

Act No. 35, 1900.

SUPREME COURT
AND
CIRCUIT COURTS.

An Act to consolidate certain enactments relating to the Supreme Court and Circuit Courts. [19th October, 1900.]

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:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Supreme Court and Circuit Courts Act, 1900," and is divided into Parts, as follows:—

PART I.—*Preliminary*—ss. 1-3.

PART II.—*The Judges*—ss. 4-15.

PART III.—*Jurisdiction of the Court, and how exercised*—ss. 16-21. PART

Short title and
division.

Supreme Court and Circuit Courts.

PART IV.—*Circuit Courts*—ss. 22-23.

PART V.—*Court Fees*—ss. 34-38.

PART VI.—*Rules*—ss. 39-41.

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 (1) The Acts mentioned in the Schedule to this Act are to the extent therein expressed hereby repealed.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

(2) All persons appointed under any enactment hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed hereunder. Officers under
repealed Acts.

(3) All commissions issued, and all proclamations, notices, rules, orders, and regulations made or given under the authority of any enactment hereby repealed, and being in force at the time of the passing of this Act, shall continue in force and have the same effect and validity as if they had been issued, made, or given under the authority of this Act. Commissions,
proclamations, rules,
&c., under repealed
Acts.

(4) Nothing herein shall affect the validity of any judgment, decision, order, act, proceeding, or matter rendered or declared valid by any enactment hereby repealed. Validation of
proceedings saved.
55 Vic. No. 3, s. 1.

(5) Nothing in this Act shall be construed to take away, lessen, or impair any statutory or other jurisdiction, power, authority, right, or privilege of the Court or of any Judge, or of any Circuit Court. Jurisdiction of
Courts and Judges
saved.

3. In this Act, unless the context or subject-matter otherwise indicates or requires:— Interpretation.

“ Barrister ” means a barrister admitted by the Court, or a barrister of England or Ireland.

“ Chief Justice ” means Chief Justice of the Court.

“ Judge ” means Judge of the Court, and includes the Chief Justice.

“ The Court ” means the Supreme Court of New South Wales .

PART II.

THE JUDGES.

Appointment, qualification, and tenure of office.

4. (1) The present Chief Justice and other Judges shall continue to be the Chief Justice and Judges respectively. Present Judges to
retain office.

(2) The present Chief Judge in Equity, Judge exercising the Matrimonial Causes Jurisdiction of the Court, Judge in Bankruptcy, and Probate Judge shall continue to be the Chief Judge in Equity, the Judge exercising the Matrimonial Causes Jurisdiction of the Court, and Judge in Bankruptcy, and the Probate Judge respectively.

5. The office of Chief Justice may be held by a barrister admitted by the Court in like manner and subject to the like qualifications as to standing at the bar as if he were a barrister of England or Ireland. Qualification for
office of Chief
Justice.
25 Vic. No. 9, s. 1.

6.

Supreme Court and Circuit Courts.

Appointment of Chief Judge in Equity.
44 Vic. No. 18, s. 1.
55 Vic. No. 26, s. 4.

Appointment of Judge exercising Matrimonial Causes Jurisdiction.
36 Vic. No. 9, s. 3.

Appointment of Probate Judge.
[cf. 1898, No. 13, s. 33.]

Appointment of Judge in Bankruptcy and of Puisne Judges generally.
28 Vic. No. 7, s. 1.
45 Vic. No. 1, s. 1.
50 Vic. No. 35, s. 1.
51 Vic. No. 19, s. 123.

Qualification of such Judges.
25 Vic. No. 9, s. 1.
28 Vic. No. 7, s. 2.
45 Vic. No. 1, s. 1.
50 Vic. No. 35, s. 1.
51 Vic. No. 19, ss. 128, 135.

Tenure of office.
Constitution Act, ss. 8, 33.
28 Vic. No. 7, s. 3.
45 Vic. No. 1, s. 4.
50 Vic. No. 35, s. 4.
51 Vic. No. 19, s. 128 (3).

Salary.
Constitution Act, s. 40.
46 Vic. No. 15, s. 1.
50 Vic. No. 35, s. 2.
51 Vic. No. 19, s. 128 (4).

Pension.
46 Vic. No. 15, ss. 2, 3.
50 Vic. No. 35, s. 3.
51 Vic. No. 19, s. 128 (4).

6. Whenever the office of Chief Judge in Equity becomes vacant, the Governor may appoint one of the Judges to such office.

