

SUPREME COURT PROCEDURE ACT.

Act No. 13, 1957.

An Act to make further provision in respect of the powers of the Supreme Court in certain of its jurisdictions and in respect of the practice and procedure of that Court; for these and other purposes to amend the Common Law Procedure Act, 1899, the Supreme Court and Circuit Courts Act, 1900, the Supreme Court Procedure Act, 1900, the Judgment Creditors' Remedies Act, 1901, the Equity Act, 1901, the Justices Act, 1902, the Commercial Causes Act, 1903, and certain other Acts; and for purposes connected therewith. [Assented to, 8th April, 1957.]

Elizabeth II,
No. 13, 1957.

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. (1) This Act may be cited as the "Supreme Court Procedure Act, 1957."

Short title
and
commence-
ment.

(2) This Act shall commence on the first day of July, one thousand nine hundred and fifty-seven.

2. Each Act specified in the first column of the Second Schedule to this Act and as amended by subsequent Acts, if any, and by this Act may be cited in the manner specified in the second column of that Schedule opposite the reference to that Act in the first column.

Citation of
amended
Acts.

3.

Supreme Court Procedure Act.

No. 13, 1957. **3.** The Common Law Procedure Act, 1899, as
 Amendment of Act
 No. 21, 1899. amended by subsequent Acts, is amended—

Sec. 15.
 (Indorse-
 ment of
 service.)

(a) (i) by inserting in section fifteen after the word
 “service” where firstly occurring the words
 “or within such enlarged time as the Court
 or a Judge may order”;

(ii) by inserting in the same section after the
 words “under this Act” the words—

“Any such order may be made although
 application therefor is not made until after
 the expiration of three days after such
 service.”;

Sec. 102.
 (Discovery
 of
 documents.)

(b) by omitting from subsection one of section one
 hundred and two the words “upon an affidavit
 by such party or his attorney of his belief that
 any document to the production of which he is
 entitled for the purpose of discovery or other-
 wise is in the possession or power of the opposite
 party,”;

New
 sec. 184A.

(c) by inserting next after section one hundred and
 eighty-four the following new section:—

Lien or
 claim of
 third person
 on debt.

184A. (1) Whenever in any proceedings to
 obtain an attachment of debts it is suggested by
 the garnishee that the debt sought to be attached
 belongs to some third person, or that any third
 person has a lien or charge upon it, the Judge
 may order such third person to appear and to
 state the nature and particulars of his claim
 upon such debt.

(2) After hearing the allegations of any
 third person under any such order as is men-
 tioned in subsection one of this section, and of
 any other person who by the same or any sub-
 sequent order is ordered by the Judge to
 appear, or in case of such third person not
 appearing when ordered, the Judge may order
 execution to issue as provided in section one
 hundred

hundred and eighty-three of this Act, or may order any issue or question arising to be tried or determined, and may bar the claim of such third person or make such other order as he may think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Judge shall think just and reasonable. No. 13, 1957.

- (d) by omitting section two hundred and twenty-eight and by inserting in lieu thereof the following section:— Substituted sec. 228.

228. Upon a finding for the claimant, judgment may be signed and execution issue for the recovery of the possession of the property or such part thereof as the jury finds the claimant entitled to, and for costs, at such time as may be prescribed and in the manner prescribed. Judgment upon finding for claimant.

- (e) (i) by omitting from subsection three of section two hundred and sixty-eight the words "or before the Colonial Parliament at any time before the commencement of the operation of any such rule"; Sec. 268. (General rules may be made by the Judges.)

- (ii) by inserting next after subsection three of the same section the following new subsection:—

(3A) All general rules and orders, rules, orders or regulations made pursuant to the foregoing provisions of this section and all rules made pursuant to section two hundred and sixty-six of this Act shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the general rules and orders, rules, orders or regulations; and

(c)

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- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the general rules and orders, rules, orders or regulations have been laid before such House disallowing any general rule or order, or rule, order or regulation, or part thereof, such general rule or order, or rule, order or regulation, or part shall thereupon cease to have effect.

Amendment
of Act
No. 35,
1900.

Sec. 9.
(Puisne
Judges.)

Substituted
sec. 20.

Powers of
Court may
be exercised
by single
Judge in
certain
cases.

4. The Supreme Court and Circuit Courts Act, 1900, as amended by subsequent Acts, is amended—

- (a) (i) by omitting the proviso to subsection one of section nine;
(ii) by omitting subsection four of the same section;
(b) by omitting section twenty and by inserting in lieu thereof the following section:—

20. (1) The Court may be held by one Judge alone for the disposal of applications for a rule or order nisi for prohibition, mandamus, or certiorari 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.

Nothing in this subsection—

- (a) authorises the Court to be held by one Judge alone for the purpose of exercising the powers and jurisdiction of the Court on the return of a rule or order nisi for prohibition, mandamus or certiorari; or
(b) affects the construction of subsection two of this section.

