

Act No. 34, 1902.

GENERAL LEGAL
PROCEDURE.
—

An Act to consolidate certain enactments relating to legal procedure. [20th August, 1902.]

BE it enacted by the King'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 “General Legal Procedure Act, 1902.”

Repeal.

2. (1) The enactments mentioned in the First Schedule, to the extent therein expressed, are hereby repealed.

(2)

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(2) All rules made under the authority of any Act hereby repealed, and in force at the time of the passing of this Act, shall be deemed to have been made hereunder.

3. Every writ, summons, rule, or order of the Supreme Court requiring service may be served by the Sheriff or his deputies, or by any other person. Service of writs, &c., of Supreme Court. 13 Vic. No. 34, s. 1.

4. (1) The Judges of the Supreme Court may by rule empower any commissioner of the said Court for taking affidavits, under such regulations as they think proper, to receive any præcipe for and to issue any writ of summons of the said Court at any circuit town now or hereafter to be appointed, and also any writ of subpoena to give evidence in any case, civil or criminal. Issue of writs of summons and subpoena at circuit towns. 23 Vic. No. 18, s. 1.

(2) Every such writ shall be returnable in the Supreme Court at Sydney, and every such præcipe shall, as soon as conveniently may be after the issue of the writ to which the same relates, be transmitted by the commissioner who received the same to the office of the Prothonotary of the said Court.

5. In all pleadings and proceedings the word "Statute" or "Act," used to indicate an enactment, shall mean and include an Act or an Imperial Act, as the context or the case may require. Term "Statute" or "Act" in pleadings, &c. 22 Vic. No. 12, s. 7.

6. Whenever a power is conferred or a duty imposed by any Act or Imperial Act upon any person by virtue or in the exercise of any public office or employment, and such person is sued in respect of anything done by him which he shall allege to have been done in pursuance thereof, he may plead the general issue (with or without any other plea or pleas), and give the special matter in evidence under that plea, and if he succeeds in the action he shall recover costs as between attorney and client : General issue by statute pleaded by public officers. Ibid. s. 9.

Provided that he shall, at the foot of his plea, state the particular Act or Imperial Act, and section or sections upon which he intends to rely ; and no other enactments shall at the trial be relied on by him.

7. In all actions brought by executors or administrators in right of their testator or intestate, such executors or administrators (unless the Court or a Judge otherwise orders) shall be liable to pay costs to the defendant in case of being nonsuited or a verdict passing against them, and in all other cases in which they would be liable to costs if suing upon a cause of action accruing to themselves in their own right, and the defendant shall have judgment for such costs accordingly. Liability of plaintiffs, executors, and administrators to pay costs. 5 Vic. No. 9, s. 28.

8. No wager of law shall be allowed, and actions of debt shall be maintainable on simple contract against executors or administrators. Wager of law not allowed. Ibid. s. 29.

9. If any defendant in an action or a simple contract pleads any matter in abatement to the effect that any other person or persons ought to be jointly sued, and issue is joined on such plea, and it appears at Pleas in abatement. 4 Will. IV, No. 17, adopting 1 Geo. IV, c. 14, s. 2.

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at the trial that the action could not by reason of any Statute of Limitations be maintained against such other person or persons or any of them, the issue joined on such plea shall be found against the party pleading the same.

Feigned issue and
proceedings thereon.
4 Vic. No. 6, s. 25.
4 Vic. No. 22, s. 28.

10. The Supreme Court may, in every case in which the ends of justice appear to render that mode of inquiry expedient, in any branch of its jurisdiction—

- (a) direct the trial by a jury of any feigned issue or issues; and
- (b) make all such orders and issue all such writs and cause all such proceedings to be had and taken as the Court thinks necessary for that purpose; and
- (c) upon the finding of such jury (unless a new trial is for any sufficient reason ordered), give such decision and make such decree or pronounce such judgment in the cause or matter pending before them as justice seems to require.

Feigned issue subject
to conditions or
admissions.
5 Vic. No. 9, s. 42.

