

NOTE: original document 22 pages.

BEGIN TRANSCRIPTION

No. [6] of 1903.

AN ACT

To make provision for the Exercise of the Judicial
Power of the Commonwealth.

Assented to [25th August 1903]

AN ACT

To make provision for the Exercise of the Judicial
Power of the Commonwealth.

BE it enacted by the King's Most Excellent Majesty, the Senate,
and the House of Representatives of the Commonwealth of
Australia, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the Judiciary Act 1903, and is divided into Parts as follows:— Short title and
Divisions.

PART I.—Preliminary, ss.1–3.

PART II.—Constitu-) Justices of the High Court, ss. 4–9.
tion and Seat of the) Seat of the High Court, ss. 10–14.
High Court.)

(Exercise of Jurisdiction, s. 15.

PART III.—Jurisdic- (Single Justices, ss. 16–18.
tion and Powers of (A Full Court, ss. 19–23.
the High Court (Enforcement of Process, ss. 24, 25.
Generally. (Costs, ss. 26, 27.
(Absent Defendants, ss. 28, 29.

PART IV.

- PART IV.—Original)
 Jurisdiction of the) ss. 30–33.
 High Court.)
- PART V.—Appellate) Appeals, ss. 34, 35.
 Jurisdiction of the) Power of Court, ss. 36, 37.
 High Court.)
- PART VI.—Exclusive and Invested Jurisdiction, ss. 38, 39.
- PART VII.—Removal of Causes, ss. 40—46.
 (Salaries of Justices, ss. 47, 48.
- PART VIII.— Mem- (Barristers and Solicitors, ss. 49, 50.
 bers and Officers of (Registrars, ss. 51, 52.
 the High Court. (The Marshal, ss. 53–55.
- PART IX.—Suits by and against the Commonwealth and the
 States, ss. 56–67.
- PART X.—Criminal (Application of Laws, s. 68.
 Jurisdiction. (Indictable Offences, ss. 69–71.
 (Appeal, ss. 72–77.
 (Appearance of Parties, s. 78.
- PART XI.—Supple- (Application of Laws, ss. 79–81.
 mentary Provi- (Venue, ss. 82–85.
 sions. (Rules of Court, ss. 86, 87.

Interpretation.

2. In this Act, unless the contrary intention appears—
 “Suit” includes any action or original proceeding between parties;
 “Cause” includes any suit, and also includes criminal proceedings;
 “Matter” includes any proceeding in a Court, whether between parties or not, and also any incidental proceeding in a cause or matter;
 “Plaintiff” includes any person seeking any relief against any other person by any form of proceeding in a Court;
 “Defendant” includes any person against whom any relief is sought in a matter or who is required to attend the proceedings in a matter as a party thereto;
 “The Chief Justice” includes any Justice upon whom the power and duties of the Chief Justice devolve for the time being;
 “Judgment” includes any judgment decree order or sentence;
 “Appeal” includes an application for a new trial and any proceeding to review or call in question the proceedings decision or jurisdiction of any Court or Judge.

Repeal of Act
 No. 21 of 1902.

3. The Claims against the Commonwealth Act 1902 is hereby repealed.

PART II.—CONSTITUTION AND SEAT OF THE HIGH COURT.
 Justices of the High Court.

5. The qualification of a Justice of the High Court shall be as follows:—He must either be or have been a Judge of the Supreme Court of a State, or be or have been a practising barrister or solicitor of the High Court or of the Supreme Court of a State of not less than five years' standing.

Qualification of Justices.

(N.S.W.)

6. The Justices other than the Chief Justice shall have seniority according to the dates of their commissions, or when the commissions of two or more of them bear the same date according to the precedence assigned to them by their commissions, or failing such assignment according to the order of their being sworn.

Seniority.
U.S. 674.