(2)

(2) The powers and jurisdiction of the Court on the return of a rule or order nisi for prohibition, mandamus or certiorari to make absolute, discharge, or make any order whatsoever in respect of, the rule or order nisi (whether made by the Court or a Judge) may be exercised by one Judge alone—

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- (a) at any time when the Court is not sitting in banco;
- (b) in cases of exigency when the Court is sitting in banco.

(3) Any person aggrieved by any decision or determination by one Judge alone made pursuant to subsection one or two of this section may appeal therefrom to the Court. Any such appeal shall be in accordance with rules of court.

(4) The Judges or any five of them may by rules of court authorise the exercise (subject to those rules) by a Judge, in vacation or in any case of exigency, of any power which can only under ordinary circumstances be exercised by the Court.

The power to make rules of court conferred by this subsection does not include power to make rules of court with respect to—

- (a) applications for rules or orders nisi for prohibition, mandamus or certiorari;
- (b) the exercise in the circumstances mentioned in subsection two of this section of the powers and jurisdiction conferred by that subsection upon one Judge alone.

(c) (i) by inserting in section forty after the word "shall" the words "subject to subsection two of this section,";

Sec. 40.
(Rules to have force of law.)

(ii)

No. 13, 1957.

(ii) by inserting at the end of the same section the following new subsection:—

(2) All rules and orders so made and all rules made under section twenty of this Act shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules and orders or rules; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules and orders or rules have been laid before such House disallowing any rule or order or part thereof such rule or order or part shall thereupon cease to have effect.

Further amendment of Act No. 21, 1899. Substituted sec. 98.

5. (1) The Common Law Procedure Act, 1899, as amended by subsequent Acts, is further amended by omitting section ninety-eight and by inserting in lieu thereof the following section:—

Extension of power to plead equitable plea or replication; transfer of certain actions into equity jurisdiction.

98. (1) Any such equitable plea or equitable replication may be pleaded notwithstanding that upon the facts pleaded the relief on equitable grounds would not be an absolute, perpetual and unconditional injunction, but if upon the facts pleaded that relief would not be such an injunction, the Court or Judge shall make an order that the action be transferred into the jurisdiction of the Court in equity.

The Court or the Judge when making the order may impose such terms as to costs and otherwise as to the Court or Judge seems reasonable.

(2)

(2) Where an order is made under subsection one of this section the whole record of the action shall be transferred into the jurisdiction of the Court in equity. No. 13, 1957.

(3) After an action has been transferred into the jurisdiction of the Court in equity under this section—

- (a) any Judge exercising that jurisdiction may, from time to time, make such orders as he considers necessary relating to amendments, the filing of fresh pleadings, the settling of issues for trial, or otherwise to enable the action to be disposed of in that jurisdiction;
- (b) the action shall, subject to paragraph (a) of this subsection, be disposed of according to the practice and procedure of the Court in equity; and
- (c) the Court in equity may make such decree, declaration or order as appears just and may in addition thereto or in substitution therefor direct judgment to be entered on its verdict or finding and for costs in the manner prescribed and such a judgment so entered shall have the like force and effect in all respects as the signing of judgment in a Court of law and execution may issue thereon in the manner prescribed.

In so far as the costs of the proceedings before transfer have not been dealt with under subsection one of this section, the Court in equity may deal with those costs.

(2) The Equity Act, 1901, as amended by subsequent Acts, is amended— Amendment of Act No. 24, 1901.

- (a) (i) by omitting from section eight the words “any proceeding before it” and by inserting in lieu thereof the words “any suit or proceeding before it or has to be decided in any action transferred into its jurisdiction under section ninety-eight of the Common Law Procedure Act, 1899-1957,”; Sec. 8. (Power to decide legal titles, &c.)
- (ii)

No. 13, 1957.

(ii) by omitting from the same section the words "no suit in equity" and by inserting in lieu thereof the words "no suit or proceeding in equity and no action so transferred";

New sec. 8A.

(b) by inserting next after section eight the following new section:—

Transfer
of certain
suits, &c.,
into common
law
jurisdiction.

8A. (1) If it appears to the Court at any stage of any suit or proceeding in the Court that the Court has no jurisdiction to deal with the subject matter of the suit or proceeding and that the appropriate remedy in respect thereof lies in the Common Law jurisdiction of the Supreme Court, the Court shall make an order that the suit or proceeding be transferred into that jurisdiction.

The Court when making the order may impose such terms as to costs and otherwise as to the Court seems reasonable.

(2) Where an order is made under subsection one of this section the whole record of the suit or proceeding shall be transferred into the Common Law jurisdiction of the Supreme Court.

(3) After a suit or proceeding has been transferred into the Common Law jurisdiction of the Supreme Court under this section—

(a) any Judge exercising that jurisdiction may, from time to time, make such orders as he considers necessary relating to amendments, the filing of fresh pleadings, the settling of issues for trial, or otherwise to enable the suit or proceeding to be disposed of in that jurisdiction; and

(b) the suit or proceeding shall, subject to paragraph (a) of this subsection, be disposed of according to the practice and procedure of the Supreme Court at Common Law.

In

In so far as the costs of the proceedings before transfer have not been dealt with under subsection one of this section, the Judge presiding at the trial or the Supreme Court at Common Law may make such order as to those costs as may be just. No. 13, 1957.

