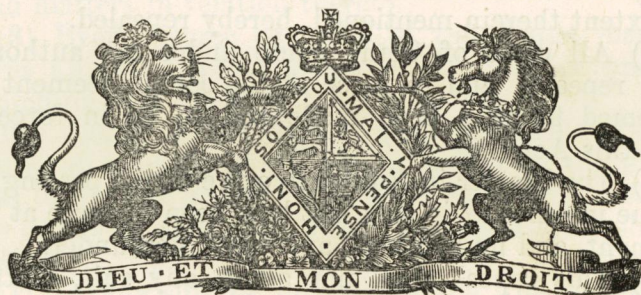


New South Wales.



ANNO PRIMO

EDWARDI VII REGIS.

Act No. 24, 1901.

An Act for consolidating enactments relating to the practice, procedure, and powers of the Supreme Court of New South Wales in its equitable jurisdiction. [Assented to, 30th October, 1901.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembly, and by the authority of the same, as follows:—

1. This Act may be cited as the "Equity Act, 1901," and is Short title. divided into Parts as follows:—

PART I.—INTERPRETATION.—s. 3.

PART II.—THE CONSTITUTION OF THE COURT.—ss. 4–7.

PART III.—JURISDICTION AND SPECIAL POWERS OF THE COURT—

DIVISION 1.—*Co-ordinate jurisdiction with Common Law Courts*—ss. 8, 9.

DIVISION 2.—*Various powers of the Court*.—ss. 10–19.

DIVISION 3.—*Jurisdiction in chambers*.—ss. 20, 21.

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PART

Equity.

PART IV.—PROCEDURE.—ss. 22-70.

PART V.—THE MASTER IN EQUITY.—ss. 71-80.

PART VI.—APPEALS TO THE FULL COURT.—ss. 81-89.

PART VII.—CONTEMPT OF COURT.—ss. 90-93.

PART VIII.—RULES OF COURT.—s. 94.

Repeal of Acts.
First Schedule.

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 (1) The Acts mentioned in the First Schedule to this Act are, to the extent therein mentioned, hereby repealed.

(2) All rules of Court made under the authority of any provision so repealed and in force at the commencement of this Act shall be deemed to have been made and to be in force under the authority of this Act.

(3) The Master in Equity in office at the passing of this Act shall continue in office as if this Act had been in force at the time of his appointment, and he had been appointed hereunder.

(4) This repeal shall not affect any suit, matter, or proceeding now pending in the Court, but the same shall be continued under the provisions of this Act.

PART I.

INTERPRETATION.

Interpretation.

44 Vic. No. 18, ss.
3, 82.

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

The words “the Court” mean the Supreme Court in equity holden before the Judge, or any other Judge lawfully exercising the jurisdiction of the Judge, or in cases on appeal before the Full Court.

55 Vic. No. 26, s. 4.

The words “the Judge” mean the Chief Judge in Equity.

The words “the Master” mean the Master in Equity.

The words “statement of claim” include information.

1897, No. 11, s. 7.

The expression “equitable process” includes statement of claim, petition, motion, summons, decree, order, and generally any other document of which service is required to be effected in any proceeding before the Court.

The word “affidavit” includes affirmation, statutory declaration, and attestation of honour.

The word “prescribed” means prescribed by rules of Court.

11 Vic. No. 27, s. 2.

A reference to the jurisdiction “in equity” includes the jurisdiction of the Supreme Court in all matters relating to the appointment of guardians of infants and their estates.

PART

Equity.

PART II.

THE CONSTITUTION OF THE COURT.

4. (1) The jurisdiction of the Supreme Court in equity including all matters relating to the appointment of guardians of infants and their estates shall be exercised by the Judge. Appointment and powers of the Chief Judge in equity.

(2) The Supreme Court shall be holden by the Judge for the determination of all proceedings in equity, and the disposal of motions and matters in relation thereto. 11 Vic. No. 27, s. 2.
44 Vic. No. 18, s. 1.

(3) Every decree or order of the Judge made in equity shall (unless appealed from in manner hereinafter provided) be as valid and binding as if made by the Full Court.

5. The Judge in Bankruptcy shall have the like powers and jurisdiction in all respects as are herein vested in the Judge, subject nevertheless to the like appeal; and when exercising such jurisdiction and powers or any of them the Judge in Bankruptcy shall be styled Judge in Equity. Judge in bankruptcy to be Judge in equity.
55 Vic. No. 26, s. 4.

6. (1) In any suit or proceeding the Judge may sit with the assistance of any two other Judges of the Supreme Court. Two Judges may assist.

(2) In every such case the decision of the majority shall be taken to be that of the Full Court. 44 Vic. No. 18, s. 5.

7. (1) The Court may in every case obtain the assistance of conveyancing counsel, accountants, merchants, engineers, actuaries, or other scientific persons the better to enable it to determine any matter at issue in any suit or proceeding and may act upon the certificate of any such person. Assistance of scientific persons.
Ibid. s. 46.

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

PART III.

JURISDICTION AND SPECIAL POWERS OF THE COURT.

DIVISION I.—*Co-ordinate jurisdiction with Common Law Courts.*

8. In any suit or proceeding in equity wherein it may be necessary to establish any legal title or right as a foundation for relief the Court shall itself determine such title or right without requiring the parties to proceed at law to establish the same, and whenever any question now cognizable only at law arises in the course of any proceeding before it the Court shall have cognizance thereof as completely as if the same had arisen in a court of law, and shall exercise in relation to such title, right, or question all the powers of the Supreme Court in its Common Law jurisdiction, and no suit in equity shall be open to objection on the ground that the remedy or appropriate remedy is in some other jurisdiction. Power to decide legal titles, &c.
Ibid. s. 4.

Equity.

Power to Court to
award damages in
certain cases.

44 Vic. No. 18, s. 32.

9. In all cases in which the Court has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract, or agreement, or against the commission or continuance of any wrongful act or for the specific performance of any contract, covenant, or agreement the Court may award damages to the party injured either in addition to or in substitution for such injunction or specific performance.

DIVISION 2.—*Various powers of the Court.*

Declarations of right.

Ibid. s. 50.

10. No suit shall be open to objection on the ground that a merely declaratory decree is sought thereby, and the Court may make binding declarations of right without granting consequential relief.

Decree for adminis-
tration discretionary.

1900, No. 49, s. 11.

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

Court may direct a
sale in foreclosure
suits.

44 Vic. No. 18, s. 52.

12. In any suit for the foreclosure of the equity of redemption in any property, the Court may, upon the request of the mortgagee or any subsequent encumbrancer, or of the mortgagor, or any person claiming under them respectively, direct a sale of such property instead of a foreclosure on such terms as the Court may think fit, and without previously determining the priorities of encumbrances or giving time to redeem:

Provided that if such request be made by any such subsequent encumbrancer, or by the mortgagor, or any person claiming under them respectively, the Court shall not direct any such sale without the consent of the mortgagee or the person claiming under him unless the party making such request shall deposit in Court a reasonable sum to be fixed by the Court for the purpose of securing the performance of such terms as the Court may think fit to impose on him.

Dispensing with
references in certain
cases of account.

Ibid. s. 53.

13. (1) In all cases of account either party may by consent or by leave of the Court file a statement of facts before or at the hearing of any suit, petition, motion, or matter verified by affidavit; and where the amount is capable of being ascertained without difficulty from the pleadings or evidence, or by such statement of facts, the Court may adjust the same and decree accordingly without further inquiry or reference.

(2) Where the account cannot be so adjusted, the Court may give such special directions as may seem expedient with respect to the mode in which the account shall be taken or verified, which directions may be given either by the decree or order directing such account, or by any subsequent order.

Books may be
declared prima facie
evidence of account.

Ibid.

(3) The Court may direct that in the taking of any account the books in which the same has been kept shall be taken as prima facie evidence of the truth of the matters therein contained with liberty to the parties interested to take such objections thereto as they may be advised.

Equity.

14. If in any suit instituted in relation to real estate it appears to the Court that it will be expedient that the same or any part thereof should be sold for the purposes of such suit, the Court may at any time direct the same to be sold, and such sale shall be as valid as if directed to be made by a decree or decretal order on the hearing, and any party to the suit in possession of such estate or in receipt of the rents and profits thereof shall deliver up such possession or receipt to the purchaser or such other person as the Court directs.

Sales may be directed before decree.

44 Vic. No. 18, s. 54.

15. Where any real or personal property is the subject of any proceeding in equity, and the Court is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceeding, the Court may, at any time after the commencement of such proceeding, allow to the parties interested therein, or any of them, the whole or part of the annual income of such real property or a part of such personal property or of the income thereof up to such time as the Court directs, and for that purpose may make such orders as may appear expedient.

Allowance to parties out of property in certain cases.

Ibid. s. 55.

16. (1) An injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that such order should be made, and whether there be a prayer for an injunction or receiver or not, and any such order may be made either unconditionally or upon such terms and conditions as the Court thinks just.

Injunctions and receivers.

Ibid. s. 57.

(2) If an injunction is asked either before or at or after the hearing of any suit or matter to prevent any threatened or apprehended waste or trespass, such injunction may be granted whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

Injunction to prevent waste.

Ibid.

17. Service upon any person of the decree or order directing such injunction or notice thereof shall have the same effect as the issuing of a writ of injunction and signing and filing of a docquet and service of the writ upon such person had previously to the first day of September, one thousand eight hundred and eighty, and thereupon the plaintiff shall be entitled to all such remedies as he was entitled to under the practice in force at the last-mentioned date.

Service of order for injunction.

Ibid. s. 58.

18. (1) In any suit in which the Court declares that any real estate of a deceased person is liable to any debt of such person the Court may direct that the amount of such debt be raised by mortgage or sale of such real estate.

Sales and mortgages for payment of debts.

11 Geo. IV and 1 Wm. IV, c. 47, ss. 11, 12.

21 Vic. No. 6, ss. 1, 2, 3.

(2) For the purpose of effecting any sale or mortgage so directed, the Court may name some person to execute the necessary conveyances, mortgages, or other documents; and any conveyance, mortgage,

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mortgage, or other document executed by such person shall be as effectual in all respects as if such person were of full age and seised or possessed of the fee simple or other whole interest and estate so to be sold or mortgaged.

(3) Where any such sale or mortgage is made the surplus (if any) of the money raised thereby, after defraying the debt and all legal costs and expenses, shall be considered for all purposes as unconverted real estate.

Court may apply
dividends of stock
belonging to infants
for their maintenance
11 Geo. IV, and
1 Wm. IV, c. 65,
ss. 32, 35, 44.

19. (1) When an infant is beneficially entitled to the whole or part of any stock, fund, annuity, security, or sum of money transferable in books kept by any company or society, the Court may order all or any part of the dividends or interest due or to become due in respect thereof to be paid to any guardian of such infant, or to any other person it may deem fit, for the maintenance and education or otherwise for the benefit of such infant, such guardian or other person to be named in the order directing payment.

(2) The receipt of such guardian or other person for such dividends or interest shall be as effectual as if such infant had attained the age of twenty-one years and had signed and given the same.

(3) The Court may order that the costs of applications under this section be paid out of the fund, annuity, security, sum of money, or the dividends or interest arising therefrom, or out of any moneys in Court in which such infant is interested in such manner as the Court thinks proper.

(4) This section shall be a full and complete indemnity to all companies and societies, and their officers and servants, for all acts and things done or permitted to be done pursuant thereto.

Costs.

20. The Court may in any case award costs as between solicitor and client.
44 Vic. No. 18, s. 78

DIVISION 3.—*Jurisdiction in Chambers.*

Business to be
disposed of in
chambers.

Ibid. ss. 61, 62.

26 Vic. No. 12, s. 34.

21. (1) The business to be disposed of by the Judge in chambers shall consist of such of the following as he thinks would be more conveniently so disposed of, namely :—

- (a) Applications for time ;
- (b) Applications for leave to amend ;
- (c) Applications for discovery ;
- (d) Applications for determining the mode of trial, and settling the questions to be tried ;
- (e) Applications relating to the conduct of any suit or matter ;
- (f) Applications relating to the guardianship or maintenance of infants ;
- (g) Matters connected with the management of property ;

(h)

Equity.

(h) Applications for the investment or alteration of the state of investment of any funds held in Court upon trust in any cause or matter;

(i) Such other matters as in the opinion of the Judge may advantageously and with propriety be heard in chambers.

(2) The Judge shall fix the times for sitting in chambers, and when so sitting shall have the same powers and jurisdiction as in open court.

(3) The Judge while sitting in open court may adjourn for hearing in chambers, or while sitting in chambers may adjourn for hearing in open court, any case before him which he may think would better be heard in chambers or in open court as the case may be.

Adjournment from Court to chambers.
44 Vic. No. 18, s. 63.

PART IV.

PROCEDURE.

Statement of claim.

22. (1) All suits in equity shall be commenced, save as herein- *Ibid.* s. 6.
after mentioned, by filing in the office of the Master a statement of the plaintiff's case, to be called the statement of claim, in the form and manner prescribed. 1900, No. 49, s. 10.

(2) Rules of Court may be made under this Act specifying in what cases persons seeking equitable relief may apply for such relief by way of originating summons in chambers and providing for the course of procedure thereon.

(3) Where any Act provides that applications thereunder may be made to the Court or Judge such applications shall be made in the manner (if any) provided for by such Act.

23. It shall not be competent to any defendant to take any objection for want of parties in any case to which the rules next hereinafter set forth extend, and such rules shall be taken as part of the law and practice of the Court:—

Rules as to parties.
44 Vic. No. 18, s. 7.

(a) Any legatee, devisee, or next of kin may, without serving the remaining legatees, devisees, or next of kin, have a decree for the administration of the real and personal estate of a deceased person.

(b) Any one of several *cestuis que trust* under any deed or instrument may, without serving any other of such *cestuis que trust*, have a decree for the execution of the trusts of the deed or instrument.

(c)

Equity.

- (c) In all cases of suits for the protection of property pending litigation and in all cases in the nature of waste one person may sue on behalf of himself and of all persons having the same interest.
- (d) Any executor, administrator, or trustee may obtain a decree against any one legatee, next of kin, or *cestuis que trust* for the administration of the estate or the execution of the trusts.
- (e) In all the above cases the Court may require any other persons to be made parties to the suit, and may give the conduct of the suit to such person as it may deem proper, and may make such order in any particular case as it may deem just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.
- (f) In all the above cases the persons who, according to the practice of the Court previously to the first day of September, one thousand eight hundred and eighty, would have been necessary parties to the suit, shall be served with notice of the decree, and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit, and they may by an order of course have liberty to attend the proceedings under the decree, and any party so served may within the prescribed time apply to the Court to add to the decree.
- (g) In all suits concerning real or personal estate vested in an executor, administrator, or trustee under a will, intestacy, settlement, or otherwise, such executor, administrator, or trustee shall represent the persons beneficially interested in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate, and in such cases it shall not be necessary to make the persons beneficially interested parties to the suit, but the Court may upon consideration of the matter on the hearing if it thinks fit order such persons or any of them to be made parties.

Absence of personal
representative.
44 Vic. No. 18, s. 8.

24. (1) If in any suit or proceeding in equity it appears to the Court that any deceased person who was interested in the matters in question has no legal personal representative, the Court may either proceed without any person representing the estate of such deceased person or appoint some person to represent such estate for the purposes of the suit or proceeding on such notice (if any), as the Court shall think fit, either specially or generally by public advertisement.

(2) Every order made in reference to the matter and every order consequent thereon shall bind the estate of such deceased person in

Equity.

in the same manner as if there had been a duly constituted legal personal representative of such deceased person and such representative had been a party to the suit or proceeding and had appeared and submitted his rights and interests to the protection of the Court.

25. (1) No suit shall be dismissed by reason only of the misjoinder of persons as plaintiffs, but wherever it appears to the Court that, notwithstanding the conflict of interest in the co-plaintiffs, or the want of interest in some of the plaintiffs, or the existence of some ground of defence affecting some of the plaintiffs, the plaintiffs or some of them are entitled to relief, the Court may grant such relief and modify its decree according to the special circumstances, and for that purpose may direct such amendments (if any) as may be necessary, and at the hearing, before such amendments are made, may treat any of the plaintiffs as if they were defendants in the suit and the other plaintiffs were the only plaintiffs on the record.

Misjoinder of plaintiffs.
44 Vic. No. 18, s. 9.

(2) Where there is a misjoinder of plaintiffs, and the plaintiff having an interest has died leaving a plaintiff on the record without an interest, the Court may at the hearing order the suit to stand revived, as may appear just, and proceed to the decision of the suit if it sees fit, and may give such directions as to costs or otherwise as to the Court seems meet.

26. (1) The Court may adjudicate on questions arising between parties, notwithstanding that they may be some only of the parties interested in the property respecting which the question may have arisen, or that the property is comprised with other property in the same instrument, without making the other parties interested in the property or interested under the same instrument parties to the suit and without requiring the whole trusts and purposes of the instrument to be executed under the direction of the Court and without taking the accounts of the trustees or other accounting parties or ascertaining the particulars or amount of the property touching which the question may have arisen.

Absence of persons interested.
Ibid. s. 10.

(2) If the Court is of opinion that the application is fraudulent or collusive, or for some other reason ought not to be entertained it may refuse to make the order prayed.

27. It shall not be necessary that every defendant to the statement of claim shall be interested as to all the relief thereby prayed for, but the Court may make such order as appears just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such suit in which he has no interest.

Defendant not interested as to all the relief.
Ibid. s. 11.

28. Before the name of any person is used in any suit or other proceeding as next friend of any infant, married woman, or other party, or as relator in any information, such person shall sign a written authority to the solicitor for that purpose, and such authority shall be filed with the statement of claim, petition, motion, or summons, as the case may be.

As to next friend and relator.
Ibid. s. 12.

Service.

Equity.

Service.

Service of statement
of claim.

44 Vic. No. 18, s. 13.
1897, No. 11, s. 6.

Service out of the
jurisdiction.

1897, No. 11, s. 3.

29. No writ of subpoena or other process to appear to and answer any statement of claim shall be required; but a copy of the statement of claim, stamped with the seal of the Court, and endorsed as herein-after directed, shall be served in the prescribed manner.

30. The Court or the Judge may allow the statement of claim or any other equitable process in any suit or proceeding to be served out of the jurisdiction whenever—

- (a) the suit or proceeding, wholly or in part, concerns land or hereditaments situate within the jurisdiction, or any charge, lien, judgment, or incumbrance thereon; or
- (b) any Act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction is sought to be construed, rectified, set aside, or enforced in the suit or proceeding; or
- (c) the relief sought in any suit or proceeding in respect of the person to be served, wholly or in part concerns any money vested in any Government stocks or funds, or in the stocks or shares of any corporation, company, or society registered within the jurisdiction, or deposited with any such corporation, company, or society, or the interest, dividends, or produce of such money; or
- (d) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or
- (e) the suit or proceeding is for the administration of the estate of any deceased person who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument of which the person to be served is a trustee which ought to be executed according to the law of New South Wales, or for the appointment or removal of any trustee of such trusts; or
- (f) the suit is founded on any breach or alleged breach within the jurisdiction of any contract wherever made which (in respect of the matter as to which relief is sought) ought, according to the terms thereof, to be performed within the jurisdiction; or
- (g) any injunction is sought as to anything to be done or against the doing of any act within the jurisdiction, whether damages are or are not also sought in respect thereof; or
- (h) any person out of the jurisdiction is a necessary or proper party to a suit or proceeding properly brought against some other person duly served within the jurisdiction; or

(i)

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(i) relief is sought against a person out of the jurisdiction in respect of his membership or alleged membership in any company or society registered within the jurisdiction.

31. (1) When leave is given to serve any statement of claim upon a person out of the jurisdiction, and such person is neither a British subject nor in any British possession, such statement of claim shall be endorsed in the form or to the effect of the form set out in the Second Schedule hereto.

Endorsement of statement of claim.
1897, No. 11, s. 4.

(2) Every other statement of claim served upon any defendant, whether within or out of the jurisdiction, shall be endorsed in the form or to the effect of the form set out in the Third Schedule hereto.

32. The filing and service upon the defendant of the statement of claim shall respectively have the same effect as the filing and service of a bill of complaint had previously to the first day of September, one thousand eight hundred and eighty.

Effect of filing statement of claim.
44 Vic. No. 18, s. 14.

33. (1) If any person is unable to effect reasonably prompt service of any process the Court or Judge may in the prescribed manner order substituted or other service to be effected or notice to be given instead of service.

Substituted service.
1897, No. 11, s. 5.

(2) The mere fact that the person to be served is out of the jurisdiction shall not be considered a sufficient reason for allowing substituted service.

(3) Where the person required to be served is out of the jurisdiction the Court or Judge shall not make an order directing substituted or other service or the giving of notice as aforesaid except in cases where the Court or Judge would have power to allow service out of the jurisdiction.

34. The plaintiff shall deliver to the defendant or his solicitor upon application for the same such a number of copies of the statement of claim as he requires upon being paid for the same at the prescribed rate.

Delivering copies of statement of claim.
44 Vic. No. 18, s. 15.

35. (1) Upon the amendment of any statement of claim the provisions hereinbefore contained with respect to filing and delivering copies thereof shall so far as may be extend to the statement of claim as amended.

Amendment of statement of claim.
Ibid. s. 16.

(2) Except where the rules or practice of the Court otherwise provide a statement of claim may be amended by written alterations therein as filed.

Appearance and statement of defence.

36. The defendant shall, when he enters an appearance to the statement of claim or at such later period as the Judge may allow, file a memorandum as prescribed, disputing or submitting to the plaintiff's claim or disclaiming any interest in the subject matter of the suit, and shall within the prescribed time file in the office of the Master a demurrer plea or statement of defence to the statement of claim.

Appearance by defendant.
Ibid. s. 18.

Equity.

Form of statement
of defence.
44 Vic. No. 18, ss. 19, 20.
Facts not denied
are admitted.
Ibid. s. 20.

37. Every statement of defence, and defence to counter claim, shall be verified upon oath, and shall be in the prescribed form.

38. (1) Where a party does not know whether a fact alleged in the statement of claim or counter-claim is true or not he may in his statement of defence state that he does not know and is not able to admit the truth of the fact alleged.

(2) Except as aforesaid, all facts stated in the statement of claim or counter-claim, and not expressly and in terms denied in the statement of defence shall be deemed to be admitted for the purpose of the suit.

Set-off and counter-
claim.
Ibid. s. 21.

39. (1) A defendant may in his statement of defence set off or set up by way of counter-claim against the claim of the plaintiff any right or claim, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross suit so as to enable the Court to pronounce a final judgment in the same suit both on the original and on the cross claim.

(2) The Court may, on the application of the plaintiff before the hearing, refuse permission to the defendant to avail himself of such set-off or counter-claim if, in the opinion of the Judge, such set-off or counter-claim cannot be conveniently disposed of in the pending suit, or ought not to be allowed.

Court may decree in
favour of defendant.
Ibid. s. 22.

40. Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, make a decree in favour of the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

Discovery.

Plaintiff's
interrogatories.
Ibid. s. 19.

41. The plaintiff or applicant in any suit or proceeding may by leave of the Court, and not otherwise, file and serve interrogatories for the examination on oath of any defendant or respondent.

Defendant's
interrogatories.
Ibid. s. 23.

42. Any defendant or respondent who has not been required to answer interrogatories, or who has been required to answer interrogatories and has put in a sufficient answer thereto, may by leave of the Court and not otherwise file and serve interrogatories for the examination on oath of the plaintiff or applicant.

Sufficiency of
answers.
Ibid. s. 24.

43. The sufficiency, materiality, or relevancy of the answer to any interrogatory may be determined in the prescribed manner.

Pleadings to be
considered.
Ibid. s. 23.

44. The Court, in determining what interrogatories shall be allowed or the sufficiency, materiality, or relevancy of any answer thereto, shall have regard to the statements contained in the pleadings of the parties filing and answering such interrogatories respectively.

Suit for discovery.
Ibid. s. 23.

45. Nothing in this Act shall be deemed to take away the right of any person to institute a suit for the purpose of discovery.

Equity.

46. The Court may, on the application of the plaintiff or applicant in any suit or proceeding, make an order for the production by any defendant or respondent on oath of such documents in his possession or power relating to any matter in question in the suit or proceeding as the Court thinks right, and the Court may deal with such documents when produced in such manner as appears just. Production of documents by a defendant. 44 Vic. No. 18, s. 25.

47. The Court may, on the application of any defendant or respondent in any suit or proceeding who has not been required to answer interrogatories, or who has been required to answer interrogatories and has put in a sufficient answer thereto, make an order for the production by the plaintiff or applicant in such suit or proceeding on oath of such documents in his possession or power relating to any matter in question in the suit or proceeding as the Court thinks right, and the Court may deal with such documents when produced in such manner as appears just. The like by plaintiffs. Ibid. s. 26.

Motion for decree.

48. (1) The plaintiff in any suit may at any time after the time allowed the defendant for filing a statement of defence has expired, but before replication, move the Court upon the prescribed notice for such decree or decretal order as he may think himself entitled to, and the plaintiff and defendant respectively may file affidavits in support of and in opposition to the motion so to be made, and use the same on the hearing of such motion, and the statement of defence (if any) and any answer to interrogatories may upon such motion be used as an affidavit. Proceedings on motion for a decree. Ibid. s. 28.

(2) Upon any such motion it shall be discretionary with the Court to grant or refuse the same, and to give such directions with respect to the further prosecution of the suit as the circumstances appear to require, and the Court may make such order as to costs as it may think right. Making of such decree discretionary. Ibid. s. 29.

Joinder of issue.

49. In suits where notice of motion for a decree or decretal order has not been given, or having been given where a decree or decretal order has not been made thereon, issue shall be joined by filing a replication in the prescribed form. Filing replication. Ibid. s. 30.

Want of prosecution.

50. Any defendant may move to dismiss a suit for want of prosecution at such times and under such circumstances and subject to such restrictions as may be prescribed. Dismissal of suits for want of prosecution. Ibid. s. 27.

Trial.

51. (1) The evidence to be used at the hearing of any suit shall be taken before the Judge sitting in open Court without a jury. Trial of issues. Ibid. ss. 33, 34, 36, 37.

(2)

Equity.

(2) The Court may, if it thinks fit, cause any question of fact arising in any suit to be tried, or, where it has jurisdiction to award damages, the amount of such damages to be assessed either—

- (a) by a special or common jury before the Judge; or
- (b) by a jury before any Judge of the Supreme Court at Sydney or in any Circuit Court; or
- (c) by the Judge without a jury.

(3) Any such question of fact and any such question as to the amount of damages shall be reduced into writing in such form as the Court directs.

44 Vic. No. 19, s. 32.

(4) In addition to the powers hereby conferred, the Court may direct the amount of any such damages to be assessed in such other manner as the Court thinks fit.

Jury how summoned.
Ibid. ss. 34, 35.

52. (1) Where any question of fact or question of damages has been ordered to be tried by a special or common jury before the Court itself, the Judge may issue such precepts and make such orders upon the Sheriff for procuring the attendance of such jury as may be made by the Supreme Court in its common law jurisdiction, and may also make any other orders in relation thereto which to him may seem requisite.

(2) Every such jury shall be summoned, struck, called, and sworn in like manner as if summoned for the trial of an action in the Supreme Court in its common law jurisdiction.

(3) Generally for all purposes of or auxiliary to the trial of questions by a jury the Judge shall have the same power, jurisdiction, and authority in all respects as belong respectively to the Supreme Court in its common law jurisdiction, or to any Judge thereof sitting at nisi prius for the like purpose.

New trials, &c.
Ibid. ss. 35, 36.

53. (1) Where a question of fact or question of damages has been tried, any party to the suit may, within the prescribed time, move the Court to set aside or vary the verdict or finding or for a new trial of such question.

Ibid. s. 35.

