

No. VII.

An Act to amend the Practice and Course of Proceeding in the Supreme Court in Equity. [8th July, 1853.]

EQUITY PRACTICE.

WHEREAS it is expedient to amend the practice and course of proceeding in the Supreme Court in the Equity Branch of its Jurisdiction Be it enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof as follows :—

1. From the time hereinafter appointed for the commencement of this Act the practice of engrossing bills of complaint or claims on parchment shall be discontinued and the proper officers of the Court shall receive and file bills of complaint or claims printed on paper in lieu thereof and in respect of all subsequent pleadings in any suit such practice of engrossment on parchment shall in like manner be discontinued and in lieu thereof such pleadings shall be engrossed or written on paper.

Engrossing bills and subsequent pleadings on parchment discontinued.

2. The writ of subpoena to appear to and answer a bill of complaint and the writ of summons upon a claim shall respectively be abolished.

Writs of subpoena and summons abolished.

3. In lieu of serving the defendant to a bill of complaint or claim with a writ of subpoena or writ of summons according to the practice now adopted the defendant shall be served with a printed copy of the bill of complaint or claim with an indorsement thereon in the form or to the effect set out in the Schedule to this Act with such variations as circumstances may require and stamped with a proper stamp by one of the Clerks of the Supreme Court.

Defendants to be served with a printed copy of bill in lieu of subpoena and summons.

4. The filing of a bill of a printed complaint or claim shall have the same effect as the filing of a bill of complaint or claim and the issuing of a subpoena or writ of summons thereon respectively now have and the service upon the defendant of a printed copy of the bill of complaint or claim so filed with such indorsement thereon so stamped as aforesaid shall have the same effect as the service on him of a writ of subpoena or writ of summons respectively now has and shall entitle the plaintiff in such suit to such remedies for default of appearance and otherwise as he is now entitled to in case of due and proper service of a subpoena or summons.

Service of a bill or claim to have same effect as the issuing of subpoena and summons.

5. The service upon any defendant of a printed copy of a bill of complaint or of a claim shall be effected in the same manner as service of a writ of subpoena to appear to and answer a bill of complaint is now effected except in respect of the production of the original provided that the Court shall be at liberty to direct substituted service thereof in such manner and in such cases as it shall think fit.

As to service of bill.

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Written copies of bills may be served in certain cases upon plaintiff undertaking to file a printed copy in fourteen days.

6. Notwithstanding the provisions hereinbefore contained the proper officers of the Court may receive and file a written copy of any bill of complaint praying a writ of injunction or a writ of ne exeat regno or filed for the purpose either solely or among other things of making an infant a ward of the Court upon the personal undertaking of the plaintiff or his solicitor to file a printed copy of such bill within fourteen days and every bill of complaint so filed shall be deemed and taken to have been filed at the time of filing the written copy thereof and a written copy of any such bill of complaint stamped as aforesaid and with such indorsement thereon as aforesaid may be served on any defendant thereto and such service shall have the same effect as the service of a printed copy.

Bills of complaint to contain concise narratives of material facts &c. divided into numbered paragraphs but need not contain interrogatories.

7. Every bill of complaint filed after the time appointed for the commencement of this Act shall contain as concisely as may be a narrative of the material facts matters and circumstances on which the plaintiff relies such narrative being divided into paragraphs numbered consecutively and each paragraph containing as nearly as may be a separate and distinct statement or allegation and shall pray specifically for the relief which the plaintiff may conceive himself entitled to and also for general relief but such bill of complaint shall not contain any interrogatories for the examination of the defendant.

Plaintiff to deliver printed copies of bill or claim at rate fixed by Supreme Court.

8. The plaintiff in any suit to be commenced in the said Court after the time hereinafter appointed for the commencement of this Act shall be bound to deliver to the defendant or his solicitor upon application for the same such a number of printed copies of his bill of complaint or claim as he shall have occasion for upon being paid for the same at such rate as shall be prescribed by any general order of the Supreme Court in that behalf.

Amendments to original bill also to be filed &c.