7. Whenever the office of Judge exercising the Matrimonial Causes Jurisdiction of the Court becomes vacant, the Governor may appoint the Chief Justice, or if he declines such appointment, then one of the other Judges, to such office.

8. Whenever the office of Probate Judge becomes vacant, the Governor may appoint one of the Judges permanently or temporarily to such office.

9. (1) Whenever—
(a) the office of Judge in Bankruptcy becomes vacant; or
(b) through the office of any other Puisne Judge becoming vacant, the number of Puisne Judges is less than six,
the Governor may, by Commission under the Great Seal, in Her Majesty's name, appoint a fit and proper person to such office.

(2) Such person shall, from the time of his appointment, be a Judge to all intents and purposes whatsoever, and may, subject to the provisions of this or any other Act, sit as such in any jurisdiction of the Court.

(3) Such person shall be a barrister of not less than five years standing, or, if he be appointed to the office of Judge in Bankruptcy, shall be such barrister or a solicitor of not less than seven years standing: But this subsection shall not apply to a person appointed in succession to any present Judge, who has been appointed under the provisions of the Act forty-fifth Victoria number one, or of the Act fiftieth Victoria number thirty-five.

10. (1) The commission of every Judge shall be, continue, and remain in force during his good behaviour, notwithstanding the demise of Her Majesty, whom may God long preserve.

(2) Provided that Her Majesty may remove any Judge upon the address of both houses of the legislature.

Salaries and pensions.

11. (1) The annual salary of the Chief Justice shall be three thousand five hundred pounds, and the annual salary of every Puisne Judge shall be two thousand six hundred pounds.

(2) Such salary shall be paid to such Chief Justice or Puisne Judge so long as his patent or commission continues and remains in force.

12. (1) The pension to be paid to a Chief Justice or Puisne Judge retiring after fifteen years' service in New South Wales as a Judge, or on permanent disability or infirmity, shall be seven-tenths of his actual salary at the time of such retirement.

(2) Every such pension shall be in every year charged upon and payable out of the Consolidated Revenue Fund. (3)

Supreme Court and Circuit Courts.

(3) If, after the assignment of such pension to a Judge, he accepts any new appointment under the Crown, such pension shall merge or be reduced *pro tanto* during the tenure of such appointment according as the salary or emoluments of such appointment are of a greater or less amount than such pension. Constitution Act, s. 51.

Acting Judges.

13. (1) The Governor may issue a special commission to any Judge of the District Court, or to any barrister or solicitor of not less than seven years' standing, appointing him— General power to appoint acting Judge.
55 Vic. No. 26, s. 3.

(a) to act as a Judge of the Court for the trial of issues, civil or criminal, at any Circuit Court, or Court of gaol delivery, or at any place or places at which a Judge of the Court could not attend without detriment to the ordinary business of the Court; or

(b) to sit and act as a Judge of the Court at Sydney in any one or more jurisdictions of the Court to be specified in such commission, and for a time not exceeding in any case six months to be specified in like manner.

(2) Thereupon the person so appointed shall, at the place and for the time and subject to the conditions or limitations specified in such commission, have all the power, authorities, privileges, and immunities, and fulfil all the duties of a Judge of the Court.

14. (1) Upon leave of absence being granted to the Judge in Bankruptcy, the Governor may appoint an acting Judge in Bankruptcy during such leave of absence. Acting Judge in Bankruptcy.
51 Vic. No. 19, s. 129.

(2) Thereupon such acting Judge shall have and exercise the same jurisdiction, powers, authorities, and privileges as the Judge in Bankruptcy.

15. Where under any Act any jurisdiction, power, or authority is vested in the Chief Judge in Equity, the Judge exercising the Matrimonial Causes Jurisdiction of the Court, the Judge in Bankruptcy, or the Probate Judge, then— Acting judges in special jurisdictions.
36 Vic. No. 9, s. 4.
44 Vic. No. 18, s. 2.
48 Vic. No. 3, s. 2.
50 Vic. No. 36, s. 1.
51 Vic. No. 19, s. 129.
54 Vic. No. 25, s. 4.

(a) at the request of such Judge or of the Chief Justice; or

(b) during the illness of such Judge or his absence from Sydney; or

(c) for any other reasonable cause,

any other Judge may exercise such jurisdiction, power, or authority in all respects as such Judge in whom the same is so vested might have done, and shall while so acting have co-ordinate jurisdiction with and all the power and authority of such Judge, subject to the same right of appeal.

PART III.

