

Act No. 49, 1900.

An Act to amend the procedure of the Supreme Court. [14th November, 1900.]

SUPREME COURT PROCEDURE.

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:—

1. This Act may be cited as the "Supreme Court Procedure Act, 1900." Short title.

2. In the interpretation of this Act, unless the context otherwise indicates or requires, the following words shall have the respective meanings set opposite to them, that is to say:— Interpretation.

- "The Court" means Supreme Court.
"Judge" means Judge of the Supreme Court.
"Action" means action in the Supreme Court.
"Prescribed" means prescribed by rules of Court.

Common Law Procedure.

3. (1) In any action by consent of both parties the whole or any one or more of the issues of fact in question may be tried, or the amount of any damages or compensation may be assessed by a Judge without a jury. Parties may consent to dispense with a jury.

(2) Notwithstanding such consent a Judge may at any time order that all or any of the issues of fact in an action be tried with a jury if it appears to him to be expedient.

4. Issues of fact settled under the provisions of the Real Property Act, 1900, may by consent of both parties be tried by a Judge without a jury, and a Judge when so sitting shall have all the powers of a jury. Issues under the Real Property Act may be tried by a Judge without a jury.

5. The verdict or finding of any Judge sitting without a jury on the trial or assessment of any issue of fact or amount of damages or compensation pursuant to this Act shall be of the like force and effect in all respects as the verdict or finding of a jury. Finding of Judge to be finding of a jury.

6. In all cases in which the Real Property Act, 1900, directs applications to be made to the Supreme Court, such applications may be made to the Supreme Court in its equitable jurisdiction, as well as to the Supreme Court holden before three Judges. Applications to the Court under the Real Property Act may be made to the Equity Court.

7. (1) In any action, if the Court in Banco is of opinion that the plaintiff should have been nonsuited, or that upon the evidence the plaintiff or the defendant is as a matter of law entitled to a verdict in the action or upon any issue therein, the Court may order a nonsuit or such verdict to be entered. Full Court may order nonsuit or verdict to be entered.

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(2) If the Court in Banco orders a new trial of any action, issue, or question which has been tried before a Judge without a jury, it may direct such new trial to be heard before a Judge either with or without a jury.

Defendant may have judgment for excess of set-off.

8. In every action in which the defendant has pleaded by way of set-off or cross-action any debt or demand claimed by him from the plaintiff, such defendant shall be entitled to recover in such action the amount by which such debt or demand is found to exceed the debt or demand proved by the plaintiff, and shall have judgment and execution for the same accordingly.

Foreign attachment against absent defendant.

9. Under section one hundred and eighty-eight, section one hundred and ninety-one, and section one hundred and ninety-four of the Common Law Procedure Act, 1899, the cause of action shall be deemed to have arisen within the jurisdiction in the case of an action arising out of contract if either—

- (a) the contract was made within the jurisdiction, or
- (b) the breach thereof was made or committed within the jurisdiction wherever the contract was made.

Equity Procedure.

Equitable relief may be given on originating summons.

10. (1) It shall not be necessary that persons seeking equitable relief shall in all cases apply by way of statement of claim, but rules of Court shall be made specifying in what cases applications may be made by way of originating summons in chambers, and providing for the course of procedure thereon.

(2) Appeals from any order made on an originating summons shall be made to the Full Court direct.

Equity Court to have discretion to refuse an administration decree.

11. It shall not be obligatory on the Court or a Judge sitting in equity to make a decree or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person if the questions between the parties can be properly determined without such decree or order.

Rules of Court.

Rules of Court.

12. The rules and form in the Schedule to this Act shall regulate the practice and procedure hereunder in all matters to which they relate, except so far as they shall hereafter be altered, added to, or rescinded under the power to make rules herein contained.

Judges to make rules.

13. Rules of Court regulating the practice and procedure under this Act shall be made by the Judges of the Supreme Court, or any three of them, and such rules may rescind, add to, or alter any of the rules or form contained in the Schedule to this Act, and when so made such rules shall have the same force and effect as if they had formed part of the Schedule to this Act.

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- 14.** The Judges of the Court or any three of them may make rules of Court for all or any of the following purposes, that is to say :—
- (a) For the purpose of regulating the manner in which applications to the Court under any statute may be made, and the practice and procedure to be observed upon any such application.
 - (b) For the purpose of providing for the verification on oath of all pleas filed in actions arising under a writ specially endorsed under the twenty-fourth section of the Common Law Procedure Act, 1899.
 - (c) For the purpose of regulating the sittings of the Court and of the Judges thereof sitting in Chambers, and for the distribution among the Judges of the business of the Court.
 - (d) And generally for the purpose of regulating the practice and procedure of the Court.

Judges to make rules relating to procedure in the Court generally.

15. Nothing in any rules of Court to be made under this Act shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries.

Rules not to affect certain matters.

16. Non-compliance with any of the rules of Court in the Schedule to this Act, or made under the authority of this Act, shall not render any proceeding void unless the Court or a Judge thereof so directs, but such proceedings may be set aside either wholly or in part as irregular, or amended or otherwise dealt with in such manner and upon such terms (if any) as appear to be just.

Non-compliance with rules.

17. All rules of Court made under the powers herein contained shall, immediately after the making thereof, be laid before both Houses of Parliament if then sitting, or if not within ten days of the next sitting thereof; and if either of the said Houses, by any resolution passed within thirty days after such rules have been so laid before it, resolves 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.

Rules to be laid before Parliament, who may disallow them.

SCHEDULE.