9. Upon the amendment of any bill of complaint or claim to be filed in the said Court after the time hereinafter appointed for the commencement of this Act the provisions hereinbefore contained with respect to filing and serving and delivering printed copies thereof shall so far as may be extend and be applicable to the bill or claim as amended Provided that where according to the present practice of the said Court an amendment of a bill or claim may be made without a new engrossment thereof or under such other circumstances as shall be prescribed by any general order of the Supreme Court in that behalf a bill or claim may be wholly or partially amended by written alterations in the printed bill of complaint or claim so to be filed as aforesaid.

In certain cases a printed bill may contain written amendments.

Power to Supreme Court to revive present practice as to filing of bills &c.

10. It shall be lawful for the Supreme Court from time to time to make any order or orders directing that the provisions hereinbefore contained as to printing or otherwise shall be discontinued or suspended until further order and to direct that all or any of the present practice as to the filing of bills and claims and the issuing and service of subpoenas and writs of summons may be revived and come into operation as if this Act had not passed.

Person named as next friend to sign an authority.

11. Before the name of any person shall be used in any suit to be instituted as next friend of any infant married woman or other party or as relator in any information such person shall sign a written authority to the solicitor for that purpose and such authority shall be filed with the bill information or claim or with the affidavit as support of any rule *nisi* in Equity.

Interrogatories to be filed in office of Master in Equity by plaintiff within time prescribed.

12. Within a time to be limited by a general order of the Supreme Court in that behalf the plaintiff in any suit in the said Court commenced by bill may if he requires an answer from any defendant thereto file in the office of the Master in Equity interrogatories for the examination of the defendant or defendants or such of them from whom he shall require an answer and deliver to the defendant

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defendant or defendants so required to answer or to his or their solicitor a copy of such interrogatories or of such of them as shall be applicable to the particular defendant or defendants and no defendant shall be called upon or required to put in any answer to a bill unless interrogatories shall have been so filed and a copy thereof delivered to him or his solicitor within the time so to be limited or within such further time as the Court shall think fit to direct.

13. Whether the plaintiff in any suit commenced by bill does or does not require any answer from the defendant or any one or more of the defendants to the bill every defendant may without leave of the Court put in a plea answer or demurrer to the plaintiff's bill within the time now allowed to a defendant for demurring alone to a bill or within such other time as shall be fixed by any general order of the Supreme Court in that behalf but after that time a defendant not required to answer the plaintiff's bill shall not be at liberty to put in a plea answer or demurrer to the bill without leave of the Court or Master in Equity provided that the power of the Court to grant further time for pleading answering or demurring to any bill upon the application of any defendant thereto whether required to answer the bill or not shall remain in full force and shall not be in anywise prejudiced or affected provided also that if the Court or Master shall grant any further time to any defendant for pleading answering or demurring to the bill the plaintiff's right to move for a decree under the provisions hereinafter contained shall in the meantime be suspended.

Defendants may answer without leave within the time now allowed though not required so to do.

14. The answer of the defendant to any bill of complaint in the said Court may contain not only the answer of the defendant to the interrogatories so filed as aforesaid but such statements material to the case as the defendant may think it necessary or advisable to set forth therein and such answer shall be also divided into paragraphs numbered consecutively each paragraph containing as nearly as may be a separate and distinct statement or allegation.

Answer to contain not only answers to interrogatories but such other statements as may be deemed necessary and to be divided into numbered paragraphs.

15. The plaintiff in any suit commenced by bill shall be at liberty at any time after the time allowed to the defendant for answering the same shall have expired (but before replication) to move the Court upon such notice as shall in that behalf be prescribed by any general order of the Supreme Court for such decree or decretal order as he may think himself entitled to and the plaintiff and defendant respectively shall be at liberty to file affidavits in support of and in opposition to the motion so to be made and to use the same on the hearing of such motion and if such motion shall be made after an answer filed in the cause the answer shall for the purposes of the motion be treated as an affidavit.

Plaintiff may on expiry of time for answering move for decree or decretal order.

16. Upon any such motion for a decree or decretal order it shall be discretionary with the Court to grant or refuse the motion or to make an order giving such directions for or with respect to the further prosecution of the suit as the circumstances of the case may require and to make such order as to costs as it may think right.

Proceedings thereon.

17. The practice of excepting to bills answers and other proceedings in the said Court for impertinence is hereby abolished Provided always that it shall be lawful for the Court to direct the costs occasioned by any impertinent matter introduced into any proceeding in the Court to be paid by the party introducing the same upon application being made to the Court for that purpose.

