

(Reprint No. 2)

**SOUTH AUSTRALIA**

**SUPREME COURT ACT, 1935**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 6 July 1992.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

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## SUPREME COURT ACT, 1935

being

Supreme Court Act, 1935, No. 2253 of 1935 [Assented to 21 December 1935]<sup>1</sup>

as amended by

Statute Law Revision Act, 1936, No. 2293 of 1936 [Assented to 8 October 1936]  
Supreme Court Act Amendment Act, 1944, No. 38 of 1944 [Assented to 14 December 1944]  
Supreme Court Act Amendment Act, 1947, No. 33 of 1947 [Assented to 4 December 1947]  
Supreme Court Act Amendment Act, 1951, No. 6 of 1951 [Assented to 6 September 1951]<sup>2</sup>  
Supreme Court Act Amendment Act, 1952, No. 13 of 1952 [Assented to 16 October 1952]  
Supreme Court Act Amendment Act, 1953, No. 45 of 1953 [Assented to 17 December 1953]  
Statutes Amendment (Public Salaries) Act, 1955, No. 3 of 1955 [Assented to 23 June 1955]<sup>3</sup>  
Supreme Court Act Amendment Act, 1955, No. 12 of 1955 [Assented to 30 September 1955]  
Supreme Court Act Amendment Act, 1958, No. 41 of 1958 [Assented to 27 November 1958]<sup>4</sup>  
Supreme Court Act Amendment Act, 1960, No. 67 of 1960 [Assented to 24 November 1960]  
Supreme Court Act Amendment Act (No. 2), 1960, No. 71 of 1960 [Assented to 1 December 1960]  
Supreme Court Act Amendment Act, 1962, No. 52 of 1962 [Assented to 15 November 1962]  
Supreme Court Act Amendment Act, 1963, No. 29 of 1963 [Assented to 21 November 1963]  
Supreme Court Act Amendment Act, 1965, No. 9 of 1965 [Assented to 23 September 1965]  
Supreme Court Act Amendment Act (No. 2), 1965, No. 49 of 1965 [Assented to 9 December 1965]  
Supreme Court Act Amendment Act (No. 1), 1966, No. 85 of 1966 [Assented to 1 December 1966]<sup>5</sup>  
Supreme Court Act Amendment Act, 1967, No. 9 of 1967 [Assented to 30 March 1967]  
Supreme Court Act Amendment Act (No. 2), 1967, No. 21 of 1967 [Assented to 13 April 1967]<sup>6</sup>  
Supreme Court Act Amendment Act 1969, No. 10 of 1969 [Assented to 27 February 1969]  
Supreme Court Act Amendment Act (No. 2), 1969, No. 22 of 1969 [Assented to 26 June 1969]  
Supreme Court Act Amendment Act (No. 3), 1969, No. 62 of 1969 [Assented to 4 December 1969]<sup>7</sup>  
Supreme Court Act Amendment Act, 1970, No. 14 of 1970 [Assented to 17 September 1970]  
Supreme Court Act Amendment Act (No. 2), 1970, No. 16 of 1970 [Assented to 17 September 1970]  
Supreme Court Act Amendment Act (No. 3), 1970, No. 58 of 1970 [Assented to 10 December 1970]<sup>8</sup>  
Judges' Pensions Act, 1971, No. 30 of 1971 [Assented to 22 April 1971]<sup>9</sup>  
Supreme Court Act Amendment Act, 1971, No. 49 of 1971 [Assented to 26 August 1971]  
Statutes Amendment (Judges' Salaries) Act, 1972, No. 39 of 1972 [Assented to 13 April 1972]  
Supreme Court Act Amendment Act, 1972, No. 40 of 1972 [Assented to 13 April 1972]<sup>10</sup>  
Crown Proceedings Act, 1972, No. 41 of 1972 [Assented to 20 April 1972]<sup>11</sup>  
Statutes Amendment (Judges' Salaries) Act, 1974, No. 8 of 1974 [Assented to 21 March 1974]  
Supreme Court Act Amendment Act, 1974, No. 12 of 1974 [Assented to 28 March 1974]<sup>12</sup>  
Statutes Amendment (Judges' Salaries) Act, 1975, No. 18 of 1975 [Assented to 27 March 1975]  
Statute Law Revision Act, 1975, No. 24 of 1975 [Assented to 27 March 1975]  
Supreme Court Act Amendment Act, 1978, No. 67 of 1978 [Assented to 26 October 1978]<sup>13</sup>  
Sheriff's Act, 1978, No. 82 of 1978 [Assented to 30 November 1978]<sup>13</sup>  
Supreme Court Act Amendment Act, 1980, No. 53 of 1980 [Assented to 3 July 1980]  
Statutes Amendment (Administration of Courts and Tribunals) Act, 1981, No. 34 of 1981 [Assented to 19 March 1981]<sup>14</sup>  
Supreme Court Act Amendment Act, 1982, No. 82 of 1982 [Assented to 16 September 1982]

<sup>1</sup> Came into operation 1 November 1937: *Gaz.* 25 March 1937, p. 646.

<sup>2</sup> Came into operation 1 July 1951: s. 4.

<sup>3</sup> Came into operation 1 June 1955: s. 16(2).

<sup>4</sup> Came into operation 1 July 1958: s. 4.

<sup>5</sup> Came into operation 12 January 1967: *Gaz.* 12 January 1967, p. 51.

<sup>6</sup> Came into operation 22 June 1967: *Gaz.* 22 June 1967, p. 1850

<sup>7</sup> Came into operation 21 May 1970: *Gaz.* 21 May 1970, p. 1842.

<sup>8</sup> Came into operation 1 January 1971: *Gaz.* 10 December 1970, p. 2646.

<sup>9</sup> Came into operation 1 May 1971: *Gaz.* 22 April 1971, p. 2186.

<sup>10</sup> Came into operation 9 November 1972: *Gaz.* 9 November 1972, p. 2254.

<sup>11</sup> Came into operation 14 December 1972: *Gaz.* 14 December 1972, p. 2630.

<sup>12</sup> Came into operation 20 June 1974: *Gaz.* 20 June 1974, p. 2450.

<sup>13</sup> Came into operation 6 July 1992: *Gaz.* 2 July 1992, p. 209.

<sup>14</sup> Came into operation 1 July 1981: *Gaz.* 25 June 1981, p. 1896.

Judicial Remuneration Act, 1982, No. 92 of 1982 [Assented to 14 October 1982]<sup>1</sup>  
 Supreme Court Act Amendment Act, 1983, No. 2 of 1983 [Assented to 14 April 1983]  
 Supreme Court Act Amendment Act (No. 2), 1983, No. 73 of 1983 [Assented to 3 November 1983]  
 Statutes Amendment (Oaths and Affirmations) Act, 1984, No. 56 of 1984 [Assented to 24 May 1984]<sup>2</sup>  
 Statutes Amendment (Bail) Act, 1985, No. 6 of 1985 [Assented to 7 March 1985]<sup>3</sup>  
 Statutes Amendment (Remuneration) Act, 1985, No. 59 of 1985 [Assented to 30 May 1985]<sup>4</sup>  
 Statutes Amendment (Courts) Act, 1985, No. 70 of 1985 [Assented to 6 June 1985]<sup>5</sup>  
 Commercial Arbitration Act, 1986, No. 102 of 1986 [Assented to 18 December 1986]<sup>6</sup>  
 Supreme Court Act Amendment Act, 1987, No. 80 of 1987 [Assented to 19 November 1987]  
 Judicial Administration (Auxiliary Appointments and Powers) Act, 1988, No. 95 of 1988 [Assented to 15 December 1988]  
 Statutes Amendment (Attorney-General's Portfolio) Act 1991 No. 33 of 1991 [Assented to 24 April 1991]<sup>7</sup>  
 Director of Public Prosecutions Act 1991 No. 49 of 1991 [Assented to 21 November 1991]<sup>8</sup>  
 Statutes Repeal and Amendment (Courts) Act 1991 No. 69 of 1991 [Assented to 12 December 1991]<sup>9</sup>

### An Act to consolidate and amend certain Acts relating to the Supreme Court.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows.

#### Short titles and commencement

1. This Act may be cited as the *Supreme Court Act, 1935*, and shall come into operation on a day to be fixed by the Governor by proclamation.

#### Arrangement of Act

2. This Act is divided into Parts as follows:—

- PART I—Constitution of the court.
- PART II—Jurisdiction and powers of the court.
- PART III—Sittings and distribution of business.
- PART IIIA—The Land and Valuation Court.
- PART IV—Procedure generally.
- PART V—Proceedings by and against the Crown.
- PART VI—Officers of the court.
- PART VII—Miscellaneous provisions.

#### Repeal

3. The Acts mentioned in the schedule to this Act are repealed to the extent shown in that schedule:

Provided that—

- (a) the repeal shall not affect any principle or rule of law, or any established jurisdiction, notwithstanding that the same may have been affirmed by, or derived from, any of the repealed enactments; and

<sup>1</sup> Came into operation 28 October 1982: *Gaz.* 28 October 1982, p. 1214.

<sup>2</sup> Came into operation 1 July 1984: *Gaz.* 28 June 1984, p. 1897.

<sup>3</sup> Came into operation 7 July 1985: *Gaz.* 9 May 1985, p. 1398.

<sup>4</sup> Came into operation 13 June 1985: *Gaz.* 13 June 1985, p. 2132.

<sup>5</sup> Came into operation 1 August 1985: *Gaz.* 11 July 1985, p. 92.

<sup>6</sup> Came into operation 9 July 1987: *Gaz.* 9 July 1987, p. 57.

<sup>7</sup> Came into operation 6 June 1991: *Gaz.* 6 June 1991, p. 1776.

<sup>8</sup> Came into operation 6 July 1992: *Gaz.* 25 June 1992, p. 1869.

<sup>9</sup> Came into operation 6 July 1992: *Gaz.* 2 July 1992, p. 209.

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

- (b) any rule, order, or regulation made, and any commission issued, direction given, or thing done, under any enactment repealed by this Act shall continue in force so far as it could have been made, issued, given, or done under this Act, and shall have effect as if it had been so made, issued, given, or done.

### Savings

4. (1) Nothing in this Act shall—
- (a) take away or impair any substantive right or privilege of any person:
  - (b) affect any rule of practice or procedure existing at the time of the passing of this Act except to the extent expressly mentioned in this Act or in any rules of court made under this Act:
  - (c) revive any law, enactment, regulation, or rule of court not in force at the time of the passing of this Act:
  - (d) affect in any way anything done or suffered before the passing of this Act under any Act repealed by this Act:
  - (e) affect in any way any proceedings pending at the time of the passing of this Act.
- (2) Save as otherwise expressly provided, nothing in this Act shall affect the operation of any enactment, which is in force at the commencement of this Act, and is not repealed by this Act.

