No. 9, s. 49.  
45 Vic. No. 1, s. 5.  
48 Vic. No. 13, ss. 1, 2, 3.  
51 Vic. No. 19, s. 135.

(3) This section shall not apply to—

- (a) any judgment, order, decree, ruling, or decision pronounced or made *pro forma* by consent of parties; or
- (b) any motion for a rule nisi only; or
- (c) the hearing of an appeal or motion before two Judges only where the parties consent thereto.

19. The Court may be held by one Judge alone for the disposal of—

Court held by one Judge in certain cases.  
22 Vic. No. 14, s. 7.

- (a) returns of fines and estreated recognisances; and
- (b) applications for and returns to writs of *habeas corpus*, notwithstanding that it may be term time, or that the Court held before two or more Judges may be at the same time sitting in banco.

20. In order to prevent the delay and consequent mischief which might otherwise ensue:—

Powers of single Judge in vacation.  
4 Vic. No. 22, s. 27.

- (1) Every Judge shall in vacation have power to make all such orders and grant all such writs as can only under ordinary circumstances be made or granted respectively by the Court:

Provided that no such order or writ shall continue in force after the first day of the next ensuing term unless the Court shall then otherwise direct.

(2)



*Supreme Court and Circuit Courts.*

And in certain cases  
in term.

4 Vic. No. 22, s. 27.

Court may be held  
in two or more  
divisions.

55 Vic. No. 3, s. 2.

- (2) The like power may be also exercised by any Judge in cases of exigency in term :

Provided that no order made or writ granted as last aforesaid shall continue in force after the then next ensuing sitting day in banco of the Court.

21. (1) Two or more Courts, each consisting of two or more Judges, may during term be held simultaneously in banco.

(2) Subject to the provisions of this Act, each such Court shall have power to exercise the full jurisdiction of the Court hitherto possessed while sitting in banco.

## PART IV.

## CIRCUIT COURTS.

Circuit districts.

5 Vic. No. 4, s. 1.

22. The Governor may by proclamation apportion and divide New South Wales into three or more circuit districts, and ascertain and fix the boundaries and limits of every such district, and alter such boundaries and limits from time to time as occasion may require.

Proclamation of  
Circuit Courts.

4 Vic. No. 22, s. 16.

23. The Governor may by proclamation direct Circuit Courts to be holden in or at such towns and places as he thinks fit to appoint, and fix from time to time, and vary or alter, as occasion may require, the times and places for holding the said Courts respectively.

Court to be holden  
by a Judge.

4 Vic. No. 22, s. 17.

24. Every Circuit Court shall be holden by a Judge.

Officers.

*Ibid.*

Nature of Courts  
defined.

*Ibid.*

5 Vic. No. 4, s. 1.

25. Every Circuit Court shall have such ministerial officers as may be required.

26. Every Circuit Court shall be—

- (a) a court of record ; and
- (b) a court of oyer and terminer and of assize and nisi prius for New South Wales ; and
- (c) a court of gaol delivery in and for the particular district only within which it is appointed to be holden.

General powers and  
jurisdiction.

4 Vic. No. 22, s. 17.

27. Every Circuit Court shall have the same powers and jurisdiction as courts of oyer and terminer, and gaol delivery, and of nisi prius in England had respectively at the time of the passing of the Act fourth Victoria number twenty-two, and shall stand in the same relation to the Court as such courts respectively stood in with respect to Her Majesty's Superior Courts of Record at Westminster at the time of the passing of the said Act.

Jurisdiction in civil  
actions.

*Ibid.*

5 Vic. No. 4, s. 2.

28. Every Circuit Court may—

- (a) try and determine all issues of fact joined in any action or other proceeding commenced or pending in the Court ; and
- (b) inquire into and assess damages in any such action.

29.



*Supreme Court and Circuit Courts.*

29. Every Circuit Court may, upon information exhibited therein—

Criminal jurisdiction.  
4 Vic. No. 22, s. 17.  
5 Vic. No. 4, s. 10.

(a) by and in the name of Her Majesty's Attorney or Solicitor General; or

(b) in case of their absence from such Court, by and in the name of such other person as the Governor appoints in that behalf, hear and determine all cases of crimes and misdemeanours committed in New South Wales.

30. Every person convicted in any Circuit Court of any crime or offence cognizable therein shall be liable to the same penalties and punishments as by law could be inflicted on such person if convicted in the Court of such crime or offence.

Jurisdiction as to punishment.  
5 Vic. No. 4, s. 2.

31. Every Circuit Court shall proceed in all cases according to the form and manner observed and established by law in the Court in similar cases.

Procedure.  
4 Vic. No. 22, s. 17.

32. If in any case the Judge does not arrive at any such circuit town or place in time to open the Circuit Court, or does not actually open such Court on the day for that purpose appointed by any such proclamation as aforesaid, the subsequent holding of such Court shall not for that reason be or be taken to be illegal, but the same may be opened and holden, either by the same Judge or by any other Judge, on any following day:

Delay in opening Circuit Court.  
*Ibid.* s. 18.

Provided that every such Circuit Court shall be actually opened and holden on the day so appointed except in cases of unavoidable accident, and that then such Court shall be opened and holden as soon afterwards as possible.

33. The records of every Circuit Court shall be taken to belong to and shall be kept in the Supreme Court, and the Prothonotary shall have their legal custody:

Custody of records.  
46 Vic. No. 17,  
s. 359.

Provided that during the sitting of any Circuit Court the Judge's Associate, or other officer there acting as Clerk of Assize, shall in respect of all proceedings at such sitting have the custody of such records.

PART V.

COURT FEES.

34. (1) The Governor may, by notice in the Gazette, direct that after the day specified in the notice all or any of the fees to be demanded and paid in the Court or in any Circuit Court shall be collected by means of stamps.

Governor may direct fees to be collected by means of stamps.  
60 Vic. No. 19, s. 3.

(2) After the day so specified, the fees mentioned in the notice shall be received by stamps denoting the sums payable, and not in money.

(3)



*Supreme Court and Circuit Courts.*

(3) All or any of the stamps shall be impressed or adhesive as may be directed in the notice.

Document, book, or record to be stamped.  
60 Vic. No. 19, s. 4.

**35.** (1) Where any fee mentioned in such notice is payable in respect of a document, the stamps denoting the fee shall be affixed to or impressed upon the document, or such other document, book, or record as may be prescribed by regulations made under the authority of this Act.

(2) Where any fee mentioned in such notice is payable otherwise than in respect of a document, the stamps denoting the fee shall be affixed to or impressed on such document, book, or record as may be prescribed as aforesaid.

(3) The Governor may make regulations prescribing the document, book, or record to be stamped as aforesaid.

Document to be stamped before being filed.

*Ibid.* s. 5.

**36.** No judge or officer of any Court shall allow any such document as aforesaid to be filed, received, or used, although no exception be taken thereto, until the document has been first duly stamped. And if the document is through mistake or inadvertence filed, received, or used in any Court without having been first duly stamped, the said Court or a Judge may order that it be duly stamped.

Officers to see that stamps are affixed or impressed and duly cancelled.

*Ibid.* s. 6.

**37.** Every officer whose duty it is to receive any fees, which under the authority of this Act are required to be collected by means of stamps, shall see that the proper stamps have been affixed to or impressed on the document, book, or record required to be stamped, and that when adhesive stamps are used the same are duly cancelled.

Provisions of Stamp Acts to apply.

*Ibid.*

**38.** The provisions of the Stamp Duties Act, 1893, and of any Act amending the same shall, so far as applicable, extend and apply to and in respect of all stamps required under this Act to be used.

## PART VI.

## RULES.

Power to make rules.

4 Vic. No. 22, s. 23.

15 Vic. No. 17, s. 1.

60 Vic. No. 19, s. 2.

**39.** The Judges may make all such general rules and orders as to them seem meet—

- (a) for the regulation of practice and pleadings in the Court in all respects in the several branches of its jurisdiction; and
- (b) for facilitating, or more fully carrying into effect, all or any of the provisions and objects of Part IV of this Act; and
- (c) for fixing the amount of fees and costs to be allowed in respect of all matters at any time pending in the Court to the practitioners therein; and
- (d) for fixing the fees to be demanded and paid in the Court and in the Circuit Courts; and

(e)



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(e) for the government and conduct of the officers and ministers of the Court and of the Circuit Courts.

40. Every rule and order so made shall be of the same force and effect as if the same had been inserted in and had formed part of this Act. Rules to have force of law.  
4 Vic. No. 22, s. 23.

41. Nothing in this part of this Act shall affect the provisions of any Act in force for the time being, by which power to make rules or orders is conferred upon the Court or any Judge. Power to make rules under other Acts saved.

## SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
6 Wm. IV No. 12	An Act to remove doubts respecting the power of the Supreme Court of New South Wales to do and perform certain acts which are required to be done and performed by His Majesty's Courts in England.	The whole.
4 Vic. No. 22 ...	An Act to provide for the more effectual administration of justice in New South Wales and its dependencies.	Sections 1, 2, 3, 13, 16, 17, 18, 19, 23, 24, 25, and 27.
5 Vic. No. 4 ...	An Act to make further provision for the trial of cases in the Circuit Courts of New South Wales, and to amend in certain respects the Act providing for trial by jury in such Courts.	Sections 1, 2, and 10.
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Sections 1 to 11 inclusive.
15 Vic. No. 17 ...	An Act to repeal so much of the Imperial Act ninth George the Fourth, chapter eighty-three, and the Colonial Act fourth Victoria number twenty-two as vests a power of taxation in the Judges of the Supreme Court.	The whole.
17 Vic. No. 12 ...	An Act to amend the law respecting fees taken by officers of the Supreme Court. The Constitution Act ... ..	The whole. Sections 38, 39, 40, and so much of section 51 as relates to Judges.
22 Vic. No. 14 ...	Equity and Banco Business Expediting Act.	Sections 4, 5, 6, and section 7 except in so far as it relates to cases under the Justices Acts.
25 Vic. No. 9 ...	An Act to amend the law as to the qualification for certain judicial and other offices.	So much as refers to the offices of Chief Justice and of the Puisne Justices.