Excepting to bills &c. for impertinence abolished. Proviso as to costs.

18. It shall be lawful for the Court upon the application of the plaintiff in any suit whether commenced by bill claim or rule *nisi* and as to a suit commenced by bill whether the defendant may or may not have been required to answer the bill or interrogated as to the possession of documents to make an order for the production by any defendant upon oath of such of the documents in his possession or power relating to

Court or Judge may order defendant to produce documents &c. on oath.

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to matters in question in the suit as the Court shall think right and the Master in Equity shall have the like power under references to him and the Court or Master (as the case may be) may deal with such documents when produced in such manner as shall appear just.

In certain cases defendant after answer may file interrogatories for examination of plaintiff.

19. It shall be lawful for any defendant in any suit whether commenced by bill claim or rule *nisi* but in suits commenced by bill which the defendant is required to answer not until after he shall have put in a sufficient answer to the bill and without filing any cross bill of discovery to file interrogatories for the examination of the plaintiff to which shall be prefixed a concise statement of the subjects on which a discovery is sought and to deliver a copy of such interrogatories to the plaintiff or his solicitor and such plaintiff shall be bound to answer such interrogatories in like manner as if the same had been contained in a bill of discovery filed by the defendant against him on the day when such interrogatories shall have been filed and as if the defendant to such bill of discovery had on the same day duly appeared and the practice of the Court with reference to excepting to answers for insufficiency or for scandal shall extend and be applicable to answers put in to such interrogatories provided that in determining the materiality or relevancy of any such answer or of any exception thereto the Court is to have regard in suits commenced by bill to the statements contained in the original bill and in the answer which may have been put in thereto by the defendant exhibiting such interrogatories for the examination of the plaintiff and in suits commenced by claim or rule *nisi* to the statements in such claim and in any affidavits which may have been filed in support of such claim or rule *nisi* or in opposition thereto. Provided also that a defendant if he shall think fit so to do may exhibit a cross bill of discovery against the plaintiff instead of filing interrogatories for his examination.

Plaintiff may be required to produce documents on oath.

20. It shall be lawful for the Court upon the application of any defendant in any suit whether commenced by bill claim or rule *nisi* but as to suits commenced by bill where the defendant is required to answer the bill not until after he has put in a full and sufficient answer unless the Court shall make any order to the contrary to make an order for the production by the plaintiff in such suit on oath of such of the documents in his possession or power relating to the matters in question in the suit as the Court shall think right and the Master in Equity shall have the like powers under references to him and the Court or Master (as the case may be) may deal with such documents when produced in such manner as shall appear just.

Pleas declarations &c. how to be sworn and taken in places out of this Colony.

21. All pleas answers disclaimers examinations affidavits declarations affirmations and attestations of honour in causes or matters depending in the Supreme Court in Equity may be sworn and taken in any place out of this Colony under the dominion of Her Majesty before any Judge Court Notary Public or person lawfully authorized to administer oaths at such place or before any of Her Majesty's Consuls or Vice Consuls in any place out of Her Majesty's Dominions and the Judges and other Officers of the said Supreme Court shall take judicial notice of the seal or signature as the case may be and authority of any such Court Judge Notary Public Person Consul or Vice Consul attached appended or subscribed to any such plea answer disclaimer examination affidavit affirmation attestation of honour declaration or other document to be used in the said Court.

Penalty for falsely swearing &c.

22. All persons swearing declaring affirming or attesting before any person authorized by this Act to administer oaths and take declarations affirmations or attestations of honour shall be liable to all such penalties punishments and consequences for any wilful and corrupt false swearing declaring affirming or attesting contained therein as if the matter sworn declared affirmed or attested had been sworn declared

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declared affirmed or attested before the said Court or a Commissioner thereof for taking affidavits.

23. If any person shall forge the signature or the official seal of any such Judge Notary Public or other person lawfully authorized to administer oaths under this Act or shall tender in evidence any plea answer disclaimer examination affidavit or other judicial or official document with a false or counterfeit signature or seal of any such Judge Court Notary Public or other person authorized as aforesaid attached or appended thereto knowing the same signature or seal to be false or counterfeit every such person shall be guilty of felony and shall be liable to fine or imprisonment at the discretion of the Judge before whom he shall be tried.