(2) The Court shall have the same powers and jurisdiction in respect to new trials as belong to the Supreme Court in its common law jurisdiction or to any Judge thereof for the like purpose.

(3) Nothing herein shall be interpreted as restricting or qualifying the power of the Court as a Court of Equity to set aside or vary the verdict of a jury upon any question of fact or question of damages or to grant a new trial of such question.

Appeals to Full Court.
Ibid. ss. 35, 36.

54. From every order made by the Court upon an application for a new trial or to set aside or vary such verdict there shall be the same right of appeal as from any other order of the Court.

Further evidence,
how taken.
Ibid. s. 38.

55. Where any question of fact or question of damages has been tried, any further evidence that is required for the hearing of the suit shall be taken at such time and in such manner as the Judge directs.

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56. When the evidence has been taken the suit shall forthwith proceed to the hearing unless the Judge otherwise orders.

Proceeding to hearing after close of evidence.

44 Vic. No. 18, ss. 31, 38.

Evidence.

57. (1) The evidence to be used at the hearing of any cause, or on the trial of any question of fact or of damages, shall be taken in the same manner and subject to the same rules and exceptions as at a trial at nisi prius.

Evidence, how taken. *Ibid.* ss. 31, 40.

(2) The Court at the hearing of any suit, or of any further consideration thereof, may, whether any of the parties interested are under disability or not, use affidavits by particular witnesses or receive proof by affidavit of such particular matters as in the opinion of the Court may properly be so proved.

16 Vic. No. 3, s. 26. 44 Vic. No. 18, ss. 40, 41.

58. Upon the hearing of any suit or matter the Judge may require the production and oral examination before himself of any witness or party in the suit, and may direct the cost of and attending the production and examination of such witness or party to be paid by such of the parties to the suit or matter and in such manner as he thinks fit.

Judge may require examination before himself of any witness. *Ibid.* s. 39.

59. The Judge shall have the same power of issuing or of authorising the issue of subpoenas, and of punishing parties for non-attendance in obedience to any such subpoena as is now vested in the Supreme Court in its common law jurisdiction.

Witnesses, how summoned. *Ibid.* s. 31.

60. The evidence in any suit may, if the Court or either party so require, be taken down by a shorthand writer.

Shorthand writer. *Ibid.* s. 31.

61. (1) Every witness who has made an affidavit in any suit or matter before the Court shall be subject to oral cross-examination in the same manner as if the evidence given in his affidavit had been given by him orally, and may be re-examined orally by the party using such affidavit.

Cross-examination of a deponent. *Ibid.* s. 42.

(2) Such witness shall attend before the Court to be so examined upon receiving due notice and payment of his reasonable expenses in like manner as if he had been duly served with a writ of subpoena *ad testificandum*.

(3) The expenses attending such examination shall be paid by the parties respectively in like manner as if the witness were the witness of the party cross-examining, and shall be deemed costs in the cause unless the Court otherwise directs.

62. (1) Any party may call on any other party, who is competent to make admissions, by notice to admit any document, saving all just exceptions; and in case of his not admitting the same, the cost of proving the document shall be paid by the party so neglecting or refusing to admit, whatever the result of the suit or proceeding, unless the Court otherwise orders.

Notice to admit documents. *Ibid.* s. 43.

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(2) No costs of proving any document shall be allowed unless such notice has been given, except where the omission to give it was, in the opinion of the Master, a saving of expense.

Oral evidence on motions, &c.

44 Vic. No. 18, s. 47.

63. Any party in any suit or proceeding may by a subpoena require the attendance of any person before the Court or Master or any person specially appointed for the purpose, and may require the production of any deed, instrument, writing, matter, or thing which such person may be lawfully required to produce, and may examine such person orally for the purpose of using his evidence upon any motion, petition, or other proceeding in like manner as such person would be bound to attend and be examined with a view to the hearing of a suit.

Answer how used on certain motions.

Ibid. s. 48.

64. Upon any application to the Court for an injunction, or a receiver, or to dissolve an injunction or discharge an order appointing a receiver, where the defendant has filed an answer to interrogatories, such answer shall, for the purpose of evidence on such application, be regarded as an affidavit, and affidavits may be received and read in opposition thereto.

Evidence after the hearing.

Ibid. s. 49.

65. In cases where it is necessary for any party to go into evidence subsequently to the hearing, or on any inquiry, account, or reference before the Judge, such evidence shall be taken in the prescribed manner.

Pleadings, &c., out of the jurisdiction.

Ibid. s. 45.

66. (1) All pleadings, examinations, and affidavits in suits or proceedings in equity may be sworn and taken in any place out of this State under the dominion of His Majesty before any Judge, notary public, or person authorised to administer oaths at such place, or before any British consul or vice-consul in any place out of His Majesty's dominions.

(2) Judicial notice shall be taken of the seal or signature, as the case may be, and authority of any such Judge, notary public, person, consul, or vice-consul.

Abatement and revivor.

Suit how revived after abatement.

Ibid. s. 59.

67. (1) Upon any suit becoming abated by death or otherwise, or defective by reason of some change or transmission of interest or liability it shall not be necessary to file any new or supplemental statement of claim, but an order to the effect of the common order to revive, or of the usual supplemental decree, may be obtained as of course upon an allegation of the fact and of the nature of the statement or defect in the suit.

(2) Such order for revivor shall be served upon the persons who previously to the first day of September, one thousand eight hundred and eighty, would have been defendants to a bill of revivor or supplemental bill.

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(3) Such persons when so served shall become parties to the suit and shall enter an appearance thereto as if they had been duly served with process to appear to such a bill as aforesaid duly filed against them.

(4) The persons so served may within the prescribed time after service apply to the Court to discharge such order on any ground which would have been open to them on a bill of revivor or supplemental bill stating the previous proceedings in the suit and the alleged change or transmission of interest or liability, and praying the usual relief consequent thereon.

(5) If any person so served is under disability, such order shall be of no effect as against him until a guardian *ad litem* has been appointed for him and the prescribed time has elapsed.

68. (1) Facts which have occurred since the commencement of the suit may, if the Court thinks proper, be introduced by way of amendment into the original statement of claim.

Facts occurring since the filing of the statement of claim.

44 Vic. No. 18, s. 60.

(2) Otherwise the plaintiff may state such facts on the record in such manner and subject to such rules as are prescribed with respect to the proof thereof and to affording the defendant an opportunity of answering the same.

Decrees.

69. All decrees and orders shall be settled in the prescribed manner.

Mode of settling decrees and orders.
Ibid. s. 65.

Formal defects, &c.

70. No proceeding shall be invalidated by any formal defect nor by any irregularity unless the Court is of opinion that substantial injustice has been caused by such defect or irregularity and that such injustice cannot be remedied by any order of the Court.

Formal defects not to invalidate proceedings.
Ibid. s. 51.

PART V.

THE MASTER IN EQUITY.

71. The Governor may appoint a barrister of at least five years standing to be Master in Equity at such salary as may be deemed reasonable.

The Master in Equity.
4 Vic. No. 22, s. 22.
25 Vic. No. 9, s. 1.

72. (1) The Court shall order what matters shall be investigated before the Master with or without special directions, and what matters shall be heard and investigated by the Court respectively.

44 Vic. No. 18, s. 66.

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(2) In every case, unless the Court otherwise directs, the Master shall tax costs and make such inquiries as have usually been prosecuted before the Master.

(3) The Judge shall give such aid and directions in any such inquiry as he may think fit subject to the right of appeal and to the right of every suitor to bring any particular point before the Judge himself.

44 Vic. No. 18, s. 67.
Several powers.

73. The Master shall for the purpose of any proceeding before him have full power to issue advertisements, to summon any persons, to administer oaths, to take affidavits, and also acknowledgments except those of married women, and to examine parties or witnesses orally or upon interrogatories.

Witnesses bound to attend.
Ibid. s. 67.

74. Every person summoned by the Master shall be bound to attend upon such summons, and shall for disobedience thereof be liable to process of contempt in like manner as for disobedience to or for default of attendance in pursuance of any order of the Supreme Court or on any writ of subpoena.

Production of documents.
Ibid. ss. 25, 26.

75. The Master shall have the like powers under references to him to order production of documents by the parties as by this Act are vested in the Court, and the Master may deal with such documents when produced in such manner as appears just.

Evidence.
Ibid. s. 49.

76. In cases where it is necessary for any party to go into evidence on any inquiry, account, or reference before the Master, such evidence shall be taken in such manner as is prescribed.

False swearing.
Ibid. s. 67.

77. All persons knowingly swearing or affirming falsely before the Master shall incur all the penalties of perjury.

Service.

78. The Master shall have the like powers under references to him to order substituted or other service or notice in lieu of service to be effected or given where the person required to be served is within the jurisdiction as by this Act are vested in the Court or Judge.

Certificate.
Ibid. s. 68.

79. The result of any proceedings before the Master shall be stated in a certificate in the prescribed form, unless otherwise directed by the Court, and the approval of the Judge of any such certificate shall be signified under his hand.

Taking opinion of Judge.
Ibid. s. 69.

80. (1) During the proceeding before the Master, or within the prescribed time after its conclusion, any party may take the opinion of the Judge on any particular point or matter arising in the course of the proceeding, or upon the result of the whole when brought to a conclusion.

(2) Every certificate of the Master, after it has been adopted and signed by the Judge, shall be filed, and shall thenceforth be binding on all parties unless discharged or varied by the Court upon application within the prescribed time.

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PART VI.

APPEALS TO THE FULL COURT.

81. (1) Any person aggrieved by any decree or order of the Judge, whether sitting in open Court or in chambers, may, at any time within fourteen days next after the pronouncing of the same, or within such further time as the Judge allows, enter an appeal in the office of the Master against such decree or order to the Full Court, subject to such general rules as are prescribed.

Power to appeal to Full Court.

44 Vic. No. 18, s. 70.

(2) Every person so appealing shall, within fourteen days from the time of filing such appeal, either—

Security to be given by appellant.

(a) deposit in the hands of the Master such sum, not exceeding one hundred pounds, as the Master directs; or

(b) deposit with the Master a bond of two persons to be approved of by him, in such sum, not exceeding one hundred pounds, as he directs, conditioned to be void if the appellant prosecutes his appeal with all due diligence, and pays such costs as the Court adjudges.

(3) Such sum of money or bond, as the case may be, shall be held by the Master, subject to the order of the Court.

(4) If such sum of money or bond is not deposited as aforesaid within the period hereby provided, such appeal shall be deemed to have been abandoned.

82. (1) All appeals under this Act shall be by way of rehearing, and shall be brought by notice of appeal, and no petition or other formal proceeding other than such notice shall be necessary.

Mode of appealing.

Ibid. s. 71.

(2) The appellant may, by the notice, appeal from the whole or any part of any decree or order, and such notice shall state whether the whole or part only of such decree or order is complained of, and in the latter case shall specify such part.

83. (1) The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Full Court may direct notice of the appeal to be served on all or any other parties to the suit, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may make such decree or order as might have been made if the persons served with such notice had been originally parties.

Notice of appeal.

Ibid. s. 72.

(2) Any notice of appeal may be amended at any time as to the Full Court may seem fit.

84. (1) The Full Court shall have all the powers and duties as to amendment and otherwise of the Judge, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before the Master or a commissioner.

General powers of the Full Court.

Ibid. s. 73.

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(2) Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decree or order from which the appeal is brought.

(3) Upon appeals from a decree or order upon the merits at the trial or hearing of any suit or proceeding, such further evidence (save as aforesaid) shall be admitted on special grounds only, and not without special leave.

(4) The Full Court shall have power to make any decree or order which ought to have been made, and such further or other order as the case may require.

(5) The powers aforesaid shall be exercised by the Full Court notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties although such respondents or parties may not have appealed from or complained of the decision.

(6) The Full Court shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

Regulations as to
cross appeals.
44 Vic. No. 18, s. 74.

85. (1) It shall not, under any circumstances, be necessary for a respondent to give notice of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied or altered, he shall, within such time as may be prescribed by any general rule or by special order, give notice of such intention to any parties who may be affected by such contention.

(2) The omission to give such notice shall not diminish the powers by this Act conferred upon the Full Court, but may, in the discretion of the Court, be ground for the adjournment of the appeal, or for a special order as to costs.

Stay of proceedings
on appeal.
Ibid. s. 75.

86. (1) Every notice of appeal shall stay the execution of proceedings upon the decree appealed from unless the Judge directs such execution to be proceeded with.

(2) The Judge may (subject nevertheless to appeal as from any other order) direct such decree or order to be carried into execution and all proceedings to be taken thereupon as if no appeal had been entered, which direction may be upon such terms (if any) as to security or otherwise as to such Judge seems fit.

Decrees how settled.
Ibid. s. 76.

87. The decrees and orders of the Court on appeal shall be settled by the Master as at present, and the Court may, in any decree or order, direct what, if any, accounts shall be taken, or inquiries made, before the Judge, and what, if any, before the Master.

Appeal by direction
of the Judge.
Ibid. s. 77.

88. The Judge may, on the application of any party or at his own discretion, and on such terms, if any, as he thinks fit to impose, direct a rehearing by the Full Court of any cause, petition, motion, or matter

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matter before him, and in such case it shall not be necessary to give any notice of appeal, but nothing herein shall prejudice the right of any party to appeal where the Judge does not give any such direction.

89. Nothing in this Act shall be construed to affect the right of any party to appeal to His Majesty in Council from any such decree or order, or from any reversal or affirmance thereof. Appeals to Privy Council.

PART VII.

CONTEMPT OF COURT.

90. (1) When any person, directed by any decree or order to execute any deed or other instrument or make a surrender or transfer, has refused or neglected so to do for the space of twenty-eight days, the Court may appoint the chief clerk in equity, or some other person, to execute such deed or instrument or to make such surrender or transfer in his name, and to do all acts necessary to give validity and operation thereto. Order to execute instruments. 11 Geo. IV, and 1 Wm. IV, c. 36, s. 15, subs. 15.

(2) The execution of such deed or instrument and the surrender or transfer so made by the person so appointed shall in all respects have the same force or validity as if the same had been executed or made by the person directed by the decree or order to execute or make the same.

(3) The Court shall make such order as may be just touching the payment of the costs of, or attending the execution of, any such deed, transfer, surrender, or instrument.

(4) The powers hereby conferred on the Court are in addition to the powers conferred by the Trustee Act, 1898.

91. (1) Where any person has been ordered by any decree or order of the Court to deliver to any person or to deposit in Court or elsewhere books, papers, or any other article or thing, and has refused or neglected to do so for the space of twenty-eight days any sequestrator appointed by the Court shall have the same power to seize and take such books, papers, writings, or other things being in the custody or power of the person against whom the sequestration issues as such sequestrator would have over such person's own property. Order to deliver up books. Ibid. 15, subs. 16.

(2) Any article or thing so seized and taken shall be dealt with as the Court directs.

(3) The Court may make such order as to the costs of proceedings under this section as it thinks fit.

92. (1) The Master on some day in the last week of the months of February, May, August, and November respectively in each year shall make a return to the Judge of the persons (if any) then confined in prison under orders of the Court for contempt of Court together with a report upon the case of each person so confined. Return of persons imprisoned for contempt. 1 Wm. IV, c. 36, s. 15, subs. 7, 17, 18.

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(2) The Court may at any time upon the application of any person so confined or upon the receipt of such report make such order for the discharge of any such person so confined and as to costs incidental to such order as it thinks fit.

Committal for non-payment of money into Court.

1 Wm. IV, c. 36, ss. 16, 17.

93. Where any person is committed to prison for non-payment of any money into Court, or is kept in prison for non-payment of any costs, and such person becomes bankrupt, the Court shall order his release from prison unless the imprisonment of such person was intended to be punitive or disciplinary and not merely to enforce the order of the Court.

PART VIII.

RULES OF COURT.

44 Vic. No. 18, ss. 80, 81.

26 Vic. No. 12, s. 34.
1897, No. 11, s. 6.

94. (1) The Judges of the Supreme Court or any three of them may make general rules for the following purposes—

- (a) for regulating the times, forms, and modes of procedure;
- (b) for fixing the amount of all fees and allowances to officers of the Court and solicitors in reference to any matter in equity;
- (c) for regulating the times and modes of service or notice in lieu of service of all equitable process;
- (d) as to the investment of cash under the control of the Court in such stocks, funds, or securities, as may seem fit.
- (e) and generally for regulating the practice of the Court and otherwise for the effectual execution of this Act and of the intention and object thereof.

(2) The rules and form contained in the Fourth Schedule to this Act shall regulate the practice and procedure upon originating summons until altered, added to or rescinded by rules of Court made under the authority of this Act, which rules when made shall have the same force and effect as if they had formed part of the said Fourth Schedule.

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

SCHEDULES.

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SCHEDULES.

FIRST SCHEDULE.

Reference to Act.	Title or Short Title.	Extent of repeal.
5 Wm. IV No. 8 ...	An Act for adopting and applying certain Imperial Acts.	So much of the Act as adopted the Imperial Acts, 11 Geo. IV and 1 Wm. IV, cc. 36 and 47, and the unrepealed portion of 11 Geo. IV and 1 Wm. IV, c. 65.
4 Vic. No. 22 ...	An Act to provide for the more effectual administration of justice in N.S.W.	Section 22.
5 Vic. No. 9 ...	Advancement of Justice	Section 14.
11 Vic. No. 27 ...	An Act to render valid certain acts and appointments and to authorise the making of orders in infancy.	The whole.
12 Vic. No. 1 ...	An Act to simplify and alter the law in some respects.	Section 8.
16 Vic. No. 3 ...	An Act to diminish the delay and expense of proceedings in the Supreme Court in its jurisdiction as a Court of Equity and in Infancy and Lunacy.	The whole.
16 Vic. No. 19 ...	Trustee Act, 1852	The unrepealed portion.
21 Vic. No. 6 ...	An Act for further facilitating the payment of debts out of real estate.	The whole Act.
22 Vic. No. 14 ...	The Equity and Banco Business Expediting Act.	Sections 1, 2, 3.
25 Vic. No. 9 ...	An Act to amend the law in certain respects.	The unrepealed portion.
26 Vic. No. 12 ...	Trust Property Act	Section 34 and sections 66-70 (inclusive).
37 Vic. No. 11 ...	An Act to amend the law of arrest ...	Section 7.
44 Vic. No. 18 ...	The Equity Act of 1880	The unrepealed portion.
55 Vic. No. 26 ...	The Judicial Offices Act	Section 4.
1897, No. 11 ...	Service of Equitable Process Act of 1897	The whole.
1900, No. 49 ...	Supreme Court Procedure Act, 1900 ...	Sections 10, 11, and the Schedule, except rule one thereof.

SECOND SCHEDULE.

, the day of , in the year one

thousand nine hundred and

To the within-named A.B.—

TAKE notice that the within-named plaintiff, E.F. [or, where there is more than one plaintiff, plaintiffs E.F. and C.D.], has (or have) commenced a suit against you in the Supreme Court of New South Wales in its Equitable Jurisdiction by the within statement of claim, and you are required, within days after the service hereof on you, exclusive of the day of such service, to cause an appearance to be entered for you in the Equity

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Equity Office of the said Supreme Court, at Chancery-square, in the city of Sydney, in the State of New South Wales, to the within statement of claim. And you are also required at the same time of entering your appearance to file in the said Equity Office a memorandum stating in effect that you dispute, in whole or in part, the plaintiff's claim (specifying which part), or that you submit to such decree or order as the Court thinks fit to make, or that you disclaim all right, title, and interest in the subject matter of the within statement of claim.

NOTE.—If you neglect to enter an appearance, or to file a memorandum as above mentioned, you will be subject to such order as the said Court thinks fit to make in your absence.

(Signed) E.F., Plaintiff,
or, Y.Z., of
Solicitor for the Plaintiff.

THIRD SCHEDULE.

EDWARDUS R.

To the within named defendant, A.B.,—

Greeting :—

WE command you that, within _____ days after the service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in the Equity Office of our Supreme Court, at Chancery-square, Sydney, in the State of New South Wales, to the within statement of claim. And that you do at the same time of entering your appearance file in the said Equity Office a memorandum stating in effect that you dispute, in whole or in part, the plaintiff's claim (specifying which part), or that you submit to such decree or order as the Court thinks fit to make, or that you disclaim all right, title, and interest in the subject matter of the within statement of claim.

Witness the Honorable A.B., the Chief Judge in Equity, at Sydney, the
day of _____, in the year one thousand nine hundred and _____,
and in the _____ year of our reign.

NOTE.—If you neglect to enter your appearance, or to file a memorandum as above mentioned, you will be subject to such order as the Court thinks fit to make in your absence.

FOURTH SCHEDULE.

Rules of Court for Originating Summons.

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

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

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

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- (g) the determination of any question arising in the administration of the estate or trust.
2. Any of the persons named in the last preceding rule may, in like manner, apply for and obtain an order for— Administration on originating summons.
- (a) The administration of the personal estate of the deceased ;
- (b) The administration of the real estate of the deceased ;
- (c) the administration of the trust.
3. The persons to be served with the summons under the last two preceding rules in the first instance shall be the following, that is to say— Parties
- A. Where the summons is taken out by an executor or administrator or trustee—
- (a) for the determination of any question under subsections (a), (e), (f), or (g) of rule 1, the persons or one of the persons whose rights or interests are sought to be affected ;
- (b) for the determination of any question under subsection (b) of rule 1, any member or alleged member of the class ;
- (c) for the determination of any question under subsection (c) of rule 1, any person interested in taking such accounts ;
- (d) for the determination of any question under subsection (d) of rule 1, any person interested in such money ;
- (e) for relief under subsection (a) of rule 2, the residuary legatees, or next of kin, or some of them ;
- (f) for relief under subsection (b) of rule 2, the residuary devisees, or next of kin, or some of them ;
- (g) for relief under subsection (c) of rule 2, the cestuis que trust or some of them ;
- (h) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur.
- B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.
4. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out, as of course, an originating summons returnable in Chambers in Equity for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case may require, that is to say—delivery of possession by the mortgagor, foreclosure, payment of the mortgage debt and foreclosure, sale, redemption reconveyance, delivery of possession by the mortgagee. Foreclosure, &c., on originating summons.
5. The persons to be served with the summons under the last preceding rule shall be such persons as under the existing practice of the Court in Equity would be the proper parties to a suit for the like relief as that specified by the summons. Parties.
6. A vendor or purchaser of real or leasehold estate, or their representatives respectively, may take out, as of course, an originating summons, returnable in Chambers in Equity, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the Judge shall make such order upon the application as appears just, and shall order by whom all or any of the costs of and incident to the application shall be borne and paid. Originating summons for decision of question between vendor and purchaser.
7. The Judge may direct such other persons to be served with an originating summons, as they or he may think fit.
8. (a) Any person claiming to be interested under a deed, will, or other written instrument, may apply, by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested. Construction of instrument on originating summons.
- (b) The Judge may direct such persons to be served with the summons, as he may think fit.
9. The parties served with an originating summons shall, before they are heard, enter appearances in the office of the Master in Equity, together with an address for service, which shall not be more than one mile from the said office. Appearance to an originating summons.

Equity.

- Time for appearance. 10. The time within which a defendant within the jurisdiction shall appear to an originating summons shall be—
 (a) if he resides above 200 miles from Sydney, within sixteen days ;
 (b) if he resides above 100 miles from Sydney, within twelve days ;
 (c) in all other cases, within eight days
 after service of the summons upon him, inclusive of the day of such service.
- Evidence. 11. Applications by way of originating summons shall be supported by such evidence as the Judge may require, and directions may be given, as he may think just, for the trial of any question arising thereout.
- Settlement of orders. 12. Orders made on originating summons shall be settled, passed, and entered, and remain of record, and shall be enforced in the same manner in all respects as orders of the Court in Equity.
- Form of summons. 13. An originating summons shall be in Form A to these rules altered to meet the circumstances of the case.
- Appointment for hearing of summons. 14. So soon as the defendants have appeared to an originating summons, or have made default in so appearing within the time limited, the plaintiff shall take out in the Equity Office an appointment, before the Judge, for the hearing of the summons, and shall give the defendants who have appeared two clear days' notice of the date of such appointment. If the plaintiff does not take out such appointment within seven days after the defendants have appeared, or made default, as the case may be, any defendant who has appeared may take out such appointment, and shall give two clear days' notice of the date of such appointment to the plaintiff and the other defendants who have appeared.

FORM A.

In the Supreme Court of New South Wales, } No.
 in Equity. }
 In the matter of the will of, &c. ;
or
 In the matter of the estate of, &c. ;
or
 In the matter of the trusts of, &c. ;
or
 In the matter of the indenture of mortgage dated, &c. ;
or
 In the matter of the contract for sale, dated, &c. ;
or as the case may be
 Between A.B., plaintiff, and C.D., defendant.

Originating Summons.

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

[State the questions or proposed order.]

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

Dated the day of , one thousand nine hundred and

This summons is taken out by the abovenamed [or by the
 solicitor for the abovenamed .]

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

By Authority : WILLIAM APPELGATE GULLICK, Government Printer, Sydney, 1901.

[1s. 3d.]

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, 17th October, 1901. }*

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO PRIMO

EDWARDI VII REGIS.

Act No. 24, 1901.

An Act for consolidating enactments relating to the practice, procedure, and powers of the Supreme Court of New South Wales in its equitable jurisdiction. [Assented to, 30th October, 1901.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembly, and by the authority of the same, as follows:—

1. This Act may be cited as the "Equity Act, 1901," and is Short title. divided into Parts as follows:—

PART I.—INTERPRETATION.—s. 3.

PART II.—THE CONSTITUTION OF THE COURT.—ss. 4-7.

PART III.—JURISDICTION AND SPECIAL POWERS OF THE COURT—

DIVISION 1.—*Co-ordinate jurisdiction with Common Law Courts*—ss. 8, 9.

DIVISION 2.—*Various powers of the Court*.—ss. 10-19.

DIVISION 3.—*Jurisdiction in chambers*.—ss. 20, 21.

PART

Equity.

PART IV.—PROCEDURE.—ss. 22-70.

PART V.—THE MASTER IN EQUITY.—ss. 71-80.

PART VI.—APPEALS TO THE FULL COURT.—ss. 81-89.

PART VII.—CONTEMPT OF COURT.—ss. 90-93.

PART VIII.—RULES OF COURT.—s. 94.

Repeal of Acts.
First Schedule.

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

(2) All rules of Court made under the authority of any provision so repealed and in force at the commencement of this Act shall be deemed to have been made and to be in force under the authority of this Act.

(3) The Master in Equity in office at the passing of this Act shall continue in office as if this Act had been in force at the time of his appointment, and he had been appointed hereunder.

(4) This repeal shall not affect any suit, matter, or proceeding now pending in the Court, but the same shall be continued under the provisions of this Act.

PART I.

INTERPRETATION.

Interpretation.

44 Vic. No. 18, ss.
3, 82.

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

The words “the Court” mean the Supreme Court in equity holden before the Judge, or any other Judge lawfully exercising the jurisdiction of the Judge, or in cases on appeal before the Full Court.

55 Vic. No. 26, s. 4.

The words “the Judge” mean the Chief Judge in Equity.

The words “the Master” mean the Master in Equity.

The words “statement of claim” include information.

1897, No. 11, s. 7.

The expression “equitable process” includes statement of claim, petition, motion, summons, decree, order, and generally any other document of which service is required to be effected in any proceeding before the Court.

The word “affidavit” includes affirmation, statutory declaration, and attestation of honour.

The word “prescribed” means prescribed by rules of Court.

11 Vic. No. 27, s. 2.

A reference to the jurisdiction “in equity” includes the jurisdiction of the Supreme Court in all matters relating to the appointment of guardians of infants and their estates.

PART

Equity.

PART II.

THE CONSTITUTION OF THE COURT.

