

SUPREME COURT ACT, 1935-1975

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THE SCHEDULE

SUPREME COURT ACT, 1935-1975

being

Supreme Court Act, 1935, No. 2253 of 1935 [Assented to 21st December, 1935]¹;

as amended by

Statute Law Revision Act, 1936, No. 2293 of 1936 [Assented to 8th October, 1936];
 Supreme Court Act Amendment Act, 1944, No. 38 of 1944 [Assented to 14th December, 1944];
 Supreme Court Act Amendment Act, 1947, No. 33 of 1947 [Assented to 4th December, 1947];
 Supreme Court Act Amendment Act, 1951, No. 6 of 1951 [Assented to 6th September, 1951]²;
 Supreme Court Act Amendment Act, 1952, No. 13 of 1952 [Assented to 16th October, 1952];
 Supreme Court Act Amendment Act, 1953, No. 45 of 1953 [Assented to 17th December, 1953];
 Statutes Amendment (Public Salaries) Act, 1955, No. 3 of 1955 [Assented to 23rd June, 1955]³;
 Supreme Court Act Amendment Act, 1955, No. 12 of 1955 [Assented to 30th September, 1955];
 Supreme Court Act Amendment Act, 1958, No. 41 of 1958 [Assented to 27th November, 1958]⁴;
 Supreme Court Act Amendment Act, 1960, No. 67 of 1960 [Assented to 24th November, 1960];
 Supreme Court Act Amendment Act (No. 2), 1960, No. 71 of 1960 [Assented to 1st December, 1960];
 Supreme Court Act Amendment Act, 1962, No. 52 of 1962 [Assented to 15th November, 1962];
 Supreme Court Act Amendment Act, 1963, No. 29 of 1963 [Assented to 21st November, 1963];
 Supreme Court Act Amendment Act, 1965, No. 9 of 1965 [Assented to 23rd September, 1965];
 Supreme Court Act Amendment Act (No. 2), 1965, No. 49 of 1965 [Assented to 9th December, 1965];
 Supreme Court Act Amendment Act (No. 1), 1966, No. 85 of 1966 [Assented to 1st December, 1966]⁵;
 Supreme Court Act Amendment Act, 1967, No. 9 of 1967 [Assented to 30th March, 1967];
 Supreme Court Act Amendment Act (No. 2), 1966-1967, No. 21 of 1967 [Assented to 13th April, 1967]⁶;
 Supreme Court Act Amendment Act, 1969, No. 10 of 1969 [Assented to 27th February, 1969];
 Supreme Court Act Amendment Act (No. 2), 1969, No. 22 of 1969 [Assented to 26th June, 1969];
 Supreme Court Act Amendment Act (No. 3), 1969, No. 62 of 1969 [Assented to 4th December, 1969]⁷;
 Supreme Court Act Amendment Act, 1970, No. 14 of 1970 [Assented to 17th September, 1970];
 Supreme Court Act Amendment Act (No. 2), 1970, No. 16 of 1970 [Assented to 17th September, 1970];
 Supreme Court Act Amendment Act (No. 3), 1970, No. 58 of 1970 [Assented to 10th December, 1970]⁸;
 Judges' Pensions Act, 1971, No. 30 of 1971 [Assented to 22nd April, 1971]⁹;
 Supreme Court Act Amendment Act, 1971, No. 49 of 1971 [Assented to 26th August, 1971];
 Statutes Amendment (Judges' Salaries) Act, 1972, No. 39 of 1972 [Assented to 13th April, 1972];
 Supreme Court Act Amendment Act, 1972, No. 40 of 1972 [Assented to 13th April, 1972]¹⁰;
 Crown Proceedings Act, 1972, No. 41 of 1972 [Assented to 20th April, 1972]¹¹;
 Statutes Amendment (Judges' Salaries) Act, 1974, No. 8 of 1974 [Assented to 21st March, 1974];
 Supreme Court Act Amendment Act, 1974, No. 12 of 1974 [Assented to 28th March, 1974]¹²;
 Statutes Amendment (Judges' Salaries) Act, 1975, No. 18 of 1975 [Assented to 27th March, 1975];

and

Statute Law Revision Act, 1975, No. 24 of 1975 [Assented to 27th March, 1975].

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

¹ This Act came into operation on 1st November, 1937: *Gaz.* 25th March, 1937, p. 646.

² By s. 4 of this Act it is provided that the Act is to be deemed to have come into operation on 1st July, 1951.

³ For date of coming into operation of the relevant amendments made by this Act, see s. 16 (2) thereof.

⁴ For date of coming into force of rates of salary as altered by this Act, see s. 4 thereof.

⁵ Came into operation on 12th January, 1967: *Gaz.* 12th January, 1967, p. 51.

⁶ Came into operation on 22nd June, 1967: *Gaz.* 22nd June, 1967, p. 1850.

⁷ Came into operation on 21st May, 1970: *Gaz.* 21st May, 1970, p. 1842.

⁸ Came into operation on 1st January, 1971: *Gaz.* 10th December, 1970, p. 2646.

⁹ Came into operation on 1st May, 1971: *Gaz.* 22nd April, 1971, p. 2186.

¹⁰ Came into operation on 9th November, 1972: *Gaz.* 9th November, 1972, p. 2254.

¹¹ Came into operation on 14th December, 1972: *Gaz.* 14th December, 1972, p. 2630.

¹² Came into operation on 20th June, 1974: *Gaz.* 20th June, 1974, p. 2450.

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.
Citation
amended by 24,
1975, s. 3 (1)
(2nd Sched.).

1. This Act may be cited as the "Supreme Court Act, 1935-1975", and shall come into operation on a day to be fixed by the Governor by proclamation¹.

Division of Act
into Parts.
S. 2 amended by
29, 1963, s. 3;
62, 1969, s. 3.

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 V²—Proceedings by and against the Crown.

PART VI—The Master and 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
- (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.

¹ The Supreme Court Act, 1935 (Act No. 2253 of 1935) came into operation on 1st November, 1937: *Gaz.* 25th March, 1937, p. 646.