7. (1) In case of the absence of the Chief Justice from the Commonwealth, or of his inability to perform the duties of his office, all the duties and powers of the Chief Justice shall, during such absence or inability, devolve upon the senior Justice.

Vacancy of office of Chief Justice.
U.S. 675.

(2) In case of the absence from the Commonwealth or inability of any Justice upon whom such powers and duties devolve, they shall during such absence or inability devolve upon the Justice who is next in seniority.

8. A Justice of the High Court shall not be capable of accepting or holding any other office or any other place of profit within the Commonwealth, except any such judicial office as may be conferred upon him by or under any law of the Commonwealth.

Justices not to hold other office.

9. Every Justice of the High Court shall before proceeding to discharge the duties of his office take an oath or affirmation of allegiance in the form in the Schedule to the Constitution, and also an oath or affirmation in the form following:—

Oath or affirmation of allegiance and of office.
31 & 32 Vict. c. 72
s. 4

I A.B. do swear that I will well and truly serve our Sovereign Lord the King in the office of a Justice of the High Court of Australia and I will do right to all manner of people according to law without fear or favour affection or ill-will : so help me GOD.

Or I A.B. do solemnly and sincerely promise and declare that (& c. as above, except the words "So help me GOD").

Seat of the High Court.

10. The principal seat of the High Court shall be at the seat of Government. Until the seat of Government is established, the principal seat of the High Court shall be at such place as the Governor-General from time to time appoints.

Seat of the High Court.

11. (1) There shall be a Principal Registry of the High Court, which shall be at the principal seat of the Court. (2) There

Registries.

(2) There shall also be a District Registry of the High Court in every State except the State in which the principal seat of the Court is situated. Such District Registry shall be at the seat of Government of the State.

(3) The Governor-General may on the recommendation of the Justices of the High Court, or a majority of them of whom the Chief Justice is one, establish District Registries at other places within any State or Territory.

Place of sitting.

12. Sittings of the High Court shall be held from time to time as may be required at the principal seat of the Court and at each place at which there is a District Registry.

Matter heard at one place may be further dealt with at another place.

13. When any cause or matter has been heard at a sitting of the High Court held at any place the Justice or Justices before whom the matter was heard may pronounce judgment or give further hearing or consideration to the cause or matter at a sitting of the High Court held at another place.

Reserved judgments.
Cf. Q. 57 Vict.
No. 17 s. 8.

14. (1) When any cause or matter, after being fully heard before a Full Court, is ordered to stand for judgment, it shall not be necessary that all the Justices before whom it was heard shall be present together in Court to declare their opinions thereon, but the opinion of any of them may be reduced to writing and may be read by any other Justice at any subsequent sitting of a Full Court at which judgment in the cause or matter is appointed to be delivered.

(2) In any such case the question shall be decided in the same manner, and the judgment of the Court shall have the same force and effect, as if the Justice whose opinion is so read had been present in Court and had declared his opinion in person.

PART III.—JURISDICTION AND POWERS OF THE HIGH COURT GENERALLY.

Exercise of jurisdiction.

15. The jurisdiction of the High Court may, subject to the provisions of this Act, be exercised by any one or more Justices sitting in open Court.

Single Justices.

Jurisdiction in Chambers.

16. The jurisdiction of the High Court may be exercised by a Justice sitting in Chambers in the cases following:—

- (a) Applications relating to the conduct of a cause or matter;
- (b) Applications relating to the custody management or preservation of property, or to the sale of property and the disposition of the purchase money;
- (c) Applications for orders or directions as to any matter which by this Act or by Rules of Court is made subject to the direction of a Justice sitting in Chambers;

(d) Any

- (d) Any other applications which by this or any Act or by Rules of Court are authorized to be made to a Justice sitting in Chambers.

But on the application of either party the Justice may order the application to be adjourned into Court and heard in open Court.