4. (1) The jurisdiction of the Supreme Court in equity including all matters relating to the appointment of guardians of infants and their estates shall be exercised by the Judge. Appointment and powers of the Chief Judge in equity. 11 Vic. No. 27, s. 2.

(2) The Supreme Court shall be holden by the Judge for the determination of all proceedings in equity, and the disposal of motions and matters in relation thereto. 44 Vic. No. 18, s. 1.

(3) Every decree or order of the Judge made in equity shall (unless appealed from in manner hereinafter provided) be as valid and binding as if made by the Full Court.

5. The Judge in Bankruptcy shall have the like powers and jurisdiction in all respects as are herein vested in the Judge, subject nevertheless to the like appeal; and when exercising such jurisdiction and powers or any of them the Judge in Bankruptcy shall be styled Judge in Equity. Judge in bankruptcy to be Judge in equity. 55 Vic. No. 26, s. 4.

6. (1) In any suit or proceeding the Judge may sit with the assistance of any two other Judges of the Supreme Court. Two Judges may assist. 44 Vic. No. 18, s. 5.

(2) In every such case the decision of the majority shall be taken to be that of the Full Court.

7. (1) The Court may in every case obtain the assistance of conveyancing counsel, accountants, merchants, engineers, actuaries, or other scientific persons the better to enable it to determine any matter at issue in any suit or proceeding and may act upon the certificate of any such person. Assistance of scientific persons. Ibid. s. 46.

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

PART III.

JURISDICTION AND SPECIAL POWERS OF THE COURT.

DIVISION I.—*Co-ordinate jurisdiction with Common Law Courts.*

8. In any suit or proceeding in equity wherein it may be necessary to establish any legal title or right as a foundation for relief the Court shall itself determine such title or right without requiring the parties to proceed at law to establish the same, and whenever any question now cognizable only at law arises in the course of any proceeding before it the Court shall have cognizance thereof as completely as if the same had arisen in a court of law, and shall exercise in relation to such title, right, or question all the powers of the Supreme Court in its Common Law jurisdiction, and no suit in equity shall be open to objection on the ground that the remedy or appropriate remedy is in some other jurisdiction. Power to decide legal titles, &c. Ibid. s. 4.

Equity.

Power to Court to
award damages in
certain cases.

44 Vic. No. 18, s. 32.

9. In all cases in which the Court has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract, or agreement, or against the commission or continuance of any wrongful act or for the specific performance of any contract, covenant, or agreement the Court may award damages to the party injured either in addition to or in substitution for such injunction or specific performance.

DIVISION 2.—*Various powers of the Court.*

Declarations of right.
Ibid. s. 50.

10. No suit shall be open to objection on the ground that a merely declaratory decree is sought thereby, and the Court may make binding declarations of right without granting consequential relief.

Decree for adminis-
tration discretionary.
1900, No. 49, s. 11.

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

Court may direct a
sale in foreclosure
suits.
44 Vic. No. 18, s. 52.

12. In any suit for the foreclosure of the equity of redemption in any property, the Court may, upon the request of the mortgagee or any subsequent encumbrancer, or of the mortgagor, or any person claiming under them respectively, direct a sale of such property instead of a foreclosure on such terms as the Court may think fit, and without previously determining the priorities of encumbrances or giving time to redeem:

Provided that if such request be made by any such subsequent encumbrancer, or by the mortgagor, or any person claiming under them respectively, the Court shall not direct any such sale without the consent of the mortgagee or the person claiming under him unless the party making such request shall deposit in Court a reasonable sum to be fixed by the Court for the purpose of securing the performance of such terms as the Court may think fit to impose on him.

Dispensing with
references in certain
cases of account.
Ibid. s. 53.

13. (1) In all cases of account either party may by consent or by leave of the Court file a statement of facts before or at the hearing of any suit, petition, motion, or matter verified by affidavit; and where the amount is capable of being ascertained without difficulty from the pleadings or evidence, or by such statement of facts, the Court may adjust the same and decree accordingly without further inquiry or reference.

(2) Where the account cannot be so adjusted, the Court may give such special directions as may seem expedient with respect to the mode in which the account shall be taken or verified, which directions may be given either by the decree or order directing such account, or by any subsequent order.

Books may be
declared *prima facie*
evidence of account.
Ibid.

(3) The Court may direct that in the taking of any account the books in which the same has been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objections thereto as they may be advised.

Equity.

14. If in any suit instituted in relation to real estate it appears to the Court that it will be expedient that the same or any part thereof should be sold for the purposes of such suit, the Court may at any time direct the same to be sold, and such sale shall be as valid as if directed to be made by a decree or decretal order on the hearing, and any party to the suit in possession of such estate or in receipt of the rents and profits thereof shall deliver up such possession or receipt to the purchaser or such other person as the Court directs.

Sales may be directed before decree.
44 Vic. No. 18, s. 54.

15. Where any real or personal property is the subject of any proceeding in equity, and the Court is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceeding, the Court may, at any time after the commencement of such proceeding, allow to the parties interested therein, or any of them, the whole or part of the annual income of such real property or a part of such personal property or of the income thereof up to such time as the Court directs, and for that purpose may make such orders as may appear expedient.

Allowance to parties out of property in certain cases.
Ibid. s. 55.

16. (1) An injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that such order should be made, and whether there be a prayer for an injunction or receiver or not, and any such order may be made either unconditionally or upon such terms and conditions as the Court thinks just.

Injunctions and receivers.
Ibid. s. 57.

(2) If an injunction is asked either before or at or after the hearing of any suit or matter to prevent any threatened or apprehended waste or trespass, such injunction may be granted whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

Injunction to prevent waste.
Ibid.

17. Service upon any person of the decree or order directing such injunction or notice thereof shall have the same effect as the issuing of a writ of injunction and signing and filing of a docquet and service of the writ upon such person had previously to the first day of September, one thousand eight hundred and eighty, and thereupon the plaintiff shall be entitled to all such remedies as he was entitled to under the practice in force at the last-mentioned date.

Service of order for injunction.
Ibid. s. 58.

18. (1) In any suit in which the Court declares that any real estate of a deceased person is liable to any debt of such person the Court may direct that the amount of such debt be raised by mortgage or sale of such real estate.

Sales and mortgages for payment of debts.
11 Geo. IV and 1 Wm. IV, c. 47, ss. 11, 12.
21 Vic. No. 6, ss. 1, 2, 3.

(2) For the purpose of effecting any sale or mortgage so directed, the Court may name some person to execute the necessary conveyances, mortgages, or other documents; and any conveyance, mortgage,

Equity.

mortgage, or other document executed by such person shall be as effectual in all respects as if such person were of full age and seised or possessed of the fee simple or other whole interest and estate so to be sold or mortgaged.

(3) Where any such sale or mortgage is made the surplus (if any) of the money raised thereby, after defraying the debt and all legal costs and expenses, shall be considered for all purposes as unconverted real estate.

Court may apply dividends of stock belonging to infants for their maintenance
11 Geo. IV, and
1 Wm. IV, c. 65,
ss. 32, 35, 44.

19. (1) When an infant is beneficially entitled to the whole or part of any stock, fund, annuity, security, or sum of money transferable in books kept by any company or society, the Court may order all or any part of the dividends or interest due or to become due in respect thereof to be paid to any guardian of such infant, or to any other person it may deem fit, for the maintenance and education or otherwise for the benefit of such infant, such guardian or other person to be named in the order directing payment.

(2) The receipt of such guardian or other person for such dividends or interest shall be as effectual as if such infant had attained the age of twenty-one years and had signed and given the same.

(3) The Court may order that the costs of applications under this section be paid out of the fund, annuity, security, sum of money, or the dividends or interest arising therefrom, or out of any moneys in Court in which such infant is interested in such manner as the Court thinks proper.

(4) This section shall be a full and complete indemnity to all companies and societies, and their officers and servants, for all acts and things done or permitted to be done pursuant thereto.

Costs.

20. The Court may in any case award costs as between solicitor and client.
44 Vic. No. 18, s. 78, and client.

DIVISION 3.—*Jurisdiction in Chambers.*

Business to be disposed of in chambers.

Ibid. ss. 61, 62.

26 Vic. No. 12, s. 34.

21. (1) The business to be disposed of by the Judge in chambers shall consist of such of the following as he thinks would be more conveniently so disposed of, namely :—

- (a) Applications for time ;
- (b) Applications for leave to amend ;
- (c) Applications for discovery ;
- (d) Applications for determining the mode of trial, and settling the questions to be tried ;
- (e) Applications relating to the conduct of any suit or matter ;
- (f) Applications relating to the guardianship or maintenance of infants ;
- (g) Matters connected with the management of property ;
- (h)

Equity.

- (h) Applications for the investment or alteration of the state of investment of any funds held in Court upon trust in any cause or matter;
 - (i) Such other matters as in the opinion of the Judge may advantageously and with propriety be heard in chambers.
- (2) The Judge shall fix the times for sitting in chambers, and when so sitting shall have the same powers and jurisdiction as in open court.
- (3) The Judge while sitting in open court may adjourn for hearing in chambers, or while sitting in chambers may adjourn for hearing in open court, any case before him which he may think would better be heard in chambers or in open court as the case may be.

Adjournment from Court to chambers.
44 Vic. No. 18, s. 63.

PART IV.

PROCEDURE.

Statement of claim.

22. (1) All suits in equity shall be commenced, save as herein- after mentioned, by filing in the office of the Master a statement of the plaintiff's case, to be called the statement of claim, in the form and manner prescribed.

Ibid. s. 6.

1900, No. 49, s. 10.

(2) Rules of Court may be made under this Act specifying in what cases persons seeking equitable relief may apply for such relief by way of originating summons in chambers and providing for the course of procedure thereon.

(3) Where any Act provides that applications thereunder may be made to the Court or Judge such applications shall be made in the manner (if any) provided for by such Act.

23. It shall not be competent to any defendant to take any objection for want of parties in any case to which the rules next hereinafter set forth extend, and such rules shall be taken as part of the law and practice of the Court:—

Rules as to parties.
44 Vic. No. 18, s. 7.

- (a) Any legatee, devisee, or next of kin may, without serving the remaining legatees, devisees, or next of kin, have a decree for the administration of the real and personal estate of a deceased person.
- (b) Any one of several *cestuis que trust* under any deed or instrument may, without serving any other of such *cestuis que trust*, have a decree for the execution of the trusts of the deed or instrument.
- (c)

Equity.

- (c) In all cases of suits for the protection of property pending litigation and in all cases in the nature of waste one person may sue on behalf of himself and of all persons having the same interest.
- (d) Any executor, administrator, or trustee may obtain a decree against any one legatee, next of kin, or *cestuis que trust* for the administration of the estate or the execution of the trusts.
- (e) In all the above cases the Court may require any other persons to be made parties to the suit, and may give the conduct of the suit to such person as it may deem proper, and may make such order in any particular case as it may deem just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.
- (f) In all the above cases the persons who, according to the practice of the Court previously to the first day of September, one thousand eight hundred and eighty, would have been necessary parties to the suit, shall be served with notice of the decree, and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit, and they may by an order of course have liberty to attend the proceedings under the decree, and any party so served may within the prescribed time apply to the Court to add to the decree.
- (g) In all suits concerning real or personal estate vested in an executor, administrator, or trustee under a will, intestacy, settlement, or otherwise, such executor, administrator, or trustee shall represent the persons beneficially interested in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate, and in such cases it shall not be necessary to make the persons beneficially interested parties to the suit, but the Court may upon consideration of the matter on the hearing if it thinks fit order such persons or any of them to be made parties.

Absence of personal
representative.
44 Vic. No. 18, s. 8.

24. (1) If in any suit or proceeding in equity it appears to the Court that any deceased person who was interested in the matters in question has no legal personal representative, the Court may either proceed without any person representing the estate of such deceased person or appoint some person to represent such estate for the purposes of the suit or proceeding on such notice (if any), as the Court shall think fit, either specially or generally by public advertisement.

(2) Every order made in reference to the matter and every order consequent thereon shall bind the estate of such deceased person in

Equity.

in the same manner as if there had been a duly constituted legal personal representative of such deceased person and such representative had been a party to the suit or proceeding and had appeared and submitted his rights and interests to the protection of the Court.

25. (1) No suit shall be dismissed by reason only of the misjoinder of persons as plaintiffs, but wherever it appears to the Court that, notwithstanding the conflict of interest in the co-plaintiffs, or the want of interest in some of the plaintiffs, or the existence of some ground of defence affecting some of the plaintiffs, the plaintiffs or some of them are entitled to relief, the Court may grant such relief and modify its decree according to the special circumstances, and for that purpose may direct such amendments (if any) as may be necessary, and at the hearing, before such amendments are made, may treat any of the plaintiffs as if they were defendants in the suit and the other plaintiffs were the only plaintiffs on the record.

Misjoinder of
plaintiffs.
44 Vic. No. 18, s. 9.

(2) Where there is a misjoinder of plaintiffs, and the plaintiff having an interest has died leaving a plaintiff on the record without an interest, the Court may at the hearing order the suit to stand revived, as may appear just, and proceed to the decision of the suit if it sees fit, and may give such directions as to costs or otherwise as to the Court seems meet.

26. (1) The Court may adjudicate on questions arising between parties, notwithstanding that they may be some only of the parties interested in the property respecting which the question may have arisen, or that the property is comprised with other property in the same instrument, without making the other parties interested in the property or interested under the same instrument parties to the suit and without requiring the whole trusts and purposes of the instrument to be executed under the direction of the Court and without taking the accounts of the trustees or other accounting parties or ascertaining the particulars or amount of the property touching which the question may have arisen.

Absence of persons
interested.
Ibid. s. 10.

(2) If the Court is of opinion that the application is fraudulent or collusive, or for some other reason ought not to be entertained it may refuse to make the order prayed.

27. It shall not be necessary that every defendant to the statement of claim shall be interested as to all the relief thereby prayed for, but the Court may make such order as appears just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such suit in which he has no interest.

Defendant not
interested as to all
the relief.
Ibid. s. 11.

28. Before the name of any person is used in any suit or other proceeding as next friend of any infant, married woman, or other party, or as relator in any information, such person shall sign a written authority to the solicitor for that purpose, and such authority shall be filed with the statement of claim, petition, motion, or summons, as the case may be.

As to next friend
and relator.
Ibid. s. 12.

Service.

*Equity.**Service.*

Service of statement
of claim.

44 Vic. No. 18, s. 13.
1897, No. 11, s. 6.

Service out of the
jurisdiction.

1897, No. 11, s. 3.

29. No writ of subpoena or other process to appear to and answer any statement of claim shall be required; but a copy of the statement of claim, stamped with the seal of the Court, and endorsed as hereinafter directed, shall be served in the prescribed manner.

30. The Court or the Judge may allow the statement of claim or any other equitable process in any suit or proceeding to be served out of the jurisdiction whenever—

- (a) the suit or proceeding, wholly or in part, concerns land or hereditaments situate within the jurisdiction, or any charge, lien, judgment, or incumbrance thereon; or
- (b) any Act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction is sought to be construed, rectified, set aside, or enforced in the suit or proceeding; or
- (c) the relief sought in any suit or proceeding in respect of the person to be served, wholly or in part concerns any money vested in any Government stocks or funds, or in the stocks or shares of any corporation, company, or society registered within the jurisdiction, or deposited with any such corporation, company, or society, or the interest, dividends, or produce of such money; or
- (d) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or
- (e) the suit or proceeding is for the administration of the estate of any deceased person who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument of which the person to be served is a trustee which ought to be executed according to the law of New South Wales, or for the appointment or removal of any trustee of such trusts; or
- (f) the suit is founded on any breach or alleged breach within the jurisdiction of any contract wherever made which (in respect of the matter as to which relief is sought) ought, according to the terms thereof, to be performed within the jurisdiction; or
- (g) any injunction is sought as to anything to be done or against the doing of any act within the jurisdiction, whether damages are or are not also sought in respect thereof; or
- (h) any person out of the jurisdiction is a necessary or proper party to a suit or proceeding properly brought against some other person duly served within the jurisdiction; or

(i)

Equity.

- (i) relief is sought against a person out of the jurisdiction in respect of his membership or alleged membership in any company or society registered within the jurisdiction.

31. (1) When leave is given to serve any statement of claim upon a person out of the jurisdiction, and such person is neither a British subject nor in any British possession, such statement of claim shall be endorsed in the form or to the effect of the form set out in the Second Schedule hereto.

Endorsement of statement of claim.
1897, No. 11, s. 4.

(2) Every other statement of claim served upon any defendant, whether within or out of the jurisdiction, shall be endorsed in the form or to the effect of the form set out in the Third Schedule hereto.

32. The filing and service upon the defendant of the statement of claim shall respectively have the same effect as the filing and service of a bill of complaint had previously to the first day of September, one thousand eight hundred and eighty.

Effect of filing statement of claim.
44 Vic. No. 18, s. 14.

33. (1) If any person is unable to effect reasonably prompt service of any process the Court or Judge may in the prescribed manner order substituted or other service to be effected or notice to be given instead of service.

Substituted service.
1897, No. 11, s. 5.

(2) The mere fact that the person to be served is out of the jurisdiction shall not be considered a sufficient reason for allowing substituted service.

(3) Where the person required to be served is out of the jurisdiction the Court or Judge shall not make an order directing substituted or other service or the giving of notice as aforesaid except in cases where the Court or Judge would have power to allow service out of the jurisdiction.

34. The plaintiff shall deliver to the defendant or his solicitor upon application for the same such a number of copies of the statement of claim as he requires upon being paid for the same at the prescribed rate.

Delivering copies of statement of claim.
44 Vic. No. 18, s. 15.

35. (1) Upon the amendment of any statement of claim the provisions hereinbefore contained with respect to filing and delivering copies thereof shall so far as may be extend to the statement of claim as amended.

Amendment of statement of claim.
Ibid. s. 16.

(2) Except where the rules or practice of the Court otherwise provide a statement of claim may be amended by written alterations therein as filed.

Appearance and statement of defence.

36. The defendant shall, when he enters an appearance to the statement of claim or at such later period as the Judge may allow, file a memorandum as prescribed, disputing or submitting to the plaintiff's claim or disclaiming any interest in the subject matter of the suit, and shall within the prescribed time file in the office of the Master a demurrer plea or statement of defence to the statement of claim.

Appearance by defendant.
Ibid. s. 18.

Equity.

Form of statement
of defence.
44 Vic. No. 18, ss. 19, 20.
Facts not denied
are admitted.
Ibid. s. 20.

37. Every statement of defence, and defence to counter claim, shall be verified upon oath, and shall be in the prescribed form.

38. (1) Where a party does not know whether a fact alleged in the statement of claim or counter-claim is true or not he may in his statement of defence state that he does not know and is not able to admit the truth of the fact alleged.

(2) Except as aforesaid, all facts stated in the statement of claim or counter-claim, and not expressly and in terms denied in the statement of defence shall be deemed to be admitted for the purpose of the suit.

Set-off and counter-
claim.
Ibid. s. 21.

39. (1) A defendant may in his statement of defence set off or set up by way of counter-claim against the claim of the plaintiff any right or claim, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross suit so as to enable the Court to pronounce a final judgment in the same suit both on the original and on the cross claim.

(2) The Court may, on the application of the plaintiff before the hearing, refuse permission to the defendant to avail himself of such set-off or counter-claim if, in the opinion of the Judge, such set-off or counter-claim cannot be conveniently disposed of in the pending suit, or ought not to be allowed.

Court may decree in
favour of defendant.
Ibid. s. 22.

40. Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, make a decree in favour of the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

Discovery.

Plaintiff's
interrogatories.
Ibid. s. 19.

41. The plaintiff or applicant in any suit or proceeding may by leave of the Court, and not otherwise, file and serve interrogatories for the examination on oath of any defendant or respondent.

Defendant's
interrogatories.
Ibid. s. 23.

42. Any defendant or respondent who has not been required to answer interrogatories, or who has been required to answer interrogatories and has put in a sufficient answer thereto, may by leave of the Court and not otherwise file and serve interrogatories for the examination on oath of the plaintiff or applicant.

Sufficiency of
answers.
Ibid. s. 24.

43. The sufficiency, materiality, or relevancy of the answer to any interrogatory may be determined in the prescribed manner.

Pleadings to be
considered.
Ibid. s. 23.

44. The Court, in determining what interrogatories shall be allowed or the sufficiency, materiality, or relevancy of any answer thereto, shall have regard to the statements contained in the pleadings of the parties filing and answering such interrogatories respectively.

Suit for discovery.
Ibid. s. 23.

45. Nothing in this Act shall be deemed to take away the right of any person to institute a suit for the purpose of discovery.

46.

Equity.

46. The Court may, on the application of the plaintiff or applicant in any suit or proceeding, make an order for the production by any defendant or respondent on oath of such documents in his possession or power relating to any matter in question in the suit or proceeding as the Court thinks right, and the Court may deal with such documents when produced in such manner as appears just.

Production of documents by a defendant.
44 Vic. No. 18, s. 25.

47. The Court may, on the application of any defendant or respondent in any suit or proceeding who has not been required to answer interrogatories, or who has been required to answer interrogatories and has put in a sufficient answer thereto, make an order for the production by the plaintiff or applicant in such suit or proceeding on oath of such documents in his possession or power relating to any matter in question in the suit or proceeding as the Court thinks right, and the Court may deal with such documents when produced in such manner as appears just.

The like by plaintiffs.
Ibid. s. 26.

Motion for decree.

48. (1) The plaintiff in any suit may at any time after the time allowed the defendant for filing a statement of defence has expired, but before replication, move the Court upon the prescribed notice for such decree or decretal order as he may think himself entitled to, and the plaintiff and defendant respectively may file affidavits in support of and in opposition to the motion so to be made, and use the same on the hearing of such motion, and the statement of defence (if any) and any answer to interrogatories may upon such motion be used as an affidavit.

Proceedings on motion for a decree.
Ibid. s. 28.

(2) Upon any such motion it shall be discretionary with the Court to grant or refuse the same, and to give such directions with respect to the further prosecution of the suit as the circumstances appear to require, and the Court may make such order as to costs as it may think right.

Making of such decree discretionary.
Ibid. s. 29.

Joinder of issue.

49. In suits where notice of motion for a decree or decretal order has not been given, or having been given where a decree or decretal order has not been made thereon, issue shall be joined by filing a replication in the prescribed form.

Filing replication
Ibid. s. 30.

Want of prosecution.

50. Any defendant may move to dismiss a suit for want of prosecution at such times and under such circumstances and subject to such restrictions as may be prescribed.

Dismissal of suits for want of prosecution.
Ibid. s. 27.

Trial.

51. (1) The evidence to be used at the hearing of any suit shall be taken before the Judge sitting in open Court without a jury.

Trial of issues.
Ibid. ss. 33, 34, 36, 37.

(2)

Equity.

(2) The Court may, if it thinks fit, cause any question of fact arising in any suit to be tried, or, where it has jurisdiction to award damages, the amount of such damages to be assessed either—

- (a) by a special or common jury before the Judge; or
- (b) by a jury before any Judge of the Supreme Court at Sydney or in any Circuit Court; or
- (c) by the Judge without a jury.

(3) Any such question of fact and any such question as to the amount of damages shall be reduced into writing in such form as the Court directs.

44 Vic. No. 18, s. 32.

(4) In addition to the powers hereby conferred, the Court may direct the amount of any such damages to be assessed in such other manner as the Court thinks fit.

Jury how summoned.

Ibid. ss. 34, 35.

52. (1) Where any question of fact or question of damages has been ordered to be tried by a special or common jury before the Court itself, the Judge may issue such precepts and make such orders upon the Sheriff for procuring the attendance of such jury as may be made by the Supreme Court in its common law jurisdiction, and may also make any other orders in relation thereto which to him may seem requisite.

(2) Every such jury shall be summoned, struck, called, and sworn in like manner as if summoned for the trial of an action in the Supreme Court in its common law jurisdiction.

(3) Generally for all purposes of or auxiliary to the trial of questions by a jury the Judge shall have the same power, jurisdiction, and authority in all respects as belong respectively to the Supreme Court in its common law jurisdiction, or to any Judge thereof sitting at nisi prius for the like purpose.

New trials, &c.

Ibid. ss. 35, 36.

53. (1) Where a question of fact or question of damages has been tried, any party to the suit may, within the prescribed time, move the Court to set aside or vary the verdict or finding or for a new trial of such question.

Ibid. s. 35.

(2) The Court shall have the same powers and jurisdiction in respect to new trials as belong to the Supreme Court in its common law jurisdiction or to any Judge thereof for the like purpose.

(3) Nothing herein shall be interpreted as restricting or qualifying the power of the Court as a Court of Equity to set aside or vary the verdict of a jury upon any question of fact or question of damages or to grant a new trial of such question.

Appeals to Full Court.

Ibid. ss. 35, 36.

54. From every order made by the Court upon an application for a new trial or to set aside or vary such verdict there shall be the same right of appeal as from any other order of the Court.

Further evidence,
how taken.

Ibid. s. 38.

55. Where any question of fact or question of damages has been tried, any further evidence that is required for the hearing of the suit shall be taken at such time and in such manner as the Judge directs.

Equity.

56. When the evidence has been taken the suit shall forthwith proceed to the hearing unless the Judge otherwise orders.

Proceeding to hearing after close of evidence.

44 Vic. No. 18, ss. 31, 38.

Evidence.

57. (1) The evidence to be used at the hearing of any cause, or on the trial of any question of fact or of damages, shall be taken in the same manner and subject to the same rules and exceptions as at a trial at nisi prius.

Evidence, how taken. *Ibid.* ss. 31, 40.

(2) The Court at the hearing of any suit, or of any further consideration thereof, may, whether any of the parties interested are under disability or not, use affidavits by particular witnesses or receive proof by affidavit of such particular matters as in the opinion of the Court may properly be so proved.

16 Vic. No. 3, s. 26. 44 Vic. No. 18, ss. 40, 41.

58. Upon the hearing of any suit or matter the Judge may require the production and oral examination before himself of any witness or party in the suit, and may direct the cost of and attending the production and examination of such witness or party to be paid by such of the parties to the suit or matter and in such manner as he thinks fit.

Judge may require examination before himself of any witness. *Ibid.* s. 39.

59. The Judge shall have the same power of issuing or of authorising the issue of subpoenas, and of punishing parties for non-attendance in obedience to any such subpoena as is now vested in the Supreme Court in its common law jurisdiction.

Witnesses, how summoned. *Ibid.* s. 31.

60. The evidence in any suit may, if the Court or either party so require, be taken down by a shorthand writer.

Shorthand writer. *Ibid.* s. 31.

61. (1) Every witness who has made an affidavit in any suit or matter before the Court shall be subject to oral cross-examination in the same manner as if the evidence given in his affidavit had been given by him orally, and may be re-examined orally by the party using such affidavit.

Cross-examination of a deponent. *Ibid.* s. 42.

(2) Such witness shall attend before the Court to be so examined upon receiving due notice and payment of his reasonable expenses in like manner as if he had been duly served with a writ of subpoena *ad testificandum*.

(3) The expenses attending such examination shall be paid by the parties respectively in like manner as if the witness were the witness of the party cross-examining, and shall be deemed costs in the cause unless the Court otherwise directs.

62. (1) Any party may call on any other party, who is competent to make admissions, by notice to admit any document, saving all just exceptions; and in case of his not admitting the same, the cost of proving the document shall be paid by the party so neglecting or refusing to admit, whatever the result of the suit or proceeding, unless the Court otherwise orders.

Notice to admit documents. *Ibid.* s. 43.

Equity.

(2) No costs of proving any document shall be allowed unless such notice has been given, except where the omission to give it was, in the opinion of the Master, a saving of expense.

Oral evidence on motions, &c.