² Part V (except s. 79a) repealed by Act No. 41 of 1972, s. 18. See also s. 118a.

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

Interpretation.
116, 1878, s. 39.
1358, 1919, s. 7.

“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” includes every power and authority vested in, or capable of being exercised by, all or any one or more of the judges whether sitting in court or in chambers or elsewhere, when acting as judges or a judge, in pursuance of any enactment, law, or custom, and also any ministerial powers, duties, and authorities incident to any part of the jurisdiction:

“master” includes deputy master:

“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”:

“rules of court” includes forms:

“suit” includes action:

“suits’ funds” means all money which is for the time being in the custody or charge of the court or any judge or the master and has been received by them or him, by virtue of their or his offices or

office, for or on account of, or to the use or credit of, any person in any cause or matter, or in exercise of the powers conferred on them or him by any enactment at any time in force and all interest and income accrued whether before or after the passing of this Act from the investment of any such money.

PART I

PART I

CONSTITUTION OF THE SUPREME COURT

Continuance of
Supreme Court.
31, 1855-6, s. 1.

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.

Judges of the
Supreme Court.
31, 1855-6, s. 1.
13, 1858, s. 1.
1358, 1919, s. 3.
1761, 1926, s. 3.
Cf. U.K. 15 and
16 Geo. 5 c. 49,
s. 2.
Subsec. (1)
amended by
13, 1952, s. 3;
9, 1965, s. 3;
62, 1969, s. 4;
40, 1972, s. 3.

7. (1) The court shall be constituted of the following judges, that is to say, the Chief Justice and the puisne judges 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.

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

Qualification of
Judges.

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.

Appointment of
Judges.
31, 1855-6, s. 1.
S. 9 amended by
38, 1944, s. 3.

9. Whenever the office of a judge of the court is vacant the Governor shall appoint a qualified person to hold that office, with the tenure prescribed by the Constitution Act, 1934¹.

Provided that a judge appointed after the passing of the Supreme Court Act Amendment Act, 1944, shall hold his office subject to the provisions of this Act as to retirement.

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.

¹ Now Constitution Act, 1934-1975.

11. (1) If any judge is absent on leave or is for any other reason unable for the time being fully to discharge the duties of his office the Governor may appoint a fit and proper person to act in the stead of that judge until he returns to the full execution of his duties or to act as a judge for such period as the Governor thinks fit.

Acting Judges.
31, 1855-6, s. 5.
Subsec. (1)
amended by
22, 1969,
s. 2 (a), (b), (c).

(2) Every person so appointed shall be an acting judge of the court and whilst holding office under this section shall have the same powers and jurisdiction as a puisne judge of the court.

(3) The appointment of an acting judge shall not be determined by the death or resignation of the judge, in whose stead he has been appointed, but the Governor may, if he thinks fit, continue the appointment until a successor is appointed to the vacant office:

Provided that no acting judge shall be continued in that office under this subsection for longer than three months.

(4) If, in the Governor's opinion, it is desirable that an acting judge should continue in office after the time when his appointment would normally have determined in order that he may complete the hearing and determination of any proceedings which may be pending before him at that time or that he should continue in office after that time for any other reason that the Governor deems proper, the Governor may continue the appointment of the acting judge for such period as he deems proper.

Subsec. (4)
inserted by
12, 1955, s. 3;
amended by
22, 1969,
s. 2 (d).

12. (1) In this section—

“the prescribed minimum salary”—

(a) in relation to the Chief Justice, means the salary payable to the Chief Justice immediately before the commencement of the Statutes Amendment (Judges' Salaries) Act, 1975, or the salary payable to the person last appointed Chief Justice before the time in relation to which the expression is used, whichever salary is the higher;

and

(b) in relation to a puisne Judge, means the salary payable to a puisne Judge immediately before the commencement of the Statutes Amendment (Judges' Salaries) Act, 1975, or the salary payable to the person last appointed a puisne judge before the time in relation to which the expression is used, whichever salary is the higher.

Salaries of
Judges.
S. 12 amended
by 33, 1947,
s. 3; 6, 1951,
s. 3; 3, 1955,
s. 13; 41, 1958,
s. 3; 71, 1960,
s. 3; substituted
by 29, 1963,
s. 4; 49, 1965,
s. 3; 85, 1966,
s. 4; amended by
10, 1969, s. 2;
22, 1969, s. 3;
16, 1970, s. 2;
39, 1972, s. 4; 8,
1974, s. 4;
substituted by
18, 1975, s. 4.

(2) Subject to this section, the salary of the Chief Justice and the salary of every puisne judge shall be such salary as is respectively from time to time determined by the Governor.

(3) Subsection (2) of this section shall not authorize or empower the Governor to determine a salary in respect of the Chief Justice or a puisne judge being a salary less than the prescribed minimum salary.

(4) A determination made under subsection (2) of this section may be expressed to apply and have effect from a day that occurs before the day on which the determination is made and any such determination shall apply and have effect according to its tenor.

(5) Until the first determination is made under subsection (2) of this section, the salary of the Chief Justice and the salary of every puisne judge shall be the salary payable to the Chief Justice or, as the case may be, a puisne

judge immediately before the commencement of the Statutes Amendment (Judges' Salaries) Act, 1975.

(6) The salaries payable pursuant to this section shall be payable out of the general revenue of the State which is hereby, and to the necessary extent, appropriated accordingly.

Salaries of
Judges, and
officers to be in
lieu of fees.
31, 1855-6, s. 4.

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.

Retiring age for
judges.
S. 13a enacted
by 38, 1944,
s. 4.

13a. (1) Every judge appointed after the passing of the Supreme Court Act Amendment Act, 1944, and every judge who holds office at the time of the passing of the Supreme Court Act Amendment Act, 1944, and elects to contribute for pension under this Act, shall retire on reaching the age of seventy years: Provided that a judge who ceases to hold office under this section on reaching the age of seventy years, may nevertheless, after reaching that age, complete the hearing and determination of any proceedings part heard by him before reaching that age, and for the purpose of such hearing and determination he shall be deemed to continue to be a judge.

