

ADMINISTRATION OF JUSTICE ACT.

Act No. 11, 1940.

George VI.
No. 11, 1940. An Act to make further provisions relating to judges of the Supreme Court, the judge of the Land and Valuation Court and the offices of Master in Equity and Prothonotary; to amend the Supreme Court and Circuit Courts Act, 1900-1935, the Land and Valuation Court Act, 1921, the Equity Act, 1901, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 22nd May, 1940.]

BE

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:—

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PART I.

PRELIMINARY.

1. This Act may be cited as the "Administration of Justice Act, 1940." Short title.

2. This Act is divided into Parts as follows—

Division into Parts.

PART I—PRELIMINARY.

PART II—AMENDMENTS OF SUPREME COURT AND CIRCUIT COURTS ACT, 1900-1935.

PART III—AMENDMENTS OF LAND AND VALUATION COURT ACT, 1921.

PART IV—AMENDMENTS OF EQUITY ACT, 1901.

PART V—AMENDMENT OF SUPERANNUATION ACT, 1916-1935.

PART II.

AMENDMENTS OF SUPREME COURT AND CIRCUIT COURTS ACT, 1900-1935.

3. (1) The Supreme Court and Circuit Courts Act, 1900-1935, as amended by this Part of this Act, may be cited as the Supreme Court and Circuit Courts Act, 1900-1940. Citation.

(2) The Supreme Court and Circuit Courts Act, 1900-1935, is amended— Amendment of Act No. 35, 1900.

(a) by omitting from the proviso to subsection one of section nine the word "eight" and by inserting in lieu thereof the word "ten"; Sec. 9. (Puisne Judges.)

(b) by inserting after subsection three of section twelve the following new subsection:— Sec. 12. New subsec. (3A).

(3A) (a) Any period, during which a Chief Justice or puisne judge has served as acting judge of the Supreme Court shall be computed (Judges' pensions.) cf. Act No. 23, 1912, s. 20 (3).

as

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as portion of the service of such Chief Justice or puisne judge for the purposes of this section.

(b) This subsection shall extend—

(i) to and in respect of the Chief Justice and every puisne judge in office at the commencement of the Administration of Justice Act, 1940; and

(ii) to and in respect of any period before such commencement during which a Chief Justice or puisne judge has served as acting judge of the Supreme Court.

Sec. 15A (3)
(b).
(Pension of
Prothono-
tary;—
correction.)

(c) by omitting paragraph (b) of subsection three of section 15A and by inserting in lieu thereof the following paragraph:—

(b) Where a Prothonotary appointed under subsection one of this section retires on permanent disability or infirmity or in accordance with the provisions of paragraph (a) of this subsection, he shall if he has served in such office for five years, be entitled on retiring to an annual pension at the rate of twenty one-hundredths of his salary at the time of his retirement and at the additional rate of three one-hundredths of his salary at the time of his retirement for each complete year of his service after the expiration of the said five years to the date of his retirement, but so that the rate of his pension shall not exceed one-half of his salary at the time of his retirement.

Sec. 15A
(3) (c).

(d) (i) by omitting from paragraph (c) of the same subsection the words “and is then required to contribute to any fund he shall continue to contribute to such fund and” and by inserting in lieu thereof the word “he”;

(ii) by omitting from the same paragraph all words following the word “privileges” and by inserting in lieu thereof the words “as if he had remained an officer within the meaning of the Public Service Act, 1902, as amended by subsequent Acts.”

(e)

(e) by inserting after paragraph (c) of the same subsection the following new paragraphs:—

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Sec. 15A (3).

New paragraphs (d), (e) and (f).

(d) (i) Where after the commencement of the Administration of Justice Act, 1940, a person is appointed to the office of Prothonotary, and such person is at the time of his appointment an officer of the Public Service, there shall be paid to such person out of the State Superannuation Fund, a lump sum equal to the contributions paid by him to that fund under the Superannuation Act, 1916-1935, or any Act amending that Act, but without interest.

(ii) Except as provided in subparagraph (i) of this paragraph such person shall not be entitled to receive any payment or pension under the Superannuation Act, 1916-1935, or any Act amending that Act.

