



ANNO QUADRAGESIMO PRIMO ET QUADRAGESIMO
SECUNDO

VICTORIÆ REGINÆ.

A.D. 1878.

No. 116.

*An Act to make provision for the better Administration of Justice in
the Supreme Court of South Australia.*

[Assented to, 30th November, 1878.]

WHEREAS it is expedient to provide for the better Adminis- Preamble.
tration of Justice in the Supreme Court of South Australia,
and for rendering the process, practice, and mode of pleading
therein more simple and speedy—Be it therefore Enacted by the
Governor of the Province of South Australia, by and with the
advice and consent of the Legislative Council and House of
Assembly of the said Province, in this present Parliament assembled,
as follows:

1. This Act shall be divided into six parts, as follows—

PART I. Sections 2 to 4—Introductory:

Provisions of Act.

PART II. Sections 5 and 6—Administration of Law and Equity:

PART III. Sections 7 to 16—Sittings and Distribution of Busi-
ness:

PART IV. Sections 17 to 23—Trial and Procedure:

PART V. Sections 29 to 34—Rules of Court and Councils of
Judges:

PART VI. Sections 35 to 39—Officers, Interpretation, and Miscel-
laneous.

Supreme Court Act.—1878.

PART I.

PART I.

INTRODUCTORY.

Short title.

2. This Act may be cited for all purposes, as the "Supreme Court Act, 1878."

Commencement of Act.

3. This Act, except any provision thereof which is declared to take effect on the passing of this Act, shall commence and come into operation on the 31st day of March, 1879, or so soon as the rules to be made as hereinafter provided shall first become valid, whichever shall first happen.

Rules as to exercise of jurisdiction and provision for pending business.

4. From and after the commencement of this Act the several jurisdictions which were heretofore vested in or capable of being exercised by the Supreme Court of the said province, or by any Judge thereof, and whether original or appellate, and whether statutory or otherwise, shall, so far as regards procedure and practice, be exercised by the said Court and by every Judge thereof, in the manner provided by this Act or by Rules of Court, and not otherwise, and where no special provision is contained in this Act or such Rules of Court with reference or applicable thereto such jurisdiction or jurisdictions shall be exercised by the said Court or Judge in such other manner, as regards such procedure and practice, as the said Court or any Judge of the said Court shall in each case direct: Provided that in all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given, shall not have been signed, drawn up, passed, entered, or otherwise perfected at the time appointed for the commencement of this Act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this Act, in the name of the same branch of the jurisdiction of the said Court, and by the same Judges or Judge, and officers, and generally in the same manner in all respects as if this Act had not been passed, and the same shall take effect to all intents and purposes as if the same had been duly perfected before the commencement of this Act. and every judgment, decree, rule, or order of the said Court, or of any Judge thereof, which shall have been duly perfected at any time before the commencement of this Act, may be executed and enforced, and, if necessary, amended or discharged by the said Court, in the same manner as if it had been a judgment, decree, rule, or order of the said Court or Judge, made after the commencement of this Act and all causes, matters, and proceedings whatsoever, which shall be pending in the said Court, or before any Judge thereof, at the commencement of this Act, shall be continued and concluded in the same manner and by the same form of procedure as they would have been continued and concluded had this Act not been passed, or according to the ordinary course provided by this Act, (so far as the same may be applicable thereto) as the said Court may think fit to direct.

Jud. Act., sec. 22 (altered).

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PART II.

PART II.

ADMINISTRATION OF LAW AND EQUITY.

5. In every civil cause or matter hereafter commenced in the said Supreme Court, law and equity, shall be administered by the said Court according to the rules following—

Law and equity to be concurrently administered.

i. If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever, asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right which heretofore could only have been given by the Supreme Court in its equitable jurisdiction, the said Court and every Judge thereof shall give to such plaintiff or petitioner such and the same relief as ought to have been given by such Court in its equitable jurisdiction in a suit or proceeding for the same or a like purpose, properly instituted before the passing of this Act :

Equitable relief claimed by plaintiff to be given in all cases.