(2) Section 74 of the Constitution Act, 1934¹, shall be read subject to this section.

S. 13b enacted
by 38, 1944,
s. 4; amended by
45, 1953, s. 3;
repealed by
30, 1971, s. 19.

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S. 13c enacted
by 38, 1944,
s. 4; amended by
45, 1953, s. 4;
repealed by
30, 1971, s. 19.

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S. 13d enacted
by 38, 1944,
s. 4; substituted
by 45, 1953,
s. 5; repealed by
30, 1971, s. 19.

* * * * *

S. 13e enacted
by 38, 1944,
s. 4; substituted
by 45, 1953,
s. 6; amended by
9, 1967, s. 3;
58, 1970,
s. 3 (a), (b);
repealed by
30, 1971, s. 19.

* * * * *

S. 13ea enacted
by 45, 1953,
s. 7; repealed by
30, 1971, s. 19.

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S. 13eb enacted
by 67, 1960,
s. 3; repealed by
30, 1971, s. 19.

* * * * *

S. 13ec enacted
by 58, 1970,
s. 4; repealed by
30, 1971, s. 19.

* * * * *

S. 13f enacted
by 38, 1944,
s. 4; repealed by
30, 1971, s. 19.

* * * * *

S. 13g enacted
by 38, 1944,
s. 4; repealed by
30, 1971, s. 19.

* * * * *

¹ Now Constitution Act, 1934-1975.

Leave on Retirement

Heading enacted
by
85, 1966, s. 5.

Long leave of
absence.
S. 13h enacted
by 38, 1944,
s. 4; substituted
by 33, 1947,
s. 4; repealed by
45, 1953, s. 8
and new s. 13h
enacted by
85, 1966, s. 5.

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

(2) Where a judge 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 judge's salary 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 and a payment under that subsection may be made before or after that retirement or resignation.

(4) If any judge 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 the amounts of salary which would have been payable to such judge himself if he had survived. If the judge 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 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 under this section, that judge may, at the commencement of such leave, be paid the total salary which would be payable to him during the currency of the leave.

14. A judge 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.

Certain
interests not to
disqualify.
U.K. 15 and 16
Geo. 5 c. 49,
s. 17.

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 chief officer of the court for the time being.

Seal of Court.
31, 1855-6, s. 6.

(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.
116, 1878, s. 34.

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

PART II

JURISDICTION AND POWERS OF THE COURT

Jurisdiction

General jurisdiction.
31, 1855-6,
ss. 7, 8, 15, 27,
20, 1866-7, s. 7.
7, 1866, s. 1.
Cf. U.K. 15 and
16 Geo. 5 c. 49,
s. 18.

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.
11, 1867, s. 6.
1367, 1919,
s. 20.
Cf. U.K. 15 and
16 Geo. 5 c. 49,
s. 20.

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.

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 exerciseable 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.

Matrimonial jurisdiction.
1946, 1929, s. 5.
Cf. U.K. 15 and 16 Geo. 5 c. 49, s. 21.

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.

Concurrent administration of law and equity.
116, 1878, s. 5.
U.K. 15 and 16 Geo. 5 c. 49, s. 36.

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.

Equities of plaintiff.
116, 1878, s. 5, I.
U.K. 15 and 16 Geo. 5 c. 49, s. 37.

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.

Equitable defences.
116, 1878, s. 5, II.

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

Counter-claims and third parties.
116, 1878, s. 5, III.
U.K. 15 & 16 Geo. 5 c. 49, s. 39.

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. 116, 1878, s. 5, IV. U.K. 15 & 16 Geo. 5 c. 49, s. 40.

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. 116, 1878, s. 5, V, and VI. U.K. 15 & 16 Geo. 5 c. 49, s. 41.

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. 116, 1878, s. 5, VII. U.K. 15 & 16 Geo. 5 c. 49, s. 42.

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. 116, 1878, s. 5, VIII. U.K. 15 & 16 Geo. 5 c. 49, s. 43.

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.

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.

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

116, 1878, s. 6, X., XI. U.K. 15 & 16 Geo. 5 c. 49, s. 44.

Miscellaneous Powers

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.

Court may make orders to have effect of mandamus or injunction, and may appoint receivers.

116, 1878, s. 6, VIII. U.K. 15 & 16 Geo. 5 c. 49, s. 45.

(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.

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.

Damages in certain cases. 20, 1866-7, s. 141.

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 direct payment to infant.

S. 30a enacted by 21, 1967, s. 4.

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.

Power to make interim assessment of damages.

S. 30b enacted by 21, 1967, s. 4.

(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, 1936-1959¹, 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, 1936-1959¹, 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

¹ Now Wrongs Act, 1936-1975.

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.
S. 30c enacted by 40, 1972, s. 4.

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—

Para. (a) substituted by 12, 1974, s. 3 (a).

(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.

Subsec. (3) substituted by 12, 1974, s. 3 (b).

(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;

Para. (ab) inserted by 12, 1974, s. 3 (c).

(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.

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.

Declaratory orders.
Cf. 20, 1866-7, s. 93.

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.

Court may order mortgage instead of sale in certain cases.
20, 1866-7, s. 149.

33. (1) Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract, or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions, if any, as are just, order that the conveyance, contract, or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court nominates for that purpose.

Execution of instruments by order of the court.
Cf. U.K. 15 & 16 Geo. 5 c. 49, s. 47.

(2) A conveyance, contract, document, or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.

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.

Court may direct sale of mortgaged property, &c.
20, 1866-7, s. 91.

35. (1) Where the plaintiff in any action in the court proves at any time before final judgment by evidence on oath, to the satisfaction of a judge—

Power to arrest debtors about to leave the State.
U.K. 32 & 33, Vict. c. 62, s. 6.
9, 1845, s. 2.

(a) that the plaintiff has a good cause of action against the defendant to the amount of one hundred dollars¹ or more; and

(b) that there is probable cause for believing that the defendant is about to quit the State unless he is apprehended; and

¹ Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

(c) that the absence of the defendant from the State will materially prejudice the plaintiff in the prosecution of his action,

the judge may in the manner prescribed by rules of court order the defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the action, that he will not go out of the State without the leave of the court.