### Interpretation

5. (1) In this Act, unless the context otherwise requires, or some other meaning is clearly intended—

“court” means the Supreme Court of South Australia:

“cause” includes any action, suit, or other original proceeding between a plaintiff and a defendant:

“defendant” includes every person served with any writ of summons or process or served with notice of, or entitled to attend any proceeding:

“existing” means existing at the time of the passing of this Act:

“formerly”, when used in relation to the courts or the law or practice in England, means prior to the *Supreme Court of Judicature Act, 1873*, and when used in relation to the court or the law or practice in South Australia, means before the passing of the *Supreme Court Act, 1878*:

“Full Court” means the Supreme Court consisting of—

(a) not less than three judges; or

(b) if three judges are not available to sit in the Full Court, any two judges:

“judge” includes the Chief Justice and any puisne judge of the court:

“judgment” includes decree:

“jurisdiction” of the court includes powers and authorities (whether of a judicial, ministerial or administrative nature) vested in the court, a judge, or a master by law or custom:

“master” means a person holding the office of master of the court:

“matter” includes every proceeding in the court not in a cause:

“order” includes rule:

“parties” includes as well as the plaintiff and defendant in the action any person not originally a party against whom any counterclaim is set up, or who has been served with notice to appear under any of the rules of court; and also every person served with notice of or attending any proceeding, although not named on the record:

“petitioner” includes every person making any application to the court, either by petition, motion, or summons, otherwise than as against any defendant:

“plaintiff” includes every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise:

“pleading” includes any petition or summons, and also the statement in writing of the claim or demand of any plaintiff and of the defence of any defendant thereto, and also any other matter by rules of court to be included under the term “pleading”:

“registrar” means a person holding, or acting in, the office of registrar of the court:

“rules of court” includes forms:

“suit” includes action:

“suits’ funds” means moneys in the custody or charge of the court that have been paid into the court for or on account of, or to the use or credit of, any person in a cause or matter, and includes interest and accretions upon any such moneys.

(2) Subject to the rules of court, a reference in an Act, or in any regulation, by-law, or instrument made under an Act, to the master or a deputy master of the court shall—

(a) where the reference occurs in connection with the performance of an act of a judicial nature—be construed as a reference to a master;

and

(b) where the reference occurs in connection with the performance of an act of an administrative nature—be construed as a reference to the registrar.

## PART I

## CONSTITUTION OF THE SUPREME COURT

**Continuance of Supreme Court**

6. The Supreme Court of South Australia as by law established is hereby continued as the superior court of record, in which has been vested all such jurisdiction (whether original or appellate) as is at the passing of this Act vested in, or capable of being exercised by that court.

**Constituent members of the court**

7. (1) The court shall be constituted of the Chief Justice, the puisne judges and the masters appointed, and for the time being holding office, under this Act.

(2) Subject to any express provision in this or any other Act, all the judges shall have, in all respects, equal power, authority and jurisdiction and the masters shall have power, authority and jurisdiction to the extent authorized by this or any other Act or by rules of court made under this or any other Act.

(3) The puisne judges shall be styled "Justices of the Supreme Court of South Australia".

(4) A Master is, while holding that office, also a District Court Judge.

**Qualifications for appointment as judges and masters**

8. (1) No person shall be qualified for appointment as a puisne judge of the court unless he is a practitioner of the court of not less than ten years' standing.

(2) No person shall be qualified for appointment as Chief Justice unless he is a practitioner of the court of not less than fifteen years' standing or a puisne judge of the court.

(3) No person shall be qualified for appointment as a master unless he is a practitioner of the court of not less than seven years standing.

(4) For the purpose of determining whether a practitioner of the court has the standing necessary for appointment as a judge or master, periods of legal practice and (where relevant) judicial service within and outside the State will be taken into account.

**Appointments to the court**

9. (1) Whenever necessary, the Governor shall appoint a qualified person to hold the office of judge of the court with the tenure prescribed by the *Constitution Act, 1934-1980*, but subject to the provisions of this Act as to retirement.

(2) Appointments to the office of master shall be made by the Governor whenever necessary.

(3) Subject to the provisions of this Act as to retirement, the commission of a master shall remain in full force during his good behaviour but the Governor may, upon the address of both Houses of Parliament, remove a master from office and revoke his commission.

**Acting Chief Justice**

10. (1) If the Chief Justice is absent on leave, or for any reason is unable for the time being to perform the duties of his office, the Governor may appoint a puisne judge of the court to be Acting Chief Justice thereof until the Chief Justice returns to the execution of the duties of his office.

(2) Upon every such appointment any power or duty, which is attached by this or any other Act to the office of the Chief Justice, shall devolve upon the judge so appointed, and in default of any such appointment, shall devolve (during the absence or inability of the Chief Justice) upon the senior puisne judge.

#### Acting judges and acting masters

11. (1) Where it appears necessary or desirable to do so in the interests of the administration of justice, the Governor may, subject to subsection (6)—

(a) appoint a person who is qualified for appointment as a puisne judge as an acting judge;

or

(b) appoint a person who is qualified for appointment as a master as an acting master.

(1a) A former judge or master who has retired from office is eligible for appointment as an acting judge or an acting master.

(1b) An appointment under this section will be for a term not exceeding 12 months.

(2) The jurisdiction of the court is exercisable by an acting judge to the same extent as by a judge, and by an acting master to the same extent as by a master.

(3) An acting judge or acting master has the same privileges and immunities as a judge or master.

\* \* \* \* \*

(5) An acting judge or an acting master may, notwithstanding the expiration of the period of his appointment, complete the hearing of any proceedings part-heard by him before the expiration of that period and, in relation to any such proceedings, shall be deemed to continue as an acting judge, or acting master.

(6) A Deputy President of the Industrial Court or a District Court Judge shall not be appointed as an acting judge under subsection (1) except on the recommendation of the Chief Justice made with the concurrence of the President of the Industrial Court or the Senior Judge of the District Court, as the case requires.

#### Remuneration of judges and masters

12. (1) The Chief Justice and each puisne judge are entitled to salary and allowances at rates determined by the Remuneration Tribunal in relation to the respective offices.

(2) A master is entitled to salary and allowances at the rates applicable to a District Court Judge.

(3) A rate of salary for a judge or master cannot be reduced by determination of the Remuneration Tribunal.

(4) The remuneration of the judges and masters is payable from the General Revenue of the State, which is appropriated to the necessary extent.

#### Salaries of Judges, and officers to be in lieu of fees

13. The salaries of the judges, and of the officers of the court, shall be in lieu of all fees or other emoluments whatsoever, it being the intent of this Act that the judges and the officers of the court shall derive no emolument from any fees payable under the authority of this Act, but that such fees shall be paid to the Treasurer in aid of the general revenue of the State.

**Retirement of judges and masters**

**13a.** (1) A judge or master shall retire on reaching the age of seventy years.

(2) Section 74 of the *Constitution Act, 1934-1980*, shall be read subject to this section.

(3) A judge or master who retires or resigns may nevertheless complete the hearing and determination of proceedings part-heard by him before his retirement or resignation and, in relation to any such proceedings, shall be deemed to continue as a judge or master (as the case may require).

**Conditions of service of certain masters**

**13b.** (1) Subject to this section, the rights of a master to whom this section applies to recreation leave, sick leave, long service leave or leave of any other kind shall be determined as if he were an officer appointed under the *Public Service Act, 1967-1978*, and for the purpose of determining those rights his service before and after the commencement of the *Statutes Amendment (Administration of Courts and Tribunals) Act, 1981*, shall be regarded as a single continuous period of service.

(2) A master to whom this section applies shall be deemed to be an employee within the meaning, and for the purposes, of the *Superannuation Act, 1974-1980*.

(3) A master to whom this section applies shall not be entitled to long service leave or payment in lieu of long service leave in respect of service after he reaches the age of sixty-five years.

(4) Any rights under the *Superannuation Act, 1974-1980*, of or relating to a master who continues in office after reaching the age of sixty-five years shall be determined upon his retirement or death (as the case may require), as if he had retired or died upon attaining the age of sixty-five years.

(5) This section applies to a master who was, immediately before the commencement of the *Statutes Amendment (Administration of Courts and Tribunals) Act, 1981*, the master or a deputy master of the court.

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*Leave on Retirement***Pre-retirement leave**

**13h.** (1) Subject to this section, the Governor may grant to any judge or master immediately prior to his retirement not more than six months leave of absence on full salary.

(2) Where a judge or master retires or resigns without taking any leave which had been or could have been granted to him under subsection (1) of this section, the Governor may direct that a cash payment be made to him in lieu of the leave not so taken. The

payment shall not exceed the amount of the salary of the judge or master for a period equal to the period of the leave not so taken, calculated at the rate at which he was being paid at the time of the retirement or resignation.

(3) A direction under subsection (2) of this section may be given before or after the retirement or resignation of the judge or master and a payment under that subsection may be made before or after that retirement or resignation.

(4) If any judge or master dies before the commencement or during the currency of any leave granted or before such leave has been granted pursuant to subsection (1) of this section the Governor may, in respect of the period of the leave so granted or the unexpired portion thereof, or in respect of the period of the leave which might have been granted (according to the circumstances of the case), pay to the dependants (if any) of such judge or master the amounts of salary which would have been payable to such judge or master himself if he had survived. If the judge or master died without leaving any dependants the Governor may pay the said amounts of salary to his personal representatives.

Any question as to—

I. Whether there are any dependants in any particular case, or who are the dependants:

II. What dependant or dependants shall be entitled to the benefit of payments made under this subsection, and in what proportions if more than one dependant,

shall be settled by the Governor, as he deems proper.

In this subsection the terms—

“dependants” means those members of the family of a judge or master who were wholly or in part dependent upon his earnings at the time of his death:

“members of the family” includes wife or husband, parents, grandparents, step-parents, children, grandchildren, step-children, brothers, sisters, half-brothers and half-sisters.

(5) Where leave is granted to any judge or master under this section, that judge or master may, at the commencement of such leave, be paid the total salary which would be payable to him during the currency of the leave.

(6) This section shall not apply to a master who was, immediately before the commencement of the *Statutes Amendment (Administration of Courts and Tribunals) Act, 1981*, the master or a deputy master of the court.

#### **Certain interests not to disqualify**

14. A judge or master of the court shall not be incapable of acting in his judicial office in any proceeding by reason of his being one of several ratepayers or taxpayers or one of any other class of persons liable in common with others to contribute to or to be benefited by any rate or tax which may be increased, diminished or in any way affected by that proceeding.

#### **Seal of court**

15. (1) The court shall continue to have and use a seal bearing a device or impression of the Royal Arms, within an exergue or label surrounding the same, and with the following inscription:—“Supreme Court, South Australia”; and the said seal shall be kept in the custody of the registrar.