Jud. Act, sec. 24.

ii. If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Court and every Judge thereof shall give to every equitable estate, right, or ground of relief so claimed; and to every equitable defence so alleged, such and the same effect by way of defence against the claim of such plaintiff or petitioner as the said Court in its equitable jurisdiction ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding, instituted in that Court, for the same or the like purpose, before the passing of this Act :

Equitable relief to be given to defendants.

iii. The said Court, and every Judge thereof, shall also have power to grant to any defendant, in respect of any equitable estate, or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Court or any Judge thereof might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim, pursuant to any Rules of Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted

Power to grant defendant such relief as might heretofore have been obtained by cross bill.

Other persons may be made parties to suit.

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Court to recognise equitable estates and rights.

No injunction or prohibition to restrain proceedings.

But stay of proceedings may be ordered in a summary way.

All legal claims to be recognised subject to equities.

Court to do complete justice in cause so as to avoid multiplicity of suits.

instituted by the same defendant for the like purpose, and every person served with any such notice shall thenceforth be deemed a party to such cause or matter with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant:

- IV. The said Court, and every Judge thereof, shall recognise and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter pending before it, in the same manner in which the said Court in its equitable jurisdiction would have recognised and taken notice of the same in any suit or proceeding duly instituted therein, before the passing of this Act:
- V. No cause or proceeding at any time pending in the said Court shall be restrained by prohibition or injunction, but every matter of equity on which an unconditional injunction against the prosecution of any such cause or proceeding might have been obtained if this Act had not passed, may be relied on by way of defence thereto:
- VI. The said Court or any Judge thereof may direct a stay of proceedings in any cause or matter pending before it if it or he shall think fit, and any person whether a party or not to any such cause or matter, who would have been entitled if this Act had not passed, to apply to the said Court in any of its jurisdictions to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Court, or a Judge, by motion, in a summary way, for a stay of proceedings in such cause or matter, either generally or so far as may be necessary for the purposes of justice, and the Court or Judge shall thereupon make such order as shall be just:
- VII. Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Court and every Judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities, existing by the common law, or by any custom, or created by any Statute, in the same manner as the same would have been recognised and given effect to, if this Act had not passed, by the said Court in any branch of its jurisdiction:
- VIII. The said Court and every Judge thereof in every cause or matter pending before them respectively shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all

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all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively, in such cause or matter, so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

6. And whereas it is expedient to amend and declare the law to be hereafter administered in this province as to the matters next hereinafter mentioned. Be it enacted as follows--

Rules of law upon certain points.
Jud. Act, sec. 25.

I. In the administration by the Court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding up of any Company under the Companies Act, 1864, whose assets may prove to be insufficient for the payment of its debts and liabilities and the cost of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities proveable, and as to the valuation of annuities and future or contingent liabilities respectively, as may be in force for the time being under the law of insolvency, with respect to the estates of persons adjudged insolvent, and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such Company, may come in under the decree or order for the administration of such estate, or under the winding up of any such Company, and make such claims against the same as they may respectively be entitled to by virtue of this Act:

Administration of assets of Insolvent Estates as in insolvency.

II. No claim of a *cestui que* trust against his trustee for any property held on trust, or in respect of any breach of trust, shall be held to be barred by any Statute of Limitations:

Statutes of Limitation inapplicable to express trusts.

III. An estate for life, without impeachment of waste, shall not confer, or be deemed to have conferred, upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate:

Tenant for life, without impeachment of waste, not to commit equitable waste.

IV. There shall not, after the commencement of this Act, be any merger by operation of law only of any estate or charge, the beneficial interest in which would not be deemed to be merged or extinguished in equity:

No merger at law where none in equity.

V. A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter upon the receipt of the rents and profits thereof shall have been given by

Suits for possession of land by mortgagors.