JURISDICTION OF THE COURT, AND HOW EXERCISED.

Court authorised to perform certain acts required to be performed by courts in England.

6 W. IV. No. 12, s. 1.

16. Where any Imperial Act in force in England on the first day of March, in the year of our Lord one thousand eight hundred and twenty-nine, and applicable to New South Wales, or any Imperial Act adopted, and directed to be applied in New South Wales, authorises and directs any proceeding, act, matter, or thing to be had, done, performed or executed by or before Her Majesty's Courts at Westminster or the respective Judges thereof in the administration of justice, every such proceeding, act, matter, and thing shall be, and the same is hereby authorised and directed to be, had, done, executed, and performed by the Court and the respective Judges thereof in like manner as if the same had been in and by such Imperial Act expressly authorised and directed to be had, done, executed, and performed by the Court or the respective Judges thereof.

Two or more Judges may exercise jurisdiction of Court.

4 Vic. No. 22, s. 19.

45 Vic. No. 1, s. 5.

Constitution of Court on appeals from Judges.

36 Vic. No. 9, s. 49.

45 Vic. No. 1, s. 5.

48 Vic. No. 13, ss. 1, 2, 3.

51 Vic. No. 19, s. 135.

17. Subject to the provisions of this Act, or of any other Act in force for the time being, every power, jurisdiction, or authority conferred on or entrusted to or vested in the Court or the Judges collectively may lawfully be exercised by two or more of the Judges.

18. (1) No Judge shall sit on the hearing of an appeal from or on a motion to set aside any judgment, order, decree, ruling, or decision made by him in any jurisdiction of the Court.

(2) The Court on the hearing of any such appeal or motion shall consist of not less than three Judges.

(3) This section shall not apply to—

- (a) any judgment, order, decree, ruling, or decision pronounced or made *pro forma* by consent of parties; or
- (b) any motion for a rule nisi only; or
- (c) the hearing of an appeal or motion before two Judges only where the parties consent thereto.

Court held by one Judge in certain cases.

22 Vic. No. 14, s. 7.

19. The Court may be held by one Judge alone for the disposal of—

- (a) returns of fines and estreated recognisances; and
- (b) applications for and returns to writs of *habeas corpus*, notwithstanding that it may be term time, or, that the Court held before two or more Judges may be at the same time sitting in banco.

Powers of single Judge in vacation.

4 Vic. No. 22, s. 27.

20. In order to prevent the delay and consequent mischief which might otherwise ensue:—

- (1) Every Judge shall in vacation have power to make all such orders and grant all such writs as can only under ordinary circumstances be made or granted respectively by the Court:

Provided that no such order or writ shall continue in force after the first day of the next ensuing term unless the Court shall then otherwise direct.

(2)

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(2) The like power may be also exercised by any Judge in cases of exigency in term: And in certain cases in term.

Provided that no order made or writ granted as last aforesaid shall continue in force after the then next ensuing sitting day in banco of the Court.

4 Vic. No. 22, s. 27.

21. (1) Two or more Courts, each consisting of two or more Judges, may during term be held simultaneously in banco.

Court may be held in two or more divisions.

(2) Subject to the provisions of this Act, each such Court shall have power to exercise the full jurisdiction of the Court hitherto possessed while sitting in banco.

55 Vic. No. 3, s. 2.

PART IV.

CIRCUIT COURTS.

22. The Governor may by proclamation apportion and divide New South Wales into three or more circuit districts, and ascertain and fix the boundaries and limits of every such district, and alter such boundaries and limits from time to time as occasion may require.

Circuit districts.
5 Vic. No. 4, s. 1.

23. The Governor may by proclamation direct Circuit Courts to be holden in or at such towns and places as he thinks fit to appoint, and fix from time to time, and vary or alter, as occasion may require, the times and places for holding the said Courts respectively.

Proclamation of Circuit Courts.
4 Vic. No. 22, s. 16

24. Every Circuit Court shall be holden by a Judge.

Court to be holden by a Judge.

25. Every Circuit Court shall have such ministerial officers as may be required.

4 Vic. No. 22, s. 17.
Officers.

26. Every Circuit Court shall be—

Ibid.

(a) a court of record; and

Nature of Courts defined.

(b) a court of oyer and terminer and of assize and nisi prius for New South Wales; and

Ibid.

(c) a court of gaol delivery in and for the particular district only within which it is appointed to be holden.