(c) by inserting at the end of section nine the following new paragraph:—

Sec. 9.
(Power to Court to award damages in certain cases.)

Nothing in this section shall be construed as limiting the operation of any other section of this Act.

(d) (i) by omitting from subsection one of section thirty-nine the words "right or claim," and by inserting in lieu thereof the words "equitable or legal right or claim, whether or not connected with the claim of the plaintiff,";

Sec. 39.
(Set-off and counter-claim.)

(ii) by inserting in subsection two of the same section after the words "ought not" the words "in the circumstances of the case";

(e) by omitting subsection three of section ninety-four and by inserting in lieu thereof the following subsection:—

(3) All rules made under this Act shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof such rule or part shall thereupon cease to have effect.

Supreme Court Procedure Act.

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Amendment
of Act No.
27, 1902.

Sec. 101.

(Party
dissatisfied
with
determina-
tion of
Justices on
point of
law may
apply to
have a case
stated for
opinion
of Supreme
Court.)

Sec. 102.

(Before
case is
stated
appellant
to give
security.)Substituted
sec. 105.Appellant
to transmit
case to
Prothono-
tary and
give notice.

6. The Justices Act, 1902, as amended by subsequent Acts, is amended—

(a) (i) by inserting next after subsection one of section one hundred and one the following new subsection:—

(1A) The application need not be served upon the Justice or Justices personally, but shall be deemed to have been properly made if served upon the clerk of the court at which the determination of the Justice or Justices was made.

(ii) by inserting at the end of the same section the following new subsection:—

(3) Written notice that application has been made for a case to be stated and signed pursuant to subsection one of this section shall be given by the appellant to the respondent within the time prescribed by rules of the Supreme Court.

(b) by omitting from subsection one of section one hundred and two the words "Before any such case is stated and delivered to the appellant, he shall enter into a recognizance" and by inserting in lieu thereof the words "The appellant shall, within twenty-eight days after the determination appealed from, enter into a recognizance";

(c) by omitting section one hundred and five and by inserting in lieu thereof the following section:—

105. When the appellant has received the case or has been notified in writing that it has been stated and signed and is available, he shall—

(a) within such period thereafter as may be prescribed by rules of the Supreme Court transmit such case to the Prothonotary of the Supreme Court; and

(b)

(b) within such period and in such manner as may be prescribed by rules of the Supreme Court serve the respondent with such number of copies of the case as may be prescribed by those rules. No. 13, 1957.

(d) (i) by omitting from subsection two of section one hundred and seven the words "Supreme Court" and by inserting in lieu thereof the words "Judges of the Supreme Court or any five of them"; Sec. 107.
(Powers of Court may be exercised by Judge in Chambers.)

(ii) by inserting at the end of the same section the following new subsection:—

(3) Rules and orders made under this section shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules and orders; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules and orders have been laid before such House disallowing any rule or order or part thereof, such rule or order or part shall thereupon cease to have effect.

(e) (i) by omitting from subsection one of section one hundred and twelve the words "apply— Sec. 112.
(Any person aggrieved by conviction or order may apply for prohibition.)

- (a) in all cases to the Supreme Court, or, in vacation, to a Judge thereof;
- (b) for prohibition.

No. 13, 1937.

(b) in the following cases, whether in term or in vacation, to a Judge—

(i) where imprisonment has been directed;

(ii) where the fine imposed, or the amount ordered to be paid, or the value of the matter adjudicated upon does not exceed thirty pounds;

and by inserting in lieu thereof the words “apply to the Supreme Court”;

(ii) by inserting at the end of subsection five of the same section the following new paragraph:—

Nothing in this subsection—

(a) authorises the Supreme Court to be held by one Judge alone for the purpose of exercising the powers and jurisdiction of the Court on the return of any rule or order granted or made under this section;

(b) affects the construction of sections one hundred and fourteen and one hundred and fifteen of this Act;

(iii) by omitting subsection six of the same section;

Substituted
sec. 114.

(f) by omitting section one hundred and fourteen and by inserting in lieu thereof the following section:—

Before
whom rule
to be
returnable.

114. Subject to any rules of court made by the Judges of the Supreme Court or any five of them, any rule or order granted or made by the Court or a Judge under section one hundred and twelve of this Act may be made returnable before the Court or any such Judge.

(g)

- (g) by omitting section one hundred and sixteen and by inserting in lieu thereof the following section:— No. 13, 1957.
Substituted
sec. 116.

116. (1) Where so provided by rules of court made by the Judges of the Supreme Court or any five of them, any person aggrieved by any decision or determination by one Judge alone made pursuant to sections one hundred and fourteen and one hundred and fifteen of this Act may appeal therefrom to the Court. Any such appeal shall be in accordance with rules of court made by the Judges of the Supreme Court or any five of them. Certain rules and writs made by a Judge may be reviewed by the Court.

(2) A Judge before whom any rule or order is made returnable pursuant to section one hundred and fourteen of this Act may, at any stage of the proceedings, refer the matter to the Court to be determined.