(2) There shall also be kept and used such other seals as are required for the business of the court, and such seals shall be in such form and kept in such custody as the Chief Justice directs.

(3) All documents and exemplifications and copies thereof purporting to be sealed with any such seal shall be receivable in evidence without further proof of the seal.

**Councils of judges to consider procedure and administration of justice**

16. The judges shall—

- (a) assemble once at least in every year for the purpose of considering the operation of this Act and of the rules of court for the time being in force, and also the working of the several offices, and the arrangements relative to the duties of the officers of the court respectively, and of inquiring and examining into any defects which appear to exist in the system of procedure or the administration of the law in the said court; and
- (b) report annually to the Attorney-General of the State what (if any) amendments it would, in their judgment, be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament, it would be expedient to make for the better administration of justice.

## PART II

## JURISDICTION AND POWERS OF THE COURT

*Jurisdiction***General jurisdiction**

17. (1) The court shall be a court of law and equity.
- (2) There shall be vested in the court—
- (a) the like jurisdiction, in and for the State, as was formerly vested in, or capable of being exercised by, all or any of the courts in England, following:—
    - (i) The High Court of Chancery, both as a common law court and as a court of equity:
    - (ii) The Court of Queen's Bench:
    - (iii) The Court of Common Pleas at Westminster:
    - (iv) The Court of Exchequer both as a court of revenue and as a court of common law:
    - (v) The courts created by commissions of assize:
  - (b) such other jurisdiction, whether original or appellate, as is vested in, or capable of being exercised by the court:
  - (c) such other jurisdiction as is in this Act conferred upon the court.

**Probate jurisdiction**

18. The court shall, in relation to probates and letters of administration, have the following jurisdiction, that is to say:—

- (a) The like voluntary and contentious jurisdiction and authority in and for the State in relation to the granting or revoking of probate of wills, and administration of the effects of deceased persons, as was vested in or exercisable by the Court of Probate established in England under the *Court of Probate Act, 1857*, together with full authority to hear and determine all questions relating to testamentary causes and matters:
- (b) The like jurisdiction and powers with respect to the real estate of deceased persons as it has with respect to the personal estate of deceased persons:
- (c) All probate jurisdiction which, under or by virtue of any enactment not repealed by this Act, is vested in or capable of being exercised by the court.

**Matrimonial jurisdiction**

19. There shall be vested in the court—
- (a) the like jurisdiction in relation to matrimonial causes and matters as was immediately before the commencement of the *Matrimonial Causes Act, 1857*, vested in or exercisable by any ecclesiastical court or person in England in respect of divorce *a mensa et thoro*, nullity of marriage, jactitation of marriage or restitution of conjugal rights, and in respect of any matrimonial cause or matter except marriage licences:
  - (b) all such jurisdiction in relation to matrimonial causes and matters as under or by virtue of any enactment not repealed by this Act, is vested in or capable of being exercised by the court.

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*Law and Equity***Concurrent administration of law and equity**

20. In every civil cause or matter commenced in the court, law and equity shall be administered by the court according to the provisions of the seven sections of this Act next following.

**Equities of plaintiff**

21. If a plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever, asserted by any defendant or respondent in the cause or matter, or to any relief founded upon a legal right which formerly could only have been given by the court in its equitable jurisdiction, the court shall give to the plaintiff or petitioner the same relief as ought formerly to have been given by the court in its equitable jurisdiction in a suit or proceeding properly instituted for the like purpose.

**Equitable defences**

22. If a defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in the cause or matter, or alleges any ground of equitable defence to any such claim of the plaintiff or petitioner, the court shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged the same effect by way of defence against the claim of the plaintiff or petitioner as the court in its equitable jurisdiction ought formerly to have given if the same or the like matters had been relied on by way of defence in a suit or proceeding instituted in that court for the like purpose.

**Counter-claims and third parties**

23. (1) The court shall have power to grant to any defendant, in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him—

- (a) all such relief against any plaintiff or petitioner as the defendant has properly claimed by his pleading, and as the court or judge might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and
- (b) all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who has been duly served with notice in writing of such claim, pursuant to any rules of court, as might properly have been granted against that person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose.

(2) Every person served with any such notice shall thenceforth be deemed a party to the cause or matter with the same rights in respect of his defence against the claim, as if he had been duly sued in the ordinary way by the defendant.

**Equities appearing incidentally**

24. The court shall recognize and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter pending before it, in the same manner in which the said court in its equitable jurisdiction would formerly have recognized and taken notice of the same in any suit or proceeding duly instituted therein.

**Defence instead of injunction or prohibition**

25. No cause or proceeding at any time pending in the court shall be restrained by prohibition or injunction, but every matter of equity on which an unconditional injunction against the prosecution of any such cause or proceeding might formerly have been obtained, may be relied on by way of defence thereto:

Provided that—

- (a) nothing in this Act shall disable the court, if it thinks fit, from directing a stay of proceedings in any cause or matter pending before it; and
- (b) any person, whether a party or not to any such cause or matter, who would formerly have been entitled to apply to the court, in any of its jurisdictions, to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, in contravention of which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the court, in a summary way, for a stay of proceedings in the cause or matter, either generally or so far as may be necessary for the purposes of justice, and the court shall thereupon make such order as is just.

**Common law and statutory rights and duties**

26. Subject to the provisions of this Act for giving effect to equitable rights and other matters of equity, the court shall recognize and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities, existing by the common law, or by any custom, or created by any statute, in the same manner as those matters would formerly have been recognized and given effect to by the court in any branch of its jurisdiction.

**Court to do complete justice in cause so as to avoid multiplicity of suits**

27. The court in every cause or matter pending before it shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as it deems just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of every legal or equitable claim properly brought forward by them respectively, in such cause or matter, so that, as far as possible, all matters so in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

**Rules of equity to prevail where in conflict with common law**

28. Subject to the express provisions of any other Act, in questions relating to the custody and education of infants, and generally in all matters not particularly mentioned in this Act in which there was formerly any conflict or variance between the rules of equity and the rules of common law with reference to the same matter, the rules of equity shall prevail in all the courts of the State, so far as the matters to which those rules relate, are cognizable by those courts.

*Miscellaneous Powers***Court may make orders to have effect of mandamus or injunction, and may appoint receivers**

29. (1) The court may grant a mandamus, or an injunction, or appoint a receiver, by an interlocutory order in all cases in which it appears to the court to be just or convenient so to do.

(2) Any such order may be made either unconditionally or upon such terms and conditions as the court thinks just.

(3) If an application is made (whether before, or at, or after the hearing of any cause or matter for an injunction) to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the court thinks fit, whether the person against whom the order 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.

**Damages in certain cases**

30. In any action arising out of the breach of any covenant, contract, or agreement, or instituted to prevent the commission or continuance of any wrongful act or for the specific performance of any covenant, contract, or agreement, the court shall have power to award damages to the party injured either in addition to or substitution for the injunction or specific performance, and those damages may be assessed by the court or in such manner as it directs.

**Power to direct payment to infant**

30a. Where in any action the court determines that a party (being an infant) is entitled to recover damages from another party, the court may by final or declaratory judgment finally determining the question of liability between the parties order payment of any amount or amounts of damages, direct to the plaintiff. Any acknowledgment or receipt in writing of any moneys paid on account of any such amount or amounts pursuant to a judgment under this section shall not if the court so orders be invalid merely on the ground that the person giving the same was under the age of twenty-one years at the time of his signing or giving the same.

**Power to make interim assessment of damages**

30b. (1) Where in any action the court determines that a party is entitled to recover damages from another party, it shall be lawful for the court to enter declaratory judgment finally determining the question of liability between the parties, in favour of the party who is entitled to recover damages as aforesaid, and to adjourn the final assessment thereof.

(2) It shall be lawful for the court when entering declaratory judgment and for any judge of the court at any time or times thereafter—

(a) to make orders that the party held liable make such payment or payments on account of the damages to be assessed as to the court seems just;

and

(b) in addition to any such order or in lieu thereof, to order that the party held liable make periodic payments to the other party on account of the damages to be assessed during a stated period or until further order:

Provided, however, that where the declaratory judgment has been entered in an action for damages for personal injury, such payment or payments shall not include an allowance for pain or suffering or for bodily or mental harm (as distinct from pecuniary loss resulting therefrom) except where serious and continuing illness or disability results from the injury or except that, where the party entitled to recover damages is incapacitated or partially incapacitated for employment and being in part responsible for his injury is not entitled to recover the full amount of his present or continuing loss of earnings, or of any hospital, medical or other expenses resulting from his injury, the court may order payment or payments not to exceed such loss of earnings and expenses and such payment or payments may be derived either wholly or in part from any damages to which the party entitled to recover damages has, but for the operation of this proviso, established a present and immediate right or except where the judge is of opinion that there are special circumstances by reason of which this proviso should not apply.

(3) Any order for payment of moneys on account of damages made hereunder may be enforced as a judgment of the court.

(4) Where the court adjourns assessment of damages under this section, it may order the party held liable to make such payment into court or to give such security for payment of damages when finally assessed as it deems just.

(5) When damages are finally assessed credit shall be given in the final assessment for all payments which have been made under this section and the final judgment shall state the full amount of damages, the total of all amounts already paid pursuant to this section and the amount of damages then remaining payable, and judgment shall be entered for the last-named amount.

(6) Where the court adjourns assessment of damages under this section, any party to the proceedings may apply to any judge of the court at any time and from time to time—

(a) for an order that the court proceed to final assessment of the damages;

or

(b) for the variation or termination of any order which may have been made for the making of periodic payments.

On the hearing of any such application the judge shall make such order as he considers just: Provided that, in an action for damages for personal injury, upon an application for an order that the court proceed to final assessment of damages, the Judge to whom such application is made shall not refuse such order if the medical condition of the party entitled to recover damages is such that neither substantial improvement nor substantial deterioration thereof is likely to occur or if a period of four years or more has expired since the date of the declaratory judgment unless the judge is of opinion that there are special circumstances by reason of which such assessment should not then be made.

(7) If it appears to the court that a person in whose favour declaratory judgment has been entered has without reasonable cause failed to undertake such reasonable medical or remedial treatment as his case might have required or require, it shall not award damages for such disability, pain or suffering as would have been remedied but for such failure.

(8) If at any time it appears to a judge that a person in whose favour declaratory judgment has been entered and who is incapacitated or partially incapacitated for employment, is not sincerely or with the diligence which should be expected of him in the circumstances of his case, attempting to rehabilitate himself for employment any payment or payments under subsection (2) of this section shall not include by way of allowance for loss of earnings a sum in excess of seventy-five per centum of such person's loss of earnings.