RULES OF COURT.

Appeals from decisions of a single Judge.

1. Appeals from the decision of a single Judge upon any question of law to the Full Court shall be made and prosecuted in the same times and manner in all respects as appeals to the Full Court in the Common Law jurisdiction of the Court from a Judge sitting in chambers.

Appeals from Judge on point of law.

Originating Summons in Equity.

2. The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law

Questions of account or administration may be made on originating law summons.

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law of a deceased person, or as cestui que trust under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor, or other person as aforesaid may take out as of course an originating summons returnable in chambers in equity for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case may require, that is to say, the determination without an administration of the estate or trust, of any of the following questions or matters:—

- (a) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or cestui que trust;
- (b) the ascertainment of any class of creditors, legatees, devisee, next of kin, or others;
- (c) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts;
- (d) the payment into Court of any money in the hands of the executors or administrators or trustees;
- (e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;
- (f) the approval of any sale, purchase, compromise, or other transaction;
- (g) the determination of any question arising in the administration of the estate or trust.

Administration on
originating
summons.

3. Any of the persons named in the last preceding rule may, in like manner, apply for and obtain an order for—

- (a) The administration of the personal estate of the deceased;
- (b) the administration of the real estate of the deceased;
- (c) the administration of the trust.

Parties.

4. The persons to be served with the summons under the last two preceding rules in the first instance shall be the following, that is to say—

A. Where the summons is taken out by an executor or administrator or trustee—

- (a) for the determination of any question under subsections (a), (e), (f), or (g) of rule 2, the persons or one of the persons whose rights or interests are sought to be affected;
- (b) for the determination of any question under subsection (b) of rule 2, any member or alleged member of the class;
- (c) for the determination of any question under subsection (c) of rule 2, any person interested in taking such accounts;
- (d) for the determination of any question under subsection (d) of rule 2, any person interested in such money;
- (e) for relief under subsection (a) of rule 3, the residuary, legatees, or next of kin, or some of them;
- (f) for relief under subsection (b) of rule 3, the residuary, devisees, or next of kin or some of them;
- (g) for relief under subsection (c) of rule 3, the cestuis que trust or some of them;
- (h) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur.

B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.

Foreclosure, &c., on
originating
summons.

5. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons returnable in Chambers in Equity for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case may require, that is to say—delivery of possession by the mortgagor, foreclosure, payment of the mortgage debt and foreclosure, sale, redemption, reconveyance, delivery of possession of the mortgagee.

6.

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6. The persons to be served with the summons under the last preceding rule shall be such persons as under the existing practice of the Court in Equity would be the proper parties to a suit for the like relief as that specified by the summons.

Parties.

7. A vendor or purchaser of real or leasehold estate, or their representatives respectively, may take out, as of course, an originating summons, returnable in Chambers in Equity, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the Chief Judge in Equity shall make such order upon the application as appears just, and shall order by whom all or any of the costs of and incident to the application shall be borne and paid.

Originating summons for decision of question between vendor and purchaser.

8. The Court in Equity or a Judge in Equity may direct such other persons to be served with an originating summons as they or he may think fit.

9. (a) any person claiming to be interested under a deed, will, or other written instrument, may apply, by originating summons, for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested.

Construction of instrument or originating summons.

(b) The Court in Equity or a Judge in Equity may direct such persons to be served with the summons as they or he may think fit.

10. The parties served with an originating summons shall, before they are heard, enter appearances in the office of the Master in Equity, together with an address for service, which shall be not more than one mile from the said office.

Appearance to an originating summons.

11. A defendant shall appear to an originating summons within eight days after service of the summons upon him, inclusive of the day of such service.

Service.

12. Applications by way of originating summons shall be supported by such evidence as the Court or Judge may require, and directions may be given, as they or he may think just, for the trial of any question arising thereout.

Evidence.

13. Orders made on originating summons shall be settled, passed, and entered, and remain of record, and shall be enforced in the same manner in all respects as orders of the Court in Equity.

Settlement of orders.

14. An originating summons shall be in Form A to these rules altered to meet the circumstances of the case.

Form of summons.

15. So soon as the defendants have appeared to an originating summons, or have made default in so appearing within the time limited, the plaintiff shall take out in the Equity Office an appointment, before the Chief Judge in Equity, for the hearing of the summons, and shall give the defendants who have appeared two clear days' notice of the date of such appointment.

Appointment for hearing of summons.

FORM A.

In the Supreme Court of New South Wales, }
in Equity. }

No.

In the matter of the will of, &c.;

or

In the matter of the estate of, &c.;

or

In the matter of the trusts of, &c.;

or

In the matter of the indenture of mortgage dated, &c.;

or

In the matter of the contract for sale, dated, &c.;

or as the case may be.

Between A.B., plaintiff, and C.D., defendant.

Originating

Act No. 50, 1900.

Commonwealth Arrangements.

Originating Summons.

Let of [*residence and description*] within eight days after service of this summons upon him, inclusive of the day of such service, cause an appearance to be entered for him to this summons which is issued upon the application of of [*residence and description*] who claims to be [*state the nature of the claim*] for the determination of the following questions:—

[*State the questions.*]

Appearance may be entered in the office of the Master in Equity, Chancery-square, Sydney.

Dated the day of , one thousand nine hundred and .

This summons is taken out by the abovenamed [*or by* the solicitor for the abovenamed .]

NOTE.—If the defendant does not enter an appearance within the time and at the place above mentioned such order will be made and proceedings taken as the Judge may think fit and expedient.