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by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or to recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person :

Assignment of debts and choses in action.

VI. Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such chose in action, shall be, and be deemed to have been, effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal rights of such chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such chose in action shall have had notice that such assignment is disputed by the assignor, or any one claiming under him, or of any other opposing or conflicting claims, to such chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the said Court, under and in conformity with the provisions of the Acts for the relief of trustees:

Debtor may interplead or pay money into Court.

Stipulations not of the essence of contracts to be construed as in equity.

VII. Stipulations in contracts, as to time or otherwise, which would not before the commencement of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have heretofore received in equity :

Court may make orders to have effect of mandamus or injunction, and may appoint receivers.

VIII. In all cases in which it shall appear to the Court to be just or convenient, the Court may make an interlocutory order or orders in the nature of, and to have the effect of, a mandamus or an injunction, or may appoint a receiver; and any such order may be made, either unconditionally or upon such terms and conditions as the Court shall think just, and if an order in the nature of an injunction is asked, either before or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such order may be made if the Court shall think fit, whether the person against whom such order is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed

Jud. Act, sec. 25.
(slightly altered.)

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claimed by both or by either of the parties are legal or equitable, and the orders or order above provided for shall have the same force and attributes respectively that writs of mandamus and injunction now have, and shall be enforced, and disobedience thereto punished by the said Court in such and the same manner as writs of mandamus and injunction are now enforced, and disobedience thereto is now punishable by the Courts now having authority to grant the said writs :

PART II.

- ix. In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the High Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law shall prevail: Damages by collisions at sea Admiralty rules to prevail.
- x. In questions relating to the custody and education of infants, the Rules of Equity shall prevail: In questions relating to infants rules of equity to prevail.
- xi. Generally in all matters not hereinbefore particularly mentioned in which there is any conflict or variance between the Rules of Equity and the Rules of Common Law with reference to the same matter, the Rules of Equity shall prevail. Cases of conflict not enumerated. Rules of equity to prevail where in conflict with common law.

PART III.

SITTINGS AND DISTRIBUTION OF BUSINESS.

PART III.

7. The division of the legal year into terms shall be abolished so far as relates to the administration of justice, and there shall no longer be terms applicable to any sitting or business of the said Court, or of any commissioners to whom any jurisdiction may be assigned under this Act; but in all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority: The said Court and the Judges thereof respectively, or any such Commissioners as aforesaid, shall have power to sit and act at any time and at any place for the transaction of any part of the business of such Court, or of such Judges or Commissioners, or for the discharge of any duty by which any Act of Parliament, or otherwise, is required to be discharged in or out of term. Abolition of terms. Jud. Act, sec. 26.

8. The Governor may from time to time, upon any report or recommendation of the Judges of the said Court make, revoke, or modify orders regulating the vacations to be observed by the said Court, and in the offices of the said Court; and any order made pursuant to this section shall, so long as it continues in force, be of the same effect as if it were contained in this Act, and until rules are made for carrying such orders into effect the vacations shall be as fixed by the Rules of Court. Vacation. Jud. Act, sec. 27.

9. During

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Sitting in vacation.

Jud. Act, sec. 28.

Forming of Circuit Courts, and further provision.

9. During vacation all such applications as may require to be immediately or promptly heard shall be heard according to the provisions in the Rules of Court in that behalf.