5 Vic. No. 4, s. 1.

27. Every Circuit Court shall have the same powers and jurisdiction as courts of oyer and terminer, and gaol delivery, and of nisi prius in England had respectively at the time of the passing of the Act fourth Victoria number twenty-two, and shall stand in the same relation to the Court as such courts respectively stood in with respect to Her Majesty's Superior Courts of Record at Westminster at the time of the passing of the said Act.

General powers and jurisdiction.
4 Vic. No. 22, s. 17.

28. Every Circuit Court may—

(a) try and determine all issues of fact joined in any action or other proceeding commenced or pending in the Court; and

Jurisdiction in civil actions.

(b) inquire into and assess damages in any such action.

Ibid.

5 Vic. No. 4, s. 2.

29.

Supreme Court and Circuit Courts.

Criminal
jurisdiction.

4 Vic. No. 22, s. 17.
5 Vic. No. 4, s. 10.

29. Every Circuit Court may, upon information exhibited therein—

(a) by and in the name of Her Majesty's Attorney or Solicitor General; or

(b) in case of their absence from such Court, by and in the name of such other person as the Governor appoints in that behalf, hear and determine all cases of crimes and misdemeanours committed in New South Wales.

Jurisdiction as to
punishment.

5 Vic. No. 4, s. 2.

30. Every person convicted in any Circuit Court of any crime or offence cognizable therein shall be liable to the same penalties and punishments as by law could be inflicted on such person if convicted in the Court of such crime or offence.

Procedure.

4 Vic. No. 22, s. 17.

31. Every Circuit Court shall proceed in all cases according to the form and manner observed and established by law in the Court in similar cases.

Delay in opening
Circuit Court.

Ibid. s. 18.

32. If in any case the Judge does not arrive at any such circuit town or place in time to open the Circuit Court, or does not actually open such Court on the day for that purpose appointed by any such proclamation as aforesaid, the subsequent holding of such Court shall not for that reason be or be taken to be illegal, but the same may be opened and holden, either by the same Judge or by any other Judge, on any following day:

Provided that every such Circuit Court shall be actually opened and holden on the day so appointed except in cases of unavoidable accident, and that then such Court shall be opened and holden as soon afterwards as possible.

Custody of records.

46 Vic. No. 17,
s. 359.

33. The records of every Circuit Court shall be taken to belong to and shall be kept in the Supreme Court, and the Prothonotary shall have their legal custody:

Provided that during the sitting of any Circuit Court the Judge's Associate, or other officer there acting as Clerk of Assize, shall in respect of all proceedings at such sitting have the custody of such records.

PART V.

COURT FEES.

Governor may direct
fees to be collected
by means of stamps.

60 Vic. No. 19, s. 3.

34. (1) The Governor may, by notice in the Gazette, direct that after the day specified in the notice all or any of the fees to be demanded and paid in the Court or in any Circuit Court shall be collected by means of stamps.

(2) After the day so specified, the fees mentioned in the notice shall be received by stamps denoting the sums payable, and not in money.

(3)

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(3) All or any of the stamps shall be impressed or adhesive as may be directed in the notice.

35. (1) Where any fee mentioned in such notice is payable in respect of a document, the stamps denoting the fee shall be affixed to or impressed upon the document, or such other document, book, or record as may be prescribed by regulations made under the authority of this Act.

Document, book, or record to be stamped.
60 Vic. No. 19, s. 4.

(2) Where any fee mentioned in such notice is payable otherwise than in respect of a document, the stamps denoting the fee shall be affixed to or impressed on such document, book, or record as may be prescribed as aforesaid.

(3) The Governor may make regulations prescribing the document, book, or record to be stamped as aforesaid.

36. No judge or officer of any Court shall allow any such document as aforesaid to be filed, received, or used, although no exception be taken thereto, until the document has been first duly stamped. And if the document is through mistake or inadvertence filed, received, or used in any Court without having been first duly stamped, the said Court or a Judge may order that it be duly stamped.

Document to be stamped before being filed.
Ibid. s. 5.

37. Every officer whose duty it is to receive any fees, which under the authority of this Act are required to be collected by means of stamps, shall see that the proper stamps have been affixed to or impressed on the document, book, or record required to be stamped, and that when adhesive stamps are used the same are duly cancelled.

Officers to see that stamps are affixed or impressed and duly cancelled.
Ibid. s. 6.

38. The provisions of the Stamp Duties Act, 1898, and of any Act amending the same shall, so far as applicable, extend and apply to and in respect of all stamps required under this Act to be used.