- (9) (a) Notwithstanding anything in the *Survival of Causes of Action Act, 1940*, when damages are finally assessed under this section for the benefit of the estate of a deceased person where the deceased person died after action brought and declaratory judgment has been entered in favour of such person, the damages finally assessed may include such damages in respect of any of the matters referred to in section 3 of that Act as the court deems proper.
- (b) Where a party dies after declaratory judgment has been entered in his favour but before final assessment of his damages in circumstances which would have entitled any person to recover damages, *solatium* or expenses by action pursuant to Part II of the *Wrongs Act, 1936-1959*, it shall be lawful for the executor or administrator of the deceased to proceed in the same action for the recovery of such damages, *solatium* or expenses for the benefit of such person notwithstanding the declaratory judgment or that the deceased has received moneys thereunder, provided, however, that in any such proceedings all moneys paid to the deceased pursuant to the declaratory judgment in excess of any actual and subsisting pecuniary loss resulting to him from the wrongful act of the party held liable shall be deemed to have been paid towards satisfaction of the damages, *solatium* or expenses awarded pursuant to the *Wrongs Act, 1936-1959*, and no further damages shall be payable in respect of the injury sustained by the deceased. In any proceedings hereunder, the declaratory judgment and any finding of fact made in the course of proceedings consequent thereupon shall enure as between the party held liable and the executor or administrator of the deceased.
- (c) Where a party dies in the circumstances referred to in the preceding paragraph of this subsection except that the death of the deceased is not wholly attributable to the personal injury, the subject of the declaratory judgment, but was accelerated thereby, it shall be lawful for proceedings to be taken and for the court to assess damages, *solatium* or expenses as in the preceding paragraph but such damages, *solatium* or expenses shall be proportioned to the injury to the person for whom and for whose benefit the proceedings are taken resulting from such acceleration of death.
- (d) The court may, if the justice of a case so requires, assess damages under paragraph (a) of this subsection notwithstanding the commencement or prosecution of proceedings under paragraph (b) or (c) of this subsection and the damages so assessed shall be for the benefit of the estate of the deceased and no damages shall be awarded under paragraph (b) or (c) of this subsection.

(10) In the exercise of the powers conferred by this section the court shall have regard to the facts and circumstances of the particular case, as they exist from time to time, and any allowance, or the final assessment, as the case may be, shall be such as to the court may seem just and reasonable as compensation to the person actually injured or to his or her dependants as the case may be.

#### **Power to award interest**

**30c.** (1) Unless good cause is shown to the contrary, the court shall, upon the application of a party in favour of whom a judgment for the payment of damages, compensation or any other pecuniary amount has been, or is to be, pronounced, include in the judgment an award of interest in favour of the judgment creditor in accordance with the provisions of this section.

(2) The interest—

(a) shall be calculated at such rate of interest as may be fixed by the court;

(b) shall be calculated—

(i) where the judgment is given upon an unliquidated claim—from the date of the commencement of the proceedings to the date of the judgment;

or

(ii) where the judgment is given upon a liquidated claim—from the date upon which the liability to pay the amount of the claim fell due to the date of the judgment,

or in respect of such other period as may be fixed by the court;

and

(c) shall be payable in respect of the whole or any part of the amount for which judgment is given in accordance with the determination of the court.

(3) Where a party to any proceedings before the court is entitled to an award of interest under this section, the court may, in the exercise of its discretion, and without proceeding to calculate the interest to which that party may be entitled in accordance with subsection (2) of this section, award a lump sum in lieu of that interest.

(4) This section does not—

(a) authorize the award of interest upon interest;

(ab) authorize the award of interest upon exemplary or punitive damages;

(b) apply in relation to any sum upon which interest is recoverable as of right by virtue of an agreement or otherwise;

(c) affect the damages recoverable upon the dishonour of a negotiable instrument;

(d) authorize the award of any interest otherwise than by consent upon any sum for which judgment is pronounced by consent;

or

(e) limit the operation of any other enactment or rule of law providing for the award of interest.

**Declaratory orders**

31. No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court shall have power to make binding declarations of right whether any consequential relief is or could be claimed or not.

**Court may order mortgage instead of sale in certain cases**

32. In any proceeding in which the court has power to order a sale of any real or personal property, the court shall have power, instead of ordering a sale, to make such order, as is just and convenient, for a mortgage of the property, with power of sale to the mortgagee; and, for the purpose of perfecting such mortgage, to order the execution of all deeds and documents in the same manner as in the case of a sale of property.

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**Court may direct sale of mortgaged property, etc.**

34. In any action for the foreclosure of the equity of redemption in any mortgaged property, and upon the request of the mortgagee, or of any subsequent encumbrancer, or of the mortgagor, or any person claiming under any such person, the court may direct a

sale of the property, or a transfer of the mortgage debt and security, instead of a foreclosure of the equity of redemption, on such terms as the court thinks fit, and, if the court thinks fit, without previously determining the priorities of encumbrances, or giving the usual or any time to redeem: Provided that if the request is made by any subsequent encumbrancer, or by the mortgagor, or by any person claiming under such encumbrancer or mortgagor, no such sale shall be directed without the consent of the mortgagee or the persons claiming under him, unless the party making such request deposits in court a reasonable sum of money, to be fixed by the court, for the purpose of securing the performance of such terms as may be imposed on the party making such request.

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#### **Appointment of commissioners for taking affidavits**

36. (1) Any two or more judges of the court of whom the Chief Justice shall be one, may by commission under the seal of the court from time to time empower such persons as they think fit and necessary, whether within or outside the State, to take all such affidavits as any person desires to make before any person so empowered in or concerning any cause, matter or thing pending in the court.

(2) Every person so appointed shall be a commissioner for taking oaths in all causes and matters whatsoever in every jurisdiction of the court.

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#### **Inspection of property in legal proceedings**

38. (1) For the purpose of any proceeding therein, the court may order a view or inspection of any land or chattel, and any judge, juryman, or other person authorized by the order, may enter on any land or premises which it is necessary or convenient to enter on for the purpose of such inspection.

(2) Every person in possession of any such land or premises shall allow such entry for the purposes aforesaid, and in case of any obstruction or refusal of such entry, the person or persons so obstructing or refusing such entry, shall be deemed guilty of a contempt of court, and be liable to punishment accordingly.

#### **Vexatious proceedings**

39. (1) If, on the application of the Attorney-General, the court is satisfied that a person has persistently instituted vexatious proceedings, the court may make either or both of the following orders:

(a) an order prohibiting the person by whom the vexatious proceedings were instituted from instituting further proceedings, or further proceedings of a particular class, without leave of the court;

(b) an order staying proceedings already instituted by that person.

(2) Where it appears to the Supreme Court or any other court of the State that there are proper grounds for an application under this section, it may refer the matter to the Attorney-General for consideration.

(3) An order under this section remains in force (subject to variation by the court)—

(a) if a period for the operation of the order is fixed—until the expiration of that period or the revocation of the order (whichever first occurs);

(b) if no such period is fixed—until revocation of the order.

(4) Where an order is made under this section, a copy of the order must be published in the *Gazette*.

(5) For the purposes of this section, proceedings are vexatious—

(a) if instituted to harass or annoy, to cause delay, or for any other ulterior purpose;

or

(b) if instituted without reasonable ground.

(6) A reference in this section to proceedings extends to both civil and criminal proceedings whether instituted in the court or some other court of the State.

#### **Power of court with regard to costs**

40. Subject to the express provisions of this Act, and to the rules of court, and to the express provisions of any other Act whenever passed, the costs of and incidental to all proceedings in the court, including the administration of estates and trusts, shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and to what extent such costs are to be paid.

(2) If—

(a) an action for the recovery of damages or any other monetary sum is brought in the Court;

(b) the action might have been brought in the District Court;

and

(c) the plaintiff recovers less than an amount fixed by the rules for the purposes of this paragraph,

no order for costs will be made in favour of the plaintiff unless the Court is of the opinion that it is just, in the circumstances of the case, that the plaintiff should recover the whole or part of the costs of action.

#### **Power to revive orders on abatement of cause**

41. When any judgment or order for the payment of any costs or money has been made in any cause or matter, and the suit afterwards becomes abated, it shall be lawful for the court or a judge, upon the application of any person interested under the judgment or order, to make an order reviving the cause or matter, and permitting the applicant to prosecute and enforce the judgment or order, upon such terms (if any) as the court or judge thinks fit.

## PART III

## SITTINGS AND DISTRIBUTION OF BUSINESS

**Abolition of terms**

42. The division of the legal year into terms is abolished as far as relates to the administration of justice, and there shall be no terms applicable to any sitting or business of the court.

**Reference to terms for computing time**

43. In all cases in which the terms, into which the legal year was formerly divided, are used as a measure for determining the time at or within which any act is required to be done, those terms may continue to be referred to for the same or the like purpose, unless provision is otherwise made by law.

**Sitting in vacation**

44. Provision shall be made by rules of court for the hearing during vacation of all such applications as require to be immediately or promptly heard.

**Place and time of sittings, and power to adjourn**

45. (1) The court may sit and act at any time and at any place for the transaction of any part of the business of the court, or for the discharge of any duty under this or any other enactment.

(2) The hearing or further hearing or determination of any cause or matter commenced in the court may be adjourned from time to time, and from place to place, as the court thinks fit.

(3) A judge sitting in open court may adjourn for consideration in chambers any matter which in his opinion may be more conveniently disposed of in chambers; and any judge sitting in chambers may adjourn any matter to be heard in open court.

**Civil sittings of court**

46. Subject to this Act and to the rules of court the civil sittings of the court for the trial of causes and questions or issues of fact shall be held in Adelaide, and such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many judges as the business to be disposed of renders necessary.

**Power to sit in several jurisdictions at one time**

47. Any two or more of the judges may sit at the same time, as separate courts or divisions of the court, for the despatch of its business, either in the same jurisdiction or in different jurisdictions, and, in particular, the Full Court may sit in more than one division.

**Jurisdictional of Full Court, single judge and master**

48. Subject to any express enactment, and to the rules of court, the jurisdiction vested in, or exercisable by the court, shall be exercisable either by the Full Court or by a single judge sitting in court:

Provided that—

(1) the Full Court shall hear and determine—

(a) all motions for new trials:

(b) all appeals from a single judge whether sitting in court or chambers:

- (c) all rules and orders to show cause returnable before the Full Court:
- (d) all special cases and points and questions of law referred to or reserved for the consideration of, or directed to be argued before the Full Court:
- (e) all trials at bar:
- (f) all causes and matters which are required by the rules of court, or by the express provision of any other Act, to be heard or determined by the Full Court:

(2) the jurisdiction of the court may be exercised by a judge in chambers in all such causes or matters, and in all such proceedings in any cause or matter, as are authorized by statute or by the rules or practice of the court.