- (h) by inserting next after section one hundred and seventeen the following new section:— New
sec. 117A.

117A. The provisions of subsection three of section one hundred and seven of this Act apply to and in respect of rules of court made under this Division of this Part. Publication, commencement and disallowance of rules.

- (i) (i) by inserting next after subsection two of section one hundred and twenty-two the following new subsection:— Sec. 122.
(Appeal to
Quarter
Sessions.)

(2A) Where but for the provisions of this subsection an appeal may not proceed by reason only that—

(a) the appellant was not served with notice of the time and place of hearing of the appeal; and

(b) the Court is not satisfied that—

(i) the appellant had knowledge of such time and place; or

(ii)

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- (ii) where the Court is satisfied that he had such knowledge, he would not be prejudiced by the non-service,

the appeal may nevertheless proceed if the Court is satisfied that the appellant is evading service of the notice or cannot, after diligent search and inquiry, be found.

- (ii) by inserting in subsection four of the same section after the word "hearing" the words " or, where a later address has been notified by any such person or his attorney to the Clerk of the Peace, to the last address so notified".

Amendment
of Act No.
19, 1903.

7. The Commercial Causes Act, 1903, is amended—

Sec. 3.
(Commercial
causes.)

- (a) by omitting from section three the word "include" and by inserting in lieu thereof the word "mean".

Sec. 6.
(Direc-
tions.)

- (b) (i) by inserting at the end of paragraph (d) of section six the words—

"or lists of documents to be exchanged and inspection allowed";

- (ii) by omitting paragraph (g) of the same section and by inserting in lieu thereof the following paragraph:—

(g) order the trial to be either with or without a jury or that special issues be tried by a jury.

Sec. 8.
(Rules of
Court.)

- (c) (i) by omitting from section eight the word "three" and by inserting in lieu thereof the word "five";

- (ii) by inserting at the end of the same section the following new subsection:—

(2) All such rules of court shall—

(a) be published in the Gazette;

(b)

- (b) take effect from the date of publication or from a later date to be specified in the rules; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

8. The Matrimonial Causes Act 1899, as amended by subsequent Acts, is amended by omitting subsection four of section ninety-one and by inserting in lieu thereof the following subsection:—

Amendment
of Act No
14, 1899.
Sec. 91.
(Power to
make rules)

- (4) All rules made under this section shall—
- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

Supreme Court Procedure Act.

No. 13, 1957. **9.** The Supreme Court Procedure Act, 1900, as amended by subsequent Acts, is amended by omitting section seventeen and by inserting in lieu thereof the following section:—

Amendment
of Act No.
49, 1900.
Substituted
sec. 17.

Rules to
be published
in Gazette
and laid
before
Parliament,
&c.

17. All rules of court made under the powers herein contained shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

10. The Jury Act, 1912, as amended by subsequent Acts, is amended by inserting in subsection two of section fifty-five after the word "capital" the words "or murder".

Amendment
of Act
No. 31,
1912.
Sec. 55.
(Challenge
in criminal
cases.)

11. The Crimes Act, 1900, as amended by subsequent Acts, is amended by omitting from subsection three of section five hundred and sixty-eight the words "not punishable with death," and by inserting in lieu thereof the words "(other than a crime or misdemeanour which is punishable with death or which was so punishable immediately before the commencement of the Crimes (Amendment) Act, 1955),".

Amendment
of Act No.
40, 1900.
Sec. 568.
(Jurisdiction,
&c., of
Courts of
Quarter
Sessions.)

12.

12. The Land and Valuation Court Act, 1921, as amended by subsequent Acts, is amended—

Amendment
of Act No.
10, 1921.

- (a) (i) by inserting in subsection three of section four after the word "powers" the word ", immunities";
- (ii) by inserting in subsection (3A) of the same section after the word "powers" the word ", immunities";
- (iii) by omitting the proviso to paragraph (a) of subsection five of the same section;
- (iv) by omitting the proviso to paragraph (a) of subsection six of the same section;
- (b) by inserting next after section nine the following new section:—

Sec. 4.

(Constitution of Land and Valuation Court and appointment of judge.)

New sec. 9A.

9A. (1) The court may in every case obtain the assistance of conveyancing counsel, accountants, engineers, actuaries, or other scientific persons the better to enable it to determine any matter at issue in any proceeding before it and may act upon the certificate of any such person.

Assistance of scientific persons.
cf. Act. No. 24, 1901, s. 7.

(2) The allowance in respect of fees to such persons shall be regulated by the registrar, subject to an appeal to the court.

13. The Acts (as amended by subsequent Acts, if any) specified in the first and second columns of the First Schedule to this Act are amended as respectively specified in the third column of that Schedule.

Amendment of Acts specified in First Schedule.

14. (1) Rules of court, general rules and orders, rules, orders or regulations made or promulgated by the Supreme Court of New South Wales or any Judge or Judges thereof by virtue of any power howsoever conferred on such Supreme Court, Judge or Judges, and in force at the commencement of this Act, shall not be affected by the repeal and substitution by this Act of any provision under which they were made, or by any alteration in the number of Judges authorised to make them, or by the provisions of this Act requiring them to be published

Savings.