Penalty for forging signature or seal of Judge &c. empowered to administer oaths under this Act.

24. In suits in the said Court commenced by bill where notice of motion for a decree or decretal order shall not have been given or having been given where a decree or decretal order shall not have been made thereon issue shall be joined by filing a replication in the form or to the effect of the replication now in use in the said Court and where a defendant shall not have been required to answer and shall not have answered the plaintiff's bill he shall be considered to have traversed the case made by the bill.

Issue may be joined by filing replication as at present.

25. Where a defendant to a suit in the said Court commenced by bill shall not have been required to answer the bill and shall not have answered the same such defendant shall be at liberty to move to dismiss the bill for want of prosecution at such times and under such circumstances and subject to such restrictions as shall be in that behalf prescribed by any general order of the Supreme Court.

Defendant not having been required to answer and not answering may move for dismissal of bill for want of prosecution.

26. When any suit commenced by bill shall be at issue the plaintiff shall within such time thereafter as shall be prescribed in that behalf by any general order of the Supreme Court give notice to the defendant that he desires that the evidence to be adduced in the cause shall be taken upon affidavit and if the plaintiff shall desire the evidence to be adduced upon affidavit and the defendant or some or one of the defendants if more than one shall not within such time as shall be prescribed in that behalf by any general order of the Supreme Court give notice to the plaintiff or his solicitor that he or they desire the evidence to be oral the plaintiff and defendants respectively shall be at liberty to verify their respective cases by affidavit.

Plaintiff where suits by bill at issue may give notice to defendant to adduce evidence orally or by affidavit.

27. Notwithstanding that the general evidence in any suit may have been taken orally affidavits by particular witnesses or affidavits as to particular facts or circumstances may by consent or by leave of the Court obtained upon notice be used on the hearing of any cause and such consent with the approbation of the Court may be given by or on the part of married women or infants or other persons under disability.

Affidavits as to particular facts &c. may be used.

28. The evidence on both sides in any suit whether taken orally or upon affidavit shall be closed within such time or times after issue joined as now is or hereafter shall in that behalf be prescribed by any general order of the Supreme Court but with power to the Court to enlarge the same as it may seem fit and after the time fixed for closing the evidence no further evidence whether oral or by affidavit shall be receivable without special leave of the Court Provided always that any witness who has made an affidavit filed by any party to a cause shall be subject to oral cross-examination within such time after the time fixed for closing the evidence as shall be prescribed in that behalf by any order of the Supreme Court by or before the Master in Equity in the same manner as if the evidence given by him in his affidavit had been given by him orally before the said Master and after such cross-examination may be re-examined orally by or on the part of the party by whom such affidavit was filed and such witness shall

Evidence on both sides to be closed within time prescribed by general order.

Witnesses by affidavit subject to oral cross-examination.

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be bound to attend before such Master to be so cross-examined and re-examined upon receiving due and proper notice and payment of his reasonable expenses in like manner as if he had been duly served with a writ of subpoena ad testificandum before such Master and the expenses attending such cross-examination and re-examination shall be paid by the parties respectively in like manner as if the witness so to be cross-examined were the witness of the party cross-examining and shall be deemed costs in the cause of such parties respectively unless the Court shall otherwise direct.

Court may require examination before itself of any witness.

29. Upon the hearing of any cause whether commenced by bill claim or rule *nisi* the Court if it shall see fit so to do may require the production and oral examination before itself of any witness or party in the cause and may direct the costs of and attending the production and examination of such witness or party to be paid by such of the parties to the suit or in such manner as it may think fit.

Any party in a cause may by subpoena require attendance of any witness.

30. Any party in any cause or matter depending in the said Court may by a writ of subpoena ad testificandum or duces tecum require the attendance of any witness before the Master in Equity or before a Commissioner specially appointed for the purpose and examine such witness orally for the purpose of using his evidence upon any claim rule *nisi* motion petition or other proceeding before the Court in like manner as such witness would be bound to attend and be examined with a view to the hearing of a cause and any party having made an affidavit to be used or which shall be used on any claim rule *nisi* motion petition or other proceeding before the Court shall be bound on being served with such writ to attend before the Court Master in Equity or a Commissioner for the purpose of being cross-examined. Provided always that the Court shall always have a discretionary power of acting upon such evidence as may be before it at the time and of making such interim orders or otherwise as may appear necessary to meet the justice of the case.