*Supreme Court and Circuit Courts.*SCHEDULE—*continued.*

Reference to Act.	Title or short title.	Extent of repeal.
28 Vic. No. 7 ...	An Act to authorise the appointment of an additional Judge of the Supreme Court.	The whole.
36 Vic. No. 9 ...	Matrimonial Causes Act ... ..	Sections 3 and 4.
44 Vic. No. 18 ...	Equity Act of 1880 ... ..	So much of section 1 as relates to appointment, and section 2.
45 Vic. No. 1 ...	An Act to authorise the appointment of an additional Judge of the Supreme Court.	The whole.
46 Vic. No. 15 ...	Judges' Salaries and Pensions Act of 1883	The whole.
46 Vic. No. 17 ...	Criminal Law Amendment Act of 1883 ...	Section 359.
46 Vic. No. 19 ...	Retired Judges' Pensions Act of 1883 ...	The whole.
48 Vic. No. 3 ...	Matrimonial Causes Act Amendment Act of 1884.	The unrepealed portion.
48 Vic. No. 13 ...	An Act to regulate appeals to and the Constitution of the Supreme Court sitting in banco.	The whole.
50 Vic. No. 35 ...	Supreme Court (Sixth Judge) Act of 1887	The whole.
50 Vic. No. 36 ...	An Act to enable any Judge of the Supreme Court to hear and determine matters in the Equity, Ecclesiastical, and Divorce jurisdiction of the Court.	The whole.
51 Vic. No. 19 ...	Bankruptcy Act, 1887 ... ..	The unrepealed portion
55 Vic. No. 3 ...	Supreme Court Procedure Act of 1891 ...	The whole.
55 Vic. No. 26 ...	Judicial Offices Act of 1892 ... ..	Section 3.
60 Vic. No. 19 ...	Supreme Court Fees Act, 1896 ... ..	The whole.

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

*Government House,  
Sydney, 19th October, 1900.*

BEAUCHAMP,  
Governor.



## Memo. and Certificate to accompany the Supreme Court and Circuit Courts Bill.

THIS Bill consolidates the whole or parts of twenty-three Acts.

*Clause 2 (5)* Is inserted for more abundant caution.

*Clause 5.* The provisions as to appointment of the Chief Justice are not consolidated in this Act, because they appear in the Charter of Justice, which, being granted under an Imperial statute, does not come within the Commission.

*Clause 13 (1) (b).* "Sit and act" has put for "sit or act." The provision as to six months has been taken to apply to appointments under (b) only, not under (a).

*Clause 14 (2).* "Judge in Bankruptcy" is used instead of "Court in Bankruptcy." The jurisdiction of the Court in Bankruptcy (which is a phrase not defined in the Bankruptcy Act) is exercised by the Judge in Bankruptcy.

*Clause 15.* This blends the various provisions of the sections mentioned in the margin of the clause. The attached table shows the variations in their wording.

*Clause 17.* This has always been taken to be the meaning of the original sections, and has been acted upon as their meaning.

*Clause 18 (1).* The words "in any jurisdiction of the Court" are added to make the meaning of the section plainer.

*Clause 18 (2).* The original says three judges, but the Court has apparently always interpreted this as meaning at least three judges.

*Clause 18 (3).* The words "or decision," omitted per incuriam, are supplied.

*Clause 20.* The preamble is preserved because its words help to construe the section, and decisions have referred to them.

*Clause 25.* The Public Service Act now regulates the mode of appointing to the public service, and some unnecessary words are here omitted.

*Clause 36.* "Or a Judge" has been inserted in the last line to save reference to the Full Court in a case say at nisi prius.

*Clause 40.* This did not originally apply to rules under (c) and (d) of the previous clause, but the omission would seem to have been accidental. The provision for transmitting rules for Her Majesty's approval or disallowance has been omitted as obsolete.

I certify that, save as aforesaid, this Bill solely consolidates, and in no way alters, adds to, or amends the law as contained in the statutes therein consolidated.

CHAS. G. HEYDON,

Commissioner for the Consolidation of the Statute Law.



<p>1. The first of these is the fact that the Commission has now decided to accept the proposal for a new system of taxation which will result in a substantial increase in the revenue of the State.</p>	<p>2. The second of these is the fact that the Commission has now decided to accept the proposal for a new system of taxation which will result in a substantial increase in the revenue of the State.</p>	<p>3. The third of these is the fact that the Commission has now decided to accept the proposal for a new system of taxation which will result in a substantial increase in the revenue of the State.</p>
<p>4. The fourth of these is the fact that the Commission has now decided to accept the proposal for a new system of taxation which will result in a substantial increase in the revenue of the State.</p>	<p>5. The fifth of these is the fact that the Commission has now decided to accept the proposal for a new system of taxation which will result in a substantial increase in the revenue of the State.</p>	<p>6. The sixth of these is the fact that the Commission has now decided to accept the proposal for a new system of taxation which will result in a substantial increase in the revenue of the State.</p>
<p>7. The seventh of these is the fact that the Commission has now decided to accept the proposal for a new system of taxation which will result in a substantial increase in the revenue of the State.</p>	<p>8. The eighth of these is the fact that the Commission has now decided to accept the proposal for a new system of taxation which will result in a substantial increase in the revenue of the State.</p>	<p>9. The ninth of these is the fact that the Commission has now decided to accept the proposal for a new system of taxation which will result in a substantial increase in the revenue of the State.</p>
<p>10. The tenth of these is the fact that the Commission has now decided to accept the proposal for a new system of taxation which will result in a substantial increase in the revenue of the State.</p>	<p>11. The eleventh of these is the fact that the Commission has now decided to accept the proposal for a new system of taxation which will result in a substantial increase in the revenue of the State.</p>	<p>12. The twelfth of these is the fact that the Commission has now decided to accept the proposal for a new system of taxation which will result in a substantial increase in the revenue of the State.</p>



DIGEST of Sections Consolidated in Clause 15.

36 Vic. No. 9, s. 4, and 48 Vic. No. 3, s. 2.	44 Vic. No. 18, s. 2.	50 Vic. No. 36, s. 1.	51 Vic. No. 19, s. 129.	54 Vic. No. 25, s. 4.
..... During the absence or illness of the Divorce Judge,  or in any case in which he thinks it inexpedient for him to exercise jurisdiction under the Matrimo- nial Causes Acts,  .....	..... During the absence or illness of the Chief Judge in Equity,  .....  .....	..... .....  .....  At the request of the Chief Judge in Equity or the Divorce Judge respectively, or of the Chief Justice,	During vacation, or  during the absence or ill- ness of the Judge in Bankruptcy,  or for any other reason- able cause,  .....	..... During the absence or ill- ness of the Probate Judge,  .....  or at his request,
any Judge nominated by him	any Judge	any Judge	any Judge	any Judge
may sit alone and hear and deter- mine all causes and matters under the Matrimonial Causes Act	may sit alone and determine all proceedings in Equity, and all motions and matters in relation thereto,	may sit alone and hear and deter- mine all causes and matters depending in the Equity or Ecclesiastical, or in the Matri- monial Causes jurisdiction,	may transact bankruptcy business,	may exercise the Probate Jurisdiction of the Court.
in like manner as the Divorce Judge might have done if not so inca- pacitated.	in like manner as the Chief Judge in Equity might have done,	and shall have, while so acting, co-ordinate jurisdiction with, and all the powers of, the Chief Judge in Equity or the Divorce Judge,	and exercise the powers of the Bankruptcy Judge.	.....
.....	but subject to the like appeal.	subject to the same right of appeal as now exists from the decision of such Judge.	.....	.....



# Supreme Court and Circuit Courts Bill

That the Senate and the House of Representatives be and they are authorized to pass and to amend the following bill:

Section 1.

That the Supreme Court of the United States be and they are authorized to pass and to amend the following bill:

That the Supreme Court of the United States be and they are authorized to pass and to amend the following bill:

That the Supreme Court of the United States be and they are authorized to pass and to amend the following bill:

That the Supreme Court of the United States be and they are authorized to pass and to amend the following bill:



# Supreme Court and Circuit Courts Bill.

TABLE showing how the sections of Acts consolidated have been dealt with.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
6 WILLIAM IV, No. 12.		
1	16	
4 VICTORIA No. 22.		
1-3	.....	Practically repealed by 28 Vic. No. 7, s. 5.
4-9	.....	Repealed by 6 Vic. No. 4.
10	.....	To be dealt with in another Bill.
11	.....	Repealed by 6 Vic. No. 4.
12	.....	To be dealt with in another Bill.
13	.....	Obsolete.
14	.....	Repealed by Witnesses Examination Act.
15	.....	Part repealed by Common Law Procedure Act, 1899 ; remainder to be dealt with in another Bill.
16	23	
17	24-29, 31	
18	32	
19	17	
20-21	.....	Repealed by 44 Vic. No. 18.
22	.....	To be dealt with in Equity Bill.
23	39, 40	
24	.....	Obsolete.
25	.....	Obsolete.
26	.....	Repealed by Common Law Procedure Act, 1899.
27	20	
28	.....	Part repealed by Common Law Procedure Act, 1899 ; remainder to be dealt with in another Bill.
5 VICTORIA No. 4.		
1	22, 26	
2	28, 30	
10	29	
5 VICTORIA No. 9.		
1-11	.....	Obsolete.
15 VICTORIA No. 17.		
1	39	
2	.....	Omitted. See Audit Act, 1898, No. 5.
3	.....	Omitted. See Wills, Probate and Administration Act, 1893, s. 154.
17 VICTORIA No. 12.		
1	.....	Omitted. See Audit Act, 1898, No. 5.



Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
CONSTITUTION ACT.		
38	10	
39	10	
40	11	
51	12	
22 VICTORIA No. 14.		
4, 5	.....	Obsolete.
6	.....	Part repealed by Lunacy Act of 1898; remainder obsolete.
7	19	The unrepealed part to be dealt with in Justices' Bill.
25 VICTORIA No. 9.		
1	5, 9	The unrepealed part to be dealt with in Equity Bill.
28 VICTORIA No. 7.		
1	9	
2	9	
3	10	
4	.....	Superseded by 46 Vic. No. 15.
5	.....	Repealing section.
36 VICTORIA No. 9.		
3	7	
4	15	
44 VICTORIA No. 18.		
1	6	
2	15	
45 VICTORIA No. 1.		
1	9	
2, 3	.....	Superseded by 46 Vic. No. 15.
4	10	
5	17, 18	
46 VICTORIA No. 15.		
1	11	
2	12	
3	12	
4	.....	Short title.
46 VICTORIA No. 17.		
359	33	
46 VICTORIA No. 19.		
1, 2	.....	Spent.



Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
		48 VICTORIA No. 3.
2	15	
		48 VICTORIA No. 13.
1-3	18	
		50 VICTORIA No. 35.
1	9	
2	11	
3	12	
4	10	
5	.....	Short title.
		50 VICTORIA No. 36.
1	15	
		51 VICTORIA No. 19.
128	9, 10, 11, 12	The proviso as to the Chief Commissioner is spent.
129	14, 15	
135	9, 18	Partly dealt with in Bankruptcy Act, 1898, s. 138.
		55 VICTORIA No. 3.
1	2	
2	21	
3	.....	Saving clause.
4	.....	Short title.
		55 VICTORIA No. 26.
1	.....	Short title.
2	.....	To be dealt with in Land Bill.
3	13	
4	.....	To be dealt with in Equity Bill.
		60 VICTORIA No. 19.
1	.....	Repealing section.
2	39	
3	34	
4	35	
5	36	
6	37, 38	
7	.....	Short title.



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Legislative Council.

No. , 1900.

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# A BILL

To consolidate certain enactments relating to the Supreme Court and Circuit Courts.

[MR. F. B. SUTTOR ;—23 August, 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:—

## PART I.

### PRELIMINARY.

1. This Act may be cited as the "Supreme Court and Circuit Courts Act, 1900," and is divided into Parts, as follows:—

Short title and  
division.

PART I.—*Preliminary*—ss. 1-3.

PART II.—*The Judges*—ss. 4-15.

PART III.—*Jurisdiction of the Court, and how exercised*—  
ss. 16-21.

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PART



PART IV.—*Circuit Courts*—ss. 22-33.PART V.—*Court Fees*—ss. 34-38.PART VI.—*Rules*—ss. 39-41.

Repeal.  
Schedule.

Officers under  
repealed Acts.

Commissions,  
proclamations, rules,  
&c., under repealed  
Acts.

Validation of  
proceedings saved.  
55 Vic. No. 3, s. 1.

Jurisdiction of  
Courts and Judges  
saved.

Interpretation.

2. (1) The Acts mentioned in the Schedule to this Act are to the extent therein expressed hereby repealed.

(2) All persons appointed under any enactment hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed hereunder.

(3) All commissions issued, and all proclamations, notices, rules, orders, and regulations made or given under the authority of any enactment hereby repealed, and being in force at the time of the passing of this Act, shall continue in force and have the same effect and validity as if they had been issued, made, or given under the authority of this Act.

(4) Nothing herein shall affect the validity of any judgment, decision, order, act, proceeding, or matter rendered or declared valid by any enactment hereby repealed.

(5) Nothing in this Act shall be construed to take away, lessen, or impair any statutory or other jurisdiction, power, authority, right, or privilege of the Court or of any Judge, or of any Circuit Court.

3. In this Act, unless the context or subject-matter otherwise indicates or requires:—

“Barrister” means a barrister admitted by the Court, or a barrister of England or Ireland.

“Chief Justice” means Chief Justice of the Court.

“Judge” means Judge of the Court, and includes the Chief Justice.

“The Court” means the Supreme Court of New South Wales.

## PART II.

## THE JUDGES.

*Appointment, qualification, and tenure of office.*

Present Judges to  
retain office.

4. (1) The present Chief Justice and other Judges shall continue to be the Chief Justice and Judges respectively.

(2) The present Chief Judge in Equity, Judge exercising the Matrimonial Causes Jurisdiction of the Court, Judge in Bankruptcy, and Probate Judge shall continue to be the Chief Judge in Equity, the Judge exercising the Matrimonial Causes Jurisdiction of the Court, the Judge in Bankruptcy, and the Probate Judge respectively.

Qualification for  
office of Chief  
Justice.

25 Vic. No. 9, s. 1.

5. The office of Chief Justice may be held by a barrister admitted by the Court in like manner and subject to the like qualifications as to standing at the bar as if he were a barrister of England or Ireland.

6.



6. Whenever the office of Chief Judge in Equity becomes vacant, the Governor may appoint one of the Judges to such office.

Appointment of Chief Judge in Equity.  
44 Vic. No. 18, s. 1.  
55 Vic. No. 26, s. 4.

7. Whenever the office of Judge exercising the Matrimonial Causes Jurisdiction of the Court becomes vacant, the Governor may appoint the Chief Justice, or if he declines such appointment, then one of the other Judges, to such office.

Appointment of Judge exercising Matrimonial Causes Jurisdiction.  
36 Vic. No. 9, s. 3.

8. Whenever the office of Probate Judge becomes vacant, the Governor may appoint one of the Judges permanently or temporarily to such office.

Appointment of Probate Judge.  
[cf. 1898, No. 13, s. 33.]

9. (1) Whenever—

(a) the office of Judge in Bankruptcy becomes vacant; or

(b) through the office of any other Puisne Judge becoming vacant, the number of Puisne Judges is less than six,

Appointment of Judge in Bankruptcy and of Puisne Judges generally.  
28 Vic. No. 7, s. 1.

the Governor may, by Commission under the Great Seal, in Her Majesty's name, appoint a fit and proper person to such office.

45 Vic. No. 1, s. 1.  
50 Vic. No. 35, s. 1.  
51 Vic. No. 19, s. 128.

(2) Such person shall, from the time of his appointment, be a Judge to all intents and purposes whatsoever, and may, subject to the provisions of this or any other Act, sit as such in any jurisdiction of the Court.

(3) Such person shall be a barrister of not less than five years standing, or, if he be appointed to the office of Judge in Bankruptcy, shall be such barrister or a solicitor of not less than seven years standing: But this subsection shall not apply to a person appointed in succession to any present Judge who has been appointed under the provisions of the Act forty-fifth Victoria number one, or of the Act fiftieth Victoria number thirty-five.

Qualification of such Judges.  
25 Vic. No. 9, s. 1.

28 Vic. No. 7, s. 2.  
45 Vic. No. 1, s. 1.  
50 Vic. No. 35, s. 1.  
51 Vic. No. 19, ss. 128, 135.

10. (1) The commission of every Judge shall be, continue, and remain in force during his good behaviour, notwithstanding the demise of Her Majesty, whom may God long preserve.

Tenure of office.  
Constitution Act, ss. 38, 39.

(2) Provided that Her Majesty may remove any Judge upon the address of both houses of the legislature.

23 Vic. No. 7, s. 3.  
45 Vic. No. 1, s. 4.  
50 Vic. No. 35, s. 4.  
51 Vic. No. 19, s. 128 (3).

*Salaries and pensions.*

11. (1) The annual salary of the Chief Justice shall be three thousand five hundred pounds, and the annual salary of every Puisne Judge shall be two thousand six hundred pounds.

Salary.  
Constitution Act, s. 40.

(2) Such salary shall be paid to such Chief Justice or Puisne Judge so long as his patent or commission continues and remains in force.

46 Vic. No. 15, s. 1.  
50 Vic. No. 35, s. 2.  
51 Vic. No. 19, s. 128 (4).

12. (1) The pension to be paid to a Chief Justice or Puisne Judge retiring after fifteen years' service in New South Wales as a Judge, or on permanent disability or infirmity, shall be seven-tenths of his actual salary at the time of such retirement.

Pension.  
46 Vic. No. 15, ss. 2, 3.  
50 Vic. No. 35, s. 3.

(2) Every such pension shall be in every year charged upon and payable out of the Consolidated Revenue Fund,

51 Vic. No. 19, s. 128 (4).

(3)



Constitution Act, s.  
51.

(3) If, after the assignment of such pension to a Judge, he accepts any new appointment under the Crown, such pension shall merge or be reduced *pro tanto* during the tenure of such appointment according as the salary or emoluments of such appointment are of a greater or less amount than such pension.

### *Acting Judges.*

General power to  
appoint acting  
Judge.