Provisions of Stamp Acts to apply.
Ibid.

PART VI.

RULES.

39. The Judges may make all such general rules and orders as to them seem meet—

Power to make rules.
4 Vic. No. 22, s. 23.
15 Vic. No. 17, s. 1.
60 Vic. No. 19, s. 2.

- (a) for the regulation of practice and pleadings in the Court in all respects in the several branches of its jurisdiction; and
- (b) for facilitating, or more fully carrying into effect, all or any of the provisions and objects of Part IV of this Act; and
- (c) for fixing the amount of fees and costs to be allowed in respect of all matters at any time pending in the Court to the practitioners therein; and
- (d) for fixing the fees to be demanded and paid in the Court and in the Circuit Courts; and

(e)

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(e) for the government and conduct of the officers and ministers of the Court and of the Circuit Courts.

Rules to have force of law.
4 Vic. No. 22, s. 23.

40. Every rule and order so made shall be of the same force and effect as if the same had been inserted in and had formed part of this Act.

Power to make rules under other Acts saved.

41. Nothing in this part of this Act shall affect the provisions of any Act in force for the time being by which power to make rules or orders is conferred upon the Court or any Judge.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
6 Wm. IV. No. 12	An Act to remove doubts respecting the power of the Supreme Court of New South Wales to do and perform certain acts which are required to be done and performed by His Majesty's Courts in England.	The whole.
4 Vic. No. 22 ...	An Act to provide for the more effectual administration of justice in New South Wales and its dependencies.	Sections 1, 2, 3, 13, 16, 17, 18, 19, 23, 24, 25, and 27.
5 Vic. No. 4 ...	An Act to make further provision for the trial of cases in the Circuit Courts of New South Wales, and to amend in certain respects the Act providing for trial by jury in such courts.	Sections 1, 2, and 10.
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Sections 1 to 11 inclusive.
15 Vic. No. 17 ...	An Act to repeal so much of the Imperial Act ninth George the Fourth, chapter eighty-three, and the Colonial Act fourth Victoria number twenty-two as vests a power of taxation in the Judges of the Supreme Court.	The whole.
17 Vic. No. 12 ...	An Act to amend the law respecting fees taken by officers of the Supreme Court. The Constitution Act.	The whole.
22 Vic. No. 14 ...	Equity and Fanco Business Expediting Act.	Sections 38, 39, 40, and so much of section 51 as relates to Judges.
25 Vic. No. 9 ...	An Act to amend the law as to the qualification for certain judicial and other offices.	Sections 4, 5, 6, and section 7 except in so far as it relates to cases under the Justices Acts.
28 Vic. No. 7 ...	An Act to authorise the appointment of an additional Judge of the Supreme Court.	So much as refers to the Offices of Chief Justice and of the Puisne Justices.
36 Vic. No. 9 ...	Matrimonial Causes Act	The whole.
		Sections 3 and 4.

Wollongong Water Supply Works.

SCHEDULE—*continued.*

Reference to Act.	Title or short title.	Extent of repeal.
44 Vic. No. 18 ...	Equity Act of 1880	So much of section 1 as relates to appointment, and section 2.
45 Vic. No. 1 ...	An Act to authorise the appointment of an additional Judge of the Supreme Court.	The whole.
46 Vic. No. 15 ...	Judges' Salaries and Pensions Act of 1883	The whole.
46 Vic. No. 17 ...	Criminal Law Amendment Act of 1883...	Section 359.
46 Vic. No. 19 ...	Retired Judges' Pensions Act of 1883 ...	The whole.
48 Vic. No. 3 ...	Matrimonial Causes Act Amendment Act of 1884.	The unrepealed portion.
48 Vic. No. 13 ...	An Act to regulate appeals to and the Constitution of the Supreme Court sitting in banco.	The whole.
50 Vic. No. 35 ...	Supreme Court (Sixth Judge) Act of 1887	The whole.
50 Vic. No. 36 ...	An Act to enable any Judge of the Supreme Court to hear and determine matters in the Equity, Ecclesiastical, and Divorce jurisdiction of the Court.	The whole.
51 Vic. No. 19 ...	Bankruptcy Act, 1887	The unrepealed portion.
55 Vic. No. 3 ...	Supreme Court Procedure Act of 1891 ...	The whole.
55 Vic. No. 26 ...	Judicial Offices Act of 1892	Section 3.
60 Vic. No. 19 ...	Supreme Court Fees Act, 1896	The whole.