(2) Where the action is for a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from the State will materially prejudice the plaintiff in the prosecution of his action, and the security given (instead of being that the defendant will not go out of the State) shall be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison.

Appointment of
commissioners
for taking
affidavits.
23, 1859, s. 1.
116, 1887, s. 36.

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.

Power of
certain persons
to administer
oaths.
8, 1867, s. 10.

37. The court and every judge thereof and every master, registrar, and chief clerk thereof, and every person appointed to take any evidence, or make any inquiry on behalf of the court, in any cause or matter pending therein, or under or by virtue of any enactment relating to the particular case, shall have power to administer oaths.

Inspection of
property in legal
proceedings.
Cf. 20, 1866-7,
s. 70.

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.

Restriction on
institution of
vexatious
actions.
U.K. 15 & 16
Geo. 5 c. 49,
s. 51.

39. (1) If, on an application made by the Attorney-General under this section, the court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the Supreme Court or in any inferior court, and whether against the same person or against different persons, the court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall, without the leave of the court or a judge thereof, be instituted by him in any court, and such leave shall not be given unless the court or judge is satisfied that the proceedings are not an abuse of the process of the court and that there is *prima facie* ground for the proceedings.

(2) If the person against whom an order is sought under this section is unable on account of poverty to retain counsel, the court shall assign counsel to him.

(3) A copy of any order made under this section shall be published in the *Government Gazette*.

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.

Power of court with regard to costs.
1739, 1926, s. 4.

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.

Power to revive orders on abatement of cause.
Cf. 33 and 34
Vic. c. 28, s. 19.

PART III

PART III

SITTINGS AND DISTRIBUTION OF BUSINESS

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.

Abolition of terms.
116, 1878, s. 7.

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.

Reference to terms for computing time.
116, 1878, s. 7.

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.

Sitting in vacation.
116, 1878, s. 9.
U.K. 15 & 16
Geo. 5 c. 49,
s. 54.

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.

Place and time of sittings, and power to adjourn.
20, 1866-7,
s. 106.
116, 1878, s. 7.

(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.

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.

Civil sittings of court.
116, 1878, s. 11.

PART III

Power to sit in several jurisdictions at one time.
7, 1868-9, s. 3.

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 two divisions.

Jurisdiction of full court and single judge.

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.

Cases or points of law reserved for Full Court.
116, 1878, s. 13.

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 to Full Court.
S. 50 amended by 21, 1967, s. 5; 24, 1975, s. 3 (1) (2nd Sched.).

50. 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, 1921¹;
 - (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 amended², 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.

Subpara. (b) (iv) amended by 24, 1975, s. 3 (1) (2nd Sched.).

Subpara. (va) inserted by 21, 1967, s. 5.

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

Applications for leave to appeal.

Circuit Sessions of the Court

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.

Circuit districts. 6, 1868-9, s. 2.

¹ Now Justices Act, 1921-1975.

² Now Companies Act, 1962-1974.

(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.

13, 1858, s. 2.
116, 1878, s. 10.
Cf. U.K.
15 & 16 Geo. 5
c. 49, s. 70.

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.

Subsec. (5)
inserted by
12, 1955, s. 4.

(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 for circuit sessions.
S. 53a enacted by 13, 1952, s. 4.

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.
13, 1858, s. 2.
286, 1883, s. 1.

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, or admitted to bail, for trial or sentence at the sessions in question.

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.

Non-attendance of commissioner. 6, 1868-9, s. 5.

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.

Jurisdiction exercisable at circuit sessions.

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.

Committal for trial or sentence. Cf. 6, 1868-9, s. 9. Subsec. (1) amended by 40, 1972, s. 5 (a), (b).

(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.

* * * * *

S. 58 repealed by 49, 1971, s. 2.

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

Change of venue. 6, 1868-9, s. 10.

(a) any person committed, or admitted to bail, for trial or sentence in the court at Adelaide to be tried or sentenced at any circuit sessions; or

(b) any person committed, or admitted to bail, 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 or admitted to bail for trial or sentence at those sessions.

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

Effect of order as to recognizances.

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.

Sureties when
venue changed.
6, 1868-9, s. 11.

61. When any person has been admitted to bail to appear for trial or sentence, and any order has been made changing the time or place appointed for the trial or sentence, any justice of the peace may on the application of the Attorney-General, cause that person to be brought before him, and order him to enter into sureties for his due appearance at the place named in the order, and in default of his finding sureties, may commit him to gaol; and from and after the appearance of such person before any justice of the peace, he and his sureties shall be discharged from the recognizance theretofore entered into for his appearance for trial at the court therein named.

Removal of
persons in gaol.
6, 1868-9, s. 12.

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

Part IIIA and
heading enacted
by 62, 1969,
s. 5.

PART IIIA

THE LAND AND VALUATION COURT

Interpretation.
S. 62a enacted
by 62, 1969,
s. 5.

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.
S. 62b enacted
by 62, 1969,
s. 5.
Subsec. (1)
amended by
58, 1970, s. 5.

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, 1915-1957¹, in relation to this Part and the complementary amending Acts is unaffected.

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.

Establishment of Land and Valuation Court.
S. 62c enacted by 62, 1969, s. 5.

(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.

Subsec. (3) substituted by 14, 1970, s. 2 (a).

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

Subsec. (3a) inserted by 14, 1970, s. 2 (a).

(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;

Subsec. (4) amended by 14, 1970, s. 2 (b).

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.

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

Jurisdiction of the Court.
S. 62d enacted by 62, 1969, s. 5.

the Crown Lands Act, 1929-1969²;

the Encroachments Act, 1944-1969;

the Highways Act, 1926-1969³;

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

the Land Tax Act, 1936-1969⁴;

the Law of Property Act, 1936-1969⁵;

the Local Government Act, 1934-1969⁶;

the Pastoral Act, 1936-1969⁷;

the Planning and Development Act, 1966-1969⁸;

the Renmark Irrigation Trust Act, 1936-1969⁹;

¹ Now Acts Interpretation Act, 1915-1975.