55 Vic. No. 26, s. 3.

13. (1) The Governor may issue a special commission to any Judge of the District Court, or to any barrister or solicitor of not less than seven years' standing, appointing him—

- (a) to act as a Judge of the Court for the trial of issues, civil or criminal, at any Circuit Court, or Court of gaol delivery, or at any place or places at which a Judge of the Court could not attend without detriment to the ordinary business of the Court; or
- (b) to sit and act as a Judge of the Court at Sydney in any one or more jurisdictions of the Court to be specified in such commission, and for a time not exceeding in any case six months to be specified in like manner.

(2) Thereupon the person so appointed shall, at the place and for the time and subject to the conditions or limitations specified in such commission, have all the power, authorities, privileges, and immunities, and fulfil all the duties of a Judge of the Court.

Acting Judge in  
Bankruptcy.

51 Vic. No. 19, s. 129.

14. (1) Upon leave of absence being granted to the Judge in Bankruptcy, the Governor may appoint an acting Judge in Bankruptcy during such leave of absence.

(2) Thereupon such acting Judge shall have and exercise the same jurisdiction, powers, authorities, and privileges, as the Judge in Bankruptcy.

Acting Judges in  
special jurisdictions.

35 Vic. No. 9, s. 4.

44 Vic. No. 18, s. 2.

48 Vic. No. 3, s. 2.

50 Vic. No. 36, s. 1.

51 Vic. No. 19, s. 129.

54 Vic. No. 25, s. 4.

15. Where under any Act any jurisdiction, power, or authority is vested in the Chief Judge in Equity, the Judge exercising the Matrimonial Causes Jurisdiction of the Court, the Judge in Bankruptcy, or the Probate Judge, then—

- (a) at the request of such Judge or of the Chief Justice; or
- (b) during the illness of such Judge or his absence from Sydney;

or

(c) for any other reasonable cause,  
any other Judge may exercise such jurisdiction, power, or authority in all respects as such Judge in whom the same is so vested might have done, and shall while so acting have co-ordinate jurisdiction with and all the power and authority of such Judge, subject to the same right of appeal.



# PART III.

## JURISDICTION OF THE COURT, AND HOW EXERCISED.

16. Where any Imperial Act in force in England on the first day of March, in the year of our Lord one thousand eight hundred and twenty-nine, and applicable to New South Wales, or any Imperial Act adopted and directed to be applied in New South Wales, authorises and directs any proceeding, act, matter, or thing to be had, done, performed or executed by or before Her Majesty's Courts at Westminster or the respective Judges thereof in the administration of justice, every such proceeding, act, matter, and thing shall be, and the same is hereby authorised and directed to be, had, done, executed, and performed by the Court and the respective Judges thereof in like manner as if the same had been in and by such Imperial Act expressly authorised and directed to be had, done, executed, and performed by the Court or the respective Judges thereof.

Court authorised to perform certain acts required to be performed by courts in England.  
6 W. IV. No. 12, s. 1.

17. Subject to the provisions of this Act, or of any other Act in force for the time being, every power, jurisdiction, or authority conferred on or entrusted to or vested in the Court or the Judges collectively may lawfully be exercised by two or more of the Judges.

Two or more Judges may exercise jurisdiction of Court.  
4 Vic. No. 22, s. 19.  
45 Vic. No. 1, s. 5.

18. (1) No Judge shall sit on the hearing of an appeal from or on a motion to set aside any judgment, order, decree, ruling, or decision made by him in any jurisdiction of the Court.

Constitution of Court on appeals from Judges.  
36 Vic. No. 9, s. 49.  
45 Vic. No. 1, s. 5.  
48 Vic. No. 13, ss. 1, 2, 3.  
51 Vic. No. 19, s. 135.

(2) The Court on the hearing of any such appeal or motion shall consist of not less than three Judges.

(3) This section shall not apply to—

- (a) any judgment, order, decree, ruling, or decision pronounced or made *pro forma* by consent of parties; or
- (b) any motion for a rule nisi only; or
- (c) the hearing of an appeal or motion before two Judges only where the parties consent thereto.

19. The Court may be held by one Judge alone for the disposal of—

- (a) returns of fines and estreated recognisances; and
- (b) applications for and returns to writs of *habeas corpus*, notwithstanding that it may be term time, or that the Court held before two or more Judges may be at the same time sitting in banco.

Court held by one Judge in certain cases.  
22 Vic. No. 14, s. 7.

20. In order to prevent the delay and consequent mischief which might otherwise ensue:—

- (1) Every Judge shall in vacation have power to make all such orders and grant all such writs as can only under ordinary circumstances be made or granted respectively by the Court: Provided that no such order or writ shall continue in force after the first day of the next ensuing term unless the Court shall then otherwise direct.

Powers of single Judge in vacation.  
4 Vic. No. 22, s. 27.

(2)



And in certain cases  
in term.

4 Vic. No. 22, s. 27.

Court may be held  
in two or more  
divisions.

55 Vic. No. 3, s. 2.

- (2) The like power may be also exercised by any Judge in cases of exigency in term :

Provided that no order made or writ granted as last aforesaid shall continue in force after the then next ensuing sitting day in banco of the Court.

21. (1) Two or more Courts, each consisting of two or more Judges, may during term be held simultaneously in banco.

(2) Subject to the provisions of this Act, each such Court shall have power to exercise the full jurisdiction of the Court hitherto possessed while sitting in banco.

## PART IV.

### CIRCUIT COURTS.

Circuit districts.

5 Vic. No. 4, s. 1.

22. The Governor may by proclamation apportion and divide New South Wales into three or more circuit districts, and ascertain and fix the boundaries and limits of every such district, and alter such boundaries and limits from time to time as occasion may require.

Proclamation of  
Circuit Courts.

4 Vic. No. 22, s. 16.

23. The Governor may by proclamation direct Circuit Courts to be holden in or at such towns and places as he thinks fit to appoint, and fix from time to time, and vary or alter, as occasion may require, the times and places for holding the said Courts respectively.

Court to be holden  
by a Judge.

4 Vic. No. 22, s. 17.

24. Every Circuit Court shall be holden by a Judge.

Officers.  
*Ibid.*

25. Every Circuit Court shall have such ministerial officers as may be required.

Nature of Courts  
defined.

*Ibid.*

5 Vic. No. 4, s. 1.

26. Every Circuit Court shall be—

- (a) a court of record ; and
- (b) a court of oyer and terminer and of assize and nisi prius for New South Wales ; and
- (c) a court of gaol delivery in and for the particular district only within which it is appointed to be holden.

General powers and  
jurisdiction.

4 Vic. No. 22, s. 17.

27. Every Circuit Court shall have the same powers and jurisdiction as courts of oyer and terminer, and gaol delivery, and of nisi prius in England had respectively at the time of the passing of the Act fourth Victoria number twenty-two, and shall stand in the same relation to the Court as such courts respectively stood in with respect to Her Majesty's Superior Courts of Record at Westminster at the time of the passing of the said Act.

Jurisdiction in civil  
actions.

*Ibid.*

5 Vic. No. 4, s. 2.

28. Every Circuit Court may—

- (a) try and determine all issues of fact joined in any action or other proceeding commenced or pending in the Court ; and
- (b) inquire into and assess damages in any such action.



29. Every Circuit Court may, upon information exhibited therein—

Criminal jurisdiction.

(a) by and in the name of Her Majesty's Attorney or Solicitor General; or

4 Vic. No. 22, s. 17.

5 Vic. No. 4, s. 10.

(b) in case of their absence from such Court, by and in the name of such other person as the Governor appoints in that behalf, hear and determine all cases of crimes and misdemeanours committed in New South Wales.

30. Every person convicted in any Circuit Court of any crime or offence cognizable therein shall be liable to the same penalties and punishments as by law could be inflicted on such person if convicted in the Court of such crime or offence.

Jurisdiction as to punishment.

5 Vic. No. 4, s. 2.

31. Every Circuit Court shall proceed in all cases according to the form and manner observed and established by law in the Court in similar cases.

Procedure.

4 Vic. No. 22, s. 17.

32. If in any case the Judge does not arrive at any such circuit town or place in time to open the Circuit Court, or does not actually open such Court on the day for that purpose appointed by any such proclamation as aforesaid, the subsequent holding of such Court shall not for that reason be or be taken to be illegal, but the same may be opened and holden, either by the same Judge or by any other Judge, on any following day :

Delay in opening Circuit Court.

*Ibid.* s. 18.

Provided that every such Circuit Court shall be actually opened and holden on the day so appointed except in cases of unavoidable accident, and that then such Court shall be opened and holden as soon afterwards as possible.

33. The records of every Circuit Court shall be taken to belong to and shall be kept in the Supreme Court, and the Prothonotary shall have their legal custody :

Custody of records.

46 Vic. No. 17, s. 359.

Provided that during the sitting of any Circuit Court the Judge's Associate, or other officer there acting as Clerk of Assize, shall in respect of all proceedings at such sitting have the custody of such records.

## PART V.

### COURT FEES.

34. (1) The Governor may, by notice in the Gazette, direct that after the day specified in the notice all or any of the fees to be demanded and paid in the Court or in any Circuit Court shall be collected by means of stamps.

Governor may direct

fees to be collected by means of stamps.

60 Vic. No. 19, s. 3.

(2) After the day so specified, the fees mentioned in the notice shall be received by stamps denoting the sums payable, and not in money.

(3)



(3) All or any of the stamps shall be impressed or adhesive as may be directed in the notice.

Document, book, or  
record to be stamped.  
60 Vic. No. 19, s. 4.