10. Nothing in this Act shall be taken to repeal or affect the Third Judge and District Courts Act, or the Act No. 6, 1868-9, intituled "An Act to repeal Act No. 11 of 1866-7, intituled 'An Act to amend the Third Judge and District Courts Act, and for other purposes,' and to make further provision for the trial of causes and trial of offences at places remote from the Court": Provided that it shall be lawful for the Governor, on the recommendation of the Judges of the said Court, to direct the commission or commissions to be issued under the said Acts to any practitioner or practitioners of the said Court of at least seven years standing, and thereupon such practitioner or practitioners shall proceed to hold such Court according to the tenor of such commission or commissions, and such Court so holden shall be deemed to be and shall have all the attributes of a Circuit Court under the said Acts, and the practitioner or practitioners to whom such commission or commissions shall be directed shall perform such and the like duties, and have such and the like powers as by the said Acts are imposed or conferred upon any Judge of the Supreme Court to whom a commission is directed under the said Acts: Provided also that all trials which if had after the commencement of this Act at the Civil Sittings of the Supreme Court would be had before a Judge of the said Court without a jury, shall, if held at any Circuit Court, be had without a Jury before the Judge or practitioner or practitioners, as the case may be, to whom such commission or commissions shall be directed.

Sittings of Court.

11. The Civil Sittings of the said Court for the trial of causes and questions or issues of fact shall (except where the contrary is declared or provided by this Act or Rules of Court) be held in Adelaide, in the said Province, and such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many Judges as the business to be disposed of may render necessary.

Jurisdiction of Judge in Court or Chambers.

Section 17 in Bill of 1876.

12. Any Judge of the said Court may exercise in Court or in Chambers all or any part of the jurisdiction by this Act vested in the said Court in all such causes and matters, and in all such proceedings in any causes or matters as before the passing of this Act might have been heard in Court or in Chambers respectively by any single Judge of the said Court, or as may be directed by Rules of Court.

Business in Banco as heretofore.

Section 18 in Bill of 1876.

13. All business of the said Court which, according to the law or practice now existing would have been proper to be transacted or disposed of by the Full Court if this Act had not passed, shall continue to be transacted and disposed of by the like number of Judges,

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Judges, and in such and the same manner, as the same has heretofore been transacted and disposed of.

PART III.

14. Any Judge or Judges of the said Court, or any Commissioner sitting in the exercise of any jurisdiction of the said Court, may reserve any case or any point in a case for the consideration of the Full Court, or may direct any case or point in a case to be argued before the Full Court, and such Full Court shall have power to hear and determine any such case or point so reserved or so directed to be argued.

Case or points of law may be reserved as heretofore.

Section 19 in Bill of 1876.

15. It shall be lawful for the Full Court, in any cause or matter in which a verdict has been found by a jury or by a Judge, without a jury or by referees or by a Judge sitting with assessors, or in which a nonsuit has been entered or refused to vary or set aside such verdict or enter or set aside such nonsuit, or to reduce the damages awarded: And any objection which heretofore could have been taken by motion in arrest of judgment, or to enter judgment *non obstante veredicto*, shall be taken on such motion for new trial, or to enter a verdict or nonsuit, or set aside a nonsuit, or to reduce damages, otherwise, and no appeal shall lie from any judgment founded and not upon and applying any verdict, or from any order or direction of any Judge of the said Court in any matter whatsoever, unless a motion has been made or other proceeding taken before the said Court to set aside or reverse such verdict or the judgment, if any, founded thereon, or such order or direction, in which case an appeal shall lie to such Court, and in such manner and on such conditions as appeals now lie from judgments or determinations of the said Court or Judge.

Motions for new trials to be heard before Full Court.

Section 20 in Bill of 1876.

Jud. Act, sec. 48 (altered.)

16. Every order or direction made by a Judge of the said Court, whether in Chambers or in Court, may be set aside or discharged by the Full Court, and an appeal shall also lie to the Full Court from any refusal of any Judge to make any order.

As to discharging orders made in Court or Chambers.

Section 21 in Bill of 1876.

Jud. Act, sec. 50. (slightly altered).

PART IV.

PART IV.

TRIAL AND PROCEDURE.

17. All actions which have hitherto been commenced by writ in the Supreme Court, and all suits which have hitherto been commenced in such Court in its Equitable Jurisdiction, by bill or information, or by citation or otherwise, in such Court in its Testamentary Causes Jurisdiction, shall be instituted in the Supreme Court by a proceeding to be called an action.