44 Vic. No. 18, s. 47.

63. Any party in any suit or proceeding may by a subpoena require the attendance of any person before the Court or Master or any person specially appointed for the purpose, and may require the production of any deed, instrument, writing, matter, or thing which such person may be lawfully required to produce, and may examine such person orally for the purpose of using his evidence upon any motion, petition, or other proceeding in like manner as such person would be bound to attend and be examined with a view to the hearing of a suit.

Answer how used on certain motions.

Ibid. s. 48.

64. Upon any application to the Court for an injunction, or a receiver, or to dissolve an injunction or discharge an order appointing a receiver, where the defendant has filed an answer to interrogatories, such answer shall, for the purpose of evidence on such application, be regarded as an affidavit, and affidavits may be received and read in opposition thereto.

Evidence after the hearing.

Ibid. s. 49.

65. In cases where it is necessary for any party to go into evidence subsequently to the hearing, or on any inquiry, account, or reference before the Judge, such evidence shall be taken in the prescribed manner.

Pleadings, &c., out of the jurisdiction.

Ibid. s. 45.

66. (1) All pleadings, examinations, and affidavits in suits or proceedings in equity may be sworn and taken in any place out of this State under the dominion of His Majesty before any Judge, notary public, or person authorised to administer oaths at such place, or before any British consul or vice-consul in any place out of His Majesty's dominions.

(2) Judicial notice shall be taken of the seal or signature, as the case may be, and authority of any such Judge, notary public, person, consul, or vice-consul.

Abatement and revivor.

Suit how revived after abatement.

Ibid. s. 59.

67. (1) Upon any suit becoming abated by death or otherwise, or defective by reason of some change or transmission of interest or liability it shall not be necessary to file any new or supplemental statement of claim, but an order to the effect of the common order to revive, or of the usual supplemental decree, may be obtained as of course upon an allegation of the fact and of the nature of the statement or defect in the suit.

(2) Such order for revivor shall be served upon the persons who previously to the first day of September, one thousand eight hundred and eighty, would have been defendants to a bill of revivor or supplemental bill.

Equity.

(3) Such persons when so served shall become parties to the suit and shall enter an appearance thereto as if they had been duly served with process to appear to such a bill as aforesaid duly filed against them.

(4) The persons so served may within the prescribed time after service apply to the Court to discharge such order on any ground which would have been open to them on a bill of revivor or supplemental bill stating the previous proceedings in the suit and the alleged change or transmission of interest or liability, and praying the usual relief consequent thereon.

(5) If any person so served is under disability, such order shall be of no effect as against him until a guardian *ad litem* has been appointed for him and the prescribed time has elapsed.

68. (1) Facts which have occurred since the commencement of the suit may, if the Court thinks proper, be introduced by way of amendment into the original statement of claim. Facts occurring since the filing of the statement of claim. 44 Vic. No. 18, s. 60.

(2) Otherwise the plaintiff may state such facts on the record in such manner and subject to such rules as are prescribed with respect to the proof thereof and to affording the defendant an opportunity of answering the same.

Decrees.

69. All decrees and orders shall be settled in the prescribed manner. Mode of settling decrees and orders. Ibid. s. 65.

Formal defects, &c.

70. No proceeding shall be invalidated by any formal defect nor by any irregularity unless the Court is of opinion that substantial injustice has been caused by such defect or irregularity and that such injustice cannot be remedied by any order of the Court. Formal defects not to invalidate proceedings. Ibid. s. 51.

PART V.

THE MASTER IN EQUITY.

71. The Governor may appoint a barrister of at least five years standing to be Master in Equity at such salary as may be deemed reasonable. The Master in Equity. 4 Vic. No. 22, s. 22. 25 Vic. No. 9, s. 1.

72. (1) The Court shall order what matters shall be investigated before the Master with or without special directions, and what matters shall be heard and investigated by the Court respectively. 44 Vic. No. 18, s. 66.

(2)

Equity.

(2) In every case, unless the Court otherwise directs, the Master shall tax costs and make such inquiries as have usually been prosecuted before the Master.

(3) The Judge shall give such aid and directions in any such inquiry as he may think fit subject to the right of appeal and to the right of every suitor to bring any particular point before the Judge himself.

44 Vic. No. 18, s. 67.
Several powers.

73. The Master shall for the purpose of any proceeding before him have full power to issue advertisements, to summon any persons, to administer oaths, to take affidavits, and also acknowledgments except those of married women, and to examine parties or witnesses orally or upon interrogatories.

Witnesses bound to attend.
Ibid. s. 67.

74. Every person summoned by the Master shall be bound to attend upon such summons, and shall for disobedience thereof be liable to process of contempt in like manner as for disobedience to or for default of attendance in pursuance of any order of the Supreme Court or on any writ of subpoena.

Production of documents.
Ibid. ss. 25, 26.

75. The Master shall have the like powers under references to him to order production of documents by the parties as by this Act are vested in the Court, and the Master may deal with such documents when produced in such manner as appears just.

Evidence.
Ibid. s. 49.

76. In cases where it is necessary for any party to go into evidence on any inquiry, account, or reference before the Master, such evidence shall be taken in such manner as is prescribed.

False swearing.
Ibid. s. 67.

77. All persons knowingly swearing or affirming falsely before the Master shall incur all the penalties of perjury.

Service.

78. The Master shall have the like powers under references to him to order substituted or other service or notice in lieu of service to be effected or given where the person required to be served is within the jurisdiction as by this Act are vested in the Court or Judge.

Certificate.
Ibid. s. 68.

79. The result of any proceedings before the Master shall be stated in a certificate in the prescribed form, unless otherwise directed by the Court, and the approval of the Judge of any such certificate shall be signified under his hand.

Taking opinion of Judge.
Ibid. s. 69.

80. (1) During the proceeding before the Master, or within the prescribed time after its conclusion, any party may take the opinion of the Judge on any particular point or matter arising in the course of the proceeding, or upon the result of the whole when brought to a conclusion.

(2) Every certificate of the Master, after it has been adopted and signed by the Judge, shall be filed, and shall thenceforth be binding on all parties unless discharged or varied by the Court upon application within the prescribed time.

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PART VI.

APPEALS TO THE FULL COURT.

81. (1) Any person aggrieved by any decree or order of the Judge, whether sitting in open Court or in chambers, may, at any time within fourteen days next after the pronouncing of the same, or within such further time as the Judge allows, enter an appeal in the office of the Master against such decree or order to the Full Court, subject to such general rules as are prescribed.

Power to appeal to Full Court.
44 Vic. No. 18, s. 70.

(2) Every person so appealing shall, within fourteen days from the time of filing such appeal, either—

Security to be given by appellant.

(a) deposit in the hands of the Master such sum, not exceeding one hundred pounds, as the Master directs; or

(b) deposit with the Master a bond of two persons to be approved of by him, in such sum, not exceeding one hundred pounds, as he directs, conditioned to be void if the appellant prosecutes his appeal with all due diligence, and pays such costs as the Court adjudges.

(3) Such sum of money or bond, as the case may be, shall be held by the Master, subject to the order of the Court.

(4) If such sum of money or bond is not deposited as aforesaid within the period hereby provided, such appeal shall be deemed to have been abandoned.

82. (1) All appeals under this Act shall be by way of rehearing, and shall be brought by notice of appeal, and no petition or other formal proceeding other than such notice shall be necessary.

Mode of appealing.
Ibid. s. 71.

(2) The appellant may, by the notice, appeal from the whole or any part of any decree or order, and such notice shall state whether the whole or part only of such decree or order is complained of, and in the latter case shall specify such part.

83. (1) The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Full Court may direct notice of the appeal to be served on all or any other parties to the suit, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may make such decree or order as might have been made if the persons served with such notice had been originally parties.

Notice of appeal.
Ibid. s. 72.

(2) Any notice of appeal may be amended at any time as to the Full Court may seem fit.

84. (1) The Full Court shall have all the powers and duties as to amendment and otherwise of the Judge, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before the Master or a commissioner.

General powers of the Full Court.
Ibid. s. 73.

(2)

Equity.

(2) Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decree or order from which the appeal is brought.

(3) Upon appeals from a decree or order upon the merits at the trial or hearing of any suit or proceeding, such further evidence (save as aforesaid) shall be admitted on special grounds only, and not without special leave.

(4) The Full Court shall have power to make any decree or order which ought to have been made, and such further or other order as the case may require.

(5) The powers aforesaid shall be exercised by the Full Court notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties although such respondents or parties may not have appealed from or complained of the decision.

(6) The Full Court shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

Regulations as to
cross appeals.
41 Vic. No. 18, s. 74.

85. (1) It shall not, under any circumstances, be necessary for a respondent to give notice of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied or altered, he shall, within such time as may be prescribed by any general rule or by special order, give notice of such intention to any parties who may be affected by such contention.

(2) The omission to give such notice shall not diminish the powers by this Act conferred upon the Full Court, but may, in the discretion of the Court, be ground for the adjournment of the appeal, or for a special order as to costs.

Stay of proceedings
on appeal.
Ibid. s. 75.

86. (1) Every notice of appeal shall stay the execution of proceedings upon the decree appealed from unless the Judge directs such execution to be proceeded with.

(2) The Judge may (subject nevertheless to appeal as from any other order) direct such decree or order to be carried into execution and all proceedings to be taken thereupon as if no appeal had been entered, which direction may be upon such terms (if any) as to security or otherwise as to such Judge seems fit.

Decrees how settled.
Ibid. s. 76.

87. The decrees and orders of the Court on appeal shall be settled by the Master as at present, and the Court may, in any decree or order, direct what, if any, accounts shall be taken, or inquiries made, before the Judge, and what, if any, before the Master.

Appeal by direction
of the Judge.
Ibid. s. 77.

88. The Judge may, on the application of any party or at his own discretion, and on such terms, if any, as he thinks fit to impose, direct a rehearing by the Full Court of any cause, petition, motion, or matter

Equity.

matter before him, and in such case it shall not be necessary to give any notice of appeal, but nothing herein shall prejudice the right of any party to appeal where the Judge does not give any such direction.

89. Nothing in this Act shall be construed to affect the right of any party to appeal to His Majesty in Council from any such decree or order, or from any reversal or affirmance thereof. Appeals to Privy Council.

PART VII.

CONTEMPT OF COURT.

90. (1) When any person, directed by any decree or order to execute any deed or other instrument or make a surrender or transfer, has refused or neglected so to do for the space of twenty-eight days, the Court may appoint the chief clerk in equity, or some other person, to execute such deed or instrument or to make such surrender or transfer in his name, and to do all acts necessary to give validity and operation thereto. Order to execute instruments. 11 Geo. IV, and 1 Wm. IV, c. 36, s. 15, subs. 15.

(2) The execution of such deed or instrument and the surrender or transfer so made by the person so appointed shall in all respects have the same force or validity as if the same had been executed or made by the person directed by the decree or order to execute or make the same.

(3) The Court shall make such order as may be just touching the payment of the costs of, or attending the execution of, any such deed, transfer, surrender, or instrument.

(4) The powers hereby conferred on the Court are in addition to the powers conferred by the Trustee Act, 1898.

91. (1) Where any person has been ordered by any decree or order of the Court to deliver to any person or to deposit in Court or elsewhere books, papers, or any other article or thing, and has refused or neglected to do so for the space of twenty-eight days any sequestrator appointed by the Court shall have the same power to seize and take such books, papers, writings, or other things being in the custody or power of the person against whom the sequestration issues as such sequestrator would have over such person's own property. Order to deliver up books. *Ibid.* 15, subs. 16.

(2) Any article or thing so seized and taken shall be dealt with as the Court directs.

(3) The Court may make such order as to the costs of proceedings under this section as it thinks fit.

92. (1) The Master on some day in the last week of the months of February, May, August, and November respectively in each year shall make a return to the Judge of the persons (if any) then confined in prison under orders of the Court for contempt of Court together with a report upon the case of each person so confined. Return of persons imprisoned for contempt. 1 Wm. IV, c. 36, s. 15, subs. 7, 17, 18.

(2)

Equity.

(2) The Court may at any time upon the application of any person so confined or upon the receipt of such report make such order for the discharge of any such person so confined and as to costs incidental to such order as it thinks fit.

Committal for non-payment of money into Court.

1 Wm. IV, c. 36, ss. 16, 17.

93. Where any person is committed to prison for non-payment of any money into Court, or is kept in prison for non-payment of any costs, and such person becomes bankrupt, the Court shall order his release from prison unless the imprisonment of such person was intended to be punitive or disciplinary and not merely to enforce the order of the Court.

PART VIII.

RULES OF COURT.

44 Vic. No. 18, ss. 80, 81.

26 Vic. No. 12, s. 34.
1897, No. 11, s. 6.

94. (1) The Judges of the Supreme Court or any three of them may make general rules for the following purposes—

- (a) for regulating the times, forms, and modes of procedure ;
- (b) for fixing the amount of all fees and allowances to officers of the Court and solicitors in reference to any matter in equity ;
- (c) for regulating the times and modes of service or notice in lieu of service of all equitable process ;
- (d) as to the investment of cash under the control of the Court in such stocks, funds, or securities, as may seem fit.
- (e) and generally for regulating the practice of the Court and otherwise for the effectual execution of this Act and of the intention and object thereof.

(2) The rules and form contained in the Fourth Schedule to this Act shall regulate the practice and procedure upon originating summons until altered, added to or rescinded by rules of Court made under the authority of this Act, which rules when made shall have the same force and effect as if they had formed part of the said Fourth Schedule.

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

SCHEDULES.

Equity.

SCHEDULES.

FIRST SCHEDULE.

Reference to Act.	Title or Short Title.	Extent of repeal.
5 Wm. IV No. 8 ...	An Act for adopting and applying certain Imperial Acts.	So much of the Act as adopted the Imperial Acts, 11 Geo. IV and 1 Wm. IV, cc. 36 and 47, and the unrepealed portion of 11 Geo. IV and 1 Wm. IV, c. 65.
4 Vic. No. 22 ...	An Act to provide for the more effectual administration of justice in N.S.W.	Section 22.
5 Vic. No. 9 ...	Advancement of Justice	Section 14.
11 Vic. No. 27 ...	An Act to render valid certain acts and appointments and to authorise the making of orders in infancy.	The whole.
12 Vic. No. 1 ...	An Act to simplify and alter the law in some respects.	Section 8.
16 Vic. No. 3 ...	An Act to diminish the delay and expense of proceedings in the Supreme Court in its jurisdiction as a Court of Equity and in Infancy and Lunacy.	The whole.
16 Vic. No. 19 ...	Trustee Act, 1852	The unrepealed portion.
21 Vic. No. 6 ...	An Act for further facilitating the payment of debts out of real estate.	The whole Act.
22 Vic. No. 14 ...	The Equity and Banco Business Expediting Act.	Sections 1, 2, 3.
25 Vic. No. 9 ...	An Act to amend the law in certain respects.	The unrepealed portion.
26 Vic. No. 12 ...	Trust Property Act	Section 34 and sections 66-70 (inclusive).
37 Vic. No. 11 ...	An Act to amend the law of arrest ...	Section 7.
44 Vic. No. 18 ...	The Equity Act of 1880	The unrepealed portion.
55 Vic. No. 26 ...	The Judicial Offices Act	Section 4.
1897, No. 11 ...	Service of Equitable Process Act of 1897	The whole.
1900, No. 49 ...	Supreme Court Procedure Act, 1900 ...	Sections 10, 11, and the Schedule, except rule one thereof.

SECOND SCHEDULE.

, the day of , in the year one
thousand nine hundred and

To the within-named A.B.—

TAKE notice that the within-named plaintiff, E.F. [or, where there is more than one plaintiff, plaintiffs E.F. and C.D.], has (or have) commenced a suit against you in the Supreme Court of New South Wales in its Equitable Jurisdiction by the within statement of claim, and you are required, within days after the service hereof on you, exclusive of the day of such service, to cause an appearance to be entered for you in the Equity

Equity.

Equity Office of the said Supreme Court, at Chancery-square, in the city of Sydney, in the State of New South Wales, to the within statement of claim. And you are also required at the same time of entering your appearance to file in the said Equity Office a memorandum stating in effect that you dispute, in whole or in part, the plaintiff's claim (specifying which part), or that you submit to such decree or order as the Court thinks fit to make, or that you disclaim all right, title, and interest in the subject matter of the within statement of claim.

NOTE.—If you neglect to enter an appearance, or to file a memorandum as above mentioned, you will be subject to such order as the said Court thinks fit to make in your absence.

(Signed) E.F., Plaintiff,
or, Y.Z., of
Solicitor for the Plaintiff.

THIRD SCHEDULE.

EDWARDUS R.

To the within named defendant, A.B.,—

Greeting :—

WE command you that, within _____ days after the service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in the Equity Office of our Supreme Court, at Chancery-square, Sydney, in the State of New South Wales, to the within statement of claim. And that you do at the same time of entering your appearance file in the said Equity Office a memorandum stating in effect that you dispute, in whole or in part, the plaintiff's claim (specifying which part), or that you submit to such decree or order as the Court thinks fit to make, or that you disclaim all right, title, and interest in the subject matter of the within statement of claim.

Witness the Honorable A.B., the Chief Judge in Equity, at Sydney, the
day of _____, in the year one thousand nine hundred and _____,
and in the _____ year of our reign.

NOTE.—If you neglect to enter your appearance, or to file a memorandum as above mentioned, you will be subject to such order as the Court thinks fit to make in your absence.

FOURTH SCHEDULE.

Rules of Court for Originating Summons.

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

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

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

(g)

Equity.

- (g) the determination of any question arising in the administration of the estate or trust.
2. Any of the persons named in the last preceding rule may, in like manner, Administration on originating summons. apply for and obtain an order for—
- (a) The administration of the personal estate of the deceased;
 - (b) The administration of the real estate of the deceased;
 - (c) the administration of the trust.
3. The persons to be served with the summons under the last two preceding Parties rules in the first instance shall be the following, that is to say—
- A. Where the summons is taken out by an executor or administrator or trustee—
 - (a) for the determination of any question under subsections (a), (e), (f), or (g) of rule 1, the persons or one of the persons whose rights or interests are sought to be affected;
 - (b) for the determination of any question under subsection (b) of rule 1, any member or alleged member of the class;
 - (c) for the determination of any question under subsection (c) of rule 1, any person interested in taking such accounts;
 - (d) for the determination of any question under subsection (d) of rule 1, any person interested in such money;
 - (e) for relief under subsection (a) of rule 2, the residuary legatees, or next of kin, or some of them;
 - (f) for relief under subsection (b) of rule 2, the residuary devisees, or next of kin, or some of them;
 - (g) for relief under subsection (c) of rule 2, the cestuis que trust or some of them;
 - (h) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur.
 - B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.
4. Any mortgagee or mortgagor, whether legal or equitable, or any person Foreclosure, &c., on originating summons. entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out, as of course, an originating summons returnable in Chambers in Equity for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case may require, that is to say—delivery of possession by the mortgagor, foreclosure, payment of the mortgage debt and foreclosure, sale, redemption reconveyance, delivery of possession by the mortgagee.
5. The persons to be served with the summons under the last preceding rule Parties. shall be such persons as under the existing practice of the Court in Equity would be the proper parties to a suit for the like relief as that specified by the summons.
6. A vendor or purchaser of real or leasehold estate, or their representatives Originating summons for decision of question between vendor and purchaser. respectively, may take out, as of course, an originating summons, returnable in Chambers in Equity, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the Judge shall make such order upon the application as appears just, and shall order by whom all or any of the costs of and incident to the application shall be borne and paid.
7. The Judge may direct such other persons to be served with an originating summons, as they or he may think fit.
8. (a) Any person claiming to be interested under a deed, will, or other written Construction of instrument on originating summons. instrument, may apply, by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested.
- (b) The Judge may direct such persons to be served with the summons, as he may think fit.
9. The parties served with an originating summons shall, before they are heard, Appearance to an enter appearances in the office of the Master in Equity, together with an address for originating summons. service, which shall not be more than one mile from the said office.

Equity.

- Time for appearance. 10. The time within which a defendant within the jurisdiction shall appear to an originating summons shall be—
 (a) if he resides above 200 miles from Sydney, within sixteen days;
 (b) if he resides above 100 miles from Sydney, within twelve days;
 (c) in all other cases, within eight days
 after service of the summons upon him, inclusive of the day of such service.
- Evidence. 11. Applications by way of originating summons shall be supported by such evidence as the Judge may require, and directions may be given, as he may think just, for the trial of any question arising thereout.
- Settlement of orders. 12. Orders made on originating summons shall be settled, passed, and entered, and remain of record, and shall be enforced in the same manner in all respects as orders of the Court in Equity.
- Form of summons. 13. An originating summons shall be in Form A to these rules altered to meet the circumstances of the case.
- Appointment for hearing of summons. 14. So soon as the defendants have appeared to an originating summons, or have made default in so appearing within the time limited, the plaintiff shall take out in the Equity Office an appointment, before the Judge, for the hearing of the summons, and shall give the defendants who have appeared two clear days' notice of the date of such appointment. If the plaintiff does not take out such appointment within seven days after the defendants have appeared, or made default, as the case may be, any defendant who has appeared may take out such appointment, and shall give two clear days' notice of the date of such appointment to the plaintiff and the other defendants who have appeared.

FORM A.

In the Supreme Court of New South Wales, } No.
 in Equity. }
 In the matter of the will of, &c.;
or
 In the matter of the estate of, &c.;
or
 In the matter of the trusts of, &c.;
or
 In the matter of the indenture of mortgage dated, &c.;
or
 In the matter of the contract for sale, dated, &c.;
or as the case may be
 Between A.B., plaintiff, and C.D., defendant.

Originating Summons.

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

[State the questions or proposed order.]

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

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

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

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

FREDK. M. DARLEY,
Lieutenant-Governor.

State Government House,
 Sydney, 30th October, 1901.

Memo. and Certificate to accompany the Equity Bill.

THIS Bill consolidates the whole or parts of the following Statutes:—

5 Wm. IV No. 8 (adopting 11 Geo. IV and 1 Wm. IV, caps. 36, 47, and 65);
4 Vic. No. 22;
5 Vic. No. 9;
11 Vic. No. 27;
12 Vic. No. 1;
16 Vic. No. 3;
16 Vic. No. 19;
21 Vic. No. 6;
22 Vic. No. 14;
25 Vic. No. 9;
26 Vic. No. 12;
37 Vic. No. 11;
44 Vic. No. 18;
55 Vic. No. 26;
1897, No. 11.
1900, No. 49.

The Imperial Act 11 Geo. IV and 1 Wm. IV, c. 36, which was adopted by 5 Wm. IV No. 8, has been almost entirely omitted as obsolete. The parts which are considered to have any existing efficacy are preserved in clauses 90, 91, 92 and 93. 16 Vic. No. 3 has been found to be entirely obsolete, and sections 3 of 22 Vic. No. 14, and 8 of 12 Vic. No. 1 are omitted as unnecessary, the ground being fully covered by the existing rules of Equity procedure. Section 55 of 16 Vic. No. 19, providing for the investment of particular moneys in Court, has been treated as superseded by the more general terms of s. 34 of the Trust Property Act (26 Vic. No. 12). Sections 17, 56, and 64 of 44 Vic. No. 18 are also unnecessary.

Clause 6. The doubt under the original section as to the number of judges who might sit has been here cleared up.

Clause 18. In redrafting the provisions of the antiquated sections here dealt with, the analogy of the procedure under the Trustee Act (under which most cases of this kind arise) has been followed.

Clause 22. The provisions of the original section as to the form of the statement of claim are now left to the rules.

Clause 23 (g). The words "executor, administrator" have been added in consequence of the Probate Act.

Clause 28. The words "or other proceeding" are added to supply an omission.

Clause 30 (i). The unnecessary word "principal" is omitted.

Clause 36. The original section, by oversight, said nothing about "submitting" or "disclaiming" and these cases had accordingly to be provided for by rules. They are now included in the clause.

Clause 37. A doubtful point is settled by adding the words "and defence to counter claim"

Clause 38. This clause, as drawn, gives what is considered to be the proper practice under the former Act and rules, and is approved by the Chief Judge in Equity.

Discovery ; clauses 41-47. The right to discovery probably already extends, as it certainly should do, to "proceedings" as well as "suits," but the matter is now made certain.

Clauses 41, 42. Plaintiff's and defendant's interrogatories are made uniform. The "concise statement" mentioned in section 23 is useless.

Clause 48. Some very confused wording in the original section has been here amended.

Clauses 51 to 56 inclusive under heading "Trial." The wording of these has been remodelled.

Clause 57 (2). Section 41 of the original Act covered much the same ground as section 40. This clause gives the sense of both.

Clause 60. The section and the rules have been brought into agreement with each other.

Clause 62 (1). Under the wording of the original section 43 it would appear that no one defendant could admit a document unless all the parties were competent to make admissions. This is now remedied.

Clause 68. The words "if the cause is otherwise in a state to allow of an amendment," which have been found to hamper the beneficial operation of the clause, have been omitted, and the matter left to the discretion of the Judge.

Clauses 90, 91. See note to clause 18.

Clause 92. The sections here consolidated prescribe a practice inapplicable to New South Wales, and which has never been followed here, but also contain provisions which are considered to be material, and are, therefore, here preserved.

Fourth Schedule : Rule 14. The right of defendants to prevent questions from being hung up for an indefinite time has been made clearer.

I must express the great obligation I am under in this important consolidation to the Chief Judge in Equity, Mr. Justice A. H. Simpson. He has found time to go over the Bill, and has considered the various points noted above (all of which have his approval), and has made valuable suggestions. The Bill is therefore fortified by his weighty authority.

I certify that, except 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.

Equity Bill.

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

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
11 GEORGE IV and 1 WILLIAM IV, c. 36 (adopted by 5 WILLIAM IV, No. 8).		
1-14	.....	Obsolete and inapplicable.
15 (1-6)	.....	Obsolete.
15 (7)	92 (1)	Adapted.
15 (8-14)	.....	Obsolete.
15 (15)	90	Adapted.
15 (16)	91	Adapted.
15 (17, 18)	92	Adapted.
15 (19)	.....	See Equity Rule 193.
15 (20)	.....	Obsolete.
16, 17	93	Adapted.
18-20	.....	Inapplicable.
21	.....	Unnecessary; see the Interpretation Act.
11 GEORGE IV and 1 WILLIAM IV, c. 47 (adopted by 5 WILLIAM IV No. 8).		
1-9	.....	Spent; all rights accrued thereunder are preserved by the Interpretation Act.
10	.....	Obsolete.
4, 12	18	
13	.....	Inapplicable.
11 GEORGE IV and 1 WILLIAM IV, c. 65 (adopted by 5 WILLIAM IV No. 8).		
32, 35, 43, 44	19	
		4 VICTORIA No. 22.
22	71	
		5 VICTORIA No. 9.
14	.....	Spent.
		11 VICTORIA No. 27.
1	.....	Validating.
2	4	
		12 VICTORIA No. 1.
8	.....	See Equity Rule 27.
		16 VICTORIA No. 3.
1-18	.....	Special Case procedure is now obsolete.
19-25	.....	Provisions now obsolete since 26 Vic. No. 12; possibly repealed in effect by repeal of 26 Vic. No. 12, s. 37 in 44 Vic. No. 18.
26	57	Identical with 44 Vic. No. 18, s. 41.
27-32	.....	Obsolete.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
		16 VICTORIA No. 19.
55	94 (1) (d)	cf. 26 Vic. No. 12, s. 34.
		21 VICTORIA No. 6.
1-3	18	
		22 VICTORIA No. 14.
1, 2	.....	Spent.
3	.....	See Equity Rule 27.
		25 VICTORIA No. 9.
1	71	Only so far as relates to Master in Equity.
		26 VICTORIA No. 12.
34 66-70	21 (1), (h), 94 (d)	These sections have no further operation, as all the sections of the Trust Property Act to which they referred, have been repealed.
		37 VICTORIA No. 11.
27	.....	Unnecessary since Bankruptcy Act.
		44 VICTORIA No. 18.
1	4	Part in Supreme Court and Circuit Courts Act, 1900.
2	.....	Supreme Court and Circuit Courts Act, 1900.
3	3	
4	8	
5	6	
6	22	
7	23	
8	24	
9	25	
10	26	
11	27	
12	28	
13	29	
14	32	
15	34	
16	35	
17	.....	Obsolete.
18	36	
19	37, 41	
20	37, 38	
21	39	
22	40	
23	42, 44, 45	
24	43	
25	46, 76	
26	47, 76	
27	50	
28	48	
29	48	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
44 VICTORIA No. 18— <i>continued</i> .		
30	49	
31	56, 57, 59, 60	
32	9, 51	
33	51	
34	51, 52	
35	52, 53, 54	
36	51, 53, 54	
37	51	
38	55, 56	
39	58	
40, 41	57	
42	61	
43	62	
44	.....	Repealed by Witnesses Examination Act, 1900.
45	66	
46	7	
47	63	
48	64	
49	65, 76	
50	10	
51	70	
52	12	
53	13	
54	14	
55	15	
56	.....	Unnecessary.
57	16	
58	17	
59	67	
60	68	
61	21	
62	21	
63	21 (3)	
64	.....	Omitted as unnecessary.
65	69	
66	72	
67	73, 76, 77	
68	79	
69	80	
70	81	
71	82	
72	83	
73	84	
74	85	
75	86	
76	87	
77	88	
78	20	
79	89	
80	94 (1)	
81	94 (2)	
82	3	
83	.....	Spent.