Supreme Court Procedure Act.

No. 13, 1957. published in the Gazette and laid before both Houses of Parliament and making them subject to disallowance by resolution of either House of Parliament but may be amended, repealed or replaced by rules of court, general rules and orders, rules, orders or regulations, as the case may be, lawfully made after that commencement.

(2) Unless the contrary intention appears, the repeal of any enactment by this Act shall not revive anything not in force or existing at the time at which the repeal takes effect.

FIRST SCHEDULE.

Sec. 13.

Reference to Act.	Short Title.	Amendment.
No. 21, 1899	Common Law Procedure Act, 1899.	<p>Section 1— Omit the matter relating to Part XV.</p> <p>Section 4, subsection (1)— (a) Insert after the words "jurisdiction of the Court" the words "or if the defendant is a corporation residing or incorporated or registered within the jurisdiction of the Court or if the defendant is a corporation registered under Part VI of the Companies Act, 1936, as amended by subsequent Acts". (b) Omit the words "Form No. 1 contained in the Second Schedule to this Act" and insert in lieu thereof the words "form prescribed".</p> <p>Section 4, subsection (2)— Omit the subsection.</p> <p>Section 10— Omit the words "Form No. 2 contained in the Second Schedule hereto, or to the like effect" and insert in lieu thereof the words "the form prescribed".</p>

FIRST

Reference to Act.	Short Title.	Amendment.
		<p>Section 11— Omit the word “ six ” and insert in lieu thereof the word “ twelve ”.</p> <p>Section 12, subsection (1)— (a) Omit the word “ six ” and insert in lieu thereof the word “ twelve ”. (b) Omit the words “ including the day of such date ”.</p> <p>Section 12, subsection (2)— (a) Omit the word “ six ” and insert in lieu thereof the word “ twelve ”. (b) Omit the words “ by being marked by the proper officer with the date of such renewal upon delivery to him by the plaintiff or his attorney of a praecipe in such form as before the commencement of the Common Law Procedure Act of 1853 was required to be delivered upon the obtaining of an alias writ ” and insert in lieu thereof the words “ by being marked as prescribed ”.</p> <p>Section 14— Omit the words “ by the proper officer ”.</p> <p>Sections 17, 18 and 19— Omit these sections and insert in lieu thereof the following sections :— 17. The service of a writ of Mode of summons shall, wherever it is service. practicable, be personal, but where prompt personal service cannot be effected substituted service may be effected as prescribed.</p>

Reference to Act.	Short Title.	Amendment.
Actions against defendants not within jurisdiction;		<p>Sections 17, 18 and 19—<i>con'inued.</i></p> <p>18. (1) In any action against a defendant who—</p> <p>(a) being a corporation is not resident incorporated or registered within the jurisdiction of the Court and is not registered under Part VI of the Companies Act, 1936, as amended by subsequent Acts; or</p> <p>(b) being any other person is not resident within the jurisdiction of the Court,</p> <p>the plaintiff may issue a writ of summons in the form prescribed.</p> <p>(2) Either the writ of summons or a notice thereof in the form prescribed shall be served upon the defendant as may be prescribed.</p> <p>(3) Until otherwise prescribed the writ of summons shall be served in the following cases:—</p> <p>(a) Where the writ of summons may be served under the provisions of the Service and Execution of Process Act 1901 (as amended by subsequent Acts) of the Parliament of the Commonwealth.</p> <p>(b) Where the defendant is a British subject or being a corporation is incorporated in the United Kingdom or in Australia or in any of the other realms and territories of Her Majesty the Queen.</p> <p>(c) Where the defendant is in the United Kingdom or in Australia or in any of the other realms and territories of Her Majesty the Queen.</p>

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FIRST SCHEDULE—*continued.*

No. 13, 1957.

Reference to Act.	Short Title.	Amendment.
		<p>Sections 17, 18 and 19—<i>continued.</i></p> <p>(4) If the defendant does not appear to the writ of summons within the time prescribed, a Judge, upon being satisfied—</p> <p>(a) that there is a cause of action which arose within the jurisdiction, or in respect of the breach of a contract made within the jurisdiction; and</p> <p>(b) that service of the writ or notice thereof, as the case may be, was duly effected or that the writ or the notice thereof came to the defendant's knowledge,</p> <p>may, if he thinks fit, by order, permit the plaintiff to proceed to sign final or interlocutory judgment in such manner and subject to such conditions as may be prescribed or as he in all the circumstances may deem fit.</p> <p>Section 20—</p> <p>Insert after the word "by" the words "or under".</p> <p>Section 21—</p> <p>Omit the words "If either of the Forms of writ of summons Nos. 1, 3, and 4, contained in the Second Schedule hereto," and insert in lieu thereof the words "If one of the prescribed forms of writ of summons".</p> <p>Section 23—</p> <p>Omit the section.</p> <p>Section 24, subsection (1)—</p> <p>(a) Insert after the word "Court" the words "or being a corporation is resident or incorporated or registered within that jurisdiction or is registered under Part VI of the Companies Act, 1936, as amended by subsequent Acts".</p>