(e) Every pension referred to in paragraph (b) of this subsection shall be paid out of moneys provided by Parliament.

(f) If after the assignment to a person of a pension referred to in paragraph (b) of this subsection 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.

(3) Paragraph (c) of subsection two of this section shall be deemed to have commenced on the date of the commencement of the Supreme Court and Circuit Courts (Prothonotary) Amendment Act, 1935.

Commencement of paragraph (c) of subsection (2).

PART III.

AMENDMENTS OF LAND AND VALUATION COURT ACT, 1921.

4. (1) The Land and Valuation Court Act, 1921, as amended by the Western Lands (Amendment) Act, 1927, the Sydney Corporation Act, 1932, the Closer Settlement (Amendment) Citation.

Administration of Justice Act.

No. 11, 1940. (Amendment) Act, 1937, the Statute Law Revision Act, 1937, and this Part of this Act, may be cited as the Land and Valuation Court Act, 1921-1940.

**Amendment
of Act No.
10, 1921.**

(2) The Land and Valuation Court Act, 1921, as amended by the Western Lands (Amendment) Act, 1927, the Sydney Corporation Act, 1932, the Closer Settlement (Amendment) Act, 1937, and the Statute Law Revision Act, 1937, is amended—

**Sec. 4 (3).
(Salary of
deputy
judge.)**

(a) by inserting at the end of subsection three of section four the words “and be paid the same salary as the judge”;

**Sec. 4.
Substituted
subsecs.
(4), (5) and
new sub-
sec. (6)**

(b) by omitting subsections four and five of the same section and by inserting in lieu thereof the following subsections:—

(4) A person shall not be qualified for appointment under this section as a judge or deputy judge unless he is at the date of his appointment a judge of the Supreme Court, or a practising barrister of not less than five years' standing.

(5) (a) Where a judge of the Supreme Court is appointed as judge under this section his office as judge of the Supreme Court shall not be affected:

Provided that, in ascertaining the number of puisne judges of the Supreme Court for the purposes of the proviso to subsection one of section nine of the Supreme Court and Circuit Courts Act, 1900, as amended by subsequent Acts, a judge of the Supreme Court appointed as judge under this section shall not be counted.

(b) When a judge of the Supreme Court who has been appointed as judge under this section ceases, in accordance with the law for the time being in force relating to judges of the Supreme Court, to be a judge of the Supreme Court, he shall thereupon cease to be the judge of the Land and Valuation Court.

(6)

(6) (a) Where a practising barrister is appointed as judge under this section he shall, by virtue of such appointment, become a puisne judge of the Supreme Court for all purposes and in all respects as if at the date of such appointment he had been appointed a puisne judge of the Supreme Court pursuant to section nine of the Supreme Court and Circuit Courts Act, 1900, as amended by subsequent Acts:

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Provided that in ascertaining the number of puisne judges of the Supreme Court for the purposes of the proviso to subsection one of section nine of the Supreme Court and Circuit Courts Act, 1900, as amended by subsequent Acts, the person who becomes a puisne judge of the Supreme Court under this subsection shall not be counted.

(b) When a person who has become a puisne judge of the Supreme Court by virtue of his appointment as judge under this section, ceases in accordance with the law for the time being in force relating to judges of the Supreme Court to be a judge of the Supreme Court, he shall thereupon cease to be the judge of the Land and Valuation Court.

(c) This subsection shall be deemed to have commenced upon the twenty-fifth day of May, one thousand nine hundred and thirty-six.

(c) by omitting section five.

Sec. 5. 1

PART IV.

AMENDMENTS OF EQUITY ACT, 1901.

5. (1) The Equity Act, 1901, as amended by subsequent Acts and by this Part of this Act, may be cited as the Equity Act, 1901-1940.

(2)

Administration of Justice Act.

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Amendment
of Act No.
24, 1901.New s. 71A.
Tenure of
office and
pension of
the Master.

(2) The Equity Act, 1901, as amended by subsequent Acts, is amended by inserting after section seventy-one the following new section:—

71A. (1) (a) Subject to this section every person appointed to the office of Master in Equity shall hold office during good behaviour, but shall retire on the day on which he attains the age of seventy years.