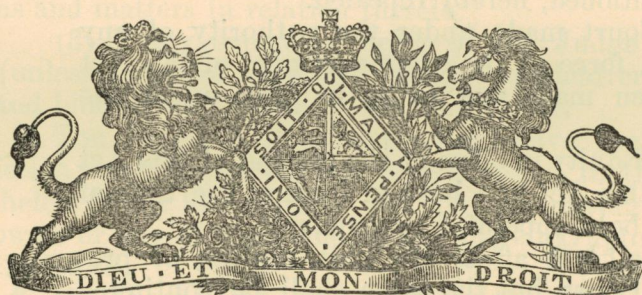
Section of Repealed Acts.	Section of Consolidated Act.	Remarks.	Section of Repealed Acts.
55 VICTORIA No. 26.			
4	3, 5		66
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This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

*Legislative Council Chamber,
Sydney, 18th September, 1901. }*

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO PRIMO

EDWARDI VII REGIS.

Act No. , 1901.

An Act for consolidating enactments relating to the practice, procedure, and powers of the Supreme Court of New South Wales in its equitable jurisdiction.

BE it enacted by the King's Most Excellent Majesty, by and with Short title. the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembly, and by the authority of the same, as follows:—

1. This Act may be cited as the "Equity Act, 1901," and is divided into Parts as follows:—

PART I.—INTERPRETATION.—s. 3.

PART II.—THE CONSTITUTION OF THE COURT.—ss. 4–7.

PART III.—JURISDICTION AND SPECIAL POWERS OF THE COURT.

DIVISION 1.—*Co-ordinate jurisdiction with Common Law Courts*—ss. 8, 9.

DIVISION 2.—*Various powers of the Court*.—ss. 10–19.

DIVISION 3.—*Jurisdiction in chambers*.—ss. 20, 21.

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PART

Equity.

PART IV.—PROCEDURE.—ss. 22-70.

PART V.—THE MASTER IN EQUITY.—ss. 71-80.

PART VI.—APPEALS TO THE FULL COURT.—ss. 81-89.

PART VII.—CONTEMPT OF COURT.—ss. 90-93.

PART VIII.—RULES OF COURT.—s. 94.

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

(2) All rules of Court made under the authority of any provision so repealed and in force at the commencement of this Act shall be deemed to have been made and to be in force under the authority of this Act.

(3) The Master in Equity in office at the passing of this Act shall continue in office as if this Act had been in force at the time of his appointment, and he had been appointed hereunder.

(4) This repeal shall not affect any suit, matter, or proceeding now pending in the Court, but the same shall be continued under the provisions of this Act.

PART I.

INTERPRETATION.

3. In the interpretation of this Act, unless the context or subject matter otherwise indicates or requires,— Interpretation.
44 Vic. No. 18, ss.
3, 82.

The words “the Court” mean the Supreme Court in equity holden before the Judge, or any other Judge lawfully exercising the jurisdiction of the Judge, or in cases on appeal before the Full Court.

The words “the Judge” mean the Chief Judge in Equity. 55 Vic. No. 26, s. 4.

The words “the Master” mean the Master in Equity.

The words “statement of claim” include information.

The expression “equitable process” includes statement of claim, petition, motion, summons, decree, order, and generally any other document of which service is required to be effected in any proceeding before the Court.

The word “affidavit” includes affirmation, statutory declaration, and attestation of honour.

The word “prescribed” means prescribed by rules of Court.

A reference to the jurisdiction “in equity” includes the jurisdiction of the Supreme Court in all matters relating to the appointment of guardians of infants and their estates. 11 Vic. No. 27, s. 2.

PART

Equity.

PART II.

THE CONSTITUTION OF THE COURT.

4. (1) The jurisdiction of the Supreme Court in equity including all matters relating to the appointment of guardians of infants and their estates shall be exercised by the Judge. Appointment and powers of the Chief Judge in equity.

(2) The Supreme Court shall be holden by the Judge for the determination of all proceedings in equity, and the disposal of motions and matters in relation thereto. 11 Vic. No. 27, s. 2.
44 Vic. No. 18, s. 1.

(3) Every decree or order of the Judge made in equity shall (unless appealed from in manner hereinafter provided) be as valid and binding as if made by the Full Court.

5. The Judge in Bankruptcy shall have the like powers and jurisdiction in all respects as are herein vested in the Judge, subject nevertheless to the like appeal; and when exercising such jurisdiction and powers or any of them the Judge in Bankruptcy shall be styled Judge in Equity. Judge in bankruptcy to be Judge in equity.
55 Vic. No. 26, s. 4.

6. (1) In any suit or proceeding the Judge may sit with the assistance of any two other Judges of the Supreme Court. Two Judges may assist.

(2) In every such case the decision of the majority shall be taken to be that of the Full Court. 44 Vic. No. 18, s. 5.

7. (1) The Court may in every case obtain the assistance of conveyancing counsel, accountants, merchants, engineers, actuaries, or other scientific persons the better to enable it to determine any matter at issue in any suit or proceeding and may act upon the certificate of any such person. Assistance of scientific persons.
Ibid, s. 46.

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

PART III.

JURISDICTION AND SPECIAL POWERS OF THE COURT.

DIVISION I.—*Co-ordinate jurisdiction with common law Courts.*

8. In any suit or proceeding in equity wherein it may be necessary to establish any legal title or right as a foundation for relief the Court shall itself determine such title or right without requiring the parties to proceed at law to establish the same, and whenever any question now cognizable only at law arises in the course of any proceeding before it the Court shall have cognizance thereof as completely as if the same had arisen in a court of law, and shall exercise in relation to such title, right, or question all the powers of the Supreme Court in its Common Law jurisdiction, and no suit in equity shall be open to objection on the ground that the remedy or appropriate remedy is in some other jurisdiction. Power to decide legal titles, &c.
Ibid, s. 4.

Equity.

9. In all cases in which the Court has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract, or agreement, or against the commission or continuance of any wrongful act or for the specific performance of any contract, covenant, or agreement the Court may award damages to the party injured either in addition to or in substitution for such injunction or specific performance.

Power to Court to award damages in certain cases.
44 Vic. No. 18, s. 32.

DIVISION 2.—*Various powers of the Court.*

10. No suit shall be open to objection on the ground that a merely declaratory decree is sought thereby, and the Court may make binding declarations of right without granting consequential relief.

Declarations of right.
Ibid. s. 50.

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

Decree for administration discretionary.
1900, No. 49, s. 11.

12. In any suit for the foreclosure of the equity of redemption in any property, the Court may, upon the request of the mortgagee or any subsequent encumbrancer, or of the mortgagor, or any person claiming under them respectively, direct a sale of such property instead of a foreclosure on such terms as the Court may think fit, and without previously determining the priorities of encumbrances or giving time to redeem:

Court may direct a sale in foreclosure suits.
44 Vic. No. 18, s. 52.

Provided that if such request be made by any such subsequent encumbrancer, or by the mortgagor, or any person claiming under them respectively, the Court shall not direct any such sale without the consent of the mortgagee or the person claiming under him unless the party making such request shall deposit in Court a reasonable sum to be fixed by the Court for the purpose of securing the performance of such terms as the Court may think fit to impose on him.

13. (1) In all cases of account either party may by consent or by leave of the Court file a statement of facts before or at the hearing of any suit, petition, motion, or matter verified by affidavit; and where the amount is capable of being ascertained without difficulty from the pleadings or evidence, or by such statement of facts, the Court may adjust the same and decree accordingly without further inquiry or reference.

Dispensing with references in certain cases of account.
Ibid. s. 53.

(2) Where the account cannot be so adjusted, the Court may give such special directions as may seem expedient with respect to the mode in which the account shall be taken or verified, which directions may be given either by the decree or order directing such account, or by any subsequent order.

(3) The Court may direct that in the taking of any account the books in which the same has been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objections thereto as they may be advised.

Books may be declared *prima facie* evidence of account.
Ibid.

Equity.

14. If in any suit instituted in relation to real estate it appears to the Court that it will be expedient that the same or any part thereof should be sold for the purposes of such suit, the Court may at any time direct the same to be sold, and such sale shall be as valid as if directed to be made by a decree or decretal order on the hearing, and any party to the suit in possession of such estate or in receipt of the rents and profits thereof shall deliver up such possession or receipt to the purchaser or such other person as the Court directs.

Sales may be directed before decree.
44 Vic. No. 18, s. 54.

15. Where any real or personal property is the subject of any proceeding in equity, and the Court is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceeding, the Court may, at any time after the commencement of such proceeding, allow to the parties interested therein, or any of them, the whole or part of the annual income of such real property or a part of such personal property or of the income thereof up to such time as the Court directs, and for that purpose may make such orders as may appear expedient.

Allowance to parties out of property in certain cases.
Ibid. s. 55.

16. (1) An injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that such order should be made, and whether there be a prayer for an injunction or receiver or not, and any such order may be made either unconditionally or upon such terms and conditions as the Court thinks just.

Injunctions and receivers.
Ibid. s. 57.

(2) If an injunction is asked either before or at or after the hearing of any suit or matter to prevent any threatened or apprehended waste or trespass, such injunction may be granted whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

Injunction to prevent waste.
Ibid.

17. Service upon any person of the decree or order directing such injunction or notice thereof shall have the same effect as the issuing of a writ of injunction and signing and filing of a docquet and service of the writ upon such person had previously to the first day of September, one thousand eight hundred and eighty, and thereupon the plaintiff shall be entitled to all such remedies as he was entitled to under the practice in force at the last-mentioned date.

Service of order for injunction.
Ibid. s. 58.

18. (1) In any suit in which the Court declares that any real estate of a deceased person is liable to any debt of such person the Court may direct that the amount of such debt be raised by mortgage or sale of such real estate.

Sales and mortgages for payment of debts.
11 Geo. IV and 1 Wm. IV, c. 47, ss. 11, 12.
21 Vic. No. 6, ss. 1, 2, 3.

(2) For the purpose of effecting any sale or mortgage so directed, the Court may name some person to execute the necessary conveyances, mortgages, or other documents; and any conveyance, mortgage,

Equity.

mortgage, or other document executed by such person shall be as effectual in all respects as if such person were of full age and seised or possessed of the fee simple or other whole interest and estate so to be sold or mortgaged.

(3) Where any such sale or mortgage is made the surplus (if any) of the money raised thereby, after defraying the debt and all legal costs and expenses, shall be considered for all purposes as unconverted real estate.

19. (1) When an infant is beneficially entitled to the whole or part of any stock, fund, annuity, security, or sum of money transferable in books kept by any company or society, the Court may order all or any part of the dividends or interest due or to become due in respect thereof to be paid to any guardian of such infant, or to any other person it may deem fit, for the maintenance and education or otherwise for the benefit of such infant, such guardian or other person to be named in the order directing payment.

Court may apply dividends of stock belonging to infants for their maintenance 11 Geo. IV, and 1 Wm. IV, c. 65, ss. 32, 35, 44.

(2) The receipt of such guardian or other person for such dividends or interest shall be as effectual as if such infant had attained the age of twenty-one years and had signed and given the same.

(3) The Court may order that the costs of applications under this section be paid out of the fund, annuity, security, sum of money, or the dividends or interest arising therefrom, or out of any moneys in Court in which such infant is interested in such manner as the Court thinks proper.

(4) This section shall be a full and complete indemnity to all companies and societies, and their officers and servants, for all acts and things done or permitted to be done pursuant thereto.

20. The Court may in any case award costs as between solicitor and client.

Costs. 44 Vic. No. 18, s. 78.

DIVISION 3.—*Jurisdiction in Chambers.*

21. (1) The business to be disposed of by the Judge in chambers shall consist of such of the following as he thinks would be more conveniently so disposed of, namely :—

Business to be disposed of in chambers.

- (a) Applications for time;
- (b) Applications for leave to amend;
- (c) Applications for discovery;
- (d) Applications for determining the mode of trial, and settling the questions to be tried;
- (e) Applications relating to the conduct of any suit or matter;
- (f) Applications relating to the guardianship or maintenance of infants;
- (g) Matters connected with the management of property;

Ibid. ss. 61, 62. 26 Vic. No. 12, s. 34.

(h)

Equity.

- (h) Applications for the investment or alteration of the state of investment of any funds held in Court upon trust in any cause or matter;
- (i) Such other matters as in the opinion of the Judge may advantageously and with propriety be heard in chambers.
- (2) The Judge shall fix the times for sitting in chambers, and when so sitting shall have the same powers and jurisdiction as in open court.
- (3) The Judge while sitting in open court may adjourn for hearing in chambers, or while sitting in chambers may adjourn for hearing in open court, any case before him which he may think would better be heard in chambers or in open court as the case may be.

Adjournment from
Court to chambers.
44 Vic. No. 18, s. 63.

PART IV.

PROCEDURE.

Statement of claim.

22. (1) All suits in equity shall be commenced, save as herein- after mentioned, by filing in the office of the Master a statement of the plaintiff's case, to be called the statement of claim, in the form and manner prescribed. *Ibid.* s. 6. 1900, No. 49, s. 10.

(2) Rules of Court may be made under this Act specifying in what cases persons seeking equitable relief may apply for such relief by way of originating summons in chambers and providing for the course of procedure thereon.

(3) Where any Act provides that applications thereunder may be made to the Court or Judge such applications shall be made in the manner (if any) provided for by such Act.

23. It shall not be competent to any defendant to take any objection for want of parties in any case to which the rules next hereinafter set forth extend, and such rules shall be taken as part of the law and practice of the Court:—

Rules as to parties.
44 Vic. No. 18, s. 7.

- (a) Any legatee, devisee, or next of kin may, without serving the remaining legatees, devisees, or next of kin, have a decree for the administration of the real and personal estate of a deceased person.
- (b) Any one of several *cestuis que trust* under any deed or instrument may, without serving any other of such *cestuis que trust*, have a decree for the execution of the trusts of the deed or instrument.

(c)

Equity.

- (c) In all cases of suits for the protection of property pending litigation and in all cases in the nature of waste one person may sue on behalf of himself and of all persons having the same interest.
- (d) Any executor, administrator, or trustee may obtain a decree against any one legatee, next of kin, or *cestuis que trust* for the administration of the estate or the execution of the trusts.
- (e) In all the above cases the Court may require any other persons to be made parties to the suit, and may give the conduct of the suit to such person as it may deem proper, and may make such order in any particular case as it may deem just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.
- (f) In all the above cases the persons who, according to the practice of the Court previously to the first day of September, one thousand eight hundred and eighty, would have been necessary parties to the suit, shall be served with notice of the decree, and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit, and they may by an order of course have liberty to attend the proceedings under the decree, and any party so served may within the prescribed time apply to the Court to add to the decree.
- (g) In all suits concerning real or personal estate vested in an executor, administrator, or trustee under a will, intestacy, settlement, or otherwise, such executor, administrator, or trustee shall represent the persons beneficially interested in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate, and in such cases it shall not be necessary to make the persons beneficially interested parties to the suit, but the Court may upon consideration of the matter on the hearing if it thinks fit order such persons or any of them to be made parties.

24. (1) If in any suit or proceeding in equity it appears to the Court that any deceased person who was interested in the matters in question has no legal personal representative, the Court may either proceed without any person representing the estate of such deceased person or appoint some person to represent such estate for the purposes of the suit or proceeding on such notice (if any), as the Court shall think fit, either specially or generally by public advertisement.

(2) Every order made in reference to the matter and every order consequent thereon shall bind the estate of such deceased person in

Absence of personal representative.
44 Vic. No. 18, s. 8.

Equity.

in the same manner as if there had been a duly constituted legal personal representative of such deceased person and such representative had been a party to the suit or proceeding and had appeared and submitted his rights and interests to the protection of the Court.

25. (1) No suit shall be dismissed by reason only of the misjoinder of persons as plaintiffs, but wherever it appears to the Court that, notwithstanding the conflict of interest in the co-plaintiffs, or the want of interest in some of the plaintiffs, or the existence of some ground of defence affecting some of the plaintiffs, the plaintiffs or some of them are entitled to relief, the Court may grant such relief and modify its decree according to the special circumstances, and for that purpose may direct such amendments (if any) as may be necessary, and at the hearing, before such amendments are made, may treat any of the plaintiffs as if they were defendants in the suit and the other plaintiffs were the only plaintiffs on the record.

Misjoinder of plaintiffs.
44 Vic. No. 18, s. 9.

(2) Where there is a misjoinder of plaintiffs, and the plaintiff having an interest has died leaving a plaintiff on the record without an interest, the Court may at the hearing order the suit to stand revived, as may appear just, and proceed to the decision of the suit if it sees fit, and may give such directions as to costs or otherwise as to the Court seems meet.

26. (1) The Court may adjudicate on questions arising between parties, notwithstanding that they may be some only of the parties interested in the property respecting which the question may have arisen, or that the property is comprised with other property in the same instrument, without making the other parties interested in the property or interested under the same instrument parties to the suit and without requiring the whole trusts and purposes of the instrument to be executed under the direction of the Court and without taking the accounts of the trustees or other accounting parties or ascertaining the particulars or amount of the property touching which the question may have arisen.

Absence of persons interested.
Ibid. s. 10.

(2) If the Court is of opinion that the application is fraudulent or collusive, or for some other reason ought not to be entertained it may refuse to make the order prayed.

27. It shall not be necessary that every defendant to the statement of claim shall be interested as to all the relief thereby prayed for, but the Court may make such order as appears just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such suit in which he has no interest.

Defendant not interested as to all the relief.
Ibid. s. 11.

28. Before the name of any person is used in any suit or other proceeding as next friend of any infant, married woman, or other party, or as relator in any information, such person shall sign a written authority to the solicitor for that purpose, and such authority shall be filed with the statement of claim, petition, motion, or summons, as the case may be.

As to next friend and relator.
Ibid. s. 12.

Service.

*Equity.**Service.*

29. No writ of subpœna or other process to appear to and answer any statement of claim shall be required; but a copy of the statement of claim, stamped with the seal of the Court, and endorsed as herein-after directed, shall be served in the prescribed manner.

Service of statement
of claim.

44 Vic. No. 18, s. 13.

1897, No. 11, s. 6.

30. The Court or the Judge may allow the statement of claim or any other equitable process in any suit or proceeding to be served out of the jurisdiction whenever—

Service out of the
jurisdiction.

1897, No. 11, s. 3.

- (a) the suit or proceeding, wholly or in part, concerns land or hereditaments situate within the jurisdiction, or any charge, lien, judgment, or incumbrance thereon; or
- (b) any Act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction is sought to be construed, rectified, set aside, or enforced in the suit or proceeding; or
- (c) the relief sought in any suit or proceeding in respect of the person to be served, wholly or in part concerns any money vested in any Government stocks or funds, or in the stocks or shares of any corporation, company, or society registered within the jurisdiction, or deposited with any such corporation, company, or society, or the interest, dividends, or produce of such money; or
- (d) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or
- (e) the suit or proceeding is for the administration of the estate of any deceased person who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument of which the person to be served is a trustee which ought to be executed according to the law of New South Wales, or for the appointment or removal of any trustee of such trusts; or
- (f) the suit is founded on any breach or alleged breach within the jurisdiction of any contract wherever made which (in respect of the matter as to which relief is sought) ought, according to the terms thereof, to be performed within the jurisdiction; or
- (g) any injunction is sought as to anything to be done or against the doing of any act within the jurisdiction, whether damages are or are not also sought in respect thereof; or
- (h) any person out of the jurisdiction is a necessary or proper party to a suit or proceeding properly brought against some other person duly served within the jurisdiction; or

(i)

Equity.

- (i) relief is sought against a person out of the jurisdiction in respect of his membership or alleged membership in any company or society registered within the jurisdiction.

31. (1) When leave is given to serve any statement of claim upon a person out of the jurisdiction, and such person is neither a British subject nor in any British possession, such statement of claim shall be endorsed in the form or to the effect of the form set out in the Second Schedule hereto.

Endorsement of statement of claim.
1897, No. 11, s. 4.

(2) Every other statement of claim served upon any defendant, whether within or out of the jurisdiction, shall be endorsed in the form or to the effect of the form set out in the Third Schedule hereto.

32. The filing and service upon the defendant of the statement of claim shall respectively have the same effect as the filing and service of a bill of complaint had previously to the first day of September, one thousand eight hundred and eighty.

Effect of filing statement of claim.
44 Vic. No. 18, s. 14.

33. (1) If any person is unable to effect reasonably prompt service of any process the Court or Judge may in the prescribed manner order substituted or other service to be effected or notice to be given instead of service.

Substituted service.
1897, No. 11, s. 5.

(2) The mere fact that the person to be served is out of the jurisdiction shall not be considered a sufficient reason for allowing substituted service.

(3) Where the person required to be served is out of the jurisdiction the Court or Judge shall not make an order directing substituted or other service or the giving of notice as aforesaid except in cases where the Court or Judge would have power to allow service out of the jurisdiction.

34. The plaintiff shall deliver to the defendant or his solicitor upon application for the same such a number of copies of the statement of claim as he requires upon being paid for the same at the prescribed rate.

Delivering copies of statement of claim.
44 Vic. No. 18, s. 15.

35. (1) Upon the amendment of any statement of claim the provisions hereinbefore contained with respect to filing and delivering copies thereof shall so far as may be extend to the statement of claim as amended.

Amendment of statement of claim.
Ibid. s. 16.

(2) Except where the rules or practice of the Court otherwise provide a statement of claim may be amended by written alterations therein as filed.

Appearance and statement of defence.

36. The defendant shall, when he enters an appearance to the statement of claim or at such later period as the Judge may allow, file a memorandum as prescribed, disputing or submitting to the plaintiff's claim or disclaiming any interest in the subject matter of the suit, and shall within the prescribed time file in the office of the Master a demurrer plea or statement of defence to the statement of claim.

Appearance by defendant.
Ibid. s. 18.

Equity.

37. Every statement of defence, and defence to counter claim, shall be verified upon oath, and shall be in the prescribed form. Form of statement of defence.
44 Vic. No. 18, ss. 19, 20.

38. (1) Where a party does not know whether a fact alleged in the statement of claim or counter-claim is true or not he may in his statement of defence state that he does not know and is not able to admit the truth of the fact alleged. Facts not denied are admitted.
Ibid. s. 20.

(2) Except as aforesaid, all facts stated in the statement of claim or counter-claim, and not expressly and in terms denied in the statement of defence shall be deemed to be admitted for the purpose of the suit.

39. (1) A defendant may in his statement of defence set off or set up by way of counter-claim against the claim of the plaintiff any right or claim, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross suit so as to enable the Court to pronounce a final judgment in the same suit both on the original and on the cross claim. Set-off and counter-claim.
Ibid. s. 21.

(2) The Court may, on the application of the plaintiff before the hearing, refuse permission to the defendant to avail himself of such set-off or counter-claim if, in the opinion of the Judge, such set-off or counter-claim cannot be conveniently disposed of in the pending suit, or ought not to be allowed.

40. Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, make a decree in favour of the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case. Court may decree in favour of defendant.
Ibid. s. 22.

Discovery.

41. The plaintiff or applicant in any suit or proceeding may by leave of the Court, and not otherwise, file and serve interrogatories for the examination on oath of any defendant or respondent. Plaintiff's interrogatories.
Ibid. s. 19.

42. Any defendant or respondent who has not been required to answer interrogatories, or who has been required to answer interrogatories and has put in a sufficient answer thereto, may by leave of the Court and not otherwise file and serve interrogatories for the examination on oath of the plaintiff or applicant. Defendant's interrogatories.
Ibid. s. 23.

43. The sufficiency, materiality, or relevancy of the answer to any interrogatory may be determined in the prescribed manner. Sufficiency of answers.
Ibid. s. 24.

44. The Court, in determining what interrogatories shall be allowed or the sufficiency, materiality, or relevancy of any answer thereto, shall have regard to the statements contained in the pleadings of the parties filing and answering such interrogatories respectively. Pleadings to be considered.
Ibid. s. 23.

45. Nothing in this Act shall be deemed to take away the right of any person to institute a suit for the purpose of discovery. Suit for discovery.
Ibid. s. 23.

Equity.

46. The Court may, on the application of the plaintiff or applicant in any suit or proceeding, make an order for the production by any defendant or respondent on oath of such documents in his possession or power relating to any matter in question in the suit or proceeding as the Court thinks right, and the Court may deal with such documents when produced in such manner as appears just.

Production of documents by a defendant.
44 Vic. No. 18, s. 25.

47. The Court may, on the application of any defendant or respondent in any suit or proceeding who has not been required to answer interrogatories, or who has been required to answer interrogatories and has put in a sufficient answer thereto, make an order for the production by the plaintiff or applicant in such suit or proceeding on oath of such documents in his possession or power relating to any matter in question in the suit or proceeding as the Court thinks right, and the Court may deal with such documents when produced in such manner as appears just.

The like by plaintiffs.
Ibid. s. 26.

Motion for decree.

48. (1) The plaintiff in any suit may at any time after the time allowed the defendant for filing a statement of defence has expired, but before replication, move the Court upon the prescribed notice for such decree or decretal order as he may think himself entitled to, and the plaintiff and defendant respectively may file affidavits in support of and in opposition to the motion so to be made, and use the same on the hearing of such motion, and the statement of defence (if any) and any answer to interrogatories may upon such motion be used as an affidavit.

Proceedings on motion for a decree.
Ibid. s. 28.

(2) Upon any such motion it shall be discretionary with the Court to grant or refuse the same, and to give such directions with respect to the further prosecution of the suit as the circumstances appear to require, and the Court may make such order as to costs as it may think right.

Making of such decree discretionary.
Ibid. s. 29.

Joinder of issue.

49. In suits where notice of motion for a decree or decretal order has not been given, or having been given where a decree or decretal order has not been made thereon, issue shall be joined by filing a replication in the prescribed form.

Filing replication
Ibid. s. 30.

Want of prosecution.

50. Any defendant may move to dismiss a suit for want of prosecution at such times and under such circumstances and subject to such restrictions as may be prescribed.

Dismissal of suits for want of prosecution.
Ibid. s. 27.

Trial.

51. (1) The evidence to be used at the hearing of any suit shall be taken before the Judge sitting in open Court without a jury.

Trial of issues.
Ibid. ss. 33, 34, 36, 37.

(2)

Equity.