² Now Crown Lands Act, 1929-1975.

³ Now Highways Act, 1926-1975.

⁴ Now Land Tax Act, 1936-1975.

⁵ Now Law of Property Act, 1936-1975.

⁶ Now Local Government Act, 1934-1975.

⁷ Now Pastoral Act, 1936-1974.

⁸ Now Planning and Development Act, 1966-1975.

⁹ Now Renmark Irrigation Trust Act, 1936-1973.

the Sewerage Act, 1929-1969¹;
the South-Eastern Drainage Act, 1931-1969²;
the Water Conservation Act, 1936-1969³;
the Waterworks Act, 1932-1969⁴.

(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)⁵, 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.
S. 62e enacted by 62, 1969, s. 5.

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.
S. 62f enacted by 62, 1969, s. 5.

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.
S. 62g enacted by 62, 1969, s. 5.

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.
S. 62h enacted by 62, 1969, s. 5.

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.

¹ Now Sewerage Act, 1929-1975.

² Now South-Eastern Drainage Act, 1931-1974.

³ Now Water Conservation Act, 1936-1975.

⁴ Now Waterworks Act, 1932-1975.

⁵ The Compulsory Acquisition of Land Act, 1925, and its amendments have been repealed and superseded by the Land Acquisition Act, 1969 (now Land Acquisition Act, 1969-1972).

(3) The rules may provide that the master shall be registrar of the Court and shall have and may exercise and discharge such powers, authorities, functions and duties in relation to the administration of the business of the Court as may be specified in the rules, and the master may be invested with such jurisdiction by the rules as may be necessary or expedient for the purposes of this Part.

(3a) The rules may provide for an appeal against a decision or order of the master made in the exercise of any jurisdiction conferred on him under this Part to a judge upon whom the jurisdiction of the Court has been conferred.

Subsec. (3a)
inserted by
14, 1970, s. 3.

(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.

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

Sittings of
Court.
S. 62i enacted by
62, 1969, s. 5.

PART IV

PART IV

PROCEDURE GENERALLY

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.

Criminal
procedure.
116, 1878, s. 30.
U.K., 15 and 16
Geo. 5 c. 49,
s. 48.

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

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

Saving of
existing
procedure.

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.
U.K. 15 and 16
Geo. 5 c. 49,
s. 88.

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.
U.K. 15 and 16
Geo. 5 c. 49,
s. 89.

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.
U.K. 15 and 16
Geo. 5 c. 49,
s. 90.

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.
U.K. 15 and 16
Geo. 5 c. 49,
s. 91.

68. The court or a judge shall, in relation to references, have all such powers as are conferred by the Arbitration Act, 1891¹, on the court or a judge in relation to references by consent out of court.

Statement of
case pending
arbitration.
U.K. 15 and 16
Geo. 5 c. 49,
s. 94.

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, &c.
U.K. 15 and 16
Geo. 5 c. 49,
s. 95.

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.

¹ Now Arbitration Act, 1891-1974.

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, 1927¹, 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.

Assessors.
116, 1878, s. 25.
U.K. 15 and 16
Geo. 5 c. 49,
s. 98.

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 the 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 the 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 regulating and prescribing the fees and percentages to be taken in the court or by any officer thereof, and the fees to be taken by commissioners of the court, and any examiner, special magistrate, or other person appointed by the court to make or conduct any inquiry or examination:
- VIa. For regulating the admission of barristers, solicitors, attorneys, and proctors of the court:

Rules of court.
116, 1878,
ss. 29, 32, 33.
Cf. Vic. s. 25.
1739, 1926, s. 4.

Para. IV
amended by
29, 1963,
s. 5 (a).

Para. IVa
inserted by
29, 1963,
s. 5 (b).

Para. VIa
inserted by
2293, 1936, s. 4,
2nd Schedule.

¹ Now Juries Act, 1927-1974.

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.

Part V
comprising
sections 73 to 81
(except s. 79a¹)
repealed by
41, 1972,
s. 18 (1).

* * * * *

PART VI

PART VI

Heading to Part
VI amended by 29,
1963, s. 6.

THE MASTER AND OFFICERS OF THE COURT

The Master

Master and
Deputy Master.
Subsec. (1)
amended by
52, 1962, s. 3.

82. (1) The court shall have a master and not more than two deputy masters.

(2) No person shall be qualified for appointment as master or deputy master unless he is a practitioner of the court of at least six years' standing.

(3) Appointments to the offices of master and deputy master shall be made by the Governor whenever necessary.

Subsec. (4)
amended by 24,
1975, s. 3 (1)
(2nd Sched.).

(4) After the commencement of this Act no person shall be appointed to the office of master or deputy master except on the recommendation of the Public Service Board, concurred in by the Chief Justice, and no master or deputy master, whether appointed before or after the commencement of this

¹ S. 79a was enacted by 49, 1971, s. 3 and redesignated s. 118a by 41, 1972, s. 18 (2).

Act, shall be dismissed or reduced in status nor shall his office be abolished except on the recommendation of the Chief Justice.

(5) Nothing in this section shall restrict the application to the master and deputy master of the provisions of the Acts prescribing the retiring age for public servants.

83. (1) Subject to the rules made under this Act every order or decision made or given by the master in exercise of any power conferred upon him pursuant to this Act shall be as valid and binding on, and be enforceable in the same manner against, all parties concerned as an order or decision made by a judge: Provided that any person affected by any such order or decision of the master may forthwith, or within such time as is prescribed by any rules made under this Act, and subject to any conditions prescribed by those rules, appeal from that order or decision to a judge.

Effect of, and appeal from, orders of Master.
1864, 1928, s. 5.
Subsec. (1) amended by 29, 1963, s. 7 (a).

(2) The master, when engaged in the exercise of any jurisdiction conferred upon him by this or any other Act, shall be deemed to have and to exercise the jurisdiction of the court.

Subsec. (2) inserted by 29, 1963, s. 7 (b).

The Sheriff and Bailiffs

84. (1) The Governor may appoint a sheriff, one or more deputy sheriffs, and as many bailiffs and other sheriff's officers as he deems necessary to act in aid of the sheriff.