17. (1) In any matter pending in the High Court, not being a matter in which the High Court has exclusive jurisdiction, the Supreme Court of a State shall, subject to any Rules of Court, be invested with federal jurisdiction to hear and determine any applications which may be made to a Justice of the High Court sitting in Chambers.

State Supreme Courts invested with jurisdiction in Chambers.

(2) Such jurisdiction may be exercised by a single Judge of the Supreme Court sitting in Chambers, and the order of the Judge shall have the effect of an order of a Justice of the High Court sitting in Chambers.

18. Any Justice of the High Court sitting alone, whether in Court or in Chambers, and any Judge of the Supreme Court of a State exercising federal jurisdiction may state any case or reserve any question for the consideration of a Full Court, or may direct any case or question to be argued before a Full Court, and a Full Court shall thereupon have power to hear and determine the case of question.

Reference to Full Court.

Jud. Act 1873 s.46.

A Full Court.

19. Except as hereinafter provided, a Full Court may be constituted by any two or more Justices of the High Court sitting together.

Quorum of a Full Court.

20. The jurisdiction of the High Court to hear and determine appeals from judgments—

Quorum on appeals from Judges of federal jurisdiction. [CSD]

- (a) of a Justice of the High Court exercising the original jurisdiction of the High Court; or
 (b) of the Supreme Court of a State exercising federal jurisdiction when such jurisdiction is exercised by a single Judge; or
 (c) of any other court exercising federal jurisdiction; or
 (d) of the Inter-State Commission;

and to hear and determine applications for a new trial of any cause or matter, after a trial before any such Justice or any such Court exercising federal jurisdiction, shall be exercised by a Full Court.

21. (1) Applications for leave or special leave to appeal to the High Court from a judgment of the Supreme Court of a State, or of any other Court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council, shall be heard and determined by a Full Court.

Applications for leave to appeal to High Court.

(2) The jurisdiction of the High Court to hear and determine appeals from judgments of the Supreme Court of a State sitting as a Full Court, or of any other Court of a State from which at the establishment

Quorum of Justices on appeals from State Supreme Courts.

establishment of the Commonwealth an appeal lay to the Queen in Council, shall be exercised by a Full Court consisting of not less than three Justices.

Quorum for granting leave to appeal to the King in Council or to High Court.

22. Applications to the High Court for a certificate that a question as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, which has been decided by the High Court, is one which ought to be determined by the King in Council, shall be heard and determined by a Full Court consisting of not less than three Justices.

Decision in case of difference of opinion.
Qd. law.

23. When the Justices sitting as a Full Court are divided in opinion as to the decision to be given on any question—

- (a) the question shall be decided according to the decision of the majority, if there is a majority; but
- (b) if the Court is equally divided in opinion, the opinion of the Chief Justice or if he is absent the opinion of the senior Justice present shall prevail, except in the case of an appeal from a decision of a Justice of the High Court or a Judge of the Supreme Court of a State exercising federal jurisdiction, in which case the decision appealed from shall be affirmed.

Provided that in the last-mentioned case if the Justice or Judge whose decision is appealed from reports to the Court that he desires that the matter shall be determined without reference to the fact that he has pronounced or given the decision, the opinion of the Chief Justice or senior Justice present shall prevail.

Enforcement of Process.

Contempt.

24. The High Court shall have the same power to punish contempts of its power and authority as is possessed at the commencement of this Act by the Supreme Court of Judicature in England.

See Jud. Act 1873 s. 16.

Powers of court to extend to whole Commonwealth.

25. The process of the High Court shall run, and the judgments and orders of the High Court shall have effect and may be executed, throughout the Commonwealth.

Costs.

Costs.

26. The High Court and every Justice thereof sitting in Chambers shall have jurisdiction to award costs in all matters brought before the Court, including matters dismissed for want of jurisdiction.

No appeal as to costs.

27. An appeal shall not lie to the High Court from a decision of a Justice of the Court, or from a decision of the Supreme Court of a State exercising federal jurisdiction, with respect to costs which are in the discretion of the Court, except by leave of the Justice or Court.