35. (1) Where any fee mentioned in such notice is payable in respect of a document, the stamps denoting the fee shall be affixed to or impressed upon the document, or such other document, book, or record as may be prescribed by regulations made under the authority of this Act.

(2) Where any fee mentioned in such notice is payable otherwise than in respect of a document, the stamps denoting the fee shall be affixed to or impressed on such document, book, or record as may be prescribed as aforesaid.

(3) The Governor may make regulations prescribing the document, book, or record to be stamped as aforesaid.

Document to be  
stamped before  
being filed.  
*Ibid.* s. 5.

36. No judge or officer of any Court shall allow any such document as aforesaid to be filed, received, or used, although no exception be taken thereto, until the document has been first duly stamped. And if the document is through mistake or inadvertence filed, received, or used in any Court without having been first duly stamped, the said Court or a Judge may order that it be duly stamped.

Officers to see that  
stamps are affixed or  
impressed and duly  
cancelled.  
*Ibid.* s. 6.

37. Every officer whose duty it is to receive any fees, which under the authority of this Act are required to be collected by means of stamps, shall see that the proper stamps have been affixed to or impressed on the document, book, or record required to be stamped, and that when adhesive stamps are used the same are duly cancelled.

Provisions of Stamp  
Acts to apply.  
*Ibid.*

38. The provisions of the Stamp Duties Act, 1893, and of any Act amending the same shall, so far as applicable, extend and apply to and in respect of all stamps required under this Act to be used.

## PART VI.

### RULES.

Power to make rules.  
4 Vic. No. 22, s. 23.  
15 Vic. No. 17, s. 1.  
60 Vic. No. 19, s. 2.

39. The Judges may make all such general rules and orders as to them seem meet—

- (a) for the regulation of practice and pleadings in the Court in all respects in the several branches of its jurisdiction; and
- (b) for facilitating, or more fully carrying into effect, all or any of the provisions and objects of Part IV of this Act; and
- (c) for fixing the amount of fees and costs to be allowed in respect of all matters at any time pending in the Court to the practitioners therein; and
- (d) for fixing the fees to be demanded and paid in the Court and in the Circuit Courts; and

(e)



(e) for the government and conduct of the officers and ministers of the Court and of the Circuit Courts.

40. Every rule and order so made shall be of the same force and effect as if the same had been inserted in and had formed part of this Act. Rules to have force of law.  
4 Vic. No. 22, s. 23.

41. Nothing in this part of this Act shall affect the provisions of any Act in force for the time being, by which power to make rules or orders is conferred upon the Court or any Judge. Power to make rules under other Acts saved.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
6 Wm. IV No. 12	An Act to remove doubts respecting the power of the Supreme Court of New South Wales to do and perform certain acts which are required to be done and performed by His Majesty's Courts in England.	The whole.
4 Vic. No. 22 ...	An Act to provide for the more effectual administration of justice in New South Wales and its dependencies.	Sections 1, 2, 3, 13, 16, 17, 18, 19, 23, 24, 25, and 27.
5 Vic. No. 4 ...	An Act to make further provision for the trial of cases in the Circuit Courts of New South Wales, and to amend in certain respects the Act providing for trial by jury in such Courts.	Sections 1, 2, and 10.
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Sections 1 to 11 inclusive.
15 Vic. No. 17 ...	An Act to repeal so much of the Imperial Act ninth George the Fourth, chapter eighty-three, and the Colonial Act fourth Victoria number twenty-two as vests a power of taxation in the Judges of the Supreme Court.	The whole.
17 Vic. No. 12 ...	An Act to amend the law respecting fees taken by officers of the Supreme Court.	The whole.
22 Vic. No. 14 ...	The Constitution Act ... .. Equity and Banco Business Expediting Act.	Sections 38, 39, 40, and so much of section 51 as relates to Judges. Sections 4, 5, 6, and section 7 except in so far as it relates to cases under the Justices Acts.
25 Vic. No. 9 ...	An Act to amend the law as to the qualification for certain judicial and other offices.	So much as refers to the offices of Chief Justice and of the Puisne Justices.



*Supreme Court and Circuit Courts.*SCHEDULE—*continued.*

Reference to Act.	Title or short title.	Extent of repeal.
28 Vic. No. 7 ...	An Act to authorise the appointment of an additional Judge of the Supreme Court.	The whole.
36 Vic. No. 9 ...	Matrimonial Causes Act ... ..	Sections 3 and 4.
44 Vic. No. 18 ...	Equity Act of 1880 ... ..	So much of section 1 as relates to appointment, and section 2.
45 Vic. No. 1 ...	An Act to authorise the appointment of an additional Judge of the Supreme Court.	The whole.
46 Vic. No. 15 ...	Judges' Salaries and Pensions Act of 1883	The whole.
46 Vic. No. 17 ...	Criminal Law Amendment Act of 1883 ...	Section 359.
46 Vic. No. 19 ...	Retired Judges' Pensions Act of 1883 ..	The whole.
48 Vic. No. 3 ...	Matrimonial Causes Act Amendment Act of 1884.	The unrepealed portion.
48 Vic. No. 13 ...	An Act to regulate appeals to and the Constitution of the Supreme Court sitting in banco.	The whole.
50 Vic. No. 35 ...	Supreme Court (Sixth Judge) Act of 1887	The whole.
50 Vic. No. 36 ...	An Act to enable any Judge of the Supreme Court to hear and determine matters in the Equity, Ecclesiastical, and Divorce jurisdiction of the Court.	The whole.
51 Vic. No. 19 ...	Bankruptcy Act, 1887 ... ..	The unrepealed portion.
55 Vic. No. 3 ...	Supreme Court Procedure Act of 1891 ...	The whole.
55 Vic. No. 26 ...	Judicial Offices Act of 1892 ... ..	Section 3.
60 Vic. No. 19 ...	Supreme Court Fees Act, 1896 ... ..	The whole.

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

[1s. 3d.]



## Memo. and Certificate to accompany the Supreme Court and Circuit Courts Bill.

THIS Bill consolidates the whole or parts of twenty-three Acts.

*Clause 2 (5)* Is inserted for more abundant caution.

*Clause 5.* The provisions as to appointment of the Chief Justice are not consolidated in this Act, because they appear in the Charter of Justice, which, being granted under an Imperial statute, does not come within the Commission.

*Clause 13 (1) (b).* "Sit and act" has put for "sit or act." The provision as to six months has been taken to apply to appointments under (b) only, not under (a).

*Clause 14 (2).* "Judge in Bankruptcy" is used instead of "Court in Bankruptcy." The jurisdiction of the Court in Bankruptcy (which is a phrase not defined in the Bankruptcy Act) is exercised by the Judge in Bankruptcy.

*Clause 15.* This blends the various provisions of the sections mentioned in the margin of the clause. The attached table shows the variations in their wording.

*Clause 17.* This has always been taken to be the meaning of the original sections, and has been acted upon as their meaning.

*Clause 18 (1).* The words "in any jurisdiction of the Court" are added to make the meaning of the section plainer.

*Clause 18 (2).* The original says three judges, but the Court has apparently always interpreted this as meaning at least three judges.

*Clause 18 (3).* The words "or decision," omitted per incuriam, are supplied.

*Clause 20.* The preamble is preserved because its words help to construe the section, and decisions have referred to them.

*Clause 25.* The Public Service Act now regulates the mode of appointing to the public service, and some unnecessary words are here omitted.

*Clause 36.* "Or a Judge" has been inserted in the last line to save reference to the Full Court in a case say at nisi prius.

*Clause 40.* This did not originally apply to rules under (c) and (d) of the previous clause, but the omission would seem to have been accidental. The provision for transmitting rules for Her Majesty's approval or disallowance has been omitted as obsolete.

I certify that, save as aforesaid, this Bill solely consolidates, and in no way alters, adds to, or amends the law as contained in the statutes therein consolidated.

CHAS. G. HEYDON,

Commissioner for the Consolidation of the Statute Law.







DIGEST of Sections Consolidated in Clause 15.

36 Vic. No. 9, s. 4, and 48 Vic. No. 3, s. 2.	44 Vic. No. 18, s. 2.	50 Vic. No. 36, s. 1.	51 Vic. No. 19, s. 129.	54 Vic. No. 25, s. 4.
..... During the absence or illness of the Divorce Judge,  or in any case in which he thinks it inexpedient for him to exercise jurisdiction under the Matri- monial Causes Acts,  .....	..... During the absence or illness of the Chief Judge in Equity,  .....  .....	..... .....  .....  At the request of the Chief Judge in Equity or the Divorce Judge respectively, or of the Chief Justice,	During vacation, or  during the absence or ill- ness of the Judge in Bankruptcy,  or for any other reason- able cause,  .....	..... During the absence or ill- ness of the Probate Judge,  .....  or at his request,
any Judge nominated by him	any Judge	any Judge	any Judge	any Judge
may sit alone and hear and deter- mine all causes and matters under the Matrimonial Causes Act	may sit alone and determine all proceedings in Equity, and all motions and matters in relation thereto,	may sit alone and hear and deter- mine all causes and matters depending in the Equity or Ecclesiastical, or in the Matri- monial Causes jurisdiction,	may transact bankruptcy business,	may exercise the Probate Jurisdiction of the Court.
in like manner as the Divorce Judge might have done if not so inca- pacitated.	in like manner as the Chief Judge in Equity might have done,	and shall have, while so acting, co-ordinate jurisdiction with, and all the powers of, the Chief Judge in Equity or the Divorce Judge,	and exercise the powers of the Bankruptcy Judge.	.....
.....	but subject to the like appeal.	subject to the same right of appeal as now exists from the decision of such Judge.	.....	.....