Appointment of sheriff and officers.

(2) All persons appointed under this section shall be appointed on the recommendation of the Public Service Board, and shall, unless the Governor otherwise determines, be subject to the Acts relating to the appointment and control of the public service.

Subsec. (2) amended by 24, 1975, s. 3 (1) (2nd Sched.).

85. The sheriff may by writing under his hand appoint any person to be a deputy sheriff, bailiff, or other sheriff's officer, for the purpose of any particular proceeding or during any period specified in the instrument of appointment.

Power of sheriff to appoint bailiffs.

86. The sheriff shall be an officer of the court and shall execute all process, civil or criminal, directed to him by the court and shall perform all such other duties as are imposed upon him by rules of court or the direction of the court or any judge.

Duties of sheriff.
Cf. 15, 1842, s. V.

87. The sheriff shall have power to execute the office of sheriff throughout the whole State.

Power of sheriff to act throughout whole State.

88. (1) A deputy sheriff may be appointed for the whole State or any part thereof, and, subject to any directions of the sheriff, may exercise, within the whole State or, as the case may be, that part of the State for which he is appointed, any power of the sheriff.

Power of deputy sheriff.

(2) In particular a deputy sheriff may execute any process of any court in the State directed to the sheriff, and make return of the same together with the manner of the execution thereof, and receive and detain in prison any person who is committed to the custody of the sheriff and do and perform any other thing which the sheriff is bound or permitted to do and perform.

Vic., 3783, 1928, s. 199.

(3) Every reference in this Act to the sheriff shall, in relation to any matter in which a deputy sheriff has acted, be construed as a reference to the deputy sheriff.

Status and
duties of
bailiffs.

89. Every bailiff appointed under this Act shall for purposes of this Act be deemed to be an officer of the sheriff, and shall, by himself or his deputies, execute all lawful warrants orders and precepts of the sheriff directed to him, and shall in all respects perform the same duties as were before the passing of this Act performed by the officers of the sheriff.

Security by
bailiffs.

90. (1) The Attorney-General may require any bailiff to give security to the Attorney-General by bond of himself and two responsible sureties or in such other manner as the Attorney-General requires for the due performance by him of the duties of his office, and for the due payment by him to the sheriff, or as the sheriff directs, of all moneys which come into his hands in the execution of the duties of his office.

(2) The Attorney-General may sue on any bond in the name of the Attorney-General by action in any court having jurisdiction up to the amount claimed.

(3) All moneys recovered on any such bond shall be paid into the general revenue of the State.

Provision for
cases where
sheriff ought not
to execute
process.
15, 1842, s. 5.

91. (1) Where any process is awarded against the sheriff, or in any circumstances which render it improper for the sheriff to execute that process, the court or any judge may direct that process to any fit person appointed by the court or judge.

(2) Every reference in this Act to the sheriff shall, in relation to any matter in which a person appointed under this section has acted, be construed as a reference to that person.

Power to
commit arrested
persons to
prison at once.
N.Z. 89, 1908,
s. 36.

92. Where the sheriff or any of his officers have arrested any person under or by virtue of any process whatever he may forthwith convey that person or cause him to be conveyed to the prison to which he ought to be sent by virtue of the process issued against him.

Resistance to
process.
Vic.,
3783, 1928,
s. 207.

93. (1) If a sheriff finds any resistance in the execution of any process he shall take with him such assistants as he thinks desirable and shall go in person to the execution and may arrest the resisters and bring them before a justice to be dealt with according to law.

(2) Every person who resists the sheriff in the execution of any process shall be guilty of a misdemeanour.

Neglect to aid
sheriff.
Vic.,
3783, 1928,
s. 206.

94. Every person who, having reasonable notice that he is required to assist the sheriff or any deputy sheriff in arresting any person or in preserving the peace omits without reasonable excuse so to do shall be liable on summary conviction to a penalty of not more than two hundred dollars¹; and if he is a bailiff or assistant of the sheriff or a member of the police force, he shall be guilty of a misdemeanour and liable to a fine of not more than two hundred dollars¹ or to imprisonment for a term of not more than one year, or to both such fine and imprisonment.

Receipt for
process.
Vic. 3783, 1928,
s. 208.

95. The sheriff shall at the request of a person delivering any process to him for execution give a receipt for such process stating the day and time of its delivery.

¹ Pursuant to s. 8 of the Acts Republishation Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.

96. (1) Where the sheriff or any other person employed in collecting by process from any court any debt due to the Crown receives from any person a sum as being due to the Crown he shall give a receipt to such person for that sum, and the sheriff shall forthwith take all necessary steps to procure in respect of that sum the effective discharge of the debtor paying it.

Duties of sheriff on receipt of Crown debt.
Vic. 3783, 1928, s. 209.

(2) Any officer receiving such sum shall account first to the sheriff and the sheriff shall give a receipt for such sum.

97. (1) The sheriff shall by himself or his deputy attend upon all criminal sittings of the court and upon other sittings when required to do so by the court or any judge.

Duty of sheriff to attend court.
Cf. N.Z. 89, 1908, s. 43.

(2) If at any time the sheriff is not in attendance upon the court, the court or a judge thereof may appoint some fit person to exercise and perform in the name and on behalf of the sheriff during any period or in any matter ordered by the court or judge, all or any of the powers and duties of the sheriff.

(3) The court or judge may issue to the person so appointed instead of to the sheriff any process, precept, or command authorized to be issued to the sheriff.

98. (1) Every sheriff shall at the expiration of his term of office make out and deliver to the incoming sheriff a correct list and account of all prisoners in his custody or lodged in gaol by him, and of all writs and attachments in his hands not wholly executed by him, with all such particulars as may be necessary to explain to the incoming sheriff the several matters intended to be transferred to him, and shall thereupon transfer to the custody of the incoming sheriff all such prisoners so in custody and all such writs and attachments and all records, books, and matters appertaining to the office of sheriff.

Duty of outgoing sheriff to turn over process and prisoners to incoming sheriff.
Vic., 3783, 1928, s. 216.