11. In all cases where the Supreme Court or a Judge thereof is authorised to direct the trial of any feigned issue, such Court or Judge may impose such conditions on the parties respectively, and direct such admissions to be made by them or either of them for the purpose of such trial as the Court or Judge thinks fit, and for the purposes aforesaid make all such orders as may be necessary.

Proceedings in lieu
of feigned issue.
14 Vic. No. 9, s. 9.

12. (1) In every case where any Court of law or equity desires to have any question of fact decided by the jury, such Court may direct a writ of summons to be sued out, by such person or persons as the Court thinks ought to be plaintiff or plaintiffs against such person or persons as the Court thinks ought to be defendant or defendants therein, in the form set forth in the Second Schedule to this Act, with such alterations or additions as such Court may think proper.

(2) Thereupon all the proceedings shall go and be brought to a close in the same manner as proceedings under a feigned issue.

Special case on
matters of law.
5 Vic. No. 9, s. 21.

13. (1) In all cases where by any law the Supreme Court or a Judge thereof is empowered to direct or authorise the trial of a feigned issue for the determination of any question of fact, such Court or Judge may direct or allow the statement of a special case for the opinion of the Court on any matter of law.

(2) On the decision of any such case the Court may make such order or orders in the matter, and give such adjudication, or cause such judgment to be entered therein as the Court thinks fit.

Judges, justices, and
others may act.
6 Vic. No. 18, s. 1.

14. No Judge of the Supreme Court, justice of the peace, or other inhabitant of the city of Sydney, or of any incorporated town or city, discharging any judicial or civil functions whatever shall be disabled from acting in the due discharge and execution of his respective duties by reason of his being a member of the corporation interested;

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interested; and any such Judge, notwithstanding that he is a member of such corporation, may sit, determine, or otherwise adjudicate on the matters brought before him connected with the said corporation as in any ordinary case of the like nature; and any person named as juror or assessor may act as such juror or assessor in any such proceeding; and any justice of the peace of any incorporated town may act as justice in like manner as if he had not been directly or indirectly interested in the concerns of such corporation.

SCHEDULES.

FIRST SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
4 Wm. IV No. 17	An Act for adopting and applying a certain Act of Parliament for rendering a written memorandum necessary to the validity of certain promises and engagements.	So much of the Act as adopts sec. 2 of 9 Geo. IV, c. 14.
4 Vic. No. 6	... An Act to consolidate and amend the laws relating to actions against persons absent from the Colony, and against persons sued as joint contractors.	The unrepealed portion.
4 Vic. No. 22	... An Act to provide for the more effectual administration of justice in New South Wales and its dependencies.	The unrepealed portion.
5 Vic. No. 9	... An Act for the further amendment of the law and for the better advancement of justice.	Sections 21, 28, 29, and the unrepealed portion of section 42.
6 Vic. No. 18	... An Act to remove doubts in respect to the exercise of certain powers by the Councils of the City of Sydney and town of Melbourne, and to declare the competency of witnesses and the jurisdiction of magistrates in certain cases within the same.	Section 1.
13 Vic. No. 34	... An Act to make further provision for the issue and service of process in the Supreme Court.	The whole.
14 Vic. No. 9	... An Act to amend the law concerning games and wagers.	The unrepealed portion.
22 Vic. No. 12	.. An Act to amend and extend the Act passed for shortening Acts of the Legislature.	Sections 7 and 9.
29 Vic. No. 18	... An Act to make further provision for the issue of process at circuit towns.	The whole.

SECOND

Sydney Corporation.

Section 12.

SECOND SCHEDULE.

In the Supreme Court of New South Wales
[or any inferior Court].

New South Wales to wit (or such other venue as may be directed).

WHEREAS A.B. affirms and C.D. denies [*here state fully the fact or facts in issue*], and the Judges of the Supreme Court of New South Wales [*or such other Court, &c.*], are desirous of ascertaining the truth by the verdict of a jury, and both parties pray that the same may be inquired of by the country.