Absent

Absent Defendants.

28. When there are several defendants in any cause pending in the High Court, if any defendant is not served with process and does not voluntarily appear, the Court may nevertheless entertain the cause and proceed to hear and determine it between the parties who are properly before the Court; but the judgment given in the cause shall not conclude or prejudice other parties who are not regularly served with process and do not voluntarily submit to the jurisdiction of the Court.

Non-appearance of some defendants U.S. 737.

29. When in any suit of which the High Court has original jurisdiction, any defendant is not a resident of or found within the Commonwealth and does not voluntarily appear in the suit, the Court may nevertheless proceed to exercise its jurisdiction after such notice to the defendant and upon such terms as are prescribed by Rules of Court.

Absent defendants.

PART IV.—ORIGINAL JURISDICTION OF THE HIGH COURT.

Extent of Jurisdiction.

30. In addition to the matters in which original jurisdiction is conferred on the High Court by the Constitution*, the High Court shall have original jurisdiction in all matters arising under the Constitution or involving its interpretation.

Original jurisdiction conferred.

31. The High Court in the exercise of its original jurisdiction may make and pronounce all such judgments as are necessary for doing complete justice in any cause or matter pending before it, and may for the execution of any such judgment in any part of the Commonwealth direct the issue of such process, whether in use in the Commonwealth before the commencement of this Act or not, as is permitted or prescribed by this or any Act or by Rules of Court.

Judgment and execution.

32. The High Court in the exercise of its original jurisdiction in any cause or matter pending before it, whether originated in the High Court or removed into it from another Court, shall have power to grant and shall grant, either absolutely or on such terms and conditions as are just, all such remedies whatsoever as any of the parties thereto are entitled to in respect of any legal or equitable claim properly

Complete relief to be granted. Jud. Act 1873 s. 24 (7).

*Sec. 75. In all matters—

- i. Arising under any treaty :
 - ii. Affecting consuls, or other representatives of other countries :
 - iii. In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party :
 - iv. Between States, or between residents of different States, or between a State and a resident of another State :
 - v. In which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth :
- the High Court shall have original jurisdiction.

Original jurisdiction of High Court.

brought

brought forward by them respectively in the cause or matter ; as far as possible all matters in controversy between the parties regarding the cause of action, or arising out of or connected with the cause of action, may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters may be avoided.

Mandamus.
Prohibition.
Ouster of office.
U.S. 688.

33. (1) The High Court may make orders or direct the issue of writs—

- (a) commanding the performance by any court invested with federal jurisdiction, of any duty relating to the exercise of its federal jurisdiction; or
- (b) requiring any court to abstain from exercise of any federal jurisdiction which it does not possess; or
- (c) commanding the performance of any duty by any person holding office under the Commonwealth; or
- (d) removing from office any person wrongfully claiming to hold any office under the Commonwealth; or
- (e) of mandamus; or
- (f) of habeas corpus.

(2) This section shall not be taken to limit by implication the power of the High Court to make any order or direct the issue of any writ.

PART V.—APPELLATE JURISDICTION OF THE HIGH COURT.

Appeals.

Appeals from
Justices of High
Court.
(See ss. 2[7],7[7].)

34. The High Court shall, except as provided by this Act, have jurisdiction to hear and determine appeals from all judgments whatsoever of any Justice or Justices, exercising the original jurisdiction of the High Court whether in Court or Chambers.

Appeals from
Supreme Courts
of States.