# Supreme Court and Circuit Courts Bill.

TABLE showing how the sections of Acts consolidated have been dealt with.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
6 WILLIAM IV, No. 12.		
1	16	
4 VICTORIA No. 22.		
1-3	.....	Practically repealed by 28 Vic. No. 7, s. 5.
4-9	.....	Repealed by 6 Vic. No. 4.
10	.....	To be dealt with in another Bill.
11	.....	Repealed by 6 Vic. No. 4.
12	.....	To be dealt with in another Bill.
13	.....	Obsolete.
14	.....	Repealed by Witnesses Examination Act.
15	.....	Part repealed by Common Law Procedure Act, 1899; remainder to be dealt with in another Bill.
16	23	
17	24-29, 31	
18	32	
19	17	
20-21	.....	Repealed by 44 Vic. No. 18.
22	.....	To be dealt with in Equity Bill.
23	39, 40	
24	.....	Obsolete.
25	.....	Obsolete.
26	.....	Repealed by Common Law Procedure Act, 1899.
27	20	
28	.....	Part repealed by Common Law Procedure Act, 1899; remainder to be dealt with in another Bill.
5 VICTORIA No. 4.		
1	22, 26	
2	28, 30	
10	29	
5 VICTORIA No. 9.		
1-11	.....	Obsolete.
15 VICTORIA No. 17.		
1	39	
2	.....	Omitted. See Audit Act, 1898, No. 5.
3	.....	Omitted. See Wills, Probate and Administration Act, 1898, s. 154.
17 VICTORIA No. 12.		
1	.....	Omitted. See Audit Act, 1898, No. 5.



Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
CONSTITUTION ACT.		
38	10	
39	10	
40	11	
51	12	
22 VICTORIA No. 14.		
4, 5	.....	Obsolete.
6	.....	Part repealed by Lunacy Act of 1898; remainder obsolete.
7	19	The unrepealed part to be dealt with in Justices' Bill.
25 VICTORIA No. 9.		
1	5, 9	The unrepealed part to be dealt with in Equity Bill.
28 VICTORIA No. 7.		
1	9	
2	9	
3	10	
4	.....	Superseded by 46 Vic. No. 15.
5	.....	Repealing section.
36 VICTORIA No. 9.		
3	7	
4	15	
44 VICTORIA No. 18.		
1	6	
2	15	
45 VICTORIA No. 1.		
1	9	
2, 3	.....	Superseded by 46 Vic. No. 15.
4	10	
5	17, 18	
46 VICTORIA No. 15.		
1	11	
2	12	
3	12	
4	.....	Short title.
46 VICTORIA No. 17.		
359	33	
46 VICTORIA No. 19.		
1, 2	.....	Spent.



Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
		48 VICTORIA No. 3.
2	15	
		48 VICTORIA No. 13.
1-3	18	
		50 VICTORIA No. 35.
1	9	
2	11	
3	12	
4	10	
5	.....	Short title.
		50 VICTORIA No. 36.
1	15	
		51 VICTORIA No. 19.
128	9, 10, 11, 12	The proviso as to the Chief Commissioner is spent.
129	14, 15	
135	9, 18	Partly dealt with in Bankruptcy Act, 1898, s. 138.
		55 VICTORIA No. 3.
1	2	
2	21	
3	.....	Saving clause.
4	.....	Short title.
		55 VICTORIA No. 26.
1	.....	Short title.
2	.....	To be dealt with in Land Bill.
3	13	
4	.....	To be dealt with in Equity Bill.
		60 VICTORIA No. 19.
1	.....	Repealing section.
2	39	
3	34	
4	35	
5	36	
6	37, 38	
7	.....	Short title.



Section 1 - General		Section 2 - General	
1. Name of the person or organization	2. Address	3. Name of the person or organization	4. Address
5. Name of the person or organization	6. Address	7. Name of the person or organization	8. Address
9. Name of the person or organization	10. Address	11. Name of the person or organization	12. Address
13. Name of the person or organization	14. Address	15. Name of the person or organization	16. Address
17. Name of the person or organization	18. Address	19. Name of the person or organization	20. Address
21. Name of the person or organization	22. Address	23. Name of the person or organization	24. Address
25. Name of the person or organization	26. Address	27. Name of the person or organization	28. Address
29. Name of the person or organization	30. Address	31. Name of the person or organization	32. Address
33. Name of the person or organization	34. Address	35. Name of the person or organization	36. Address
37. Name of the person or organization	38. Address	39. Name of the person or organization	40. Address
41. Name of the person or organization	42. Address	43. Name of the person or organization	44. Address
45. Name of the person or organization	46. Address	47. Name of the person or organization	48. Address
49. Name of the person or organization	50. Address	51. Name of the person or organization	52. Address
53. Name of the person or organization	54. Address	55. Name of the person or organization	56. Address
57. Name of the person or organization	58. Address	59. Name of the person or organization	60. Address
61. Name of the person or organization	62. Address	63. Name of the person or organization	64. Address
65. Name of the person or organization	66. Address	67. Name of the person or organization	68. Address
69. Name of the person or organization	70. Address	71. Name of the person or organization	72. Address
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81. Name of the person or organization	82. Address	83. Name of the person or organization	84. Address
85. Name of the person or organization	86. Address	87. Name of the person or organization	88. Address
89. Name of the person or organization	90. Address	91. Name of the person or organization	92. Address
93. Name of the person or organization	94. Address	95. Name of the person or organization	96. Address
97. Name of the person or organization	98. Address	99. Name of the person or organization	100. Address

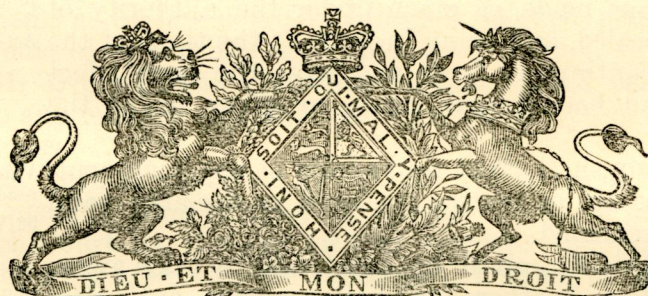


*This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

*Legislative Council Chamber,  
Sydney, 30th August, 1900. }*

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

## New South Wales.



ANNO SEXAGESIMO QUARTO

VICTORIÆ REGINÆ.

\*\*\*\*\*

Act No. , 1900.

An Act to consolidate certain enactments relating to the  
Supreme Court and Circuit Courts.

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

### PART I.

#### PRELIMINARY.

1. This Act may be cited as the "Supreme Court and Circuit  
Courts Act, 1900," and is divided into Parts, as follows:—

Short title and  
division.

PART I.—*Preliminary*—ss. 1-3.

PART II.—*The Judges*—ss. 4-15.

PART III.—*Jurisdiction of the Court, and how exercised*—  
ss. 16-21.

c 71—A

PART



*Supreme Court and Circuit Courts.*PART IV.—*Circuit Courts—ss. 22-33.*PART V.—*Court Fees—ss. 34-38.*PART VI.—*Rules—ss. 39-41.*

2. (1) The Acts mentioned in the Schedule to this Act are to the extent therein expressed hereby repealed. Repeal.  
Schedule.

(2) All persons appointed under any enactment hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed hereunder. Officers under  
repealed Acts.

(3) All commissions issued, and all proclamations, notices, rules, orders, and regulations made or given under the authority of any enactment hereby repealed, and being in force at the time of the passing of this Act, shall continue in force and have the same effect and validity as if they had been issued, made, or given under the authority of this Act. Commissions,  
proclamations, rules,  
&c., under repealed  
Acts.

(4) Nothing herein shall affect the validity of any judgment, decision, order, act, proceeding, or matter rendered or declared valid by any enactment hereby repealed. Validation of  
proceedings saved.  
55 Vic. No. 3, s. 1.

(5) Nothing in this Act shall be construed to take away, lessen, or impair any statutory or other jurisdiction, power, authority, right, or privilege of the Court or of any Judge, or of any Circuit Court. Jurisdiction of  
Courts and Judges  
saved.

3. In this Act, unless the context or subject-matter otherwise indicates or requires:— Interpretation.

“Barrister” means a barrister admitted by the Court, or a barrister of England or Ireland.

“Chief Justice” means Chief Justice of the Court.

“Judge” means Judge of the Court, and includes the Chief Justice.

“The Court” means the Supreme Court of New South Wales.

## PART II.

## THE JUDGES.

*Appointment, qualification, and tenure of office.*

4. (1) The present Chief Justice and other Judges shall continue be the Chief Justice and Judges respectively. Present Judges to  
retain office.

(2) The present Chief Judge in Equity, Judge exercising the Matrimonial Causes Jurisdiction of the Court, Judge in Bankruptcy, and Probate Judge shall continue to be the Chief Judge in Equity, the Judge exercising the Matrimonial Causes Jurisdiction of the Court, the Judge in Bankruptcy, and the Probate Judge respectively.

5. The office of Chief Justice may be held by a barrister admitted by the Court in like manner and subject to the like qualifications as to standing at the bar as if he were a barrister of England or Ireland. Qualification for  
office of Chief  
Justice.  
25 Vic. No. 9, s. 1.



*Supreme Court and Circuit Courts.*

6. Whenever the office of Chief Judge in Equity becomes vacant, the Governor may appoint one of the Judges to such office.