Proceedings previously commencing with writ, bill, or citation to be instituted by an action.

18. The Court or any Judge thereof shall hear and determine on petition, motion, or summons, all matters and applications not being in a cause which before the passing of the Act would have been heard and determined by the Court or any Judge thereof in any branch of its jurisdiction, on petition, motion, or summons.

Matters previously cognizable on petition, motion, or summons still so cognizable.

19. All

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Other proceedings as heretofore subject to Rules of Court.

19. All other proceedings in and applications to the said Court may, subject to Rules of Court, be taken and made, as they would have been taken and made if this Act had not been passed, or in such other manner as any Judge may direct.

Powers of Primary Judge, &c., transferred to Court.

20. All jurisdictions, power, and authorities conferred or imposed on the Primary Judge or any Judge of the said Court, and, whether in Equity or otherwise, by any Statute heretofore in force in this province, shall, subject to this Act and any Rules of Court, be had and exercised by the said Court or any Judge or Judges thereof.

Mode of trial.

21. Actions shall be tried and heard either before a Judge or Judges, or before a Judge sitting with assessors, or before a Judge and jury.

Trial without jury unless either party requires jury.

22. All actions shall be tried before a Judge or Judges without a jury, unless either party require a jury in any case which would heretofore have been proper to be tried before a jury, in which case such trial shall take place before a Judge and jury, but nothing herein contained shall defeat or prejudice any powers heretofore possessed by the Court or any Judge to order the trial of any questions or issues of fact by a jury or by a special jury.

Juries.

23. In actions which are altogether of contract the jury shall consist of six, and in all other actions the jury shall consist of twelve: Provided that in actions where it is doubtful whether the action is of contract or otherwise, the Court or any Judge thereof may decide whether the jury shall consist of six or twelve; and the Court or any Judge thereof on the application, subject to Rules of Court, of either party in any action of contract may order that such action shall be tried by a jury of twelve, if from any reason it shall appear to such Court or Judge desirable so to do.

Verdicts of juries.

24. In actions of contract two-thirds of the total number of jurors may return a verdict, but in all other actions the verdict must be unanimous, unless otherwise agreed.

Assessors.

Section 22 in Bill of 1876.

Bill of exceptions.

Sec. 56 (slightly altered).

25. Subject to any Rules of Court, and to the right of having cases submitted to the verdict of a jury, should any party desire it, the Court may in any cause or matter before such Court, in which it may think it expedient so to do, call in the aid of one or more assessors, specially qualified, and try and hear such cause or matter wholly or partially, with the assistance of such assessors. The remuneration, if any, to be paid to such assessors shall be determined by the Court, and the sum so fixed shall be paid by the Sheriff in the same manner as jury fees are now paid.

Power to direct trials before referees.

26. In any cause or matter before the said Court, in which all parties interested who are under no disability consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific

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scientific or local investigation, which cannot, in the opinion of the Court or a Judge, conveniently be made before a jury, or conducted by the Court, the Court or a Judge may at any time, and on such terms as may be thought proper, order such cause or matter to be tried either before the Master of the Court, or before a special referee or referees to be appointed by the Court or a Judge, or before a special referee or referees to be agreed on between the parties: All such trials before the Master or such special referee or referees, shall be conducted in such manner as may be prescribed by Rules of Court, and subject thereto in such manner as the Court or Judge ordering the same shall direct.

PART IV.

Section 23 in Bill of 1876.

Jud. Act, sec. 57. (altered).

27. In all cases of any reference to or trial by the Master or by referees under this Act, the Master or such referees shall have such authority for the purpose of such reference or trial as shall be prescribed by Rules of Court or (subject to such rules) by the Court or Judge ordering such reference or trial, and the report of the Master or such referees upon any question of fact on any such trial shall (unless set aside by the Court) be equivalent to the verdict of the Jury, and may be entered up and enforced as a verdict of a Jury. In case of such reference to referees such referee or referees shall be deemed to be officers of the Court.