35. (1) The appellate jurisdiction of the High Court with respect to judgments of the Supreme Court of a State, or of any other Court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council, shall extend to the following judgments whether given or pronounced in the exercise of federal jurisdiction or otherwise and to no others, namely :

(a) Every judgment, whether final or interlocutory, which —

- (1) is given or pronounced for or in respect of any sum or matter at issue amounting to or of the value of Three hundred pounds; or
- (2) involves directly or indirectly any claim, demand, or question, to or respecting any property or any civil right amounting to or of the value of Three hundred pounds; or

(3) affect

- (3) affects the status of any person under the laws relating to aliens, marriage, divorce, bankruptcy, or insolvency ;

but so that an appeal may not be brought from an interlocutory judgment except by leave of the Supreme Court or the High Court—

(b) Any judgment, whether final or interlocutory, and whether in a civil or criminal matter, with respect to which the High Court thinks fit to give special leave to appeal:

(c) Any judgment of the Supreme Court of a State given or pronounced in the exercise of federal jurisdiction in a matter pending in the High Court:

including respectively every or any such judgment which has been given or made before the commencement of this Act, and as to which—

- (1) leave to appeal to the King in Council might at the commencement of this Act be granted by the Court appealed from ; or
- (2) leave to appeal to the King in Council has before the commencement of this Act been granted by the Court appealed from, and up to the commencement of this Act the conditions of appeal have been complied with within the periods limited ; or
- (3) a petition for special leave to appeal to the King in Council has been lodged and is pending at the commencement of this Act.

(2) It shall not be necessary in any case, in order to appeal from a judgment of the Court of a State to the High Court, to obtain the leave of the Court appealed from.

Power of Court.

36. The High Court in the exercise of its appellate jurisdiction shall have power to grant a new trial in any cause in which there has been a trial whether with or without a jury.

New trials.
U.S. 726.

37. The High Court in the exercise of its appellate jurisdiction may affirm reverse or modify the judgment appealed from, and may give such judgment as ought to have been given in the first instance, and if the cause is not pending in the High Court may in its discretion award execution from the High Court or remit the cause to the Court from which the appeal was brought for the execution of the judgment of the High Court; and in the latter case it shall be the duty of that Court to execute the judgment of the High Court in the same manner as if it were its own judgment.

Form of judgment
on appeal.
U.S. 709

PART VI.—EXCLUSIVE AND INVESTED JURISDICTION.

38. The jurisdiction of the High Court shall be exclusive of the jurisdiction of the several Courts of the States in the following matters:—

Matters in which
jurisdiction of
[High] federal
Court exclusive
[CSD]

- (a) Matters arising directly under any treaty ; (b) Suits

- (b) Suits between States, or between persons suing or being sued on behalf of different States, or between a State and a person suing or being sued on behalf of another State ;
- (c) Suits by the Commonwealth, or any person suing on behalf of the Commonwealth, against a State, or any person being sued on behalf of a State ;
- (d) Suits by a State, or any person suing on behalf of a State, against the Commonwealth or any person being sued on behalf of the Commonwealth ;
- (e) Matters in which a writ of mandamus or prohibition is sought against an officer of the Commonwealth or a Federal Court.

Federal
jurisdiction of
State Courts in
other matters.

39. (1) The jurisdiction of the High Court in matters not mentioned in the last preceding section shall be exclusive of the jurisdiction of the several Courts of the States, except as provided in this section.

(2) The several Courts of the States shall within the limits of their several jurisdictions, whether such limits are as to locality, subject-matter, or otherwise, be invested with federal jurisdiction, in all matters in which the High Court has original jurisdiction or in which original jurisdiction can be conferred upon it, except as provided in the last preceding section, and subject to the following conditions and restrictions :—

- (a) Every decision of the Supreme Court of a State, or any other court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council, shall be final and conclusive except so far as an appeal may be brought to the High Court.
- (b) Wherever an appeal lies from a decision of any Court or Judge of a State to the Supreme Court of the State, an appeal from the decision may be brought to the High Court.
- (c) The High Court may grant special leave to appeal to the High Court from any decision of any Court or Judge of a State notwithstanding that the law of the State may prohibit any appeal from such Court or Judge.
- (d) The federal jurisdiction of a Court of summary jurisdiction of a State shall not be judicially exercised except by a Stipendiary or Police or Special Magistrate, or some Magistrate of the State who is specially authorized by the Governor-General to exercise such jurisdiction.