(3) The jurisdiction of the court may be exercised by a master to the extent authorized by this Act or any other Act, or by rules of court made under this Act or any other Act.

#### **Cases or points of law reserved for Full Court**

49. (1) Any judge of the court sitting in the exercise of any jurisdiction may reserve any case or any point in a case for the consideration of the Full Court, or may direct any case or point in a case to be argued before the Full Court, and the Full Court may hear and determine any such case or point so reserved or so directed to be argued.

(2) Subject to any express enactment the like powers may be exercised in relation to any appeal or matter whatsoever, which comes before a judge, under any enactment by which a judge of the court is designated as the judge, arbitrator, or person appointed to hear and determine the appeal or matter, notwithstanding that the determination of the judge is expressed to be final or without appeal.

#### **Appeals against decisions of judges and masters**

50. (1) Subject to the rules of court an appeal shall lie to the Full Court against every judgment, including every declaratory judgment entered pursuant to section 30b of this Act and any final assessment made thereon, order, or direction of a judge, whether in court or chambers, and also from the refusal of any judge to make any order:

Provided that—

- (1) No appeal shall lie from—
  - (a) an order allowing an extension of time to appeal from a judgment or order:
  - (b) an order giving unconditional leave to defend an action:
  - (c) any judgment or order which is by statute, or by agreement of the parties, final or without appeal.
- (2) No appeal shall lie without the leave of the judge from any order—
  - (a) made by consent of the parties:
  - (b) as to costs only which by law are left to the discretion of the judge.
- (3) No appeal shall lie without the leave of the judge or of the Full Court from—
  - (a) any order upon appeal from a court of summary jurisdiction under the *Justices Act, 1921*:

- (b) any interlocutory order or interlocutory judgment except in the following cases, namely:—
- (i) Any order refusing unconditional leave to defend:
  - (ii) Where the liberty of the subject or the custody of infants is concerned:
  - (iii) Where an injunction or the appointment of a receiver is granted or refused:
  - (iv) Any decision determining the claim of any creditor or the liability of any contributory or the liability of any director or other officer under the *Companies Act, 1962*, as amended, or under any corresponding previous enactment, in respect of misfeasance or otherwise:
  - (v) The grant or refusal of a decree or order *nisi* in a matrimonial cause:
  - (va) Any assessment of damages not being a final assessment made pursuant to section 30b of this Act.
  - (vi) Such other cases to be prescribed by rules of court as are, in the opinion of the authority making such rules, of the nature of final decisions.

(2) Subject to the rules of court, an appeal shall lie to a judge against a judgment, order, direction or decision of a master.

#### Applications for leave to appeal

51. Any application for leave to appeal may be made *ex parte* unless the judge or the Full Court otherwise directs.

#### *Circuit Sessions of the Court*

#### Circuit districts

52. (1) The Governor may by proclamation—

- (a) declare any portion of the State defined or described in the proclamation to be a circuit district:
- (b) abolish any circuit district:
- (c) alter any circuit district by including any additional territory therein or excluding any territory therefrom:
- (d) appoint a town in each circuit district at which sessions of the court shall be held.

(2) Until otherwise proclaimed, the circuit districts existing at the time of the passing of this Act shall be circuit districts for the purposes of this Act, and the towns at which circuit courts were usually held before the passing of this Act, shall be deemed to be towns appointed under subsection (1) of this section.

#### Issue of commissions for holding circuit sessions

53. (1) The Governor may at any time issue a commission directing any judge to hold circuit sessions of the court at a time and in the place named in the commission: Provided that—

- (a) it shall be lawful for the Governor upon the recommendation of the judges of the court to issue the commission to a practitioner of the court of at least seven years standing; and

(b) every practitioner so assigned shall, for the purposes of the commission, have all the power, authority, and jurisdiction of a judge of the court.

(2) The judge or practitioner named in any commission is, in the provisions of this Act relating to circuit sessions, called "the commissioner".

(3) Notice of the issue of the commission shall be given in the *Gazette* at least thirty days before the day appointed therein for the holding of the circuit sessions.

(4) Every commissioner, when engaged in the exercise of any jurisdiction assigned to him by the commission, shall be deemed to have, and to exercise, the jurisdiction of the Supreme Court of South Australia, and any sessions held under the commission shall be sessions of the said court.

(5) For the purpose of completing any business commenced at any circuit sessions the commissioner shall have the powers referred to in section 45 of this Act.

#### **Supplementary commissions of circuit sessions**

**53a.** (1) At any time after the issue of a commission under section 53 of this Act the Governor upon the recommendation of the judges of the court may issue a supplementary commission assigning a practitioner of the court of at least seven years standing to hold the sessions according to the tenor of the original commission.

(2) Any practitioner so assigned shall have the same power, authority and jurisdiction, and the original commission shall be read, as if he had been named therein.

(3) It shall not be necessary to give notice in the *Gazette* of the issue of a supplementary commission.

(4) The word "commissioner" where used in subsection (4) of section 53, and in sections 54 and 55 of this Act, shall include a practitioner to whom a supplementary commission is issued under this section.

#### **Holding of circuit sessions**

**54.** (1) When the commission is issued, the court shall be held by the commissioner according to the tenor of the commission: Provided that—

(a) if it appears to the commissioner, at any time within seven days before the day fixed for the sessions, that there is no business to be transacted, he may certify accordingly, and it shall not be necessary to hold the court:

(b) if the commissioner does not attend at the time and place appointed for holding the court, any judge may hold the sessions according to the tenor of the commission, and with the like power, authority, and jurisdiction, as if he had been named therein.

(2) Notice of any certificate given under proviso (a) to subsection (1) shall be published in the *Government Gazette*, but, as from the giving of the certificate, the commission shall be deemed to be revoked, as if never issued:

Provided that any judge may make such order, as the circumstances may require, for the purpose of securing an early trial or sentence for any prisoner, who may have been committed for trial or sentence at the sessions in question.

#### **Non-attendance of commissioner**

**55.** If the commissioner fails to attend at the time and place appointed, and no other judge is in attendance, the court shall be considered as adjourned to the next day, not being Sunday, and if the next day is Sunday, then to the following Monday, and so on from day to day until the commissioner or another judge attends; and all persons summoned, or

bound, or having received notice, or having occasion to attend the sessions, shall attend the adjourned sessions in the same manner in all respects as if the commissioner had regularly sat and adjourned the court.

#### **Jurisdiction exercisable at circuit sessions**

56. The court, at any circuit sessions:—

- (a) shall be a court of Oyer and Terminer and General Gaol Delivery in and for the circuit district in which the sessions are held with jurisdiction to try or sentence any person ordered under this Act to be tried or sentenced at such sittings:
- (b) subject to this Act and to the rules of court, shall have, and may exercise, any civil or criminal jurisdiction which is exercisable by a single judge sitting in court.

#### **Committal for trial or sentence**

57. (1) Subject to any direction of the court or commissioner, every person who is committed within any circuit district for trial or sentence upon any charge of an indictable offence shall be committed for trial or sentence (as the case may be) at the first circuit sessions to be held within the said district after the expiration of fourteen days from the day of the committal.

(2) No committal of any person for trial or sentence at any circuit sessions shall be invalid on the ground that that person has been committed for trial in the wrong circuit district or at the wrong sessions, but the commissioner or any judge may make any such order as he thinks just and convenient for the trial or sentence of any such person in that or any other circuit district and at any other sessions or in Adelaide.

\* \* \* \* \*

#### **Change of venue**

59. (1) It shall be lawful for any judge at any time, and for such reasons as he thinks fit, to order—

- (a) any person committed for trial or sentence in the court at Adelaide to be tried or sentenced at any circuit sessions; or
- (b) any person committed for trial or sentence at any circuit sessions to be tried or sentenced at circuit sessions in some other district or at Adelaide.

(2) Any commissioner holding circuit sessions shall have the like power with respect to any person committed for trial or sentence at those sessions.

#### **Effect of order as to recognizances**

60. When any order is made changing the place or time of the trial, the recognizances for the appearance of the witnesses shall be effectual to compel them to attend the place or time mentioned in the order as the place of trial, on their being served with a copy of the said order.

\* \* \* \* \*

#### **Removal of persons in gaol**

62. When any person, ordered to be tried or sentenced at any circuit sessions is in gaol, the sheriff, on being served with a duplicate of the order, shall cause him to be conveyed to the place and at the time mentioned in the order.

## PART IIIA

## THE LAND AND VALUATION COURT

**Interpretation**

**62a.** In this Part, unless the contrary intention appears—

“the Court” means the Land and Valuation Court constituted under this Part:

“the complementary amending Acts” means the *Crown Lands Act Amendment Act, 1969*, the *Encroachments Act Amendment Act, 1969*, the *Highways Act Amendment Act, 1969*, the *Land Settlement (Development Leases) Act Amendment Act, 1969*, the *Land Tax Act Amendment Act, 1969*, the *Law of Property Act Amendment Act, 1969*, the *Local Government Act Amendment Act, 1969*, the *Pastoral Act Amendment Act, 1969*, the *Planning and Development Act Amendment Act, 1969*, the *Renmark Irrigation Trust Act Amendment Act, 1969*, the *Sewerage Act Amendment Act, 1969*, the *South-Eastern Drainage Act Amendment Act, 1969*, the *Water Conservation Act Amendment Act, 1969*, and the *Waterworks Act Amendment Act, 1969*.

**Transitional provisions**

**62b.** (1) Notwithstanding the enactment of this Part and the complementary amending Acts, any appeal, reference, proceeding or other matter instituted or commenced, but not finally disposed of, at the commencement of the *Supreme Court Act Amendment Act (No. 3), 1969*, and the complementary amending Acts, that would, if it had been instituted or commenced after the commencement of those Acts, have proceeded in, and been heard and determined by the Court, shall, subject to this section, proceed in or before, and be heard and determined by, the court, board, tribunal, arbitrator, or other person or authority having cognizance of it, in all respects as if those Acts had not been enacted.

(2) The Court may, upon application by a party to a matter of the kind described in subsection (1) of this section, direct that the matter shall proceed in, and be heard and determined by, the Court, and may give and make all such consequential directions and orders as it deems just for disposing of the matter.

(3) The Court is hereby invested with all powers that are reasonably necessary or expedient to dispose of any such matter according to law.

(4) Subject to this section, the operation of section 16 of the *Acts Interpretation Act, 1915-1957*, in relation to this Part and the complementary amending Acts is unaffected.

**Establishment of Land and Valuation Court**

**62c.** (1) There shall be a court entitled the “Land and Valuation Court” which shall be a division of the Supreme Court of South Australia.

(2) The Court shall be constituted of a judge upon whom the jurisdiction of the Court has, in accordance with this section, been conferred.