(2) The Court may, if it thinks fit, cause any question of fact arising in any suit to be tried, or, where it has jurisdiction to award damages, the amount of such damages to be assessed either—

- (a) by a special or common jury before the Judge; or
- (b) by a jury before any Judge of the Supreme Court at Sydney or in any Circuit Court; or
- (c) by the Judge without a jury.

(3) Any such question of fact and any such question as to the amount of damages shall be reduced into writing in such form as the Court directs.

(4) In addition to the powers hereby conferred, the Court ^{44 Vic. No. 18, s. 32.} may direct the amount of any such damages to be assessed in such other manner as the Court thinks fit.

52. (1) Where any question of fact or question of damages has ^{Jury how summoned.} been ordered to be tried by a special or common jury before the Court ^{*Ibid.* ss. 34, 35.} itself, the Judge may issue such precepts and make such orders upon the Sheriff for procuring the attendance of such jury as may be made by the Supreme Court in its common law jurisdiction, and may also make any other orders in relation thereto which to him may seem requisite.

(2) Every such jury shall be summoned, struck, called, and sworn in like manner as if summoned for the trial of an action in the Supreme Court in its common law jurisdiction.

(3) Generally for all purposes of or auxiliary to the trial of questions by a jury the Judge shall have the same power, jurisdiction, and authority in all respects as belong respectively to the Supreme Court in its common law jurisdiction, or to any Judge thereof sitting at nisi prius for the like purpose.

53. (1) Where a question of fact or question of damages has ^{New trials, &c.} been tried, any party to the suit may, within the prescribed time, ^{*Ibid.* ss. 35, 36.} move the Court to set aside or vary the verdict or finding or for a new trial of such question.

(2) The Court shall have the same powers and jurisdiction ^{*Ibid.* s. 35.} in respect to new trials as belong to the Supreme Court in its common law jurisdiction or to any Judge thereof for the like purpose.

(3) Nothing herein shall be interpreted as restricting or qualifying the power of the Court as a Court of Equity to set aside or vary the verdict of a jury upon any question of fact or question of damages or to grant a new trial of such question.

54. From every order made by the Court upon an application ^{Appeal to Full Court.} for a new trial or to set aside or vary such verdict there shall be the ^{*Ibid.* ss. 35, 36.} same right of appeal as from any other order of the Court.

55. Where any question of fact or question of damages has ^{Further evidence, how taken.} been tried, any further evidence that is required for the hearing of ^{*Ibid.* s. 38.} the suit shall be taken at such time and in such manner as the Judge directs.

Equity.

56. When the evidence has been taken the suit shall forthwith proceed to the hearing unless the Judge otherwise orders.

Proceeding to hearing after close of evidence.

44 Vic. No. 18, ss. 31, 38.

Evidence.

57. (1) The evidence to be used at the hearing of any cause, or on the trial of any question of fact or of damages, shall be taken in the same manner and subject to the same rules and exceptions as at a trial at nisi prius.

Evidence, how taken. *Ibid.* ss. 31, 40.

(2) The Court at the hearing of any suit, or of any further consideration thereof, may, whether any of the parties interested are under disability or not, use affidavits by particular witnesses or receive proof by affidavit of such particular matters as in the opinion of the Court may properly be so proved.

16 Vic. No. 3, s. 26. 44 Vic. No. 18, ss. 40, 41.

58. Upon the hearing of any suit or matter the Judge may require the production and oral examination before himself of any witness or party in the suit, and may direct the cost of and attending the production and examination of such witness or party to be paid by such of the parties to the suit or matter and in such manner as he thinks fit.

Judge may require examination before himself of any witness. *Ibid.* s. 39.

59. The Judge shall have the same power of issuing or of authorising the issue of subpoenas, and of punishing parties for non-attendance in obedience to any such subpoena as is now vested in the Supreme Court in its common law jurisdiction.

Witnesses, how summoned. *Ibid.* s. 31.

60. The evidence in any suit may, if the Court or either party so require, be taken down by a shorthand writer.

Shorthand writer. *Ibid.* s. 31.

61. (1) Every witness who has made an affidavit in any suit or matter before the Court shall be subject to oral cross-examination in the same manner as if the evidence given in his affidavit had been given by him orally, and may be re-examined orally by the party using such affidavit.

Cross-examination of a deponent. *Ibid.* s. 42.

(2) Such witness shall attend before the Court to be so examined upon receiving due notice and payment of his reasonable expenses in like manner as if he had been duly served with a writ of subpoena *ad testificandum*.

(3) The expenses attending such examination shall be paid by the parties respectively in like manner as if the witness were the witness of the party cross-examining, and shall be deemed costs in the cause unless the Court otherwise directs.

62. (1) Any party may call on any other party, who is competent to make admissions, by notice to admit any document, saving all just exceptions; and in case of his not admitting the same, the cost of proving the document shall be paid by the party so neglecting or refusing to admit, whatever the result of the suit or proceeding, unless the Court otherwise orders.

Notice to admit documents. *Ibid.* s. 43.

Equity.

(2) No costs of proving any document shall be allowed unless such notice has been given, except where the omission to give it was, in the opinion of the Master, a saving of expense.

63. Any party in any suit or proceeding may by a subpoena require the attendance of any person before the Court or Master or any person specially appointed for the purpose, and may require the production of any deed, instrument, writing, matter, or thing which such person may be lawfully required to produce, and may examine such person orally for the purpose of using his evidence upon any motion, petition, or other proceeding in like manner as such person would be bound to attend and be examined with a view to the hearing of a suit.

Oral evidence on motions, &c.
44 Vic. No. 18, s. 47.

64. Upon any application to the Court for an injunction, or a receiver, or to dissolve an injunction or discharge an order appointing a receiver, where the defendant has filed an answer to interrogatories, such answer shall, for the purpose of evidence on such application, be regarded as an affidavit, and affidavits may be received and read in opposition thereto.

Answer how used on certain motions.
Ibid. s. 48.

65. In cases where it is necessary for any party to go into evidence subsequently to the hearing, or on any inquiry, account, or reference before the Judge, such evidence shall be taken in the prescribed manner.

Evidence after the hearing.
Ibid. s. 49.

66. (1) All pleadings, examinations, and affidavits in suits or proceedings in equity may be sworn and taken in any place out of this State under the dominion of His Majesty before any Judge, notary public, or person authorised to administer oaths at such place, or before any British consul or vice-consul in any place out of His Majesty's dominions.

Pleadings, &c., out of the jurisdiction.
Ibid. s. 45.

(2) Judicial notice shall be taken of the seal or signature, as the case may be, and authority of any such Judge, notary public, person, consul, or vice-consul.

Abatement and revivor.

67. (1) Upon any suit becoming abated by death or otherwise, or defective by reason of some change or transmission of interest or liability it shall not be necessary to file any new or supplemental statement of claim, but an order to the effect of the common order to revive, or of the usual supplemental decree, may be obtained as of course upon an allegation of the fact and of the nature of the statement or defect in the suit.

Suit how revived after abatement.
Ibid. s. 59.

(2) Such order for revivor shall be served upon the persons who previously to the first day of September, one thousand eight hundred and eighty, would have been defendants to a bill of revivor or supplemental bill.

Equity.

(3) Such persons when so served shall become parties to the suit and shall enter an appearance thereto as if they had been duly served with process to appear to such a bill as aforesaid duly filed against them.

(4) The persons so served may within the prescribed time after service apply to the Court to discharge such order on any ground which would have been open to them on a bill of revivor or supplemental bill stating the previous proceedings in the suit and the alleged change or transmission of interest or liability, and praying the usual relief consequent thereon.

(5) If any person so served is under disability, such order shall be of no effect as against him until a guardian *ad litem* has been appointed for him and the prescribed time has elapsed.

68. (1) Facts which have occurred since the commencement of the suit may, if the Court thinks proper, be introduced by way of amendment into the original statement of claim.

Facts occurring since the filing of the statement of claim.

44 Vic. No. 18, s. 60.

(2) Otherwise the plaintiff may state such facts on the record in such manner and subject to such rules as are prescribed with respect to the proof thereof and to affording the defendant an opportunity of answering the same.

Decrees.

69. All decrees and orders shall be settled in the prescribed manner.

Mode of settling decrees and orders.
Ibid. s. 65.

Formal defects, &c.

70. No proceeding shall be invalidated by any formal defect nor by any irregularity unless the Court is of opinion that substantial injustice has been caused by such defect or irregularity and that such injustice cannot be remedied by any order of the Court.

Formal defects not to invalidate proceedings.
Ibid. s. 51.

PART V.

THE MASTER IN EQUITY.

71. The Governor may appoint a barrister of at least five years standing to be Master in Equity at such salary as may be deemed reasonable.

The Master in Equity.

4 Vic. No. 22, s. 22.

25 Vic. No. 9, s. 1.

72. (1) The Court shall order what matters shall be investigated before the Master with or without special directions, and what matters shall be heard and investigated by the Court respectively.

44 Vic. No. 18, s. 66.

Equity.

(2) In every case, unless the Court otherwise directs, the Master shall tax costs and make such inquiries as have usually been prosecuted before the Master.

(3) The Judge shall give such aid and directions in any such inquiry as he may think fit subject to the right of appeal and to the right of every suitor to bring any particular point before the Judge himself.

73. The Master shall for the purpose of any proceeding before him have full power to issue advertisements, to summon any persons, to administer oaths, to take affidavits, and also acknowledgments except those of married women, and to examine parties or witnesses orally or upon interrogatories. 44 Vic. No. 18, s. 67. Several powers.

74. Every person summoned by the Master shall be bound to attend upon such summons, and shall for disobedience thereof be liable to process of contempt in like manner as for disobedience to or for default of attendance in pursuance of any order of the Supreme Court or on any writ of subpoena. Witnesses bound to attend. Ibid. s. 67.

75. The Master shall have the like powers under references to him to order production of documents by the parties as by this Act are vested in the Court, and the Master may deal with such documents when produced in such manner as appears just. Production of documents. Ibid. ss. 25, 26.

76. In cases where it is necessary for any party to go into evidence on any inquiry, account, or reference before the Master, such evidence shall be taken in such manner as is prescribed. Evidence. Ibid. s. 49.

77. All persons knowingly swearing or affirming falsely before the Master shall incur all the penalties of perjury. False swearing. Ibid. s. 67.

78. The Master shall have the like powers under references to him to order substituted or other service or notice in lieu of service to be effected or given where the person required to be served is within the jurisdiction as by this Act are vested in the Court or Judge. Service.

79. The result of any proceedings before the Master shall be stated in a certificate in the prescribed form, unless otherwise directed by the Court, and the approval of the Judge of any such certificate shall be signified under his hand. Certificate. Ibid. s. 63.

80. (1) During the proceeding before the Master, or within the prescribed time after its conclusion, any party may take the opinion of the Judge on any particular point or matter arising in the course of the proceeding, or upon the result of the whole when brought to a conclusion. Taking opinion of Judge. Ibid. s. 69.

(2) Every certificate of the Master, after it has been adopted and signed by the Judge, shall be filed, and shall thenceforth be binding on all parties unless discharged or varied by the Court upon application within the prescribed time.

Equity.

PART VI.

APPEALS TO THE FULL COURT.

81. (1) Any person aggrieved by any decree or order of the Judge, whether sitting in open Court or in chambers, may, at any time within fourteen days next after the pronouncing of the same, or within such further time as the Judge allows, enter an appeal in the office of the Master against such decree or order to the Full Court, subject to such general rules as are prescribed.

Power to appeal to Full Court.
44 Vic. No. 18, s. 70.

(2) Every person so appealing shall, within fourteen days from the time of filing such appeal, either—

Security to be given by appellant.

(a) deposit in the hands of the Master such sum, not exceeding one hundred pounds, as the Master directs; or

(b) deposit with the Master a bond of two persons to be approved of by him, in such sum, not exceeding one hundred pounds, as he directs, conditioned to be void if the appellant prosecutes his appeal with all due diligence, and pays such costs as the Court adjudges.

(3) Such sum of money or bond, as the case may be, shall be held by the Master, subject to the order of the Court.

(4) If such sum of money or bond is not deposited as aforesaid within the period hereby provided, such appeal shall be deemed to have been abandoned.

82. (1) All appeals under this Act shall be by way of rehearing, and shall be brought by notice of appeal, and no petition or other formal proceeding other than such notice shall be necessary.

Mode of appealing.
Ibid. s. 71.

(2) The appellant may, by the notice, appeal from the whole or any part of any decree or order, and such notice shall state whether the whole or part only of such decree or order is complained of, and in the latter case shall specify such part.

83. (1) The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Full Court may direct notice of the appeal to be served on all or any other parties to the suit, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may make such decree or order as might have been made if the persons served with such notice had been originally parties.

Notice of appeal.
Ibid. s. 72.

(2) Any notice of appeal may be amended at any time as to the Full Court may seem fit.

84. (1) The Full Court shall have all the powers and duties as to amendment and otherwise of the Judge, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before the Master or a commissioner.

General powers of the Full Court.
Ibid. s. 73.

(2)

Equity.

(2) Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decree or order from which the appeal is brought.

(3) Upon appeals from a decree or order upon the merits at the trial or hearing of any suit or proceeding, such further evidence (save as aforesaid) shall be admitted on special grounds only, and not without special leave.

(4) The Full Court shall have power to make any decree or order which ought to have been made, and such further or other order as the case may require.

(5) The powers aforesaid shall be exercised by the Full Court notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties although such respondents or parties may not have appealed from or complained of the decision.

(6) The Full Court shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

85. (1) It shall not, under any circumstances, be necessary for a respondent to give notice of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied or altered, he shall, within such time as may be prescribed by any general rule or by special order, give notice of such intention to any parties who may be affected by such contention.

Regulations as to cross appeals.

44 Vic. No. 18, s. 74.

(2) The omission to give such notice shall not diminish the powers by this Act conferred upon the Full Court, but may, in the discretion of the Court, be ground for the adjournment of the appeal, or for a special order as to costs.

86. (1) Every notice of appeal shall stay the execution of proceedings upon the decree appealed from unless the Judge directs such execution to be proceeded with.

Stay of proceedings on appeal.

Ibid. s. 75.

(2) The Judge may (subject nevertheless to appeal as from any other order) direct such decree or order to be carried into execution and all proceedings to be taken thereupon as if no appeal had been entered, which direction may be upon such terms (if any) as to security or otherwise as to such Judge seems fit.

87. The decrees and orders of the Court on appeal shall be settled by the Master as at present, and the Court may, in any decree or order, direct what, if any, accounts shall be taken, or inquiries made, before the Judge, and what, if any, before the Master.

Decrees how settled Ibid. s. 76.

88. The Judge may, on the application of any party or at his own discretion, and on such terms, if any, as he thinks fit to impose, direct a rehearing by the Full Court of any cause, petition, motion, or matter

Appeal by direction of the Judge.

Ibid. s. 77.

Equity.

matter before him, and in such case it shall not be necessary to give any notice of appeal, but nothing herein shall prejudice the right of any party to appeal where the Judge does not give any such direction.

89. Nothing in this Act shall be construed to affect the right of any party to appeal to His Majesty in Council from any such decree or order, or from any reversal or affirmance thereof. Appeals to Privy Council.

PART VII.

CONTEMPT OF COURT.

90. (1) When any person, directed by any decree or order to execute any deed or other instrument or make a surrender or transfer, has refused or neglected so to do for the space of twenty-eight days, the Court may appoint the chief clerk in equity, or some other person, to execute such deed or instrument or to make such surrender or transfer in his name, and to do all acts necessary to give validity and operation thereto. Order to execute instruments. 11 Geo. IV, and 1 Wm. IV, c. 36, s. 15, subs. 15.

(2) The execution of such deed or instrument and the surrender or transfer so made by the person so appointed shall in all respects have the same force or validity as if the same had been executed or made by the person directed by the decree or order to execute or make the same.

(3) The Court shall make such order as may be just touching the payment of the costs of, or attending the execution of, any such deed, transfer, surrender, or instrument.

(4) The powers hereby conferred on the Court are in addition to the powers conferred by the Trustee Act, 1898.

91. (1) Where any person has been ordered by any decree or order of the Court to deliver to any person or to deposit in Court or elsewhere books, papers, or any other article or thing, and has refused or neglected to do so for the space of twenty-eight days any sequestrator appointed by the Court shall have the same power to seize and take such books, papers, writings, or other things being in the custody or power of the person against whom the sequestration issues as such sequestrator would have over such person's own property. Order to deliver up books. Ibid. s. 15, subs. 16.

(2) Any article or thing so seized and taken shall be dealt with as the Court directs.

(3) The Court may make such order as to the costs of proceedings under this section as it thinks fit.

92. (1) The Master on some day in the last week of the months of February, May, August, and November respectively in each year shall make a return to the Judge of the persons (if any) then confined in prison under orders of the Court for contempt of Court together with a report upon the case of each person so confined. Return of persons imprisoned for contempt. 1 Wm. IV, c. 36, s. 15, subs. 7, 17, 18.

(2)

Equity.

(2) The Court may at any time upon the application of any person so confined or upon the receipt of such report make such order for the discharge of any such person so confined and as to costs incidental to such order as it thinks fit.

93. Where any person is committed to prison for non-payment of any money into Court, or is kept in prison for non-payment of any costs, and such person becomes bankrupt, the Court shall order his release from prison unless the imprisonment of such person was intended to be punitive or disciplinary and not merely to enforce the order of the Court.

Committal for non-payment of money into Court.

1 Wm. IV, c. 36, ss. 16, 17.

PART VIII.

RULES OF COURT.

94. (1) The Judges of the Supreme Court or any three of them may make general rules for the following purposes—

- (a) for regulating the times, forms, and modes of procedure ;
- (b) for fixing the amount of all fees and allowances to officers of the Court and solicitors in reference to any matter in equity ;
- (c) for regulating the times and modes of service or notice in lieu of service of all equitable process ;
- (d) as to the investment of cash under the control of the Court in such stocks, funds, or securities, as may seem fit.
- (e) and generally for regulating the practice of the Court and otherwise for the effectual execution of this Act and of the intention and object thereof.

44 Vic. No. 18, ss. 80, 81.

26 Vic. No. 12, s. 34.

1897, No. 11, s. 6.

(2) The rules and form contained in the Fourth Schedule to this Act shall regulate the practice and procedure upon originating summons until altered, added to or rescinded by rules of Court made under the authority of this Act, which rules when made shall have the same force and effect as if they had formed part of the said Fourth Schedule.

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

SCHEDULES.

Equity.

SCHEDULES.

FIRST SCHEDULE.

Reference to Act.	Title or Short Title.	Extent of repeal.
5 Wm. IV No. 8 ...	An Act for adopting and applying certain Imperial Acts.	So much of the Act as adopted the Imperial Acts, 11 Geo. IV and 1 Wm. IV, cc. 36 and 47, and the unrepealed portion of 11 Geo. IV and 1 Wm. IV, c. 65.
4 Vic. No. 22 ...	An Act to provide for the more effectual administration of justice in N.S.W.	Section 22.
5 Vic. No. 9 ...	Advancement of Justice	Section 14.
11 Vic. No. 27 ...	An Act to render valid certain acts and appointments and to authorise the making of orders in infancy.	The whole.
12 Vic. No. 1 ...	An Act to simplify and alter the law in some respects.	Section 8.
16 Vic. No. 3 ...	An Act to diminish the delay and expense of proceedings in the Supreme Court in its jurisdiction as a Court of Equity and in Infancy and Lunacy.	The whole.
16 Vic. No. 19 ...	Trustee Act, 1852	The unrepealed portion.
21 Vic. No. 6 ...	An Act for further facilitating the payment of debts out of real estate.	The whole Act.
22 Vic. No. 14 ...	The Equity and Banco Business Expediting Act.	Sections 1, 2, 3.
25 Vic. No. 9 ...	An Act to amend the law in certain respects.	The unrepealed portion.
26 Vic. No. 12 ...	Trust Property Act	Section 34 and sections 66-70 (inclusive).
37 Vic. No. 11 ...	An Act to amend the law of arrest ...	Section 7.
44 Vic. No. 18 ...	The Equity Act of 1880	The unrepealed portion.
55 Vic. No. 26 ...	The Judicial Offices Act	Section 4.
1897, No. 11 ...	Service of Equitable Process Act of 1897	The whole.
1900, No. 49 ...	Supreme Court Procedure Act, 1900 ...	Sections 10, 11, and the Schedule, except rule one thereof.

SECOND SCHEDULE.

, the day of , in the year one
thousand nine hundred and

To the within-named A.B.—

TAKE notice that the within-named plaintiff, E.F. [or, where there is more than one plaintiff, plaintiffs E.F. and C.D.], has (or have) commenced a suit against you in the Supreme Court of New South Wales in its Equitable Jurisdiction by the within statement of claim, and you are required, within days after the service hereof on you, exclusive of the day of such service, to cause an appearance to be entered for you in the Equity

Equity.

Equity Office of the said Supreme Court, at Chancery-square, in the city of Sydney, in the State of New South Wales, to the within statement of claim. And you are also required at the same time of entering your appearance to file in the said Equity Office a memorandum stating in effect that you dispute, in whole or in part, the plaintiff's claim (specifying which part), or that you submit to such decree or order as the Court thinks fit to make, or that you disclaim all right, title, and interest in the subject matter of the within statement of claim.

NOTE.—If you neglect to enter an appearance, or to file a memorandum as above mentioned, you will be subject to such order as the said Court thinks fit to make in your absence.

(Signed) E.F., Plaintiff,
or, Y.Z., of
Solicitor for the Plaintiff.

THIRD SCHEDULE.

EDWARDUS R.

To the within named defendant, A.B.,—

Greeting :—

WE command you that, within days after the service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in the Equity Office of our Supreme Court, at Chancery-square, Sydney, in the State of New South Wales, to the within statement of claim. And that you do at the same time of entering your appearance file in the said Equity Office a memorandum stating in effect that you dispute, in whole or in part, the plaintiff's claim (specifying which part), or that you submit to such decree or order as the Court thinks fit to make, or that you disclaim all right, title, and interest in the subject matter of the within statement of claim.

Witness the Honorable A.B., the Chief Judge in Equity, at Sydney, the
day of , in the year one thousand nine hundred and ,
and in the year of our reign.

NOTE.—If you neglect to enter your appearance, or to file a memorandum as above mentioned, you will be subject to such order as the Court thinks fit to make in your absence.

FOURTH SCHEDULE.

Rules of Court for Originating Summons.

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

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

(g)

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

(g) the determination of any question arising in the administration of the estate or trust.

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

(a) The administration of the personal estate of the deceased;

(b) The administration of the real estate of the deceased;

(c) the administration of the trust.

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

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

(a) for the determination of any question under subsections (a), (e), (f), or (g) of rule 1, the persons or one of the persons whose rights or interests are sought to be affected;

(b) for the determination of any question under subsection (b) of rule 1, any member or alleged member of the class;

(c) for the determination of any question under subsection (c) of rule 1, any person interested in taking such accounts;

(d) for the determination of any question under subsection (d) of rule 1, any person interested in such money;

(e) for relief under subsection (a) of rule 2, the residuary legatees, or next of kin, or some of them;

(f) for relief under subsection (b) of rule 2, the residuary devisees, or next of kin, or some of them;

(g) for relief under subsection (c) of rule 2, the cestuis que trust or some of them;

(h) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur.

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

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

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

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

7. The Judge may direct such other persons to be served with an originating summons, as they or he may think fit.

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

(b) The Judge may direct such persons to be served with the summons, as he may think fit.

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

Equity.

10. The time within which a defendant within the jurisdiction shall appear to an Time for appearance. originating summons shall be—

- (a) if he resides above 200 miles from Sydney, within sixteen days ;
- (b) if he resides above 100 miles from Sydney, within twelve days ;
- (c) in all other cases, within eight days

after service of the summons upon him, inclusive of the day of such service.

11. Applications by way of originating summons shall be supported by such Evidence. evidence as the Judge may require, and directions may be given, as he may think just, for the trial of any question arising thereout.

12. Orders made on originating summons shall be settled, passed, and entered, Settlement of orders. and remain of record, and shall be enforced in the same manner in all respects as orders of the Court in Equity.

13. An originating summons shall be in Form A to these rules altered to meet Form of summons. the circumstances of the case.

14. So soon as the defendants have appeared to an originating summons, or have Appointment for made default in so appearing within the time limited, the plaintiff shall take out in the hearing of summons. Equity Office an appointment, before the Judge, for the hearing of the summons, and shall give the defendants who have appeared two clear days' notice of the date of such appointment. If the plaintiff does not take out such appointment within seven days after the defendants have appeared, or made default, as the case may be, any defendant who has appeared may take out such appointment, and shall give two clear days' notice of the date of such appointment to the plaintiff and the other defendants who have appeared.

FORM A.

In the Supreme Court of New South Wales, }
in Equity. }

No.

In the matter of the will of, &c. ;

or

In the matter of the estate of, &c. ;

or

In the matter of the trusts of, &c. ;

or

In the matter of the indenture of mortgage dated, &c. ;

or

In the matter of the contract for sale, dated, &c. ;

or as the case may be

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

Originating Summons.

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

[State the questions or proposed order.]

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

Dated the day of , one thousand nine hundred and

This summons is taken out by the abovenamed [or by the solicitor for the abovenamed .]

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

Memo. and Certificate to accompany the Equity Bill.

This Bill consolidates the whole or parts of the following Statutes:—

5 Wm. IV No. 8 (adopting 11 Geo. IV and 1 Wm. IV, caps. 36, 47, and 65);
4 Vic. No. 22;
5 Vic. No. 9;
11 Vic. No. 27;
12 Vic. No. 1;
16 Vic. No. 3;
16 Vic. No. 19;
21 Vic. No. 6;
22 Vic. No. 14;
25 Vic. No. 9;
26 Vic. No. 12;
37 Vic. No. 11;
44 Vic. No. 18;
55 Vic. No. 26;
1897, No. 11.
1900, No. 49.

The Imperial Act 11 Geo. IV and 1 Wm. IV, c. 36, which was adopted by 5 Wm. IV No. 8, has been almost entirely omitted as obsolete. The parts which are considered to have any existing efficacy are preserved in clauses 90, 91, 92 and 93. 16 Vic. No. 3 has been found to be entirely obsolete, and sections 3 of 22 Vic. No. 14, and 8 of 12 Vic. No. 1 are omitted as unnecessary, the ground being fully covered by the existing rules of Equity procedure. Section 55 of 16 Vic. No. 19, providing for the investment of particular moneys in Court, has been treated as superseded by the more general terms of s. 34 of the Trust Property Act (26 Vic. No. 12). Sections 17, 56, and 64 of 44 Vic. No. 18 are also unnecessary.

Clause 6. The doubt under the original section as to the number of judges who might sit has been here cleared up.

Clause 18. In redrafting the provisions of the antiquated sections here dealt with, the analogy of the procedure under the Trustee Act (under which most cases of this kind arise) has been followed.

Clause 22. The provisions of the original section as to the form of the statement of claim are now left to the rules.

Clause 23 (g). The words "executor, administrator" have been added in consequence of the Probate Act.

Clause 28. The words "or other proceeding" are added to supply an omission.

Clause 30 (i). The unnecessary word "principal" is omitted.

Clause 36. The original section, by oversight, said nothing about "submitting" or "disclaiming" and these cases had accordingly to be provided for by rules. They are now included in the clause.

Clause 37. A doubtful point is settled by adding the words "and defence to counter claim"

Clause 38. This clause, as drawn, gives what is considered to be the proper practice under the former Act and rules, and is approved by the Chief Judge in Equity.

Discovery ; clauses 41-47. The right to discovery probably already extends, as it certainly should do, to "proceedings" as well as "suits," but the matter is now made certain.

Clauses 41, 42. Plaintiff's and defendant's interrogatories are made uniform. The "concise statement" mentioned in section 23 is useless.

Clause 48. Some very confused wording in the original section has been here amended.