Parties who have deposed by affidavit bound to attend for cross-examination if required.

Evidence subsequent to hearing.

31. In cases where it shall be necessary for any party to any cause depending in the said Court to go into evidence subsequently to the hearing of such cause or on any reference to the Master such evidence shall be taken as nearly as may be in the same manner as evidence with a view to such hearing.

Objections for want of parties.

32. It shall not be competent to any defendant to take any objection for want of parties in any case to which the rules next hereinafter set forth extend and such rules shall be taken as part of the law and practice of the Court and any law or practice inconsistent therewith is hereby annulled.

Rule 1. Any residuary legatee or next of kin may without serving the remaining residuary legatees or next of kin have a decree for the administration of the personal estate of a deceased person.

Rule 2. Any legatee interested in a legacy charged upon real estate and any person interested in the proceeds of real estate directed to be sold may without serving any other legatee or person interested in the proceeds of the estate have a decree for the administration of the estate of a deceased person.

Rule 3. Any residuary devisee or heir may without serving any co-residuary devisee or co-heir have the like decree.

Rule 4. Any one of several cestui que trust under any deed or instrument may without serving any other of such cestui que trust have a decree for the execution of the trusts of the deed or instrument.

Rule 5. In all cases of suits for the protection of property pending litigation and in all cases in the nature of waste one person

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person may sue on behalf of himself and of all persons having the same interest.

Rule 6. Any executor administrator or trustee may obtain a decree against any one legatee next of kin or cestui que trust for the administration of the estate or the execution of the trusts.

Rule 7. In all the above cases the Court if it shall see fit may require any other person or persons to be made a party or parties to the suit and may if it shall see fit give the conduct of the suit to such person as it may deem proper and may make such order in any particular case as it may deem just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.

Rule 8. In all the above cases the persons who according to the present practice of the Court would be necessary parties to the suit shall be served with notice of the decree and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit and they may by an order of course have liberty to attend the proceedings under the decree and any party so served may within such time as shall in that behalf be prescribed by the general order of the Supreme Court apply to the Court to add to the decree.

Rule 9. In all suits concerning real or personal estate which is vested in trustees under a will settlement or otherwise such trustees shall represent the persons beneficially interested under the trust in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate and in such cases it shall not be necessary to make the persons beneficially interested under the trusts parties to the suit but the Court may upon consideration of the matter on the hearing if it shall so think fit order such persons or any of them to be made parties.

33. If in any suit or proceeding before the Court it shall appear to the Court that any deceased person who was interested in the matters in question has no legal personal representative it shall be lawful for the Court either to proceed in the absence of any person representing the estate of such deceased person or to appoint some person to represent such estate for all the purposes of the suit or proceeding on such notice (if any) as the Court shall think fit either specially or generally by public advertisement and every order made by the said Court in reference to the matter and any orders consequent thereon shall bind the estate of such deceased person in the same manner in every respect as if there had been a duly constituted legal personal representative of such deceased person and such legal personal representative had been a party to the suit or proceeding and had duly appeared and submitted his rights and interests to the protection of the Court.

Court may proceed without representative of deceased person.

34. It shall be lawful for any person claiming to be a creditor or a specific pecuniary or residuary legatee or the next of kin or some or one of the next of kin of a deceased person to apply for and obtain as of course without bill or claim filed or any other preliminary proceedings a summons from the Judge acting as Primary Judge in Equity of the said Supreme Court requiring the executor or administrator as the case may be of such deceased person to attend before him at chambers for the purpose of shewing cause why an order for the

Remedy by creditor &c. for administration of personal estate.

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the administration of the personal estate of the deceased should not be granted and upon proof by affidavit of the due service of such summons or on the appearance in person or by his solicitor or counsel of such executor or administrator and upon proof by affidavit of such other matters if any as such Judge shall require it shall be lawful for such Judge if in his discretion he shall think fit so to do to make the usual order for the administration of the estate of the deceased with such variations if any as the circumstances of the case may require and the order so made shall have the force and effect of a decree to the like effect made on the hearing of a cause or claim between the same parties provided that such Judge shall have full discretionary power to grant or refuse such order or to give any special directions touching the carriage or execution of such order and in the case of applications for any such order by two or more different persons or classes of persons to grant the same to such one or more of the claimants or of the classes of claimants as he may think fit and if the Judge or the Master in Equity in case of any reference to him shall think proper the carriage of the order may subsequently be given to such party interested and upon such terms as the Judge or Master may direct.