FIRST

Reference to Act.	Short Title.	Amendment.
Mode of appearance.		<p>Section 24, subsection (1)—<i>cont.</i> (b) Omit the words "Form No. 5 contained in the Second Schedule hereto, or to the like effect" and insert in lieu thereof the words "form prescribed".</p> <p>Section 25, subsection (1)— Omit the words "Form No. 6 contained in the Second Schedule hereto" and insert in lieu thereof the words "form prescribed".</p> <p>Section 29— Omit the section and insert in lieu thereof the following section :— 29. Appearance to a writ of summons or under the authority of this Act shall be entered by filing a notice of appearance in the form and manner prescribed.</p> <p>Sections 32 and 33— Omit the sections.</p> <p>Section 51, subsection (1)— Insert at the end thereof the words "in the manner prescribed".</p> <p>Section 51, subsections (2) and (3)— Omit the subsections.</p> <p>Section 69— After the word "shall" insert the words ", unless a Judge otherwise orders,".</p> <p>Sections 70 and 71— Omit the sections and insert in lieu thereof the following section :— 70. Every declaration shall commence and conclude in the forms prescribed.</p> <p>Section 73— Omit the section and insert in lieu thereof the following section :— 73. The defendant shall plead to the plaintiff's declaration within the time and in the manner prescribed.</p> <p>Section 76— Omit the section.</p> <p>Section 81— Omit the section.</p>
Commencement and conclusion of declaration.		
Time for pleading to declaration.		

Reference to Act.	Short Title.	Amendment.
		<p>Section 88, subsection (1)— Omit the words “ Form No. 15 contained in the Second Schedule hereto, or to the like effect ” and insert in lieu thereof the words “ form prescribed ”.</p> <p>Section 100, subsection (1)— Omit the words “ Form No. 16 contained in the Second Schedule hereto, or to the like effect,” and insert in lieu thereof the words “ form prescribed ”.</p> <p>Section 100, subsection (3)— Omit the words “ Form No. 17 contained in the said Schedule, or to the like effect ” and insert in lieu thereof the words “ form prescribed ”.</p> <p>Section 104, subsection (1)— Omit the words “ , or by so many and such of the persons summoned as jurors for the trial as may be thought desirable,”.</p> <p>Sections 121 to 128 inclusive— Omit the sections.</p> <p>Section 129, subsection (1)— Omit the words “ it shall not be necessary to issue a writ of inquiry, but ”.</p> <p>Section 129, subsection (2)— Omit “ in the same manner as before a jury upon a writ of inquiry ”.</p> <p>Section 133— Omit the section and insert in lieu thereof the following section :— 133. A party in whose favour a verdict has been given, a nonsuit granted or a judgment directed to be entered may sign judgment in the manner and time prescribed.</p>

Reference to Act.	Short Title.	Amendment.
Execution after judgment signed.		<p>Section 134—</p> <p>Omit the section and insert in lieu thereof the following section:—</p> <p>134. A party in whose favour judgment has been signed may issue execution thereon unless a Judge otherwise orders:</p> <p>Provided that where ten years have elapsed since judgment was signed or any change has taken place by death or otherwise in the parties entitled or liable to execution, execution shall not issue without the leave of a Judge. The party alleging himself to be entitled to execution may apply for such leave in the manner prescribed.</p> <p>Part XV—</p> <p>Omit the Part.</p> <p>Section 156—</p> <p>Omit the words “, so as such judgment be entered within two terms after such verdict”.</p> <p>Section 157, subsections (3), (4) and (5)—</p> <p>Omit the subsections and insert in lieu thereof the following subsection:—</p> <p>(3) In any such case the action may be maintained by the executor or administrator mentioned in subsection one of this section or against the executor or administrator mentioned in subsection two of this section or by the firstmentioned executor or administrator against the secondmentioned executor or administrator, as the case may be, upon the filing of a suggestion of the death of the plaintiff or defendant or both, as the case may be, and</p>

FIRST SCHEDULE—*continued.*

No. 13, 1957.

Reference to Act.	Short Title.	Amendment.
		<p>Section 157, subsections (3), (4) and (5)—<i>continued.</i></p> <p>representation. A copy of any suggestion so filed shall be served upon all other parties to the action and the truth of the suggestion shall not be in issue unless notice of such issue is given to the person filing the suggestion within fourteen days of service of such copy or within such time as may be prescribed.</p> <p>Section 159, subsection (2)— Omit the words “or writ of revivor pursuant to this Act”.</p> <p>Section 184, subsection (1)— Omit the word “writ” and insert in lieu thereof the word “summons”.</p> <p>Section 184, subsection (2)— Omit the subsection and insert in lieu thereof the following subsection :— (2) Such summons shall be issued, and the procedure thereon shall be, in the manner prescribed.</p> <p>Section 186— Omit the section.</p> <p>Section 210, subsection (1)— (a) Omit the words “Form No. 21 contained in the Second Schedule hereto, or to the like effect” and insert in lieu thereof the words “form prescribed”. (b) Omit the words “sixteen days” and insert in lieu thereof the words “the time prescribed”.</p> <p>Section 210, subsection (2)— Omit the word “three” and insert in lieu thereof the word “twelve”.</p>