Clauses 51 to 56 inclusive under heading "Trial." The wording of these has been remodelled.

Clause 57 (2). Section 41 of the original Act covered much the same ground as section 40. This clause gives the sense of both.

Clause 60. The section and the rules have been brought into agreement with each other.

Clause 62 (1). Under the wording of the original section 43 it would appear that no one defendant could admit a document unless all the parties were competent to make admissions. This is now remedied.

Clause 68. The words "if the cause is otherwise in a state to allow of an amendment," which have been found to hamper the beneficial operation of the clause, have been omitted, and the matter left to the discretion of the Judge.

Clauses 90, 91. See note to clause 18.

Clause 92. The sections here consolidated prescribe a practice inapplicable to New South Wales, and which has never been followed here, but also contain provisions which are considered to be material, and are, therefore, here preserved.

Fourth Schedule : Rule 14. The right of defendants to prevent questions from being hung up for an indefinite time has been made clearer.

I must express the great obligation I am under in this important consolidation to the Chief Judge in Equity, Mr. Justice A. H. Simpson. He has found time to go over the Bill, and has considered the various points noted above (all of which have his approval), and has made valuable suggestions. The Bill is therefore fortified by his weighty authority.

I certify that, except 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.

Equity Bill.

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

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
11 GEORGE IV and 1 WILLIAM IV, c. 36 (adopted by 5 WILLIAM IV, No. 8).		
1-14	.....	Obsolete and inapplicable.
15 (1-6)	.....	Obsolete.
15 (7)	92 (1)	Adapted.
15 (8-14)	.....	Obsolete.
15 (15)	90	Adapted.
15 (16)	91	Adapted.
15 (17, 18)	92	Adapted.
15 (19)	.....	See Equity Rule 193.
15 (20)	.....	Obsolete.
16, 17	93	Adapted.
18-20	.....	Inapplicable.
21	.....	Unnecessary; see the Interpretation Act.
11 GEORGE IV and 1 WILLIAM IV, c. 47 (adopted by 5 WILLIAM IV No. 8).		
1-9	.....	Spent; all rights accrued thereunder are preserved by the Interpretation Act.
10	.....	Obsolete.
4, 12	18	
13	.....	Inapplicable.
11 GEORGE IV and 1 WILLIAM IV, c. 65 (adopted by 5 WILLIAM IV No. 8).		
32, 35, 43, 44	19	
		4 VICTORIA No. 22.
22	71	
		5 VICTORIA No. 9.
14	.....	Spent.
		11 VICTORIA No. 27.
1	.....	Validating.
2	4	
		12 VICTORIA No. 1.
8	.....	See Equity Rule 27.
		16 VICTORIA No. 3.
1-18	.....	Special Case procedure is now obsolete.
19-25	.....	Provisions now obsolete since 26 Vic. No. 12; possibly repealed in effect by repeal of 26 Vic. No. 12, s. 37 in 44 Vic. No. 18.
26	57	Identical with 44 Vic. No. 18, s. 41.
27-32	.....	Obsolete.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
		16 VICTORIA No. 17.
55	94 (1) (d)	| cf. 26 Vic. No. 12, s. 34.
		21 VICTORIA No. 6.
1-3	18	|
		22 VICTORIA No. 14.
1, 2	.....	| Spent.
3	.....	| See Equity Rule 27.
		25 VICTORIA No. 9.
1	71	| Only so far as relates to Master in Equity.
		26 VICTORIA No. 12.
34	21 (1), (h), 94 (d)	These sections have no further operation, as all the sections of the Trust Property Act to which they referred, have been repealed.
66-70	.....
		37 VICTORIA No. 11.
27	.....	| Unnecessary since Bankruptcy Act.
		44 VICTORIA No. 18.
1	4	Part in Supreme Court and Circuit Courts Act, 1900.
2	.....
3	3	Supreme Court and Circuit Courts Act, 1900.
4	8	
5	6	
6	22	
7	23	
8	24	
9	25	
10	26	
11	27	
12	28	
13	29	
14	32	
15	34	
16	35	
17	.....	Obsolete.
18	36	
19	37, 41	
20	37, 38	
21	39	
22	40	
23	42, 44, 45	
24	43	
25	46, 76	
26	47, 76	
27	50	
28	48	
29	48	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
44 VICTORIA No. 18— <i>continued</i> .		
30	49	
31	56, 57, 59, 60	
32	9, 51	
33	51	
34	51, 52	
35	52, 53, 54	
36	51, 53, 54	
37	51	
38	55, 56	
39	58	
40, 41	57	
42	61	
43	62	
44	Repealed by Witnesses Examination Act, 1900.
45	66	
46	7	
47	63	
48	64	
49	65, 76	
50	10	
51	70	
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55	15	
56	Unnecessary.
57	16	
58	17	
59	67	
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61	21	
62	21	
63	21 (3)	
64	Omitted as unnecessary.
65	69	
66	72	
67	73, 76, 77	
68	79	
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70	81	
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76	87	
77	88	
78	20	
79	89	
80	94 (1)	
81	94 (2)	
82	3	
83	Spent.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
55 VICTORIA No. 26.		
4	3, 5	
1897. No. 11.		
1	.....	Short title.
2	.....	Repealing section.
3	30	
4	31	
5	33	
6	33 (3), 95	
7	3	Part covered by s. 106 of the Lunacy Act, 1898.
1900. No. 49.		
10	22 (2)	
11	11	
Schedule Rules 2-15 and form	Fourth Schedule	

Legislative Council.

No. , 1901.

A BILL

For consolidating enactments relating to the practice, procedure, and powers of the Supreme Court of New South Wales in its equitable jurisdiction.

[MR. WISE ;—21 August, 1901.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembly, and by the authority of the same, as follows :—

1. This Act may be cited as the "Equity Act, 1901," and is Short title.
divided into Parts as follows :—

PART I.—INTERPRETATION.—s. 3.

PART II.—THE CONSTITUTION OF THE COURT.—ss. 4-7.

PART III.—JURISDICTION AND SPECIAL POWERS OF THE COURT.

DIVISION 1.—*Co-ordinate jurisdiction with Common Law Courts*—ss. 8, 9.

DIVISION 2.—*Various powers of the Court*.—ss. 10-19.

DIVISION 3.—*Jurisdiction in chambers*.—ss. 20, 21.

PART IV.—PROCEDURE.—ss. 22-70.

PART V.—THE MASTER IN EQUITY.—ss. 71-80.

PART VI.—APPEALS TO THE FULL COURT.—ss. 81-89.

PART VII.—CONTEMPT OF COURT.—ss. 90-93.

PART VIII.—RULES OF COURT.—s. 94.

Repeal of Acts.
First Schedule.

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

(2) All rules of Court made under the authority of any provision so repealed and in force at the commencement of this Act shall be deemed to have been made and to be in force under the authority of this Act.

(3) The Master in Equity in office at the passing of this Act shall continue in office as if this Act had been in force at the time of his appointment, and he had been appointed hereunder.

(4) This repeal shall not affect any suit, matter, or proceeding now pending in the Court, but the same shall be continued under the provisions of this Act.

PART I.

INTERPRETATION.

Interpretation.

44 Vic. No. 18, ss.
3, 82.

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

The words “the Court” mean the Supreme Court in equity holden before the Judge, or any other Judge lawfully exercising the jurisdiction of the Judge, or in cases on appeal before the Full Court.

55 Vic. No. 26, s. 4.

The words “the Judge” mean the Chief Judge in Equity.

The words “the Master” mean the Master in Equity.

The words “statement of claim” include information.

1897, No. 11, s. 7.

The expression “equitable process” includes statement of claim, petition, motion, summons, decree, order, and generally any other document of which service is required to be effected in any proceeding before the Court.

The word “affidavit” includes affirmation, statutory declaration, and attestation of honour.

11 Vic. No. 27, s. 2.

The word “prescribed” means prescribed by rules of Court.

A reference to the jurisdiction “in equity” includes the jurisdiction of the Supreme Court in all matters relating to the appointment of guardians of infants and their estates.

PART

PART II.

THE CONSTITUTION OF THE COURT.

4. (1) The jurisdiction of the Supreme Court in equity including all matters relating to the appointment of guardians of infants and their estates shall be exercised by the Judge. Appointment and powers of the Chief Judge in equity.
11 Vic. No. 27, s. 2.
44 Vic. No. 18, s. 1.

(2) The Supreme Court shall be holden by the Judge for the determination of all proceedings in equity, and the disposal of motions and matters in relation thereto.

(3) Every decree or order of the Judge made in equity shall (unless appealed from in manner hereinafter provided) be as valid and binding as if made by the Full Court.

5. The Judge in Bankruptcy shall have the like powers and jurisdiction in all respects as are herein vested in the Judge, subject nevertheless to the like appeal; and when exercising such jurisdiction and powers or any of them the Judge in Bankruptcy shall be styled Judge in Equity. Judge in bankruptcy to be Judge in equity.
55 Vic. No. 26, s. 4.

6. (1) In any suit or proceeding the Judge may sit with the assistance of any two other Judges of the Supreme Court. Two Judges may assist.
44 Vic. No. 18, s. 5.

(2) In every such case the decision of the majority shall be taken to be that of the Full Court.

7. (1) The Court may in every case obtain the assistance of conveyancing counsel, accountants, merchants, engineers, actuaries, or other scientific persons the better to enable it to determine any matter at issue in any suit or proceeding and may act upon the certificate of any such person. Assistance of scientific persons.
Ibid. s. 46.

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

PART III.

JURISDICTION AND SPECIAL POWERS OF THE COURT.

DIVISION I.—*Co-ordinate jurisdiction with common law Courts.*

8. In any suit or proceeding in equity wherein it may be necessary to establish any legal title or right as a foundation for relief the Court shall itself determine such title or right without requiring the parties to proceed at law to establish the same, and whenever any question now cognizable only at law arises in the course of any proceeding before it the Court shall have cognizance thereof as completely as if the same had arisen in a court of law, and shall exercise in relation to such title, right, or question all the powers of the Supreme Court in its Common Law jurisdiction, and no suit in equity shall be open to objection on the ground that the remedy or appropriate remedy is in some other jurisdiction. Power to decide legal titles, &c.
Ibid. s. 4.

Power to Court to
award damages in
certain cases.

44 Vic. No. 18, s. 32.

9. In all cases in which the Court has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract, or agreement, or against the commission or continuance of any wrongful act or for the specific performance of any contract, covenant, or agreement the Court may award damages to the party injured either in addition to or in substitution for such injunction or specific performance.

DIVISION 2.—*Various powers of the Court.*

Declarations of right.

Ibid. s. 50.

10. No suit shall be open to objection on the ground that a merely declaratory decree is sought thereby, and the Court may make binding declarations of right without granting consequential relief.

Decree for adminis-
tration discretionary.

1900, No. 49, s. 11.

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

Court may direct a
sale in foreclosure
suits.

44 Vic. No. 18, s. 52.

12. In any suit for the foreclosure of the equity of redemption in any property, the Court may, upon the request of the mortgagee or any subsequent encumbrancer, or of the mortgagor, or any person claiming under them respectively, direct a sale of such property instead of a foreclosure on such terms as the Court may think fit, and without previously determining the priorities of encumbrances or giving time to redeem:

Provided that if such request be made by any such subsequent encumbrancer, or by the mortgagor, or any person claiming under them respectively, the Court shall not direct any such sale without the consent of the mortgagee or the person claiming under him unless the party making such request shall deposit in Court a reasonable sum to be fixed by the Court for the purpose of securing the performance of such terms as the Court may think fit to impose on him.

Dispensing with
references in certain
cases of account.

Ibid. s. 53.

13. (1) In all cases of account either party may by consent or by leave of the Court file a statement of facts before or at the hearing of any suit, petition, motion, or matter verified by affidavit; and where the amount is capable of being ascertained without difficulty from the pleadings or evidence, or by such statement of facts, the Court may adjust the same and decree accordingly without further inquiry or reference.

(2) Where the account cannot be so adjusted, the Court may give such special directions as may seem expedient with respect to the mode in which the account shall be taken or verified, which directions may be given either by the decree or order directing such account, or by any subsequent order.

Books may be
declared prima facie
evidence of account.

Ibid.

(3) The Court may direct that in the taking of any account the books in which the same has been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objections thereto as they may be advised.

14. If in any suit instituted in relation to real estate it appears to the Court that it will be expedient that the same or any part thereof should be sold for the purposes of such suit, the Court may at any time direct the same to be sold, and such sale shall be as valid as if directed to be made by a decree or decretal order on the hearing, and any party to the suit in possession of such estate or in receipt of the rents and profits thereof shall deliver up such possession or receipt to the purchaser or such other person as the Court directs.

Sales may be directed before decrec.

44 Vic. No. 18, s. 54.

15. Where any real or personal property is the subject of any proceeding in equity, and the Court is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceeding, the Court may, at any time after the commencement of such proceeding, allow to the parties interested therein, or any of them, the whole or part of the annual income of such real property or a part of such personal property or of the income thereof up to such time as the Court directs, and for that purpose may make such orders as may appear expedient.

Allowance to parties out of property in certain cases.

Ibid. s. 55.

16. (1) An injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that such order should be made, and whether there be a prayer for an injunction or receiver or not, and any such order may be made either unconditionally or upon such terms and conditions as the Court thinks just.

Injunctions and receivers.

Ibid. s. 57.

(2) If an injunction is asked either before or at or after the hearing of any suit or matter to prevent any threatened or apprehended waste or trespass, such injunction may be granted whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

Injunction to prevent waste.

Ibid.

17. Service upon any person of the decree or order directing such injunction or notice thereof shall have the same effect as the issuing of a writ of injunction and signing and filing of a docket and service of the writ upon such person had previously to the first day of September, one thousand eight hundred and eighty, and thereupon the plaintiff shall be entitled to all such remedies as he was entitled to under the practice in force at the last-mentioned date.

Service of order for injunction.

Ibid. s. 58.

18. (1) In any suit in which the Court declares that any real estate of a deceased person is liable to any debt of such person the Court may direct that the amount of such debt be raised by mortgage or sale of such real estate.

Sales and mortgages for payment of debts.

11 Geo. IV and 1 Wm. IV, c. 47, ss. 11, 12.

21 Vic. No. 6, ss. 1, 2, 3.

(2) For the purpose of effecting any sale or mortgage so directed, the Court may name some person to execute the necessary conveyances, mortgages, or other documents; and any conveyance, mortgage,

mortgage, or other document executed by such person shall be as effectual in all respects as if such person were of full age and seised or possessed of the fee simple or other whole interest and estate so to be sold or mortgaged.

(3) Where any such sale or mortgage is made the surplus (if any) of the money raised thereby, after defraying the debt and all legal costs and expenses, shall be considered for all purposes as unconverted real estate.

Court may apply dividends of stock belonging to infants for their maintenance
11 Geo. IV, and
1 Wm. IV, c. 65,
ss. 32, 35, 44.

19. (1) When an infant is beneficially entitled to the whole or part of any stock, fund, annuity, security, or sum of money transferable in books kept by any company or society, the Court may order all or any part of the dividends or interest due or to become due in respect thereof to be paid to any guardian of such infant, or to any other person it may deem fit, for the maintenance and education or otherwise for the benefit of such infant, such guardian or other person to be named in the order directing payment.

(2) The receipt of such guardian or other person for such dividends or interest shall be as effectual as if such infant had attained the age of twenty-one years and had signed and given the same.

(3) The Court may order that the costs of applications under this section be paid out of the fund, annuity, security, sum of money, or the dividends or interest arising therefrom, or out of any moneys in Court in which such infant is interested in such manner as the Court thinks proper.

(4) This section shall be a full and complete indemnity to all companies and societies, and their officers and servants, for all acts and things done or permitted to be done pursuant thereto.

Costs.

20. The Court may in any case award costs as between solicitor and client.
44 Vic. No. 18, s. 78.

DIVISION 3.—*Jurisdiction in Chambers.*

Business to be disposed of in chambers.

Ibid. ss. 61, 62.

26 Vic. No. 12, s. 34.

21. (1) The business to be disposed of by the Judge in chambers shall consist of such of the following as he thinks would be more conveniently so disposed of, namely:—

- (a) Applications for time;
- (b) Applications for leave to amend;
- (c) Applications for discovery;
- (d) Applications for determining the mode of trial, and settling the questions to be tried;
- (e) Applications relating to the conduct of any suit or matter;
- (f) Applications relating to the guardianship or maintenance of infants;
- (g) Matters connected with the management of property;
- (h)

- (h) Applications for the investment or alteration of the state of investment of any funds held in Court upon trust in any cause or matter;
- (i) Such other matters as in the opinion of the Judge may advantageously and with propriety be heard in chambers.
- (2) The Judge shall fix the times for sitting in chambers, and when so sitting shall have the same powers and jurisdiction as in open court.
- (3) The Judge while sitting in open court may adjourn for hearing in chambers, or while sitting in chambers may adjourn for hearing in open court, any case before him which he may think would better be heard in chambers or in open court as the case may be.

Adjournment from
Court to chambers.
44 Vic. No. 18, s. 63.

PART IV.

PROCEDURE.

Statement of claim.

22. (1) All suits in equity shall be commenced, save as herein- after mentioned, by filing in the office of the Master a statement of the plaintiff's case, to be called the statement of claim, in the form and manner prescribed. *Ibid.* s. 6. 1930, No. 40, s. 10.

(2) Rules of Court may be made under this Act specifying in what cases persons seeking equitable relief may apply for such relief by way of originating summons in chambers and providing for the course of procedure thereon.

(3) Where any Act provides that applications thereunder may be made to the Court or Judge such applications shall be made in the manner (if any) provided for by such Act.

23. It shall not be competent to any defendant to take any objection for want of parties in any case to which the rules next hereinafter set forth extend, and such rules shall be taken as part of the law and practice of the Court:—

Rules as to parties.
44 Vic. No. 18, s. 7.

- (a) Any legatee, devisee, or next of kin may, without serving the remaining legatees, devisees, or next of kin, have a decree for the administration of the real and personal estate of a deceased person.
- (b) Any one of several *cestuis que trust* under any deed or instrument may, without serving any other of such *cestuis que trust*, have a decree for the execution of the trusts of the deed or instrument.
- (c)

- (c) In all cases of suits for the protection of property pending litigation and in all cases in the nature of waste one person may sue on behalf of himself and of all persons having the same interest.
- (d) Any executor, administrator, or trustee may obtain a decree against any one legatee, next of kin, or *cestuis que trust* for the administration of the estate or the execution of the trusts.
- (e) In all the above cases the Court may require any other persons to be made parties to the suit, and may give the conduct of the suit to such person as it may deem proper, and may make such order in any particular case as it may deem just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.
- (f) In all the above cases the persons who, according to the practice of the Court previously to the first day of September, one thousand eight hundred and eighty, would have been necessary parties to the suit, shall be served with notice of the decree, and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit, and they may by an order of course have liberty to attend the proceedings under the decree, and any party so served may within the prescribed time apply to the Court to add to the decree.
- (g) In all suits concerning real or personal estate vested in an executor, administrator, or trustee under a will, intestacy, settlement, or otherwise, such executor, administrator, or trustee shall represent the persons beneficially interested in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate, and in such cases it shall not be necessary to make the persons beneficially interested parties to the suit, but the Court may upon consideration of the matter on the hearing if it thinks fit order such persons or any of them to be made parties.

Absence of personal
representative.
44 Vic. No. 18, s. 8.

24. (1) If in any suit or proceeding in equity it appears to the Court that any deceased person who was interested in the matters in question has no legal personal representative, the Court may either proceed without any person representing the estate of such deceased person or appoint some person to represent such estate for the purposes of the suit or proceeding on such notice (if any), as the Court shall think fit, either specially or generally by public advertisement.

(2) Every order made in reference to the matter and every order consequent thereon shall bind the estate of such deceased person in

in the same manner as if there had been a duly constituted legal personal representative of such deceased person and such representative had been a party to the suit or proceeding and had appeared and submitted his rights and interests to the protection of the Court.

25. (1) No suit shall be dismissed by reason only of the misjoinder of persons as plaintiffs, but wherever it appears to the Court that, notwithstanding the conflict of interest in the co-plaintiffs, or the want of interest in some of the plaintiffs, or the existence of some ground of defence affecting some of the plaintiffs, the plaintiffs or some of them are entitled to relief, the Court may grant such relief and modify its decree according to the special circumstances, and for that purpose may direct such amendments (if any) as may be necessary, and at the hearing, before such amendments are made, may treat any of the plaintiffs as if they were defendants in the suit and the other plaintiffs were the only plaintiffs on the record.

Misjoinder of
plaintiffs.
44 Vic. No. 18, s. 9.

(2) Where there is a misjoinder of plaintiffs, and the plaintiff having an interest has died leaving a plaintiff on the record without an interest, the Court may at the hearing order the suit to stand revived, as may appear just, and proceed to the decision of the suit if it sees fit, and may give such directions as to costs or otherwise as to the Court seems meet.

26. (1) The Court may adjudicate on questions arising between parties, notwithstanding that they may be some only of the parties interested in the property respecting which the question may have arisen, or that the property is comprised with other property in the same instrument, without making the other parties interested in the property or interested under the same instrument parties to the suit and without requiring the whole trusts and purposes of the instrument to be executed under the direction of the Court and without taking the accounts of the trustees or other accounting parties or ascertaining the particulars or amount of the property touching which the question may have arisen.

Absence of persons
interested.
Ibid. s. 10.

(2) If the Court is of opinion that the application is fraudulent or collusive, or for some other reason ought not to be entertained it may refuse to make the order prayed.

27. It shall not be necessary that every defendant to the statement of claim shall be interested as to all the relief thereby prayed for, but the Court may make such order as appears just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such suit in which he has no interest.

Defendant not
interested as to all
the relief.
Ibid. s. 11.

28. Before the name of any person is used in any suit or other proceeding as next friend of any infant, married woman, or other party, or as relator in any information, such person shall sign a written authority to the solicitor for that purpose, and such authority shall be filed with the statement of claim, petition, motion, or summons, as the case may be.

As to next friend
and relator.
Ibid. s. 12.

Service.

Service.

Service of statement
of claim.

44 Vic. No. 18, s. 13.
1897, No. 11, s. 6.

Service out of the
jurisdiction.

1897, No. 11, s. 3.

29. No writ of subpoena or other process to appear to and answer any statement of claim shall be required; but a copy of the statement of claim, stamped with the seal of the Court, and endorsed as hereinafter directed, shall be served in the prescribed manner.

30. The Court or the Judge may allow the statement of claim or any other equitable process in any suit or proceeding to be served out of the jurisdiction whenever—

- (a) the suit or proceeding, wholly or in part, concerns land or hereditaments situate within the jurisdiction, or any charge, lien, judgment, or incumbrance thereon; or
- (b) any Act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction is sought to be construed, rectified, set aside, or enforced in the suit or proceeding; or
- (c) the relief sought in any suit or proceeding in respect of the person to be served, wholly or in part concerns any money vested in any Government stocks or funds, or in the stocks or shares of any corporation, company, or society registered within the jurisdiction, or deposited with any such corporation, company, or society, or the interest, dividends, or produce of such money; or
- (d) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or
- (e) the suit or proceeding is for the administration of the estate of any deceased person who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument of which the person to be served is a trustee which ought to be executed according to the law of New South Wales, or for the appointment or removal of any trustee of such trusts; or
- (f) the suit is founded on any breach or alleged breach within the jurisdiction of any contract wherever made which (in respect of the matter as to which relief is sought) ought, according to the terms thereof, to be performed within the jurisdiction; or
- (g) any injunction is sought as to anything to be done or against the doing of any act within the jurisdiction, whether damages are or are not also sought in respect thereof; or
- (h) any person out of the jurisdiction is a necessary or proper party to a suit or proceeding properly brought against some other person duly served within the jurisdiction; or
- (i)

- (i) relief is sought against a person out of the jurisdiction in respect of his membership or alleged membership in any company or society registered within the jurisdiction.

31. (1) When leave is given to serve any statement of claim upon a person out of the jurisdiction, and such person is neither a British subject nor in any British possession, such statement of claim shall be endorsed in the form or to the effect of the form set out in the Second Schedule hereto.

Endorsement of statement of claim.
1897, No. 11, s. 4.

(2) Every other statement of claim served upon any defendant, whether within or out of the jurisdiction, shall be endorsed in the form or to the effect of the form set out in the Third Schedule hereto.

32. The filing and service upon the defendant of the statement of claim shall respectively have the same effect as the filing and service of a bill of complaint had previously to the first day of September, one thousand eight hundred and eighty.

Effect of filing statement of claim.
44 Vic. No. 18, s. 14.

33. (1) If any person is unable to effect reasonably prompt service of any process the Court or Judge may in the prescribed manner order substituted or other service to be effected or notice to be given instead of service.

Substituted service.
1897, No. 11, s. 5.

(2) The mere fact that the person to be served is out of the jurisdiction shall not be considered a sufficient reason for allowing substituted service.

(3) Where the person required to be served is out of the jurisdiction the Court or Judge shall not make an order directing substituted or other service or the giving of notice as aforesaid except in cases where the Court or Judge would have power to allow service out of the jurisdiction.

34. The plaintiff shall deliver to the defendant or his solicitor upon application for the same such a number of copies of the statement of claim as he requires upon being paid for the same at the prescribed rate.

Delivering copies of statement of claim.
44 Vic. No. 18, s. 15.

35. (1) Upon the amendment of any statement of claim the provisions hereinbefore contained with respect to filing and delivering copies thereof shall so far as may be extend to the statement of claim as amended.

Amendment of statement of claim.
Ibid. s. 16.

(2) Except where the rules or practice of the Court otherwise provide a statement of claim may be amended by written alterations therein as filed.

Appearance and statement of defence.

36. The defendant shall, when he enters an appearance to the statement of claim or at such later period as the Judge may allow, file a memorandum as prescribed, disputing or submitting to the plaintiff's claim or disclaiming any interest in the subject matter of the suit, and shall within the prescribed time file in the office of the Master a demurrer plea or statement of defence to the statement of claim.

Appearance by defendant.
Ibid. s. 18.

Form of statement
of defence.

44 Vic. No. 18, ss. 19, 20.

Facts not denied
are admitted.

Ibid. s. 20.

37. Every statement of defence, and defence to counter claim, shall be verified upon oath, and shall be in the prescribed form.

38. (1) Where a party does not know whether a fact alleged in the statement of claim or counter-claim is true or not he may in his statement of defence state that he does not know and is not able to admit the truth of the fact alleged.

(2) Except as aforesaid, all facts stated in the statement of claim or counter-claim, and not expressly and in terms denied in the statement of defence shall be deemed to be admitted for the purpose of the suit.

Set-off and counter-
claim.

Ibid. s. 21.

39. (1) A defendant may in his statement of defence set off or set up by way of counter-claim against the claim of the plaintiff any right or claim, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross suit so as to enable the Court to pronounce a final judgment in the same suit both on the original and on the cross claim.

(2) The Court may, on the application of the plaintiff before the hearing, refuse permission to the defendant to avail himself of such set-off or counter-claim if, in the opinion of the Judge, such set-off or counter-claim cannot be conveniently disposed of in the pending suit, or ought not to be allowed.

Court may decree in
favour of defendant.

Ibid. s. 22.

40. Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, make a decree in favour of the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

Discovery.

Plaintiff's
interrogatories.

Ibid. s. 19.

Defendant's
interrogatories.

Ibid. s. 23.

41. The plaintiff or applicant in any suit or proceeding may by leave of the Court, and not otherwise, file and serve interrogatories for the examination on oath of any defendant or respondent.

42. Any defendant or respondent who has not been required to answer interrogatories, or who has been required to answer interrogatories and has put in a sufficient answer thereto, may by leave of the Court and not otherwise file and serve interrogatories for the examination on oath of the plaintiff or applicant.