(2) The incoming sheriff shall thereupon sign and give to the outgoing sheriff a duplicate of such list and account which shall be a good and sufficient discharge to him of and from all the prisoners therein mentioned and the execution of the writs and other matters therein contained, and thereupon the incoming sheriff shall stand charged with the said prisoners so in custody and with the execution and care of the said writs and attachments and other matters contained in the said list and account.

99. The sheriff by himself or his deputy may without holding an auctioneer's licence sell by auction property of any kind taken by him in execution.

Sale by sheriff without auctioneer's licence.
Vic. 3783, 1928, s. 203.

100. (1) The sheriff shall not be personally liable for any wrongful act or default of any deputy sheriff; and neither the sheriff nor any deputy sheriff shall be personally liable for the wrongful act or default of any bailiff or other officer of the sheriff or of a deputy sheriff.

Liability of sheriff and officers.

(2) The sheriff and every deputy sheriff, bailiff, and other officer of the sheriff or a deputy sheriff shall be liable for his own wrongful acts and defaults in the same manner and to the same extent as heretofore.

101. If a person in the custody of the sheriff or any of his officers or of any other person either in execution or for non-performance of a judgment or order of the court or for contempt of court or otherwise in the course of a civil proceeding escapes out of legal custody, the sheriff or other person shall be liable to pay the damages sustained by the person at whose suit the prisoner was taken into custody and all costs of any proceedings to recover those

Liability for escape.
Vic. 3783, 1928, s. 212.

damages but no further sum: Provided that there shall be no liability under this section for the escape of any prisoner when confined in any gaol.

Liability of
Crown to
satisfy
judgments
against the
sheriff.

102. (1) The Treasurer shall satisfy any judgment obtained against the sheriff or any bailiff or other officer of the sheriff for any wrongful act done or default committed by such sheriff, bailiff, or other person in the execution or intended execution of his duties, and this Act shall be sufficient appropriation of such amount out of the general revenue of the State as is required for the purpose of satisfying such judgment.

(2) The sheriff, bailiff, or other officer of the sheriff in respect of whose wrongful act or default the Treasurer has paid any money under this section shall be liable to indemnify the Treasurer for any money so paid; but the Attorney-General may if in his opinion it is just to do so, exempt any sheriff, bailiff or other officer from his liability under this section in any particular case.

Limitation of
actions against
sheriff and
bailiffs.
Vic. 3783, 1928,
s. 202.

103. Every action brought against the sheriff or any of his officers for any act done or default committed in the execution or intended execution of his duty shall be commenced within six months next after the plaintiff knew or could, by the exercise of reasonable diligence, have known the facts constituting the cause of action.

Fees and
poundage.

104. (1) The sheriff or any officer concerned in the execution of any process directed to the sheriff may demand, take, and receive such fees as are fixed by rules of court.

(2) No poundage shall be payable to the sheriff or any other officer for taking the body of any person in execution.

(3) The judges may make rules of court in accordance with the provisions of this Act relating to making rules of court—

- (a) fixing the fees payable to the sheriff or any such officer:
- (b) providing for the settlement of disputes as to the amount payable in any case:
- (c) prescribing the time for payment of such fees:
- (d) requiring execution creditors either generally or in any prescribed cases to give security for payment of such fees, or to lodge a deposit on account of such fees:
- (e) empowering the sheriff in cases where he is requested by the execution creditor to withdraw before sale, to require the execution creditor, the execution debtor, and any solicitor concerned to furnish him with particulars of the arrangement between the execution creditor and the execution debtor:
- (f) regulating generally the performance of the duties of the sheriff.

Sheriff may be
justice.

105. Notwithstanding any enactment or other rule of law the sheriff shall not, by reason of holding office as sheriff, be disqualified for appointment as a justice of the peace.

Tipstaves

106. (1) The Governor may 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.

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.

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

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.

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

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.

Heading substituted by 12, 1974, s. 4.

Appointment of tipstaves.

S. 106 amended by 12, 1974, s. 5 (a); redesignated s. 106 (1) by 12, 1974, s. 5 (b).

Subsec. (2) inserted by 12, 1974, s. 5 (b).

Duty of tipstaves.

Cf. 20, 1866-7, s. 22.

S. 107 amended by 12, 1974, s. 6 (a), (b).

Other duties.

Cf. *ibid.* s. 23.

S. 108 amended by 12, 1974, s. 7.

Appointment and number of officers.

31, 1855-6, s. 2. 20, 1866-7, s. 15.

120, 1878, s. 1.

Duties of officers.

116, 1878, s. 35.

PART VII

PART VII

MISCELLANEOUS PROVISIONS

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.

Rules as to division of loss upon collision at sea.

U.K. 1 & 2 Geo. 5 c. 57, s. 1. Com. 4, 1913, s. 259.

(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.
Com. 4, 1913,
s. 260.

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.
Com. 4, 1913,
s. 261.

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
judgment debts.
Cf. 9, 1845,
s. X.
8, 1867, s. 33.

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.

Power to seize
money, bank
notes, and
securities under
writs of
execution.
9, 1845, s. VIII.

115. (1) The sheriff or other officer having the execution of any writ of *feri facias* may by virtue thereof—

(a) seize and take any money, bank notes, or securities belonging to the person against whose effects the writ was issued:

(b) pay or deliver to the party suing out such writ any money or bank notes which are so seized, or a sufficient part thereof:

(c) hold any securities, so seized, as security for the amount which the writ of *feri facias* directs to be levied, or so much thereof as has not been otherwise levied and raised:

(d) sue in his own name for the recovery of the sum or sums secured by such securities, if and when the time of payment thereof has arrived.

(2) Payment to the sheriff or other officer by the party liable on any such security with or without suit or execution against the party so liable, shall discharge him to the extent of the amount paid or levied and raised by execution, from his liability on such security.

(3) The sheriff or other officer shall pay over to the party suing out the writ of *feri facias* the money so recovered or such part thereof as is sufficient to discharge the amount directed by the writ to be levied and if after satisfaction of the amount so to be levied together with the sheriff's fees and expenses, any surplus remains in the hands of the sheriff or other officer that surplus shall be paid to the party against whom the writ was issued.