Copy of summons to
be filed.

35. A duplicate or copy of such summons shall previously to the service thereof be filed in the office of the said Master in Equity and no service thereof upon any executor or administrator shall be of any validity unless the copy so served shall be stamped with a stamp of such office indicating the filing thereof and the filing of such summons shall have the same effect with respect to lis pendens as the filing of a bill or claim.

Remedy by creditor
for administration of
real estate.

36. It shall be lawful for any person claiming to be a creditor of any deceased person or interested under his will to apply for and obtain in a summary way in the manner hereinbefore provided with respect to the personal estate of a deceased person an order for the administration of the real estate of a deceased person where the whole of such real estate is by devise vested in trustees who are by the will empowered to sell such real estate and authorized to give receipts for the rents and profits thereof and for the produce of the sale of such real estate and all the provisions hereinbefore contained with respect to the application for such order in relation to the personal estate of a deceased person and consequent thereon shall extend and be applicable to an application for such order as last hereinbefore mentioned with respect to real estate.

Court may direct
sale of mortgaged
property instead of
foreclosure.

37. It shall be lawful for the Court in any suit for the foreclosure of the equity of redemption in any mortgaged property upon the request of the mortgagee or of any subsequent incumbrancer or of the mortgagor or any person claiming under them respectively to direct a sale of such property instead of a foreclosure of such equity of redemption on such terms as the Court may think fit to direct and if the Court shall so think fit without previously determining the priorities of incumbrances or giving the usual or any time to redeem provided that if such request shall be made by any such subsequent incumbrancer or by the mortgagor or by any person claiming under them respectively the Court shall not direct any such sale without the consent of the mortgagee or the persons claiming under him unless the party making such request shall deposit in Court a reasonable sum of money to be fixed by the Court for the purpose of securing the performance of such terms as the Court may think fit to impose on the party making such request.

No suit to be dis-
missed for misjoinder
of plaintiffs.

38. No suit shall be dismissed by reason only of the misjoinder of persons as plaintiffs therein but wherever it shall appear to the Court that notwithstanding the conflict of interest in the co-plaintiffs

or

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or the want of interest in some of the plaintiffs or the existence of some ground of defence affecting some or one of the plaintiffs the plaintiffs or some or one of them are or is entitled to relief the Court shall have power to grant such relief and to modify its decree according to the special circumstances of the case and for that purpose to direct such amendments if any as may be necessary and at the hearing before such amendments are made to treat any one or more of the plaintiffs as if he or they was or were a defendant or defendants in the suit and the remaining or other plaintiff or plaintiffs was or were the only plaintiff or plaintiffs on the record and where there is a misjoinder of plaintiffs and the plaintiff having an interest shall have died leaving a plaintiff on the record without an interest the Court may at the hearing of the cause order the cause to stand revived as may appear just and proceed to a decision of the cause if it shall see fit and to give such directions as to costs or otherwise as may appear just and expedient.

39. No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby and it shall be lawful for the Court to make binding declarations of right without granting consequential relief.

Suit may be for declaratory order only.

40. It shall be lawful for the Court to adjudicate on questions arising between parties notwithstanding that they may be some only of the parties interested in the property respecting which the question may have arisen or that the property in question is comprised with other property in the same settlement will or other instrument without making the other parties interested in the property respecting which the question may have arisen or interested under the same settlement will or other instrument parties to the suit and without requiring the whole trusts and purposes of the settlement will or other instrument to be executed under the direction of the Court and without taking the accounts of the trustees or other accounting parties or ascertaining the particulars or amount of the property touching which the question or questions may have arisen Provided always that if the Court shall be of opinion that the application is fraudulent or collusive or for some other reason ought not to be entertained it shall have power to refuse to make the order prayed.

Court may decide between some of the parties without making other interested persons parties.

Proviso.