(b) Where a Master in Equity retires on permanent disability or infirmity or in accordance with the provisions of paragraph (a) of this subsection, he shall if he has served in such office for five years, be entitled on retiring to an annual pension at the rate of twenty one-hundredths of his salary at the time of his retirement and at the additional rate of three one-hundredths of his salary at the time of his retirement for each complete year of his service after the expiration of the said five years to the date of his retirement, but so that the rate of his pension shall not exceed one-half of his salary at the time of his retirement.

In this paragraph "salary" means the aggregate of the salaries paid to the Master in Equity as Master in Equity and as Master in Lunacy.

(c) Every pension referred to in paragraph (b) of this subsection shall be paid out of moneys provided by Parliament.

(d) If after the assignment to a person of a pension referred to in paragraph (b) of this subsection 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.

(2) The Governor shall have power to remove any person from the office of Master in Equity on account of misbehaviour or inability to perform the duties of his office.

(3) (a) Where after the commencement of the Administration of Justice Act, 1940, a person is appointed to the office of Master in Equity, and such
person

person is at the time of his appointment an officer of the Public Service, he shall be entitled to receive any deferred or extended leave, and any privileges as if he had remained an officer within the meaning of the Public Service Act, 1902, as amended by subsequent Acts.

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(b) There shall be paid to such person out of the State Superannuation Fund, a lump sum equal to the contributions paid by him to that fund under the Superannuation Act, 1916-1935, or any Act amending that Act, but without interest.

(c) Except as provided in paragraph (b) of this subsection such person shall not be entitled to receive any payment or pension under the Superannuation Act, 1916-1935, or any Act amending that Act.

(4) (a) The Governor may, from time to time as occasion may require, appoint an Acting Master in Equity to act in the place of the Master in Equity and Master in Lunacy during the illness or absence of the Master in Equity.

(b) An Acting Master in Equity shall, while so acting, be deemed to be the Master in Equity and the Master in Lunacy.

(c) A person shall not be qualified for appointment as an Acting Master in Equity under this subsection unless he possesses the qualifications prescribed by section seventy-one of this Act for appointment as Master in Equity.

(3) (a) The provisions of subsections one and two of section 71A of the Equity Act, 1901-1940, shall, subject to paragraph (b) of this subsection, extend to and in respect of the person who at the commencement of this Act holds the office of Master in Equity, in all respects as if that section had been in force at the time of his appointment to such office.

Extension
of s. 71A.

(b) The annual pension payable under paragraph (b) of subsection one of section 71A of the Equity Act, 1901-1940, to the person who at the commencement of this Act holds the office of Master in Equity, shall be reduced

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reduced by the amount payable to him in each year by way of pension under the Superannuation Act, 1916-1935, or any Act amending that Act.

PART V.

AMENDMENT OF SUPERANNUATION ACT, 1916-1935.

Amendment
of Act No.
28, 1916,
s. 3.

6. (1) The Superannuation Act, 1916-1935, as amended by subsequent Acts, is amended by inserting in the definition of "Employee" in section three after the words "District Court judge" the words "or the Master in Equity or the Master in Lunacy or the Prothonotary".

(2) The amendment made by subsection one of this section shall not operate—

- (a) to deprive the person who at the commencement of this Act holds the office of Master in Equity or the person who at such commencement holds the office of Prothonotary, of any right to receive any payment or pension under the Superannuation Act, 1916-1935, or any Act amending that Act, to which he would be entitled if subsection one of this section had not been enacted;
- (b) to deprive any person of any right to receive any payment or pension under the Superannuation Act, 1916-1935, or any Act amending that Act, to which he would be entitled upon the death of either of the persons referred to in paragraph (a) of this subsection, if subsection one of this section had not been enacted.

(3) Any payment or pension which the person who, at the commencement of this Act, holds the office of Prothonotary is entitled to receive under the Superannuation Act, 1916-1935, or any Act amending that Act, shall be in addition to any pension which he is entitled to receive under section 15A of the Supreme Court and Circuit Courts Act, 1900-1940.

(4) The Superannuation Act, 1916-1935, as amended by subsequent Acts and by this Part of this Act, may be cited as the Superannuation Act, 1916-1940.