Power of referees and effect of their findings.

Section 24 in Bill of 1876.

Jud. Act, sec. 58 (altered).

28. With respect to all such proceedings before referees and their reports, the Court, or such Judge as aforesaid, shall have, in addition to any other powers, the same or the like powers as are given to the same, with respect to references to arbitration and proceedings before arbitrators and their awards respectively by the Supreme Court Procedure Act, 1855.

Powers of Court with respect to proceedings before referees.

Jud. Act, sec. 59.

Section 25 in Bill of 1876.

PART V.**PART V.****RULES OF COURT AND COUNCILS OF JUDGES.**

29. Subject to the provisions of this Act, it shall be lawful for any two or more of the Judges of the Supreme Court, so soon as possible after the passing of this Act, to cause to be prepared Rules with a view of rendering the process, procedure, and mode of pleading in the said Court more simple and speedy and providing as follows—

Rules of Court may be made.

- i. For the regulation of the sittings of the said Court, and of the Judges of the said Court sitting in Chambers:
- ii. For the regulation of all matters relating to the practice and procedure of the said Court, or to the duties of the officers thereof, or to the costs of proceedings therein (including the costs to be allowed to practitioners of the said Court in respect of business transacted in such Court or the offices hereof),

Jud. Act, sec. 68.

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hereof), or to the conduct of civil business coming within the cognizance of the said Court, for which provision is not expressly made by this Act:

III. For carrying into effect any orders made by the Governor pursuant to section 8:

IV. And generally for carrying into effect the provisions of this Act:

Rules to be laid before Parliament and may be annulled on address from either House.

All Rules of Court made in pursuance of this section shall be laid before the Legislative Council and House of Assembly of the said Province within one month next after the same are made, if Parliament is then sitting, or, if not, within one month after the then next meeting of Parliament; and if not disallowed by express resolution of both Houses of Parliament within one month from the time within which the same should be laid before such Houses such Rules shall, after the expiration of such month, be conclusively deemed to be valid, and shall have the force of law, and shall be judicially noticed.

Jud. Act, sec. 68.

Criminal procedure subject to future Rules to remain unaltered.

30. The practice and procedure in all criminal causes and matters whatsoever in the said Court, including the practice and procedure with respect to questions of law reserved on criminal trials, except as expressly altered hereby, shall be the same as the practice and procedure in similar causes and matters before the passing of this Act.

Jud. Act, sec. 71.

Act not to affect rules of evidence or juries.

31. Nothing in this Act, or in any Rules of Court to be made by virtue hereof, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or otherwise, or the rules of evidence, or the law relating to jurymen or juries. Provided that the Court shall be entitled to allow depositions or affidavits to be read in all cases in which through the illness or absence from the said province of any witness, or through any sufficient cause it shall be in the opinion of the Court expedient so to do.

Section 30 in Bill of 1876.

Jud. Act, sec. 72

Rules of Court may be made modifying procedure in any Act of Parliament.

32. Where any provisions in respect of the practice or procedure of the said Court are contained in any Act of Parliament, Rules of Court may be made for modifying such provision to any extent that may be deemed necessary.

Power to make and alter Rules after commencement of Act.

33. From and after the commencement of this Act the Judges of the Supreme Court may at any time alter and annul any Rules of Court for the time being in force, or make any new Rules of Court, for the purpose of regulating all such matters of practice and procedure in the Supreme Court, or relating to the suitors or officers of the said Court or otherwise, as under the provisions of this Act are, or may be, regulated by Rules of Court: Provided, that any rule made in the exercise of this power, whether for altering or annulling any then existing Rule, or for any other purpose, shall be laid before the Legislative Council and House of Assembly, within the same time and

Jud. Act, sec. 74.