Reference to Act.	Short Title.	Amendment.
Service of writ.		<p>Section 212—</p> <p>Omit the section and insert in lieu thereof the following section :—</p> <p>212. The writ shall, wherever practicable, be served personally on the persons named therein but where prompt personal service cannot be effected substituted service may be effected in the manner prescribed or in such manner as may be provided for the purpose by any other Act.</p> <p>Section 219—</p> <p>(a) Insert after the word “judgment” where firstly occurring the words “in the form prescribed”.</p> <p>(b) Omit the words “Such judgment if for all may be in the Form No. 22 contained in the Second Schedule hereto, or to the like effect, and if for part may be in the Form No. 23 contained in the said Schedule, or to the like effect.”</p> <p>Section 220, subsection (2)—</p> <p>Omit the subsection and insert in lieu thereof the following subsection :—</p> <p>(2) Such issue may be in the form prescribed.</p> <p>Section 221—</p> <p>Omit the words “used before the commencement of the Common Law Procedure Act of 1853” and insert in lieu thereof the word “prescribed”.</p> <p>Section 223—</p> <p>Omit the section.</p>

FIRST SCHEDULE—*continued.*

No. 13, 1957.

Reference to Act.	Short Title.	Amendment.
		<p>Section 229— Omit the words “ within such time as the Court or Judge before whom the cause is tried shall order, and if no such order be made then on the fifth day in term after the verdict or within fourteen days after such verdict whichever shall first happen ” and insert in lieu thereof the words “ at such time as may be prescribed and in the manner prescribed ”.</p> <p>Section 243— Omit the section and insert in lieu thereof the following section :— 243. The claimant may at any Discontinue the action as to one or more of the defendants in the manner prescribed.</p> <p>Section 245— Omit the section and insert in lieu thereof the following section :— 245. Where an appearance has been entered and the claimant omits to set the action down for trial in the manner and within the time prescribed the defendant may give him such notice as may be prescribed to set the action down within a time prescribed for this purpose and if the claimant fails so to do the defendant may suggest such failure and sign judgment in the manner prescribed.</p> <p>Section 246— Omit the words “ Form No. 28 contained in the Second Schedule hereto, or to the like effect ” and insert in lieu thereof the words “ form prescribed ”.</p>

No. 13, 1957.

FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
Application for order nisi for writ of habeas corpus.		<p>Sections 252, 253 and 254—</p> <p>Omit the sections and insert in lieu thereof the following sections:—</p> <p>252. Every application for an order nisi for a writ of habeas corpus shall be made to a Judge. Such application may be made <i>ex parte</i> in the manner prescribed.</p>
Return of order nisi.		<p>253. (1) Every order nisi for a writ of habeas corpus shall be returnable before a Judge sitting in public chambers whether in Term or not unless the Judge considers that it should be returnable before the Full Court.</p>
Appeal.		<p>(2) On the return of such order the Judge or the Court may dispose of the case as the circumstances appear to require and may make such order as to costs as the Judge or Court thinks fit.</p> <p>254. Any order made by a Judge under section two hundred and fifty-two or two hundred and fifty-three of this Act shall be subject to appeal to the Full Court within the same time and in the same manner as prescribed for motions for a new trial.</p>
		<p>Section 263—</p> <p>Omit the section.</p>
		<p>Section 266—</p> <p>Omit the words “The lowest scale shall extend to all cases not exceeding fifty pounds, the second scale to all cases above fifty and not exceeding one hundred pounds, and the highest scale to all other cases.”</p>
		<p>Section 268, subsections (1) and (2)—</p> <p>After the words “The Judges” insert the words “or any five of them”.</p>

Supreme Court Procedure Act.

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FIRST SCHEDULE—*continued.*

No. 18, 1957.

Reference to Act.	Short Title.	Amendment.
No. 29, 1902	Arbitration Act, 1902.	<p>Sections 269 and 270— Omit the sections.</p> <p>Second Schedule— Omit the Schedule.</p> <p>Section 10— Insert after the words "submission may" the words ", by leave of a Judge,".</p>
No. 24, 1902	Arrest on Mesne Process Act, 1902.	<p>Section 5, paragraph (b)— Omit the word "twenty" and insert in lieu thereof the words "two hundred".</p> <p>Section 11— Omit the section and insert in lieu thereof the following section :— 11. (1) Any person in respect of whom a special order is made under section five of this Act may apply to a Judge for an order on the plaintiff to show cause why the special order and any writ issued thereunder should not be set aside and for an order staying proceedings on the special order and any such writ in the meantime.</p> <p>(2) Any person arrested upon a writ of <i>capias</i> may apply to a Judge at any time after such arrest for an order on the plaintiff to show cause why such person should not be discharged out of custody.</p> <p>Section 12— Omit the section and insert in lieu thereof the following section :— 12. Any Judge may, upon the hearing of the application, make such order therein as he thinks fit and direct that the costs of the application be paid by either party.</p>

FIRST

No. 13, 1957.