(3) The Governor may, by proclamation, confer the jurisdiction of the Court upon any judge of the Supreme Court.

(3a) The Governor may, by proclamation, divest any judge of the jurisdiction of the Court and confer that jurisdiction upon any other judge.

(4) Where—

(a) the judge upon whom the jurisdiction of the Court has been conferred deems it improper or undesirable that he should hear and determine any proceeding before the Court, or he is, by reason of ill health or any other cause, unable, wholly or in part, to perform the duties of his office;

or

(b) the Governor is of the opinion that it is in the interests of the administration of justice to do so,

the Governor may, by proclamation confer temporarily or permanently the jurisdiction of the Court upon any additional judge.

(5) A judge upon whom the jurisdiction of the Court has been conferred is not thereby precluded from performing and discharging any other functions and duties of a judge of the Supreme Court.

### Jurisdiction of the Court

62d. (1) The Court has the jurisdiction conferred upon it under the following Acts:—

the *Crown Lands Act, 1929-1969*;

the *Encroachments Act, 1944-1969*;

the *Highways Act, 1926-1969*;

the *Land Settlement (Development Leases) Act, 1949-1969*;

the *Land Tax Act, 1936-1969*;

the *Law of Property Act, 1936-1969*;

the *Local Government Act, 1934-1969*;

the *Pastoral Act, 1936-1969*;

the *Planning and Development Act, 1966-1969*;

the *Renmark Irrigation Trust Act, 1936-1969*;

the *Sewerage Act, 1929-1969*;

the *South-Eastern Drainage Act, 1931-1969*;

the *Water Conservation Act, 1936-1969*;

the *Waterworks Act, 1932-1969*.

(2) The Court shall have jurisdiction to hear and determine all actions, matters and proceedings in which compensation is to be assessed under and pursuant to the *Compulsory Acquisition of Land Act, 1925-1966*, (as amended from time to time) or under and pursuant to any Act passed in substitution for that Act (as it may be amended from time to time), whether or not that Act is expressly, or impliedly, to be read, or incorporated with another Act or Acts (with or without qualification or modification) and whether or not the action, matter or proceeding would, but for this subsection, have been heard or determined by any other court or by arbitrators, or in any other manner.

(3) The Court shall have such additional jurisdiction as may be conferred upon it by any Act or any regulation under an Act.

(4) The Court shall, in the exercise of its jurisdiction, have all the powers and authority of the Supreme Court of South Australia and a judgment or order of the Court shall be regarded as, and shall have the force and validity of, a judgment or order of the Supreme Court of South Australia.

(5) The Court shall have the full jurisdiction exercisable by a single judge of the Supreme Court, but that jurisdiction shall be exercised by the Court only in respect of any cause, matter or proceeding that is before the Court in pursuance of this Part, or any other Act or any regulation under an Act.

#### **Reference of matters involving question of valuation**

**62e.** (1) Where any judge is of the opinion that in any cause, pending or part-heard, in the Supreme Court, a question has arisen, or is likely to arise, (whether as a preliminary point or in the course of the hearing), as to the value of land, that judge may, on the application of a party to the cause, or of his own motion, refer the cause to the Court for hearing and determination.

(2) The Court shall hear and determine any cause referred to it under subsection (1) of this section.

#### **Appeals and cases stated**

**62f.** The provisions of sections 49 and 50 of this Act shall extend and apply to and in relation to the Land and Valuation Court and any judgment, order or direction thereof.

#### **Right of crown**

**62g.** The Crown shall be entitled to appear before the Court in any matter or proceeding in which the public interest, or any right or interest of the Crown, may be involved or affected.

#### **Rules of Court**

**62h.** (1) Rules of Court may be made under this Act by the judge upon whom the jurisdiction of the Court has been conferred to regulate the practice and procedure of the Court and to provide for any matters necessary or expedient for the purposes of this Part.

(2) The power to make rules under this section includes power to make rules in respect of any jurisdiction conferred on the Court by this or any other Act, whenever passed.

(3) The rules may confer or impose on the registrar such powers, authorities, functions and duties in relation to the administration of the business of the court as may be necessary or expedient for the purposes of this Part.

(3a) A master may exercise such jurisdiction of the court as may be conferred on him by the rules.

(3b) Subject to the rules, an appeal from a judgment, order, direction or decision of a master made in the exercise of a jurisdiction conferred by the rules shall lie to a judge upon whom the jurisdiction of the court has been conferred.

(4) Where provisions in respect of the practice or procedure of the Court are contained in this, or any other Act, or in general orders or rules made under the authority of this or any other Act, rules of Court may be made under this section for modifying those provisions to any extent that may be necessary or expedient.

(5) All rules of Court made in pursuance of this section—

- (a) shall be published in the *Gazette*;
- (b) shall be laid before both Houses of Parliament within fourteen days after that publication if Parliament is then in session, and if not, within fourteen days after the commencement of the next session of Parliament;

and

- (c) shall, subject to disallowance in accordance with this section, have, as from the date of publication in the *Gazette*, or from any later date specified in the rules, the force of law and be judicially noticed and conclusively deemed to be valid.

(6) If either House of Parliament within fourteen sitting days (whether or not those sitting days occur in the same Session or Parliament as that in which the rules were laid before that House) after the rules are laid before it passes a resolution disallowing all or any of those rules, the rules disallowed shall cease to have any effect, but that disallowance shall not affect the validity, or cure the invalidity, of anything done in the meantime.

#### **Sittings of Court**

**62i.** The Court shall sit at such times and places as the judge exercising the jurisdiction of the Court directs.

## PART IV

## PROCEDURE GENERALLY

**Criminal procedure**

63. (1) The practice and procedure in all criminal causes and matters, including the practice and procedure upon appeal, except as expressly altered by this Act, shall be the same as the practice and procedure in similar causes and matters before the passing of this Act.

(2) Proceedings in *quo warranto* shall be deemed to be civil proceedings whether for the purposes of appeal or otherwise.

**Saving of existing procedure**

64. Save as is otherwise provided in this or any other Act, the practice and procedure of the court shall be as prescribed in the existing rules, and in all matters, for which no other provision is made, all forms and methods of procedure, which, under or by virtue of any law, general order or rules whatsoever, were formerly in force in the court, may continue to be used in the like cases and for the like purposes:

Provided that nothing in this section shall be deemed to affect the power of the judges to make rules of court repealing or altering the existing rules.

*Inquiries and Trials by Referees and Arbitrators***Reference for report**

65. (1) Subject to rules of court and to any right to have particular cases tried with a jury, the court or a judge may refer to an official or special referee for inquiry or report any question arising in any cause or matter, other than a criminal proceeding by the Crown.

(2) The report of an official or special referee may be adopted wholly or partially by the court or a judge, and if so adopted may be enforced as a judgment or order to the same effect.

**Reference for trial**

66. In any cause or matter, other than a criminal proceeding by the Crown—

- (a) if all the parties interested who are not under disability consent; or
- (b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the court or a judge conveniently be made by the court or conducted through its ordinary officers; or
- (c) if the question in dispute consists wholly or in part of matters of account,

the court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator agreed on by the parties, or before an official referee or officer of the court.

**Powers and remuneration of referees and arbitrators**

67. (1) In all cases of reference to an official or special referee or arbitrator, the official or special referee or arbitrator shall be deemed to be an officer of the court, and subject to rules of court shall have such authority, and conduct the reference in such manner, as the court or a judge may direct.

(2) The report or award of an official or special referee or arbitrator on any reference shall, unless set aside by the court or a judge, be equivalent to the verdict of a jury.

(3) The remuneration to be paid to a special referee or arbitrator to whom any matter is referred under an order of the court or a judge shall be determined by the court or a judge.

#### **Powers of court in references**

68. The court or a judge shall, in relation to references, have all the powers that are conferred on a court by the *Commercial Arbitration Act, 1986*, in relation to the appointment of arbitrators and the conduct of proceedings under that Act.

#### **Statement of case pending arbitration**

69. A referee or arbitrator may at any stage of the proceedings under a reference, and shall, if so directed by the court or a judge, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference.

#### **Power of court to impose terms as to costs, etc.**

70. An order made under the provisions of this Part of this Act relating to inquiries and trials by referees and arbitrators may be made on such terms as to costs or otherwise as the court or judge thinks fit.

### *Assessors*

#### **Assessors**

71. (1) Subject to any rules of court, and to the right of having cases submitted to the verdict of a jury in accordance with the *Juries Act, 1927*, the court may in any cause or matter before the court, in which it thinks it expedient so to do, call in the aid of one or more assessors, specially qualified, and try and hear such cause or matter wholly or partially, with the assistance of such assessors.

(2) The remuneration, if any, to be paid to such assessors shall be determined by the court, and the sum so fixed shall be paid by the sheriff in the same manner as jury fees are paid.

### *Rules of Court*

#### **Rules of Court**

72. (1) Rules of court may be made under this Act by any three or more judges of the Supreme Court for any of the following purposes:—

- I. For regulating the sittings of the court, and of the judges sitting in chambers and the vacations to be observed by the court and the officers of the court:
- II. For regulating the pleading practice and procedure of the court in any jurisdiction, and the initiating of actions and proceedings therein:
- III. For regulating and directing the means by which particular facts may be proved, and the mode in which evidence thereof may be given in any proceedings, or at any stage of the proceedings, and in relation to the purposes aforesaid for allowing examinations, affidavits, or depositions to be read at any trial or hearing, or in any cause or matter, or allowing secondary evidence to be given, and for providing that the court or a judge may give special directions or make special orders in relation to any of the matters aforesaid:

IV. For empowering a master to do any such thing and to transact any such business and to exercise any such authority and jurisdiction in respect of the same, including the jurisdiction to refer a bill of costs for taxation, or to refer any other matter to a master, as by virtue of any statute, custom, or rule or practice of court may be done, transacted, or exercised by a judge:

IVa. For regulating any matters relating to the business, authority and jurisdiction that may be transacted or exercised by the master:

V. For regulating the duties of the officers of the court and the costs of proceedings therein (including the costs to be allowed to practitioners of the court in respect of business transacted in the court or the offices thereof), and the conduct of any business coming within the cognizance of the court, for which provision is not expressly made by any Act:

VI. For conferring on the registrar or other member of the non-judicial staff of the court the power to tax costs:

VIa. For regulating the admission of barristers, solicitors, attorneys, and proctors of the court:

VII. And generally for any purpose mentioned in this Act or for carrying its provisions into effect.

(2) The power to make rules conferred by this section shall be deemed to include power to make rules in respect of any jurisdiction conferred upon the court or a judge thereof by any Act whenever passed.

(3) Where any provisions in respect of the practice or procedure of the court are contained in this or any other Act of Parliament, or in general orders or rules made under the authority of any Act, rules of court may be made for modifying such provision to any extent that may be deemed necessary.