41. Upon any suit becoming abated by death marriage or otherwise or defective by reason of some change or transmission of interest or liability it shall not be necessary to exhibit any bill of revivor or supplemental bill in order to obtain the usual order to revive such suit or the usual or necessary decree or order to carry on the proceedings but an order to the effect of the usual order to revive or of the usual supplemental decree may be obtained as of course upon an allegation of the abatement of such suit or of the same having become defective and of the change or transmission of interest or liability and an order so obtained when served upon the party or parties who according to the present practice of the Court would be defendant or defendants to the bill of revivor or supplemental bill shall from the time of such service be binding on such party or parties in the same manner in every respect as if such order had been regularly obtained according to the existing practice of the Court and such party or parties shall thenceforth become a party or parties to the suit and shall be bound to enter an appearance thereto within such time and in like manner as if he or they had been duly served with process to appear to a bill of revivor or supplemental bill filed against him Provided that it shall be open to the party or parties so served within such time after service as shall be in that behalf prescribed by any general order of the Supreme Court to apply to the Court by motion or petition to discharge such order on any ground which would have

In case of abatement &c. an order may be made which shall have same effect as a bill of revivor.

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have been open to him on a bill of revivor or supplemental bill stating the previous proceedings in the suit and the alleged change or transmission of interest or liability and praying the usual relief consequent thereon. Provided also that if any party so served shall be under any disability other than coverture such order shall be of no force or effect as against such party until a guardian or guardians ad litem shall have been duly appointed for such party and such time shall have elapsed thereafter as shall be prescribed by any general order of the Supreme Court in that behalf.

New facts &c. after commencement of suit to be introduced as amendments.

42. It shall not be necessary to exhibit any supplemental bill for the purpose only of stating or putting in issue facts or circumstances which may have occurred after the institution of any suit but such facts or circumstances may be introduced by way of amendment into the original bill of complaint in the suit if the cause is otherwise in such a state as to allow of an amendment being made in the bill and if not the plaintiff shall be at liberty to state such facts or circumstances on the record in such manner and subject to such rules and regulations with respect to the proof thereof and the affording the defendant leave and opportunity of answering and meeting the same as shall in that behalf be prescribed by any general order of the Supreme Court.

Where account required to be taken Court may give special directions as to the mode of taking same.

43. It shall be lawful for the Court in any case where any account is required to be taken to give such special directions if any as it may think fit with respect to the mode in which the account should be taken or vouched and such special directions may be given either by the decree or order directing such account or by any subsequent order or orders upon its appearing to the Court that the circumstances of the case are such as to require such special directions and particularly it shall be lawful for the Court in cases where it shall think fit so to do to direct that in taking the account the books of account in which the accounts required to be taken have been kept or any of them shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objections thereto as they may be advised.

Court may order real estate to be sold if required.

44. If after a suit shall have been instituted in the said Court in its Equitable Jurisdiction in relation to any real estate it shall appear to the Court that it will be necessary or expedient that the said real estate or any part thereof should be sold for the purpose of such suit it shall be lawful for the said Court to direct the same to be sold at any time after the institution thereof and such sale shall be as valid to all intents and purposes as if directed to be made by a decree or decretal order on the hearing of such cause and any party to the suit in possession of such estate or in receipt of the rents and profits thereof shall be compelled to deliver up such possession or receipt to the purchaser or such other person as the Court shall direct.

Where property is the subject of proceedings Court may allow to parties the annual income.

45. Where any real or personal property shall form the subject of any proceedings in the Supreme Court in Equity and the Court shall be satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such suit it shall be lawful for the said Court at any time after the commencement of such proceedings to allow to the parties interested therein or any one or more of them the whole or part of the annual income of such real property or a part of such personal property or a part or the whole of the income thereof up to such time as the said Court shall direct and for that purpose to make such orders as may appear to the said Court necessary or expedient.

Practice as to injunctions to stay proceedings at law.

46. The practice of the Supreme Court with respect to injunctions for the stay of proceedings at law shall so far as the nature of the case will admit be assimilated to the practice of such Court with respect

Equity Practice.

respect to special injunctions generally and such injunctions may be granted upon interlocutory applications supported by affidavit in like manner as other special injunctions are granted by the said Court.

47. Upon application by motion or petition to the Court in any suit depending therein for an injunction or a receiver or to dissolve an injunction or discharge an order appointing a receiver the answer of the defendant shall for the purpose of evidence on such motion or petition be regarded merely as an affidavit of the defendant and affidavits may be received and read in opposition thereto.