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and in the same manner, and with the same effect in all respects, as is hereinbefore provided with respect to the said Rules to be made before the commencement of this Act.

PART V.

34. The Judges of the Supreme Court shall assemble once at least in every year for the purpose of considering the operation of this Act and of the Rules of Court for the time being in force, and also the working of the several offices, and the arrangements relative to the duties of the officers of the said Court respectively, and of inquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the said Court; and they shall report annually to the Attorney-General of the said province what (if any) amendments or alterations it would, in their judgment, be expedient to make in this Act, or otherwise, relating to the administration of justice, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament, it would be expedient to make for the better administration of justice.

Councils of Judges to consider procedure and administration of justice.

Jud. Act, sec. 75.

PART VI.PART VI.

OFFICERS, INTERPRETATION, AND MISCELLANEOUS.

35. The business to be performed in the said Court, or in the Chambers of any Judge thereof, other than that performed by the Judges, shall be distributed among the several officers at present or hereafter attached to the Supreme Court, or by Rules of Court to be hereafter attached to the said Court, in such manner as may be directed by Rules of Court, or, in any cases not provided for by Rules of Court, as such Court or any Judge thereof may direct, and such officers shall perform such duties in relation to such business as may be directed by this Act or by Rules of Court, or by such Court or any Judge thereof; and, subject to this Act and such Rules of Court, all such officers respectively shall continue to perform the same duties as nearly as may be in the same manner as if this Act had not passed.

Officers.

36. Every person who, at the commencement of this Act, shall be authorised to administer oaths in the Supreme Court in any branch or branches of its jurisdiction, shall be a commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the said Court.

Power of Commissioners to administer oaths.

Jud. Act, sec. 82.

37. The several Rules of Law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in the said province, so far as the matters to which such Rules relate shall be respectively cognizable by such Courts, and shall take effect from and after the passing of this Act.

Rules of Law to apply to all Courts.

38. The procedure in the Supreme Court for the proving wills, granting letters of administration, and other matters, known in England as "common form practice," shall continue and be as at present.

Proving wills probate practice.

39. In

Supreme Court Act.—1878.

PART VI.
Interpretation.

39. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have or include the meanings following (that is to say)—

“Court” shall mean the Supreme Court of South Australia:

“Cause” shall include any action, suit, or other original proceeding between a plaintiff and a defendant:

“Suit” shall include action:

“Plaintiff” shall include every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form or proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise:

“Petitioner” shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant:

“Defendant” shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings:

“Matter” shall include every proceeding in the Court not in a cause:

“Pleading” shall include any petition or summons, and also shall include the statement in writing of the claim or demand of any plaintiff and of the defence of any defendant thereto, and also any other matter by Rules of Court to be included under the term “pleading”:

“Judgment” shall include decree:

“Order” shall include rule:

“Existing” shall mean existing at the time appointed for the commencement of this Act.

“Rules of Court” shall include the Rule or Rules and Forms made from time to time under the authority of this Act:

“Full Court” shall mean the Supreme Court consisting of the three Judges, thereof, or if any of the Judges be absent from the said province, or unable to attend from illness from being engaged in presiding in the Court in any other branch of its jurisdiction, or from any other unavoidable cause, or if any Judge or Judges shall be or declare himself or themselves to be interested in the matter in question, or shall declare that he cannot give a decision from having acted as counsel or attorney, or otherwise, in connexion with the subject-matter, the Full Court shall mean any other Judge or Judges thereof:

“Parties”

Supreme Court Act.—1878.

PART VI.

“Parties” shall include as well as the plaintiff and defendant in the action as any person not originally a party against whom any counter claim is set up, or who has been served with notice to appear under any of the Rules of Court; and also every person served with notice of or attending any proceeding, although not named on the record:

“This Act” and “The said Act” shall respectively mean the Supreme Court Act, 1878.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WM. F. DRUMMOND JERVOIS, Governor.