FIRST SCHEDULE—*continued.*

Reference to Act.	Short Title.	Amendment.
No. 8, 1901	Judgment Creditors' Remedies Act, 1901.	<p>Section 13— Omit "such order" and insert in lieu thereof the words "order made under section twelve of this Act".</p> <p>Section 27, subsection (1)— (a) After the words "the Supreme Court" insert the words "or in a District Court". (b) Omit the words "of the said Court" and insert in lieu thereof the words "of the Supreme Court or the District Court, as the case may be,".</p> <p>Section 31— Omit the words "of the said Court" and insert in lieu thereof the words "of the Supreme Court or the District Court, as the case may be".</p>
No. 35, 1900	Supreme Court and Circuit Courts Act, 1900.	<p>Section 1— Omit the matter relating to Parts IV and V and insert in lieu thereof the following matter :— PART IV.—<i>Sittings of Court elsewhere than at Sydney—</i> <i>ss. 22-33.</i> PART IVA.—<i>Gaol Delivery—</i> <i>s. 33A.</i></p> <p>Section 19, paragraph (b)— Omit the paragraph. Insert in Part IV immediately before section 22 the heading "SITTINGS OF COURT ELSEWHERE THAN AT SYDNEY." Insert next after Part IV the following new Part :— PART IVA. GAOL DELIVERY.</p>

FIRST

Reference to Act.	Short Title.	Amendment.
No. 9, 1912	Supreme Court and Circuit Courts (Amendment) Act, 1912.	<p>33A. The governor of each prison shall, at the times prescribed by rules of court, make returns in writing to the Supreme Court, Sydney, as to all persons detained in such prison, otherwise than in pursuance of a sentence, giving the particulars required by such rules. If he fails to make such returns, he may be ordered by the Court to pay a fine not exceeding five hundred pounds.</p> <p>The Court shall, after the receipt of such returns with respect to a prison, deliver such prison.</p> <p>For the purpose aforesaid the Court may be constituted by one Judge sitting in open court in the exercise of the criminal jurisdiction of the court.</p> <p>Except as aforesaid, it shall not be obligatory on the Court or a Judge to deliver any prison, or for a governor of a prison, unless so directed by the Court or a Judge, to make any such returns.</p> <p>Part V— Omit the Part.</p> <p>Section 39— Omit the word “ three ” and insert in lieu thereof the word “ five ”.</p> <p>Section 39A, paragraph (a)— Omit the word “ now ”.</p> <p>Section 8— Omit the section.</p>

Reference to Act.	Short Title.	Amendment.
No. 10, 1921	Land and Valuation Court Act, 1921.	Section 13, subsection (1)— Omit the subsection and insert in lieu thereof the following subsection :— (1) All process issuing out of the court shall be in the form prescribed, and be signed by the officer issuing the process and marked with the court office stamp.
No. 16, 1900	Sheriff Act, 1900	Section I— Omit the matter relating to Part IV. Part IV— Omit the Part.
No. 49, 1900	Supreme Court Procedure Act, 1900.	Sections 12 and 13— Omit these sections. Section 14— Omit the word "three" and insert in lieu thereof the word "five". Section 16— Omit the words "in the Schedule to this Act, or". Schedule— Omit the Schedule.
No. 31, 1912	Jury Act, 1912.	Section 32, subsection (2)— (a) Omit the words "and seal". (b) Insert at the end thereof the words "or of the prothonotary thereof". Section 32, subsection (3)— Omit the words "and seal". Fifth Schedule— Omit the words "and seal".
No. 42, 1924	Administration of Justice Act, 1924.	Section 14— Omit the section. Schedule— Omit the Schedule.

Supreme Court Procedure Act.**75****SECOND SCHEDULE.**

No. 13, 1957.

CITATION OF ACTS.

Sec. 2.

First Column.	Second Column.
Administration of Justice Act, 1924.	Administration of Justice Act, 1924-1957.
Arbitration Act, 1902.	Arbitration Act, 1902-1957.
Arrest on Mesne Process Act, 1902.	Arrest on Mesne Process Act, 1902-1957.
Commercial Causes Act, 1903.	Commercial Causes Act, 1903-1957.
Common Law Procedure Act, 1899.	Common Law Procedure Act, 1899-1957.
Equity Act, 1901.	Equity Act, 1901-1957.
Judgment Creditors' Remedies Act, 1901.	Judgment Creditors' Remedies Act, 1901-1957.
Jury Act, 1912.	Jury Act, 1912-1957.
Justices Act, 1902.	Justices Act, 1902-1957.
Land and Valuation Court Act, 1921.	Land and Valuation Court Act, 1921-1957.
Matrimonial Causes Act 1899.	Matrimonial Causes Act, 1899-1957.
Sheriff Act, 1900.	Sheriff Act, 1900-1957.
Supreme Court and Circuit Courts Act, 1900.	Supreme Court and Circuit Courts Act, 1900-1957.
Supreme Court Procedure Act, 1900.	Supreme Court Procedure Act, 1900-1957.

TRANSPORT