Answer of defendant on motion for injunction &c. to be regarded as an affidavit.

48. In case any of the directions herein contained with respect to the practice and course of proceeding in the Court in its Equity Jurisdiction shall by mistake of parties fail to be followed in any suit or proceeding it shall be lawful for the Court if it shall think fit upon payment of such costs as such Court shall direct to make such order giving effect to and rectifying such proceedings as may be justified by the merits of the case.

In case directions as to practice &c. not followed Court may rectify proceedings.

49. In cases where according to the present practice of the Court in its Equity Jurisdiction such Court declines to grant equitable relief until the legal title or right of the party or parties seeking such relief shall have been established in a proceeding at law the said Court may itself determine such title or right without requiring the parties to proceed at law to establish the same.

Court may determine legal titles.

50. The Judges of the Supreme Court or any two of them may and they are hereby required from time to time to make general rules and orders for carrying the purposes of this Act into effect and for regulating the times and form and mode of procedure and generally the practice of the said Court in respect of the matters to which this Act relates and for regulating the fees and allowances to all officers of the said Court and solicitors thereof in respect to such matters and so far as may be found expedient for altering the course of proceeding hereinbefore prescribed in respect to the matters to which this Act relates or any of them and such rules and orders may from time to time be rescinded or altered by the like authority and all such rules and orders shall take effect as general orders of the said Court.

Judges to make general rules and orders for carrying purposes of this Act into effect.

51. All such general rules and orders shall immediately after the making and issuing thereof be laid before the Legislative Council if then sitting or if not then within five days after the next meeting thereof and if the said Legislative Council shall by any resolution passed within thirty-six days after such rules or orders have been laid before such Legislative Council resolve that the whole or any part of such rules or orders ought not to continue in force in such case the whole or such part thereof as shall be so included in such resolution shall from and after such resolution cease to be binding.

Such general rules and orders to be laid before the Legislative Council.

52. In the construction of this Act the words "bill of complaint" shall mean also and include information the word "affidavit" shall mean also and include affirmation and wherever the Supreme Court is mentioned or indicated herein the enactment shall be taken to refer either to the Judge acting as Primary Judge in Equity or to the Court holden before two or more of the Judges thereof (or equally to one and the other) as the context or the nature of the case (having regard to their present jurisdiction respectively) may require.

Construction of terms.

53. This Act shall commence and take effect on and from the first day of September now ensuing Provided that it shall be lawful for the said Judges to make and issue any such general rules or orders as aforesaid at any time after the passing of this Act so as the same be not made to take effect before the said first day of September.

Commencement of Act.

Naturalization.

SCHEDULE.

Form of Indorsement on Bill of Complaint.

VICTORIA R.

To the within-named Defendant *C. D.* greeting.

WE command you ["and every of you" *where there is more than one defendant*] that within days after service hereof on you exclusive of the day of such service you cause an appearance to be entered for you in Our Supreme Court to the within Bill of Complaint and that you observe and do what Our said Court shall direct. Witness the Honorable the Chief Justice of Our said Court at Sydney the day of in the year of Our reign.

Note.—If you fail to comply with the above directions you will be liable to be arrested and imprisoned.

Appearances are to be entered at the Office of the Master in Equity Supreme Court House King-street Sydney.

Form of Indorsement on Claim.

VICTORIA R.

To the within-named Defendant *C. D.* greeting.

WE command you ["and every of you" *where there is more than one defendant*] that within _____ days after the service hereof on you exclusive of the day of such service you cause an appearance to be entered for you in Our Supreme Court to the within claim and further that on the fourteenth day after the service hereof or as soon after as you can be heard you do personally or by counsel appear in the said Court before the Judge acting as Primary Judge in Equity at ten of the clock in the forenoon and then and there shew cause if you can why the within-named *A. B.* should not have such relief against you as is within claimed or why such order as shall be just with reference to the claim should not be made. Witness the Honorable the Chief Justice of Our said Court at Sydney the _____ day of _____ in the _____ year of Our reign.

Note.—Appearances are to be entered at the Office of the Master in Equity Supreme Court House King-street Sydney and if you neglect to enter your appearance and either personally or by your counsel to appear at the place and time above mentioned you will be subject to such order as the Court may think fit to make against you in your absence.