(4) All rules of court made in pursuance of this section—

(a) shall be published in the *Gazette*:

(b) shall be laid before both Houses of Parliament within fourteen days after that publication if Parliament is in Session, and if not then within fourteen days after the commencement of the next Session of Parliament:

(c) subject to the power of disallowance provided in this section, shall, as from the date of publication in the *Gazette*, or from any later date mentioned in the rules, have the force of law, be judicially noticed and be conclusively deemed to be valid.

If either House of Parliament within one month after any rules of court are laid before it passes a resolution disallowing all or any of those rules, the rules disallowed shall cease to have effect but without affecting the validity or curing the invalidity of anything done or the omission of anything in the meantime.

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PART VI  
OFFICERS OF THE COURT

*The Registrar*

**The registrar**

82. (1) There shall be a registrar of the court.

(2) No registrar shall be appointed, dismissed or reduced in status, nor shall the office of registrar be abolished, except upon the recommendation, or with the concurrence, of the Chief Justice.

(3) The registrar shall be the principal administrative officer of the court and shall have such functions and duties as are assigned to him—

(a) by this Act or any other Act or by rules of court under this Act or any other Act;

or

(b) by the Chief Justice.

(4) The registrar shall, in relation to the performance and discharge of his functions and duties (so far as they relate to the business of the court), be subject to the control and direction of the Chief Justice.

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*Tipstaves*

**Appointment of tipstaves**

106. (1) The Governor may, on the recommendation of the Chief Justice, appoint such tipstaves of the court as are necessary.

(2) The person holding office as a messenger of the court immediately before the commencement of the *Supreme Court Act Amendment Act, 1974*, shall, upon the commencement of that Act, be deemed to have been appointed as a Tipstaff under this section.

**Duty of tipstaves**

107. The tipstaves of the court shall be in attendance on the sittings of the court, and any tipstaff may, without warrant, apprehend and lodge in prison all persons who, by the court or any judge, are ordered to be apprehended or committed into prison for contempt of court or otherwise.

**Other duties**

108. Every tipstaff shall perform all such other duties as from time to time are by the court or a judge or rules of court directed to be performed by him.

*Further Provisions as to Officers*

**Appointment of officers**

109. (1) The court shall have such other officers as are necessary for the administration of justice therein, and for the due execution of the judgments, decrees, orders, and processes thereof.

(2) Such officers shall except as provided by subsection (3) of this section be appointed by the Governor on the recommendation of the Chief Justice.

(3) The associates to the judges shall be appointed, and may be removed from office, by the Chief Justice.

#### **Duties of officers**

**110.** Subject to this Act, the business to be performed in the court, or in the chambers of any judge, other than that performed by the judges, shall be distributed among the officers of the court, in such manner as is directed by rules of court, or, in any cases not provided for by rules of court, as the court or any judge thereof may direct, and such officers shall perform such duties in relation to such business as is directed by this Act or by rules of court, or by such court or any judge thereof; and, subject to this Act and such rules of court, all such officers respectively shall continue to perform the same duties as nearly as may be in the same manner as if this Act had not passed.

#### **Administrative and ancillary staff**

**110a.** (1) The Court's administrative and ancillary staff consists of—

(a) the registrar;

(b) persons appointed to the non-judicial staff of the Court under this Act;

and

(c) any other persons appointed to the non-judicial staff of the Court.

(2) The Court's administrative and ancillary staff will be employed under the *Government Management and Employment Act 1985*.

#### **Responsibilities of non-judicial staff**

**110b.** A member of the Court's administrative or ancillary staff is responsible to the Chief Justice (through any properly constituted administrative superior) for the proper and efficient discharge of his or her duties.

## PART VII

## MISCELLANEOUS PROVISIONS

**Rules as to division of loss upon collision at sea**

111. (1) Where, by fault of two or more vessels, damage or loss is caused to one or more vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault:

Provided that, if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

(2) Nothing in this section shall operate so as to render any vessel liable for any loss or damage to which her fault has not contributed.

(3) Nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law or as affecting the right of any person to limit his liability in manner provided by law.

(4) For the purposes of this section, the expression "freight" includes passage money and hire, and references to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses consequent upon that fault, recoverable at law by way of damages.

**Damages for personal injuries**

112. (1) Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several.

(2) Nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

**Right of contribution**

113. (1) Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel, and any other vessel or vessels, and a proportion of the damages is recovered against the owner of one of the vessels which exceeds the proportion in which she was in fault, he may recover by way of contribution the amount of the excess from the owners of the other vessels to the extent to which those vessels were respectively in fault:

Provided that no amount shall be so recovered which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2) In addition to any other remedy provided by law, the persons entitled to any contribution as provided by subsection (1) of this section shall, for the purpose of recovering the contribution, have subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

**Interest on judgement debts**

114. (1) All money, including costs, payable under any judgment or order shall bear interest at the rate from time to time prescribed by the rules of court.

(2) The interest shall be computed from the following times:—

(a) in the case of money other than taxed costs, from the time specified in the judgment or order, and if no time is so specified from the date of the judgment or order:

(b) in the case of taxed costs, from the date of the certificate of the taxing officer by whom the costs were taxed or an earlier date specified by the taxing officer in the certificate.

\* \* \* \* \*

**Orders to bring prisoners for examination**

117. (1) Any sheriff, gaoler, or other officer, having the custody of any prisoner, whose evidence is required in any action, trial, or proceeding, civil or criminal, shall upon receiving an order of a judge for that purpose, take such prisoner for examination before the court, or any judge thereof, or before any official or special referee or arbitrator or other person appointed to take any examination.

(2) Such an order may be obtained upon affidavit by the party requiring the attendance of such prisoner, and shall set forth the time when and place where such prisoner is to be taken for the purpose of the examination.

(3) The officer so ordered as aforesaid shall be entitled to be paid the like travelling and other expenses, and compensation for loss of time, as upon attendance at a trial.

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*Suitors' Funds*

**Suitors' funds to vest in master**

119. All suitors' funds shall be vested in the registrar on behalf of the court and shall be dealt with by him in accordance with this Act and the rules of court, and any order of the court or a judge.

**Securities in court**

120. All securities standing in court or at any time deposited in court shall be held by the registrar in trust to apply the same in accordance with law.

**Liability of Treasurer for default of master**

121. (1) The Treasurer shall be liable to make good to the suitors of the court all suitors' funds and securities in court, and for that purpose may by authority of this Act, and without any further appropriation, make any necessary payments out of the general revenue of the State.

(2) If the Chief Justice certifies to the Treasurer in writing that the registrar has failed to pay any money in court or to transfer or deliver any securities in court required by law or by any order of the court to be paid, transferred, or delivered by him, or has been guilty of any default with respect to any such money or securities, the Treasurer shall pay out of the general revenue to such persons as are named by the Chief Justice in the certificate,

such sums as the Chief Justice certifies in writing to be required for the purpose of paying the money so required to be paid or of replacing the securities so required to be transferred or delivered, or of making good such default.

#### **Banking and investment of suitors' funds**

122. (1) All suitors' funds shall, as soon as practicable after payment into, or deposit in court, be paid into the Treasury or a bank carrying on general banking business in Adelaide.

(2) Such funds or such part thereof as the rules direct shall be invested in such manner and at such times as the rules of court prescribe.

(3) The interest or other income from such investment shall be dealt with as prescribed by rules of court.

(4) Until rules of court are made under this section the law and practice relating to the deposit, payment, delivery and transfer in into and out of court of suitors' funds and securities which belong to suitors, shall continue as at the commencement of this Act.

#### **Investments made under order of the court**

123. Any money in court which under the rules of court or under the order of the court is required to be laid out in any particular investment shall be so laid out notwithstanding anything in this Act.

#### **Validity of payments, etc., pursuant to rules of court**

124. All acts done by the registrar with reference to funds in court pursuant to and in accordance with rules of court shall be as valid and effectual as if they had been done in pursuance of an order of the court.

#### **Remittances by post**

125. Where by rules of court the registrar is authorized to make payments of money to persons entitled thereto upon their request by transmitting to them by post crossed cheques or other documents intended to enable them to obtain payment of the sums expressed therein, the posting of a letter containing the cheque or document and addressed to the person entitled thereto at the address given by him in his request shall, as respects the liability of the registrar and of the Treasurer respectively, be equivalent to the delivery of the cheque or document to that person himself.

#### **Power to appoint deputies**

126. In sections 120 to 126, inclusive, the term registrar shall not include an acting registrar, but the registrar may do any act, sign or execute any instrument and exercise any authority required or authorized to be done, signed, executed, or exercised by him in relation to suitors' funds, by a deputy of the registrar appointed by the Chief Justice.

#### **Rules of Court**

127. The judges may make rules of court in accordance with the provisions for making rules of court contained in this Act for regulating:—

- (a) the deposit, payment, delivery and transfer in, into, and out of court of money and securities which belong to suitors or are otherwise capable of being deposited in or paid or transferred into court or under the custody of the court;
- (b) the investment of and other dealings with money and securities in court;
- (c) the disposal of the interest or other income from such investments;

- (d) the execution of the orders of the court and the powers and duties of the registrar with reference to such money and securities; and
- (e) any other matters incidental to or connected with the matters previously mentioned in this section.

**Payment to the Treasurer of unclaimed suitors' funds**

128. (1) In the month of July in every year the registrar shall pay to the Treasurer, as part of the general revenue of the State, all suitors' funds which, on the first day of that month, have been unclaimed for the period of six years next preceding.

(2) Such moneys shall not be afterwards claimable from the Treasurer unless the court otherwise orders.

**Party subsequently claiming may petition the Supreme Court, etc.**

129. (1) If at any time after any such money has been so paid to the Treasurer, any person applies to the court, by summons, for the payment to him of that money or any part thereof, and the court is satisfied upon affidavit or other sufficient evidence adduced that the applicant is entitled to the whole or any part of the money claimed by him, the court shall make an order for payment of the sum to which the applicant is entitled, with or without such additional amount as would have accrued (whether as interest or otherwise) had that sum been retained by the court from the time when it was paid to the Treasurer to the time of the court order.

(2) On any such order being served on the Treasurer he shall issue and pay the money mentioned in the order to the persons to whom it is payable by virtue of the order, and the receipt of any person to whom any such money is so paid shall be a full and valid discharge for the sum stated in the receipt to have been received.

**Power to prescribe and provide for payment of court fees**

130. (1) The Governor may, by regulation, prescribe and provide for the payment of fees in respect of proceedings in the court, or any step in such proceedings.

(2) Any rules made under section 72(1)VI and in force immediately before the commencement of the *Supreme Court Act Amendment Act, 1983*, shall be deemed to be regulations made under this section.