43. The sufficiency, materiality, or relevancy of the answer to any interrogatory may be determined in the prescribed manner.

44. The Court, in determining what interrogatories shall be allowed or the sufficiency, materiality, or relevancy of any answer thereto, shall have regard to the statements contained in the pleadings of the parties filing and answering such interrogatories respectively.

45. Nothing in this Act shall be deemed to take away the right of any person to institute a suit for the purpose of discovery.

Sufficiency of
answers.

Ibid. s. 24.

Pleadings to be
considered.

Ibid. s. 23.

Suit for discovery.

Ibid. s. 23.

46. The Court may, on the application of the plaintiff or applicant in any suit or proceeding, make an order for the production by any defendant or respondent on oath of such documents in his possession or power relating to any matter in question in the suit or proceeding as the Court thinks right, and the Court may deal with such documents when produced in such manner as appears just.

Production of documents by a defendant.
44 Vic. No. 18, s. 25.

47. The Court may, on the application of any defendant or respondent in any suit or proceeding who has not been required to answer interrogatories, or who has been required to answer interrogatories and has put in a sufficient answer thereto, make an order for the production by the plaintiff or applicant in such suit or proceeding on oath of such documents in his possession or power relating to any matter in question in the suit or proceeding as the Court thinks right, and the Court may deal with such documents when produced in such manner as appears just.

The like by plaintiffs.
Ibid. s. 26.

Motion for decree.

48. (1) The plaintiff in any suit may at any time after the time allowed the defendant for filing a statement of defence has expired, but before replication, move the Court upon the prescribed notice for such decree or decretal order as he may think himself entitled to, and the plaintiff and defendant respectively may file affidavits in support of and in opposition to the motion so to be made, and use the same on the hearing of such motion, and the statement of defence (if any) and any answer to interrogatories may upon such motion be used as an affidavit.

Proceedings on motion for a decree.
Ibid. s. 28.

(2) Upon any such motion it shall be discretionary with the Court to grant or refuse the same, and to give such directions with respect to the further prosecution of the suit as the circumstances appear to require, and the Court may make such order as to costs as it may think right.

Making of such decree discretionary.
Ibid. s. 29.

Joinder of issue.

49. In suits where notice of motion for a decree or decretal order has not been given, or having been given where a decree or decretal order has not been made thereon, issue shall be joined by filing a replication in the prescribed form.

Filing replication
Ibid. s. 30.

Want of prosecution.

50. Any defendant may move to dismiss a suit for want of prosecution at such times and under such circumstances and subject to such restrictions as may be prescribed.

Dismissal of suits for want of prosecution.
Ibid. s. 27.

Trial.

51. (1) The evidence to be used at the hearing of any suit shall be taken before the Judge sitting in open Court without a jury.

Trial of issues.
Ibid. ss. 33, 34, 36, 37.

(2)

(2) The Court may, if it thinks fit, cause any question of fact arising in any suit to be tried, or, where it has jurisdiction to award damages, the amount of such damages to be assessed either—

- (a) by a special or common jury before the Judge; or
- (b) by a jury before any Judge of the Supreme Court at Sydney or in any Circuit Court; or
- (c) by the Judge without a jury.

(3) Any such question of fact and any such question as to the amount of damages shall be reduced into writing in such form as the Court directs.

44 Vic. No. 18, s. 32.

(4) In addition to the powers hereby conferred, the Court may direct the amount of any such damages to be assessed in such other manner as the Court thinks fit.

Jury how summoned.

Ibid. ss. 34, 35.

52. (1) Where any question of fact or question of damages has been ordered to be tried by a special or common jury before the Court itself, the Judge may issue such precepts and make such orders upon the Sheriff for procuring the attendance of such jury as may be made by the Supreme Court in its common law jurisdiction, and may also make any other orders in relation thereto which to him may seem requisite.

(2) Every such jury shall be summoned, struck, called, and sworn in like manner as if summoned for the trial of an action in the Supreme Court in its common law jurisdiction.

(3) Generally for all purposes of or auxiliary to the trial of questions by a jury the Judge shall have the same power, jurisdiction, and authority in all respects as belong respectively to the Supreme Court in its common law jurisdiction, or to any Judge thereof sitting at nisi prius for the like purpose.

New trials, &c.

Ibid. ss. 35, 36.

53. (1) Where a question of fact or question of damages has been tried, any party to the suit may, within the prescribed time, move the Court to set aside or vary the verdict or finding or for a new trial of such question.

Ibid. s. 35.

(2) The Court shall have the same powers and jurisdiction in respect to new trials as belong to the Supreme Court in its common law jurisdiction or to any Judge thereof for the like purpose.

(3) Nothing herein shall be interpreted as restricting or qualifying the power of the Court as a Court of Equity to set aside or vary the verdict of a jury upon any question of fact or question of damages or to grant a new trial of such question.

Appeals to Full Court.

Ibid. ss. 35, 36.

54. From every order made by the Court upon an application for a new trial or to set aside or vary such verdict there shall be the same right of appeal as from any other order of the Court.

Further evidence,
how taken.

Ibid. s. 38.

55. Where any question of fact or question of damages has been tried, any further evidence that is required for the hearing of the suit shall be taken at such time and in such manner as the Judge directs.

56. When the evidence has been taken the suit shall forthwith proceed to the hearing unless the Judge otherwise orders.

Proceeding to hearing after close of evidence.

44 Vic. No. 18, ss. 31, 38.

Evidence.

57. (1) The evidence to be used at the hearing of any cause, or on the trial of any question of fact or of damages, shall be taken in the same manner and subject to the same rules and exceptions as at a trial at nisi prius.

Evidence, how taken. *Ibid.* ss. 31, 40.

(2) The Court at the hearing of any suit, or of any further consideration thereof, may, whether any of the parties interested are under disability or not, use affidavits by particular witnesses or receive proof by affidavit of such particular matters as in the opinion of the Court may properly be so proved.

16 Vic. No. 3, s. 26. 44 Vic. No. 18, ss. 40, 41.

58. Upon the hearing of any suit or matter the Judge may require the production and oral examination before himself of any witness or party in the suit, and may direct the cost of and attending the production and examination of such witness or party to be paid by such of the parties to the suit or matter and in such manner as he thinks fit.

Judge may require examination before himself of any witness. *Ibid.* s. 39.

59. The Judge shall have the same power of issuing or of authorising the issue of subpoenas, and of punishing parties for non-attendance in obedience to any such subpoena as is now vested in the Supreme Court in its common law jurisdiction.

Witnesses, how summoned. *Ibid.* s. 31.

60. The evidence in any suit may, if the Court or either party so require, be taken down by a shorthand writer.

Shorthand writer. *Ibid.* s. 31.

61. (1) Every witness who has made an affidavit in any suit or matter before the Court shall be subject to oral cross-examination in the same manner as if the evidence given in his affidavit had been given by him orally, and may be re-examined orally by the party using such affidavit.

Cross-examination of a deponent. *Ibid.* s. 42.

(2) Such witness shall attend before the Court to be so examined upon receiving due notice and payment of his reasonable expenses in like manner as if he had been duly served with a writ of subpoena *ad testificandum*.

(3) The expenses attending such examination shall be paid by the parties respectively in like manner as if the witness were the witness of the party cross-examining, and shall be deemed costs in the cause unless the Court otherwise directs.

62. (1) Any party may call on any other party, who is competent to make admissions, by notice to admit any document, saving all just exceptions; and in case of his not admitting the same, the cost of proving the document shall be paid by the party so neglecting or refusing to admit, whatever the result of the suit or proceeding, unless the Court otherwise orders.

Notice to admit documents. *Ibid.* s. 43.

(2) No costs of proving any document shall be allowed unless such notice has been given, except where the omission to give it was, in the opinion of the Master, a saving of expense.

Oral evidence on motions, &c.

44 Vic. No. 18, s. 47.

63. Any party in any suit or proceeding may by a subpoena require the attendance of any person before the Court or Master or any person specially appointed for the purpose, and may require the production of any deed, instrument, writing, matter, or thing which such person may be lawfully required to produce, and may examine such person orally for the purpose of using his evidence upon any motion, petition, or other proceeding in like manner as such person would be bound to attend and be examined with a view to the hearing of a suit.

Answer how used on certain motions.

Ibid. s. 48.

64. Upon any application to the Court for an injunction, or a receiver, or to dissolve an injunction or discharge an order appointing a receiver, where the defendant has filed an answer to interrogatories, such answer shall, for the purpose of evidence on such application, be regarded as an affidavit, and affidavits may be received and read in opposition thereto.

Evidence after the hearing.

Ibid. s. 49.

65. In cases where it is necessary for any party to go into evidence subsequently to the hearing, or on any inquiry, account, or reference before the Judge, such evidence shall be taken in the prescribed manner.

Pleadings, &c., out of the jurisdiction.

Ibid. s. 45.

66. (1) All pleadings, examinations, and affidavits in suits or proceedings in equity may be sworn and taken in any place out of this State under the dominion of His Majesty before any Judge, notary public, or person authorised to administer oaths at such place, or before any British consul or vice-consul in any place out of His Majesty's dominions.

(2) Judicial notice shall be taken of the seal or signature, as the case may be, and authority of any such Judge, notary public, person, consul, or vice-consul.

Abatement and revivor.

Suit how revived after abatement.

Ibid. s. 59.

67. (1) Upon any suit becoming abated by death or otherwise, or defective by reason of some change or transmission of interest or liability it shall not be necessary to file any new or supplemental statement of claim, but an order to the effect of the common order to revive, or of the usual supplemental decree, may be obtained as of course upon an allegation of the fact and of the nature of the statement or defect in the suit.

(2) Such order for revivor shall be served upon the persons who previously to the first day of September, one thousand eight hundred and eighty, would have been defendants to a bill of revivor or supplemental bill.

(3) Such persons when so served shall become parties to the suit and shall enter an appearance thereto as if they had been duly served with process to appear to such a bill as aforesaid duly filed against them.

(4) The persons so served may within the prescribed time after service apply to the Court to discharge such order on any ground which would have been open to them on a bill of revivor or supplemental bill stating the previous proceedings in the suit and the alleged change or transmission of interest or liability, and praying the usual relief consequent thereon.

(5) If any person so served is under disability, such order shall be of no effect as against him until a guardian *ad litem* has been appointed for him and the prescribed time has elapsed.

68. (1) Facts which have occurred since the commencement of the suit may, if the Court thinks proper, be introduced by way of amendment into the original statement of claim.

Facts occurring since the filing of the statement of claim.

44 Vic. No. 18, s. 60.

(2) Otherwise the plaintiff may state such facts on the record in such manner and subject to such rules as are prescribed with respect to the proof thereof and to affording the defendant an opportunity of answering the same.

Decrees.

69. All decrees and orders shall be settled in the prescribed manner.

Mode of settling decrees and orders.

Ibid. s. 65.

Formal defects, &c.

70. No proceeding shall be invalidated by any formal defect nor by any irregularity unless the Court is of opinion that substantial injustice has been caused by such defect or irregularity and that such injustice cannot be remedied by any order of the Court.

Formal defects not to invalidate proceedings.

Ibid. s. 51.

PART V.

THE MASTER IN EQUITY.

71. The Governor may appoint a barrister of at least five years standing to be Master in Equity at such salary as may be deemed reasonable.

The Master in Equity.

4 Vic. No. 22, s. 22.

25 Vic. No. 9, s. 1.

72. (1) The Court shall order what matters shall be investigated before the Master with or without special directions, and what matters shall be heard and investigated by the Court respectively.

44 Vic. No. 18, s. 66.

(2) In every case, unless the Court otherwise directs, the Master shall tax costs and make such inquiries as have usually been prosecuted before the Master.

(3) The Judge shall give such aid and directions in any such inquiry as he may think fit subject to the right of appeal and to the right of every suitor to bring any particular point before the Judge himself.

44 Vic. No. 18, s. 67.
Several powers.

73. The Master shall for the purpose of any proceeding before him have full power to issue advertisements, to summon any persons, to administer oaths, to take affidavits, and also acknowledgments except those of married women, and to examine parties or witnesses orally or upon interrogatories.

Witnesses bound to attend.
Ibid. s. 67.

74. Every person summoned by the Master shall be bound to attend upon such summons, and shall for disobedience thereof be liable to process of contempt in like manner as for disobedience to or for default of attendance in pursuance of any order of the Supreme Court or on any writ of subpoena.

Production of documents.
Ibid. ss. 25, 26.

75. The Master shall have the like powers under references to him to order production of documents by the parties as by this Act are vested in the Court, and the Master may deal with such documents when produced in such manner as appears just.

Evidence.
Ibid. s. 49.

76. In cases where it is necessary for any party to go into evidence on any inquiry, account, or reference before the Master, such evidence shall be taken in such manner as is prescribed.

False swearing.
Ibid. s. 67.

77. All persons knowingly swearing or affirming falsely before the Master shall incur all the penalties of perjury.

Service.

78. The Master shall have the like powers under references to him to order substituted or other service or notice in lieu of service to be effected or given where the person required to be served is within the jurisdiction as by this Act are vested in the Court or Judge.

Certificate.
Ibid. s. 63.

79. The result of any proceedings before the Master shall be stated in a certificate in the prescribed form, unless otherwise directed by the Court, and the approval of the Judge of any such certificate shall be signified under his hand.

Taking opinion of Judge.
Ibid. s. 69.

80. (1) During the proceeding before the Master, or within the prescribed time after its conclusion, any party may take the opinion of the Judge on any particular point or matter arising in the course of the proceeding, or upon the result of the whole when brought to a conclusion.

(2) Every certificate of the Master, after it has been adopted and signed by the Judge, shall be filed, and shall thenceforth be binding on all parties unless discharged or varied by the Court upon application within the prescribed time.

PART VI.

APPEALS TO THE FULL COURT.

81. (1) Any person aggrieved by any decree or order of the Judge, whether sitting in open Court or in chambers, may, at any time within fourteen days next after the pronouncing of the same, or within such further time as the Judge allows, enter an appeal in the office of the Master against such decree or order to the Full Court, subject to such general rules as are prescribed.

Power to appeal to Full Court.
44 Vic. No. 18, s. 70.

(2) Every person so appealing shall, within fourteen days from the time of filing such appeal, either—

Security to be given by appellant.

(a) deposit in the hands of the Master such sum, not exceeding one hundred pounds, as the Master directs; or

(b) deposit with the Master a bond of two persons to be approved of by him, in such sum, not exceeding one hundred pounds, as he directs, conditioned to be void if the appellant prosecutes his appeal with all due diligence, and pays such costs as the Court adjudges.

(3) Such sum of money or bond, as the case may be, shall be held by the Master, subject to the order of the Court.

(4) If such sum of money or bond is not deposited as aforesaid within the period hereby provided, such appeal shall be deemed to have been abandoned.

82. (1) All appeals under this Act shall be by way of rehearing, and shall be brought by notice of appeal, and no petition or other formal proceeding other than such notice shall be necessary.

Mode of appealing.
Ibid. s. 71.

(2) The appellant may, by the notice, appeal from the whole or any part of any decree or order, and such notice shall state whether the whole or part only of such decree or order is complained of, and in the latter case shall specify such part.

83. (1) The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Full Court may direct notice of the appeal to be served on all or any other parties to the suit, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may make such decree or order as might have been made if the persons served with such notice had been originally parties.

Notice of appeal.
Ibid. s. 72.

(2) Any notice of appeal may be amended at any time as to the Full Court may seem fit.

84. (1) The Full Court shall have all the powers and duties as to amendment and otherwise of the Judge, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before the Master or a commissioner.

General powers of the Full Court.
Ibid. s. 73.

(2)

(2) Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decree or order from which the appeal is brought.

(3) Upon appeals from a decree or order upon the merits at the trial or hearing of any suit or proceeding, such further evidence (save as aforesaid) shall be admitted on special grounds only, and not without special leave.

(4) The Full Court shall have power to make any decree or order which ought to have been made, and such further or other order as the case may require.

(5) The powers aforesaid shall be exercised by the Full Court notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties although such respondents or parties may not have appealed from or complained of the decision.

(6) The Full Court shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

Regulations as to
cross appeals.
44 Vic. No. 18, s. 74.

85. (1) It shall not, under any circumstances, be necessary for a respondent to give notice of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied or altered, he shall, within such time as may be prescribed by any general rule or by special order, give notice of such intention to any parties who may be affected by such contention.

(2) The omission to give such notice shall not diminish the powers by this Act conferred upon the Full Court, but may, in the discretion of the Court, be ground for the adjournment of the appeal, or for a special order as to costs.

Stay of proceedings
on appeal.
Ibid. s. 75.

86. (1) Every notice of appeal shall stay the execution of proceedings upon the decree appealed from unless the Judge directs such execution to be proceeded with.

(2) The Judge may (subject nevertheless to appeal as from any other order) direct such decree or order to be carried into execution and all proceedings to be taken thereupon as if no appeal had been entered, which direction may be upon such terms (if any) as to security or otherwise as to such Judge seems fit.

Decrees how settled
Ibid. s. 76.

87. The decrees and orders of the Court on appeal shall be settled by the Master as at present, and the Court may, in any decree or order, direct what, if any, accounts shall be taken, or inquiries made, before the Judge, and what, if any, before the Master.

Appeal by direction
of the Judge.
Ibid. s. 77.

88. The Judge may, on the application of any party or at his own discretion, and on such terms, if any, as he thinks fit to impose, direct a rehearing by the Full Court of any cause, petition, motion, or matter

matter before him, and in such case it shall not be necessary to give any notice of appeal, but nothing herein shall prejudice the right of any party to appeal where the Judge does not give any such direction.

89. Nothing in this Act shall be construed to affect the right of any party to appeal to His Majesty in Council from any such decree or order, or from any reversal or affirmance thereof. Appeals to Privy Council.

PART VII.

CONTEMPT OF COURT.

90. (1) When any person, directed by any decree or order to execute any deed or other instrument or make a surrender or transfer, has refused or neglected so to do for the space of twenty-eight days, the Court may appoint the chief clerk in equity, or some other person, to execute such deed or instrument or to make such surrender or transfer in his name, and to do all acts necessary to give validity and operation thereto. Order to execute instruments. 11 Geo. IV, and 1 Wm. IV, c. 36, s. 15, subs. 15.

(2) The execution of such deed or instrument and the surrender or transfer so made by the person so appointed shall in all respects have the same force or validity as if the same had been executed or made by the person directed by the decree or order to execute or make the same.

(3) The Court shall make such order as may be just touching the payment of the costs of, or attending the execution of, any such deed, transfer, surrender, or instrument.

(4) The powers hereby conferred on the Court are in addition to the powers conferred by the Trustee Act, 1898.

91. (1) Where any person has been ordered by any decree or order of the Court to deliver to any person or to deposit in Court or elsewhere books, papers, or any other article or thing, and has refused or neglected to do so for the space of twenty-eight days any sequestrator appointed by the Court shall have the same power to seize and take such books, papers, writings, or other things being in the custody or power of the person against whom the sequestration issues as such sequestrator would have over such person's own property. Order to deliver up books. Ibid. s. 15, subs. 16.

(2) Any article or thing so seized and taken shall be dealt with as the Court directs.

(3) The Court may make such order as to the costs of proceedings under this section as it thinks fit.

92. (1) The Master on some day in the last week of the months of February, May, August, and November respectively in each year shall make a return to the Judge of the persons (if any) then confined in prison under orders of the Court for contempt of Court together with a report upon the case of each person so confined. Return of persons imprisoned for contempt. 1 Wm. IV, c. 36, s. 15, subs. 7, 17, 18.

(2)

(2) The Court may at any time upon the application of any person so confined or upon the receipt of such report make such order for the discharge of any such person so confined and as to costs incidental to such order as it thinks fit.

Committal for non-payment of money into Court.
1 Wm. IV, c. 36, ss. 16, 17.

93. Where any person is committed to prison for non-payment of any money into Court, or is kept in prison for non-payment of any costs, and such person becomes bankrupt, the Court shall order his release from prison unless the imprisonment of such person was intended to be punitive or disciplinary and not merely to enforce the order of the Court.

PART VIII.

RULES OF COURT.

44 Vic. No. 18, ss. 80, 81.

26 Vic. No. 12, s. 34.
1897, No. 11, s. 6.

94. (1) The Judges of the Supreme Court or any three of them may make general rules for the following purposes—

- (a) for regulating the times, forms, and modes of procedure;
- (b) for fixing the amount of all fees and allowances to officers of the Court and solicitors in reference to any matter in equity;
- (c) for regulating the times and modes of service or notice in lieu of service of all equitable process;
- (d) as to the investment of cash under the control of the Court in such stocks, funds, or securities, as may seem fit.
- (e) and generally for regulating the practice of the Court and otherwise for the effectual execution of this Act and of the intention and object thereof.

(2) The rules and form contained in the Fourth Schedule to this Act shall regulate the practice and procedure upon originating summons until altered, added to or rescinded by rules of Court made under the authority of this Act, which rules when made shall have the same force and effect as if they had formed part of the said Fourth Schedule.

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

SCHEDULES.

SCHEDULES.

FIRST SCHEDULE.

Reference to Act.	Title or Short Title.	Extent of repeal.
5 Wm. IV No. 8 ...	An Act for adopting and applying certain Imperial Acts.	So much of the Act as adopted the Imperial Acts, 11 Geo. IV and 1 Wm. IV, cc. 36 and 47, and the unrepealed portion of 11 Geo. IV and 1 Wm. IV, c. 65.
4 Vic. No. 22 ...	An Act to provide for the more effectual administration of justice in N.S.W.	Section 22.
5 Vic. No. 9 ...	Advancement of Justice	Section 14.
11 Vic. No. 27 ...	An Act to render valid certain acts and appointments and to authorise the making of orders in infancy.	The whole.
12 Vic. No. 1 ...	An Act to simplify and alter the law in some respects.	Section 8.
16 Vic. No. 3 ...	An Act to diminish the delay and expense of proceedings in the Supreme Court in its jurisdiction as a Court of Equity and in Infancy and Lunacy.	The whole.
16 Vic. No. 19 ...	Trustee Act, 1852	The unrepealed portion.
21 Vic. No. 6 ...	An Act for further facilitating the payment of debts out of real estate.	The whole Act.
22 Vic. No. 14 ...	The Equity and Banco Business Exempting Act.	Sections 1, 2, 3.
25 Vic. No. 9 ...	An Act to amend the law in certain respects.	The unrepealed portion.
26 Vic. No. 12 ...	Trust Property Act	Section 34 and sections 66-70 (inclusive).
37 Vic. No. 11 ...	An Act to amend the law of arrest ...	Section 7.
44 Vic. No. 18 ...	The Equity Act of 1880	The unrepealed portion.
55 Vic. No. 26 ...	The Judicial Offices Act	Section 4.
1897, No. 11 ...	Service of Equitable Process Act of 1897	The whole.
1900, No. 49 ...	Supreme Court Procedure Act, 1900 ...	Sections 10, 11, and the Schedule, except rule one thereof.

SECOND SCHEDULE.

, the day of , in the year one
thousand nine hundred and .

To the within-named A.B.—

TAKE notice that the within-named plaintiff, E.F. [*or, where there is more than one plaintiff, plaintiffs E.F. and C.D.*], has (*or have*) commenced a suit against you in the Supreme Court of New South Wales in its Equitable Jurisdiction by the within statement of claim, and you are required, within days after the service hereof on you, exclusive of the day of such service, to cause an appearance to be entered for you in the Equity

Equity Office of the said Supreme Court, at Chancery-square, in the city of Sydney, in the State of New South Wales, to the within statement of claim. And you are also required at the same time of entering your appearance to file in the said Equity Office a memorandum stating in effect that you dispute, in whole or in part, the plaintiff's claim (specifying which part), or that you submit to such decree or order as the Court thinks fit to make, or that you disclaim all right, title, and interest in the subject matter of the within statement of claim.

NOTE.—If you neglect to enter an appearance, or to file a memorandum as above mentioned, you will be subject to such order as the said Court thinks fit to make in your absence.

(Signed) E.F., Plaintiff,
or, Y.Z., of
Solicitor for the Plaintiff.

THIRD SCHEDULE.

EDWARDUS R.

To the within named defendant, A.B.,—

Greeting :—

WE command you that, within _____ days after the service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in the Equity Office of our Supreme Court, at Chancery-square, Sydney, in the State of New South Wales, to the within statement of claim. And that you do at the same time of entering your appearance file in the said Equity Office a memorandum stating in effect that you dispute, in whole or in part, the plaintiff's claim (specifying which part), or that you submit to such decree or order as the Court thinks fit to make, or that you disclaim all right, title, and interest in the subject matter of the within statement of claim.

Witness the Honorable A.B., the Chief Judge in Equity, at Sydney, the
day of _____, in the year one thousand nine hundred and _____,
and in the _____ year of our reign.

NOTE.—If you neglect to enter your appearance, or to file a memorandum as above mentioned, you will be subject to such order as the Court thinks fit to make in your absence.

FOURTH SCHEDULE.

Rules of Court for Originating Summons.

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

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

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

(g)

(g) the determination of any question arising in the administration of the estate or trust.

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

(a) The administration of the personal estate of the deceased;

(b) The administration of the real estate of the deceased;

(c) the administration of the trust.

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

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

(a) for the determination of any question under subsections (a), (e), (f), or (g) of rule 1, the persons or one of the persons whose rights or interests are sought to be affected;

(b) for the determination of any question under subsection (b) of rule 1, any member or alleged member of the class;

(c) for the determination of any question under subsection (c) of rule 1, any person interested in taking such accounts;

(d) for the determination of any question under subsection (d) of rule 1, any person interested in such money;

(e) for relief under subsection (a) of rule 2, the residuary legatees, or next of kin, or some of them;

(f) for relief under subsection (b) of rule 2, the residuary devisees, or next of kin, or some of them;

(g) for relief under subsection (e) of rule 2, the cestuis que trust or some of them;

(h) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur.

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

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

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

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

7. The Judge may direct such other persons to be served with an originating summons, as they or he may think fit.

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

(b) The Judge may direct such persons to be served with the summons, as he may think fit.

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

- Time for appearance. 10. The time within which a defendant within the jurisdiction shall appear to an originating summons shall be—
 (a) if he resides above 200 miles from Sydney, within sixteen days ;
 (b) if he resides above 100 miles from Sydney, within twelve days ;
 (c) in all other cases, within eight days
 after service of the summons upon him, inclusive of the day of such service.
- Evidence. 11. Applications by way of originating summons shall be supported by such evidence as the Judge may require, and directions may be given, as he may think just, for the trial of any question arising thereout.
- Settlement of orders. 12. Orders made on originating summons shall be settled, passed, and entered, and remain of record, and shall be enforced in the same manner in all respects as orders of the Court in Equity.
- Form of summons. 13. An originating summons shall be in Form A to these rules altered to meet the circumstances of the case.
- Appointment for hearing of summons. 14. So soon as the defendants have appeared to an originating summons, or have made default in so appearing within the time limited, the plaintiff shall take out in the Equity Office an appointment, before the Judge, for the hearing of the summons, and shall give the defendants who have appeared two clear days' notice of the date of such appointment. If the plaintiff does not take out such appointment within seven days after the defendants have appeared, or made default, as the case may be, any defendant who has appeared may take out such appointment, and shall give two clear days' notice of the date of such appointment to the plaintiff and the other defendants who have appeared.

FORM A.

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

In the matter of the will of, &c. ;
or
 In the matter of the estate of, &c. ;
or
 In the matter of the trusts of, &c. ;
or
 In the matter of the indenture of mortgage dated, &c. ;
or
 In the matter of the contract for sale, dated, &c. ;
or as the case may be
 Between A.B., plaintiff, and C.D., defendant.

Originating Summons.

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

[State the questions or proposed order.]

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

Dated the day of , one thousand nine hundred and

This summons is taken out by the abovenamed [or by the
 solicitor for the abovenamed .]

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