Appointment of Chief Judge in Equity.  
44 Vic. No. 18, s. 1.  
55 Vic. No. 26, s. 4.

7. Whenever the office of Judge exercising the Matrimonial Causes Jurisdiction of the Court becomes vacant, the Governor may appoint the Chief Justice, or if he declines such appointment, then one of the other Judges, to such office.

Appointment of Judge exercising Matrimonial Causes Jurisdiction.  
36 Vic. No. 9, s. 3.

8. Whenever the office of Probate Judge becomes vacant, the Governor may appoint one of the Judges permanently or temporarily to such office.

Appointment of Probate Judge.  
[cf. 1898, No. 13, s. 33.]

9. (1) Whenever—

(a) the office of Judge in Bankruptcy becomes vacant; or

(b) through the office of any other Puisne Judge becoming vacant, the number of Puisne Judges is less than six,

Appointment of Judge in Bankruptcy and of Puisne Judges generally.  
28 Vic. No. 7, s. 1.

the Governor may, by Commission under the Great Seal, in Her Majesty's name, appoint a fit and proper person to such office.

45 Vic. No. 1, s. 1.  
50 Vic. No. 35, s. 1.  
51 Vic. No. 19, s. 128.

(2) Such person shall, from the time of his appointment, be a Judge to all intents and purposes whatsoever, and may, subject to the provisions of this or any other Act, sit as such in any jurisdiction of the Court.

(3) Such person shall be a barrister of not less than five years standing, or, if he be appointed to the office of Judge in Bankruptcy, shall be such barrister or a solicitor of not less than seven years standing: But this subsection shall not apply to a person appointed in succession to any present Judge who has been appointed under the provisions of the Act forty-fifth Victoria number one, or of the Act fiftieth Victoria number thirty-five.

Qualification of such Judges.  
25 Vic. No. 9, s. 1.  
28 Vic. No. 7, s. 2.  
45 Vic. No. 1, s. 1.  
50 Vic. No. 35, s. 1.  
51 Vic. No. 19, ss. 128, 135.

10. (1) The commission of every Judge shall be, continue, and remain in force during his good behaviour, notwithstanding the demise of Her Majesty, whom may God long preserve.

Tenure of office.  
Constitution Act, ss. 38, 39.

(2) Provided that Her Majesty may remove any Judge upon the address of both houses of the legislature.

28 Vic. No. 7, s. 3.  
45 Vic. No. 1, s. 4.  
50 Vic. No. 35, s. 4.  
51 Vic. No. 19, s. 128 (3).

*Salaries and pensions.*

11. (1) The annual salary of the Chief Justice shall be three thousand five hundred pounds, and the annual salary of every Puisne Judge shall be two thousand six hundred pounds.

Salary.  
Constitution Act, s. 40.

(2) Such salary shall be paid to such Chief Justice or Puisne Judge so long as his patent or commission continues and remains in force.

46 Vic. No. 15, s. 1.  
50 Vic. No. 35, s. 2.  
51 Vic. No. 19, s. 128 (4).

12. (1) The pension to be paid to a Chief Justice or Puisne Judge retiring after fifteen years' service in New South Wales as a Judge, or on permanent disability or infirmity, shall be seven-tenths of his actual salary at the time of such retirement.

Pension.  
46 Vic. No. 15, ss. 2, 3.

(2) Every such pension shall be in every year charged upon and payable out of the Consolidated Revenue Fund.

50 Vic. No. 35, s. 3.  
51 Vic. No. 19, s. 128 (4).

(3)



*Supreme Court and Circuit Courts.*

(3) If, after the assignment of such pension to a Judge, he accepts any new appointment under the Crown, such pension shall merge or be reduced *pro tanto* during the tenure of such appointment according as the salary or emoluments of such appointment are of a greater or less amount than such pension.

Constitution Act, s. 51.

*Acting Judges.*

13. (1) The Governor may issue a special commission to any Judge of the District Court, or to any barrister or solicitor of not less than seven years' standing, appointing him—

General power to appoint acting Judge.  
55 Vic. No. 26, s. 3.

(a) to act as a Judge of the Court for the trial of issues, civil or criminal, at any Circuit Court, or Court of gaol delivery, or at any place or places at which a Judge of the Court could not attend without detriment to the ordinary business of the Court; or

(b) to sit and act as a Judge of the Court at Sydney in any one or more jurisdictions of the Court to be specified in such commission, and for a time not exceeding in any case six months to be specified in like manner.

(2) Thereupon the person so appointed shall, at the place and for the time and subject to the conditions or limitations specified in such commission, have all the power, authorities, privileges, and immunities, and fulfil all the duties of a Judge of the Court.

14. (1) Upon leave of absence being granted to the Judge in Bankruptcy, the Governor may appoint an acting Judge in Bankruptcy during such leave of absence.

Acting Judge in Bankruptcy.  
51 Vic. No. 19, s. 129.

(2) Thereupon such acting Judge shall have and exercise the same jurisdiction, powers, authorities, and privileges, as the Judge in Bankruptcy.

15. Where under any Act any jurisdiction, power, or authority is vested in the Chief Judge in Equity, the Judge exercising the Matrimonial Causes Jurisdiction of the Court, the Judge in Bankruptcy, or the Probate Judge, then—

Acting Judges in special jurisdictions.  
36 Vic. No. 9, s. 4.  
44 Vic. No. 18, s. 2.  
48 Vic. No. 3, s. 2.  
50 Vic. No. 36, s. 1.  
51 Vic. No. 19, s. 129.  
54 Vic. No. 25, s. 4.

(a) at the request of such Judge or of the Chief Justice; or

(b) during the illness of such Judge or his absence from Sydney ;  
or

(c) for any other reasonable cause,  
any other Judge may exercise such jurisdiction, power, or authority in all respects as such Judge in whom the same is so vested might have done, and shall while so acting have co-ordinate jurisdiction with and all the power and authority of such Judge, subject to the same right of appeal.



*Supreme Court and Circuit Courts.*

## PART III.

## JURISDICTION OF THE COURT, AND HOW EXERCISED.

16. Where any Imperial Act in force in England on the first day of March, in the year of our Lord one thousand eight hundred and twenty-nine, and applicable to New South Wales, or any Imperial Act adopted and directed to be applied in New South Wales, authorises and directs any proceeding, act, matter, or thing to be had, done, performed or executed by or before Her Majesty's Courts at Westminster or the respective Judges thereof in the administration of justice, every such proceeding, act, matter, and thing shall be, and the same is hereby authorised and directed to be, had, done, executed, and performed by the Court and the respective Judges thereof in like manner as if the same had been in and by such Imperial Act expressly authorised and directed to be had, done, executed, and performed by the Court or the respective Judges thereof.

Court authorised to perform certain acts required to be performed by courts in England.

6 W. IV. No. 12, s. 1.

17. Subject to the provisions of this Act, or of any other Act in force for the time being, every power, jurisdiction, or authority conferred on or entrusted to or vested in the Court or the Judges collectively may lawfully be exercised by two or more of the Judges.

Two or more Judges may exercise jurisdiction of Court.

4 Vic. No. 22, s. 19.

45 Vic. No. 1, s. 5.

18. (1) No Judge shall sit on the hearing of an appeal from or on a motion to set aside any judgment, order, decree, ruling, or decision made by him in any jurisdiction of the Court.

Constitution of Court on appeals from Judges.

36 Vic. No. 9, s. 49.

45 Vic. No. 1, s. 5.

48 Vic. No. 13, ss. 1, 2, 3.

51 Vic. No. 13, s. 135.

(2) The Court on the hearing of any such appeal or motion shall consist of not less than three Judges.

(3) This section shall not apply to—

- (a) any judgment, order, decree, ruling, or decision pronounced or made *pro forma* by consent of parties; or
- (b) any motion for a rule nisi only; or
- (c) the hearing of an appeal or motion before two Judges only where the parties consent thereto.

19. The Court may be held by one Judge alone for the disposal of—

Court held by one Judge in certain cases.

22 Vic. No. 14, s. 7.

(a) returns of fines and estreated recognisances; and  
(b) applications for and returns to writs of *habeas corpus*, notwithstanding that it may be term time, or that the Court held before two or more Judges may be at the same time sitting in banco.

20. In order to prevent the delay and consequent mischief which might otherwise ensue:—

Powers of single Judge in vacation.

4 Vic. No. 22, s. 27.

- (1) Every Judge shall in vacation have power to make all such orders and grant all such writs as can only under ordinary circumstances be made or granted respectively by the Court:

Provided that no such order or writ shall continue in force after the first day of the next ensuing term unless the Court shall then otherwise direct.

(2)



*Supreme Court and Circuit Courts.*

- (2) The like power may be also exercised by any Judge in cases of exigency in term : And in certain cases in term.

Provided that no order made or writ granted as last aforesaid shall continue in force after the then next ensuing sitting day in banco of the Court. 4 Vic. No. 22, s. 27.

21. (1) Two or more Courts, each consisting of two or more Judges, may during term be held simultaneously in banco. Court may be held in two or more divisions.

(2) Subject to the provisions of this Act, each such Court shall have power to exercise the full jurisdiction of the Court hitherto possessed while sitting in banco. 55 Vic. No. 3, s. 2.

PART IV.

CIRCUIT COURTS.

22. The Governor may by proclamation apportion and divide New South Wales into three or more circuit districts, and ascertain and fix the boundaries and limits of every such district, and alter such boundaries and limits from time to time as occasion may require. Circuit districts. 5 Vic. No. 4, s. 1.

