

Act No. 11, 1897.

SERVICE OF
EQUITABLE PROCESS.

—
An Act to amend and declare the law relating to the service of process in the Supreme Court in its Equitable Jurisdiction ; and for other purposes connected therewith. [14th October, 1897.]

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

Short title.

1. This Act may be cited as the “Service of Equitable Process Act of 1897.”

Repeal of 13 Vic.
No. 31.

2. The Act thirteenth Victoria number thirty-one, intituled “*An Act to effectuate the service of Process issuing from the Supreme Court in its Equitable Jurisdiction,*” is hereby repealed.

Service out of the
jurisdiction.

3. The Supreme Court in its Equitable Jurisdiction, or a Judge in Equity of the said Court, may allow any equitable process in any suit or proceeding to be served out of the jurisdiction whenever—

(a) the suit or proceeding, wholly or in part, concerns lands or hereditaments within the jurisdiction, or any charge, lien, judgment, or incumbrance thereon ; or

(b)

Service of Equitable Process.

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

4. (i) When leave is given to serve any statement of claim Endorsement of statement of claim. upon a person out of the jurisdiction, and such person is neither a British subject nor in any British possession, the said statement of claim shall be endorsed in the form or to the effect of the form set out in Schedule A hereto instead of in the form set out in the First Schedule to the Equity Act of 1880.

(ii) Every other statement of claim which is served upon any defendant, whether within or out of the jurisdiction, shall be endorsed in the form or to the effect of the form set out in Schedule B hereto instead of in the form set out in the First Schedule to the said Equity Act of 1880. (iii)

Service of Equitable Process.

(III) All statements of claim which have heretofore been endorsed in the form or to the effect of the form set out in Schedule B to this Act shall be deemed to have been properly endorsed, anything in the said Equity Act of 1880 to the contrary notwithstanding.

Substituted service.

5. (1) If it be made to appear to the Supreme Court in its Equitable Jurisdiction, or to a Judge in Equity of the said Court, that any party is from any cause, other than the mere fact that the person to be served is out of the jurisdiction unable to effect reasonably prompt service, the said Court or Judge may make such order as may seem just, directing substituted or other service, or directing notice by advertisement or otherwise to be given instead of service, whether such party as aforesaid is out of the jurisdiction or not.

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

Power to make rules.

6. (1) The Judges of the Supreme Court or any three of them (of whom the Chief Justice and the Chief Judge in Equity shall be two) may make such rules as they shall think fit—

(a) for regulating service or notice in lieu of service within the jurisdiction of all equitable process, notwithstanding anything in the said Equity Act of 1880, or in any other Act of Parliament contained; and

(b) for regulating applications to the Court or Judge under this Act; and

(c) generally for the purpose of carrying this Act into effect.

Rules to be laid before Parliament.

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

Interpretation.

7. (1) In the construction of this Act the words "equitable process" include statement of claim, petition, motion, summons, decree, order, and generally any other document of which service is required to be effected in any suit or proceeding before the Supreme Court in its Equitable Jurisdiction or before the Master in Equity or Master in Lunacy.

(II) For the purposes of this Act the Equitable Jurisdiction of the Supreme Court shall be deemed to include every jurisdiction of the said Court in Equity, whether statutory or otherwise, and also the jurisdiction of the said Court in matters of Infancy and Lunacy.

SCHEDULES.

Service of Equitable Process.

SCHEDULES.

SCHEDULE A.

Notice to be endorsed on statement of claim the day of , in the year one thousand eight hundred and ninety-

To the within-named defendant, A.B.—

TAKE notice that the within-named plaintiff E.F. [or, where there is more than one plaintiff, plaintiffs E.F. and C.D.] has commenced a suit against you in the Supreme Court of New South Wales in its Equitable Jurisdiction by the within statement of claim, and you are required within days after the service hereof on you, exclusive of the day of such service, to cause an appearance to be entered for you in the Equity Office of the Supreme Court of New South Wales to the within statement of claim, and you are also required at the same time of entering your appearance to file in the said Equity Office a memorandum stating in effect that you dispute or admit, in whole or in part, the plaintiff's claim, or submit to such decree or order as the said Court may think fit to make, or disclaim all right, title, or interest in the subject matter of the within statement of claim. And if you admit the plaintiff's claim, you may, on the Tuesday following the eighth day after such appearance, or so soon thereafter as you can be heard, attend, either personally or by counsel or solicitor, before the Judge sitting in chambers, at Chancery-square, in the city of Sydney, in the Colony of New South Wales, at ten of the clock in the forenoon, and submit to such decree as is within prayed or shall be just.

NOTE.—Appearances are to be entered in the Equity Office of the Supreme Court of New South Wales, at Chancery-square aforesaid, and if you neglect to enter an appearance or to file a memorandum as above-mentioned, or personally or by counsel or solicitor to attend at the place and time above-mentioned, you will be subject to such order as the said Court may think fit to make in your absence.

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

SCHEDULE B.

VICTORIA R.

To the within-named defendant, A.B. [or where there is more than one defendant, defendants A.B. and 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 the Equity Office of our Supreme Court to the within statement of claim. And that you do at the same time of entering your appearance, file in the Equity Office a memorandum stating in effect that you dispute or admit, in whole or in part, the plaintiff's claim, or submit to such decree or order as the Court may think fit to make, or disclaim all right, title, or interest in the subject matter of the within statement of claim. And if you admit the plaintiff's claim, you may, on the Tuesday following the eighth day after such appearance, or so soon after as you can be heard, attend, either personally or by counsel or solicitor, before the Judge sitting in Chambers, in Chancery-square, in the city of Sydney, at ten of the clock in the forenoon, and submit to such decree as is within prayed or shall be just.

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

NOTE.—Appearances are to be entered in Equity Office of the Supreme Court, at Chancery-square aforesaid, and if you neglect to enter your appearance or to file a memorandum as above-mentioned, or personally or by counsel or solicitor to attend at the place and time above-mentioned, you will be subject to such order as the Court may think fit to make in your absence.