(4) No sheriff or other officer shall be bound to sue any party liable upon any such security unless the party suing out the writ of *feri facias* enters into a bond with two sufficient securities for indemnifying him from all costs and expenses to be incurred in the prosecution of the action or to which he may become liable in consequence thereof and the expenses of that bond shall be deducted out of any money recovered in the action.

(5) In this section "security" includes any cheque, bill of exchange, promissory note, bond, speciality, or other security for money.

116. (1) All land within the State belonging to any person indebted shall be liable to and assets for the payment and satisfaction of all just debts duties and demands owing by him to the Crown or any other person, in like manner as personal property within the State, and shall be subject to the like remedies, proceedings and processes in all courts for seizing, selling, and disposing of the land towards satisfaction of such debts, duties, and demands, as personal property within the State.

Power to sell
land under *feri*
facias.
5, 1853,
ss. 184, 185.

(2) The sheriff under any writ of *feri facias* directed to him upon a judgment or order of the court may sell, dispose of and transfer or convey to the purchasers thereof so much of the land which the person against whom execution is issued possessed at the time of the delivery of the writ to the sheriff or at any time thereafter, as is necessary to produce the amount directed by the writ to be levied: Provided that no land shall be sold unless—

(a) the sheriff has endorsed the writ with a certificate that the party against whom it is issued has no goods whereof the amount directed to be levied can be made, or that the sheriff has caused to be made a part of that amount and there are no further goods whereof he can cause the remainder of that amount to be made; and

(b) the sheriff has given fourteen days notice by advertisement in the *Gazette* of his intention to sell all the land.

(3) The expenses of the advertisement shall be recoverable by the sheriff together with poundage and other expenses recoverable upon writs of *feri facias*.

(4) It shall not be necessary for the sheriff to make an actual seizure of land under any writ in order to authorize a sale thereof, but the notice in the

Gazette under this section shall be equivalent to an actual seizure of the land mentioned in that notice.

(5) In this section "land" includes real property of all kinds and any interest legal or equitable therein and also any chattel interest in land.

Orders to bring
prisoners for
examination.
8, 1867, s. 15.

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.

Perjury.

118. Any person who in any proceedings in the court, or in any examination, wilfully gives false evidence, or wilfully swears, affirms or declares falsely in any affidavit, deposition, affirmation, or declaration, taken within the State, shall be guilty of perjury and punishable accordingly.

Power of
Crown
Prosecutor and
others
appointed by
Attorney-
General as to
informations,
etc.
S. 118a enacted
as s. 79a by
49, 1971, s. 3;
redesignated
s. 118a by
41, 1972,
s. 18 (2).

118a. (1) It shall be lawful for the Attorney-General by writing under his hand to appoint the Crown Prosecutor, or any other person named therein, to represent him at the criminal sittings and circuit sessions of the court or at any particular criminal sitting or circuit sessions of the court and in the name and on behalf of the Attorney-General to—

(a) present any information which the Attorney-General might have presented;

and

(b) amend any information which has been signed by or on behalf of the Attorney-General, before the information is presented to the court.

(2) The Crown Prosecutor or other person so appointed may, so long as the appointment has not expired or been revoked, represent the Attorney-General at the criminal sittings and circuit sessions or any of them, or at that particular criminal sitting or circuit sessions of the court, as the case may be, and any information so presented or amended shall be deemed to have been presented or amended, as the case may be, by the Attorney-General.

(3) An appointment under subsection (1) of this section of some other person to represent the Attorney-General at any particular criminal sitting or circuit sessions of the court does not revoke a general appointment under that subsection of the Crown Prosecutor to represent the Attorney-General at the criminal sittings and circuit sessions of the court.

(4) An appointment under this section is revocable at will and does not prevent the Attorney-General himself from appearing and being heard at any criminal sitting or circuit sessions of the court or from presenting or amending any information and any such appearance by the Attorney-General or presentation or amendment of an information by him does not of itself have the effect of revoking an appointment under subsection (1) of this section.

(5) Notwithstanding the repeal of section 58 of this Act as then in force and the enactment of this section by the Supreme Court Act Amendment Act,

1971, such repeal and enactment shall not affect any appointment made under section 58 prior to such repeal and such appointment shall, until it expires or is revoked, continue to have the same force and effect as if that section had not been repealed.

Suitors' Funds

119. All suitors' funds shall be vested in the master 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.

Suitors' funds to vest in master.
U.K. 15 & 16 Geo. 5 c. 49, s. 133 (4).

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

Securities in court.

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.

Liability of Treasurer for default of master.
Cf. U.K. 15 & 16 Geo. 5 c. 49, s. 134.

(2) If the Chief Justice certifies to the Treasurer in writing that the master 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.

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.

Banking and investment of suitors' fund.

(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.

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.

Investments made under order of the court.
U.K. 15 & 16 Geo. 5 c. 49, s. 142.

124. All acts done by the master 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.

Validity of payments, &c., pursuant to rules of court.

125. Where by rules of court the master 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 master and of

Remittances by post.

the Treasurer respectively, be equivalent to the delivery of the cheque or document to that person himself.

Power to
appoint
deputies.
U.K. 15 & 16
Geo. 5 c. 49,
s. 133 (5).

126. In sections 120 to 126, inclusive, the term master shall not include the deputy master, but the master 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 appointed by him in writing under his hand.

Rules of Court.
U.K. 15 & 16
Geo. 5 c. 49,
s. 146.

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 master 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.
514, 1891, s. 3.

128. (1) In the month of July in every year the master 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.

Parties
subsequently
claiming may
petition the
Supreme Court,
&c.
514, 1891, s. 4.

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 simple interest thereon at the rate of three per centum per annum, from the time when the money was paid to the Treasurer as aforesaid.

(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.

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

Supreme Court Act, 1935-1975

ACTS REPEALED—*continued*

Number and Year of Act	Short or Long Title of Act	Extent of Repeal
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 1883	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
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