23. The Governor may by proclamation direct Circuit Courts to be holden in or at such towns and places as he thinks fit to appoint, and fix from time to time, and vary or alter, as occasion may require, the times and places for holding the said Courts respectively. Proclamation of Circuit Courts. 4 Vic. No. 22, s. 16.

24. Every Circuit Court shall be holden by a Judge. Court to be holden by a Judge.

25. Every Circuit Court shall have such ministerial officers as may be required. 4 Vic. No. 22, s. 17. Officers.

26. Every Circuit Court shall be—

- (a) a court of record ; and
- (b) a court of oyer and terminer and of assize and nisi prius for New South Wales ; and
- (c) a court of gaol delivery in and for the particular district only within which it is appointed to be holden.

27. Every Circuit Court shall have the same powers and jurisdiction as courts of oyer and terminer, and gaol delivery, and of nisi prius in England had respectively at the time of the passing of the Act fourth Victoria number twenty-two, and shall stand in the same relation to the Court as such courts respectively stood in with respect to Her Majesty's Superior Courts of Record at Westminster at the time of the passing of the said Act. General powers and jurisdiction. 4 Vic. No. 22, s. 17.

28. Every Circuit Court may—

- (a) try and determine all issues of fact joined in any action or other proceeding commenced or pending in the Court ; and
- (b) inquire into and assess damages in any such action.



*Supreme Court and Circuit Courts.*

29. Every Circuit Court may, upon information exhibited therein—  
 (a) by and in the name of Her Majesty's Attorney or Solicitor General; or  
 (b) in case of their absence from such Court, by and in the name of such other person as the Governor appoints in that behalf,  
 hear and determine all cases of crimes and misdemeanours committed in New South Wales.

Criminal jurisdiction.  
 4 Vic. No. 22, s. 17.  
 5 Vic. No. 4, s. 10.

30. Every person convicted in any Circuit Court of any crime or offence cognizable therein shall be liable to the same penalties and punishments as by law could be inflicted on such person if convicted in the Court of such crime or offence.

Jurisdiction as to punishment.  
 5 Vic. No. 4, s. 2.

31. Every Circuit Court shall proceed in all cases according to the form and manner observed and established by law in the Court in similar cases.

Procedure.  
 4 Vic. No. 22, s. 17.

32. If in any case the Judge does not arrive at any such circuit town or place in time to open the Circuit Court, or does not actually open such Court on the day for that purpose appointed by any such proclamation as aforesaid, the subsequent holding of such Court shall not for that reason be or be taken to be illegal, but the same may be opened and holden, either by the same Judge or by any other Judge, on any following day :

Delay in opening Circuit Court.  
*Ibid.* s. 18.

Provided that every such Circuit Court shall be actually opened and holden on the day so appointed except in cases of unavoidable accident, and that then such Court shall be opened and holden as soon afterwards as possible.

33. The records of every Circuit Court shall be taken to belong to and shall be kept in the Supreme Court, and the Prothonotary shall have their legal custody :

Custody of records.  
 46 Vic. No. 17, s. 359.

Provided that during the sitting of any Circuit Court the Judge's Associate, or other officer there acting as Clerk of Assize, shall in respect of all proceedings at such sitting have the custody of such records.

## PART V.

## COURT FEES.

34. (1) The Governor may, by notice in the Gazette, direct that after the day specified in the notice all or any of the fees to be demanded and paid in the Court or in any Circuit Court shall be collected by means of stamps.

Governor may direct fees to be collected by means of stamps.  
 60 Vic. No. 19, s. 3.

(2) After the day so specified, the fees mentioned in the notice shall be received by stamps denoting the sums payable, and not in money.

(3)



*Supreme Court and Circuit Courts.*

(3) All or any of the stamps shall be impressed or adhesive as may be directed in the notice.

35. (1) Where any fee mentioned in such notice is payable in respect of a document, the stamps denoting the fee shall be affixed to or impressed upon the document, or such other document, book, or record as may be prescribed by regulations made under the authority of this Act.

Document, book, or record to be stamped.  
60 Vic. No. 19, s. 4.

(2) Where any fee mentioned in such notice is payable otherwise than in respect of a document, the stamps denoting the fee shall be affixed to or impressed on such document, book, or record as may be prescribed as aforesaid.

(3) The Governor may make regulations prescribing the document, book, or record to be stamped as aforesaid.

36. No judge or officer of any Court shall allow any such document as aforesaid to be filed, received, or used, although no exception be taken thereto, until the document has been first duly stamped. And if the document is through mistake or inadvertence filed, received, or used in any Court without having been first duly stamped, the said Court or a Judge may order that it be duly stamped.

Document to be stamped before being filed.  
*Ibid.* s. 5.

37. Every officer whose duty it is to receive any fees, which under the authority of this Act are required to be collected by means of stamps, shall see that the proper stamps have been affixed to or impressed on the document, book, or record required to be stamped, and that when adhesive stamps are used the same are duly cancelled.

Officers to see that stamps are affixed or impressed and duly cancelled.  
*Ibid.* s. 6.

38. The provisions of the Stamp Duties Act, 1893, and of any Act amending the same shall, so far as applicable, extend and apply to and in respect of all stamps required under this Act to be used.

Provisions of Stamp Acts to apply.  
*Ibid.*

## PART VI.

## RULES.

39. The Judges may make all such general rules and orders as to them seem meet—

Power to make rules.  
4 Vic. No. 22, s. 23.  
15 Vic. No. 17, s. 1.  
60 Vic. No. 19, s. 2.

- (a) for the regulation of practice and pleadings in the Court in all respects in the several branches of its jurisdiction; and
- (b) for facilitating, or more fully carrying into effect, all or any of the provisions and objects of Part IV of this Act; and
- (c) for fixing the amount of fees and costs to be allowed in respect of all matters at any time pending in the Court to the practitioners therein; and
- (d) for fixing the fees to be demanded and paid in the Court and in the Circuit Courts; and

(e)



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(e) for the government and conduct of the officers and ministers of the Court and of the Circuit Courts.

40. Every rule and order so made shall be of the same force and effect as if the same had been inserted in and had formed part of this Act. Rules to have force of law.  
4 Vic. No. 22, s. 23.

41. Nothing in this part of this Act shall affect the provisions of any Act in force for the time being, by which power to make rules or orders is conferred upon the Court or any Judge. Power to make rules under other Acts saved.

## SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
6 Wm. IV No. 12	An Act to remove doubts respecting the power of the Supreme Court of New South Wales to do and perform certain acts which are required to be done and performed by His Majesty's Courts in England.	The whole.
4 Vic. No. 22 ...	An Act to provide for the more effectual administration of justice in New South Wales and its dependencies.	Sections 1, 2, 3, 13, 16, 17, 18, 19, 23, 24, 25, and 27.
5 Vic. No. 4 ...	An Act to make further provision for the trial of cases in the Circuit Courts of New South Wales, and to amend in certain respects the Act providing for trial by jury in such Courts.	Sections 1, 2, and 10.
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Sections 1 to 11 inclusive.
15 Vic. No. 17 ...	An Act to repeal so much of the Imperial Act ninth George the Fourth, chapter eighty-three, and the Colonial Act fourth Victoria number twenty-two as vests a power of taxation in the Judges of the Supreme Court.	The whole.
17 Vic. No. 12 ...	An Act to amend the law respecting fees taken by officers of the Supreme Court.	The whole.
	The Constitution Act ... ..	Sections 38, 39, 40, and so much of section 51 as relates to Judges.
22 Vic. No. 14 ...	Equity and Banco Business Expediting Act.	Sections 4, 5, 6, and section 7 except in so far as it relates to cases under the Justices Acts.
25 Vic. No. 9 ...	An Act to amend the law as to the qualification for certain judicial and other offices.	So much as refers to the offices of Chief Justice and of the Puisne Justices.



*Supreme Court and Circuit Courts.*

## SCHEDULE—continued.

Reference to Act.	Title or short title.	Extent of repeal.
28 Vic. No. 7 ...	An Act to authorise the appointment of an additional Judge of the Supreme Court.	The whole.
36 Vic. No. 9 ...	Matrimonial Causes Act ... ..	Sections 3 and 4.
44 Vic. No. 18 ...	Equity Act of 1880 ... ..	So much of section 1 as relates to appointment, and section 2.
45 Vic. No. 1 ...	An Act to authorise the appointment of an additional Judge of the Supreme Court.	The whole.
46 Vic. No. 15 ...	Judges' Salaries and Pensions Act of 1883	The whole.
46 Vic. No. 17 ...	Criminal Law Amendment Act of 1883 ...	Section 359.
46 Vic. No. 19 ...	Retired Judges' Pensions Act of 1883 ..	The whole.
48 Vic. No. 3 ...	Matrimonial Causes Act Amendment Act of 1884.	The unrepealed portion.
48 Vic. No. 13 ...	An Act to regulate appeals to and the Constitution of the Supreme Court sitting in banco.	The whole.
50 Vic. No. 35 ...	Supreme Court (Sixth Judge) Act of 1887	The whole.
50 Vic. No. 36 ...	An Act to enable any Judge of the Supreme Court to hear and determine matters in the Equity, Ecclesiastical, and Divorce jurisdiction of the Court.	The whole.
51 Vic. No. 19 ...	Bankruptcy Act, 1887 ... ..	The unrepealed portion.
55 Vic. No. 3 ...	Supreme Court Procedure Act of 1891 ...	The whole.
55 Vic. No. 26 ...	Judicial Offices Act of 1892 ... ..	Section 3.
60 Vic. No. 19 ...	Supreme Court Fees Act, 1896 ... ..	The whole.