(3) Any rules (being rules prescribing or providing for the payment of fees in respect of proceedings in the testamentary causes jurisdiction of the court) made under section 122(1)(a) of the *Administration and Probate Act, 1919*, and in force immediately before the commencement of the *Supreme Court Act Amendment Act (No. 2), 1983*, shall be deemed to be regulations made under this section.

**Accessibility of evidence, etc.**

131. (1) Subject to subsection (2), the Court must, on application by any member of the public and payment of the appropriate fee (if any) fixed by the regulations make available for inspection by the applicant—

- (a) a transcript of evidence taken by the Court in any proceedings;
- (b) any documentary material admitted into evidence in any proceedings;
- (c) any judgment or order given or made by the Court.

(2) Evidentiary material will not be made available for inspection under this section if—

- (a) the evidence was not taken or received in open court;

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- (b) the Court has suppressed it from publication;  
or
- (c) the Court has determined that it is not to be available for inspection under this section.
- (3) On payment of the appropriate fee fixed under the regulations, the Court must provide a copy of any material that is available for inspection under this section.

## Supreme Court Act, 1935

SCHEDULE  
SUPREME COURT ACT, 1935  
ACTS REPEALED

Number and Year of Act	Short or Long Title of Act	Extent of Repeal
15 of 1842	An Act to regulate the Appointment and the Duties of the Sheriff of the Province of South Australia	The whole
3 of 1843	An Ordinance to amend an Ordinance intituled "An Act to regulate the Appointment and Duties of the Sheriff of the Province of South Australia	The whole
9 of 1845	An Ordinance for adopting in South Australia certain parts of an Act made and passed in the Imperial Parliament which was held in the First and Second Years of the Reign of Her present Majesty intituled "An Act for abolishing Arrest on mesne Process in Civil Actions, except in certain cases; for extending the remedies of Creditors against the property of Debtors; and for amending the laws for the relief of Insolvent Debtors in England	The whole
14 of 1845	An Ordinance to provide for the performance of certain matters in the Supreme Court during the occasional absence of the Judge at a distance from Adelaide	The whole
20 of 1852	An Act to enable the Sheriff to appoint a Deputy to perform the Duties of his Office, and to abolish the Poundage now payable on taking the body in execution	The whole
5 of 1853	Supreme Court Procedure Amendment Act	The whole except secs. 162-172, inclusive.
6 of 1853	An Act to give relief to Persons having Claims against the Local Government of South Australia by authorizing them to try the validity of such Claims in a Court of Law or Equity	The whole
24 of 1855-6	The Supreme Court Procedure Act, 1855	The whole
30 of 1855-6	An Act to facilitate Actions against Persons absent from the Colony and against Persons sued as Joint Contractors	The whole
31 of 1855-6	An Act to consolidate the several ordinances relating to the establishment of the Supreme Court of the Province of South Australia	The whole
4 of 1858	The Summary Procedure on Bills of Exchange Act, 1858	The whole
5 of 1858	Supreme Court Procedure Further Amendment Act of 1858	The whole
13 of 1858	The Third Judge and District Courts Act	The whole
23 of 1859	An Act to provide for the appointment of Commissioners to take Affidavits as well in South Australia as elsewhere, to be made use of in the Supreme Court of South Australia and for the more easy Administration of Oaths to persons appointed to act as Justices of the Peace in South Australia	The whole
5 of 1861	An Act to amend the Laws regulating the Court of Appeals of the Province of South Australia, and to extend the Powers thereof	The whole
3 of 1862	The Common Law Procedure Act, 1862	The whole, except sections 1, 2, and 3
15 of 1865	The Court of Appeals Amendment Act, 1865	The whole
12 of 1865-6	An Act to provide for the more speedy administration of justice by means of the Supreme Court	The whole
2 of 1866	An Act to protect certain persons from actions by reason of their being elected to Parliament while members of the Court of Appeals	The whole
7 of 1866	An Act to regulate and amend the Practice and Procedure of the Supreme Court of the Province of South Australia in its Revenue Jurisdiction	The whole, except sections 15 and 26
20 of 1866-7	The Equity Act 1866	The whole, except sections 150 and 151
8 of 1867	Supreme Court Act, 1867	The whole
6 of 1868-9	An Act to repeal Act No. 11 of 1866-7 intituled "An Act to amend The Third Judge and District Courts Act, and for other purposes" and to make further provision for the trial of Causes, and trial of Offences at places remote from the Supreme Court	The whole
7 of 1868-9	An Act to amend the "Supreme Court Act, 1867"	The whole
23 of 1870-71	An Act to fix the tenure of office of the Primary Judge in Equity, and to provide for the performance of the duties of the office of Primary Judge in Equity in certain cases	The whole
28 of 1873	An Act to increase the salaries of the Judges of the Supreme Court, and of certain officers of the Civil Service of the Province of South Australia	The whole
116 of 1878	Supreme Court Act, 1878	The whole, except paragraphs I - VII, inclusive, of section 6
120 of 1878	An Act to amend "The Equity Act, 1866"	The whole
286 of 1833	An Act to amend "The Third Judge and District Courts Act" and the Act No. 6 of 1868-9	The whole
514 of 1891	The Suitors Unclaimed Funds Act, 1891	The whole

ACTS REPEALED—*continued*

Number and Year of Act	Short or Long Title of Act	Extent of Repeal
1358 of 1919	Fourth Judge Act, 1919	The whole
1564 of 1923	Acts Interpretation Act Amendment Act, 1923	The whole
1739 of 1926	Supreme Court Act Amendment Act, 1926	The whole
1761 of 1926	Fifth Judge Act, 1926	The whole
1864 of 1928	Supreme Court Act, 1928	The whole

## APPENDIX

## Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 10 of The Public General Acts of South Australia 1837-1975 at page 718.

Legislative history since 3 February 1976 (entries in bold type indicate amendments incorporated since the last reprint):

Section 2:	amended by 34, 1981, s. 5
Section 5:	redesignated as s. 5(1) by 34, 1981, s. 6(e) definition of "jurisdiction" substituted by 34, 1981, s. 6(a) definition of "master" substituted by 34, 1981, s. 6(b) definition of "registrar" inserted by 34, 1981, s. 6(c) definition of "suits' funds" substituted by 34, 1981, s. 6(d)
Section 5(2):	inserted by 34, 1981, s. 6(e)
Section 7:	substituted by 34, 1981, s. 7
Section 7(4):	<b>inserted by 69, 1991, s. 9(a)</b>
Section 8(3):	inserted by 34, 1981, s. 8
Section 8(4):	inserted by 95, 1988, Sched. 1
Section 9:	substituted by 34, 1981, s. 9
Section 11:	substituted by 34, 1981, s. 10
Section 11(1):	substituted by 70, 1985, s. 3(a)
Section 11(1a):	inserted by 70, 1985, s. 3(a); substituted by 95, 1988, Sched. 1
Section 11(1b):	inserted by 95, 1988, Sched. 1
Section 11(4):	repealed by 70, 1985, s. 3(b)
Section 11(6):	inserted by 70, 1985, s. 3(c)
Section 12:	substituted by 34, 1981, s. 11; 92, 1982, s. 3(1); amended by 59, 1985, s. 21; substituted by 95, 1988, Sched. 1
Section 13a:	amended by 53, 1980, s. 2; substituted by 34, 1981, s. 12
Section 13b:	inserted by 34, 1981, s. 12
Section 13h(1):	amended by 82, 1982, s. 2(a)
Section 13h(2):	amended by 82, 1982, s. 2(b), (c)
Section 13h(3) - (5):	amended by 82, 1982, s. 2(a)
Section 13h(6):	inserted by 82, 1982, s. 2(d)
Section 14:	amended by 34, 1981, s. 13
Section 15(1):	amended by 34, 1981, s. 14
Section 33:	<b>repealed by 67, 1978, s. 3</b>
Section 35:	<b>repealed by 69, 1991, s. 9(b)</b>
Section 37:	repealed by 56, 1984, s. 8
Section 39:	substituted by 80, 1987, s. 2
Section 40(2):	<b>inserted by 69, 1991, s. 9(c)</b>
Section 47:	amended by 34, 1981, s. 15
Section 48(3):	inserted by 34, 1981, s. 16
Section 50:	redesignated as s. 50(1) by 34, 1981, s. 17
Section 50(2):	inserted by 34, 1981, s. 17
Section 54(2):	amended by 6, 1985, s. 8(a)
Section 59(1):	amended by 6, 1985, s. 8(b)
Section 59(2):	amended by 6, 1985, s. 8(c)
Section 61:	repealed by 6, 1985, s. 8(d)
Section 62h(3) and (3a):	substituted by 34, 1981, s. 18
Section 62h(3b):	inserted by 34, 1981, s. 18
Section 68:	substituted by 102, 1986, s. 3(1) (Sched.)
Section 72(1):	amended by 34, 1981, s. 19; 2, 1983, s. 2; <b>69, 1991, s. 9(d)</b>
Part VI heading:	substituted by 34, 1981, s. 20
Heading preceding section 82:	substituted by 34, 1981, s. 21
Section 82:	substituted by 34, 1981, s. 21
Section 82(2):	<b>amended by 69, 1991, s. 9(e)</b>
Section 83:	repealed by 34, 1981, s. 21
Heading preceding section 84:	<b>repealed by 82, 1978, s. 3(1)</b>
Section 84:	amended by 34, 1981, s. 22; <b>repealed by 82, 1978, s. 3(1)</b>
Sections 85 - 105:	<b>repealed by 82, 1978, s. 3(1)</b>
Section 106(1):	amended by 34, 1981, s. 23
Section 109(2):	amended by 34, 1981, s. 24
Sections 110a and 110b:	<b>inserted by 69, 1991, s. 9(f)</b>
Section 114(2):	<b>amended by 69, 1991, s. 9(g)</b>
Sections 115 - 116:	<b>repealed by 67, 1978, s. 4</b>
Section 118:	repealed by 56, 1984, s. 8
Section 118a:	<b>repealed by 49, 1991, Sched. 2</b>
Section 119:	amended by 34, 1981, s. 25(a)
Section 120:	amended by 34, 1981, s. 25(b)
Section 121(2):	amended by 34, 1981, s. 25(c)
Section 124:	amended by 34, 1981, s. 25(d)
Section 125:	amended by 34, 1981, s. 25(e)
Section 126:	amended by 34, 1981, s. 25(f), (g)
Section 127:	amended by 34, 1981, s. 25(h)
Section 128(1):	amended by 34, 1981, s. 25(i)
Section 129(1):	amended by 33, 1991, s. 15
Section 130:	inserted by 2, 1983, s. 3
Section 130(3):	inserted by 73, 1983, s. 2
Section 131:	<b>inserted by 69, 1991, s. 9(h)</b>