Special leave to
appeal from
decisions of State
Courts though
State law
prohibits appeal.
Exercise of federal
jurisdiction by
State Courts of
summary
jurisdiction.

PART VII.—REMOVAL OF CAUSES.

40. (1) Any cause or part of a cause arising under the Constitution or involving its interpretation which is at any time pending in any Court of a State on appeal, may at any stage of the proceedings before final judgment be removed into the High Court under an order of the High Court, which may, for special cause shown, upon application by any party, or by or on behalf of the Attorney-General of the Commonwealth or of a State, be made on such terms as the Court thinks fit.

Removal by order of the High Court.

(2) When any such order for removal is made, the proceedings in the cause and such documents, if any, relating thereto as are filed of record in the Court of the State, or if part only of the cause is removed a certified copy of those proceedings and documents, shall be transmitted to such Registry of the High Court as is directed by the order.

41. When a cause or part of a cause is removed into the High Court under the provisions of this Act, the High Court shall proceed therein as if the cause had been originally commenced in that Court and as if the same proceedings had been taken in the cause in the High Court as had been taken therein in the Court of the State prior to its removal, but so that all subsequent proceedings shall be according to the course and practice of the High Court.

Proceedings after removal.
U.S. A.D. 1875
c. 137 s. 6.

42. (1) If in any cause removed in whole or part from a Court of a State into the High Court it appears to the satisfaction of the High Court at any time after the removal that the cause does not really and substantially arise under the Constitution or involve its interpretation[,] the High Court shall proceed no further therein but shall dismiss the cause or remit it to the Court from which it was removed as justice requires[,] and shall make such order as to costs as is just.

Remittal of cases improperly brought or removed.
U.S. A.D. 1875 c. 137
s. 5.

(2) Every such order of remitter shall be carried into execution forthwith, and the proceedings and documents shall be returned to the Court from which they were received.

43. When a cause is removed in whole or part into the High Court the High Court may—

Certiorari.
Ib. s. 7.

- (a) issue a writ directed to the Judges of the Court from which it is removed commanding them to make return of the records in the cause, and may enforce the writ according to law; or
- (b) allow the party removing the cause to file in the High Court a sworn copy of the records in such other Court, and may thereupon proceed upon that copy.

44. When

Effect of
interlocutory
orders & c.
before removal
of cause.

44. When a cause is removed in whole or part into the High Court from any Court of a State—

U.S. 1875 c. 137 s.
4.

- (a) every order relating to the custody or preservation of any property the subject-matter of the cause which has been made before the removal shall remain in force until it is discharged or varied by the High Court ; and
- (b) any attachment or sequestration of the goods or estate of a defendant had in the cause in the Court of the State before the removal shall hold the goods or estate so attached or sequestered to answer the final judgment of the High Court in the same manner as by law they would have been held to answer the final judgment of the Court in which the cause was commenced ; and
- (c) all undertakings or security given by any party in the cause before the removal shall remain valid and effectual notwithstanding the removal ; and
- (d) all injunctions orders and other proceedings granted made or taken in the cause before the removal shall remain in full force and effect until the High Court otherwise orders.

Remitter for trial.

45. (1) Any matter which is at any time pending in the High Court, whether originally commenced in the High Court or not, may be remitted for trial to any Court of a State which has federal jurisdiction with regard to the subject-matter and the parties.

(2) The order remitting the matter may be made by the High Court, or a Justice sitting in Chambers, on the application of any party to the matter.

Defence in causes
removed to
High Court.

46. When a cause is removed in whole or part from any Court of a State into the High Court, the defendant may set up by way of defence any matter which he might have set up if the cause had been commenced in the High Court, notwithstanding that the Court from which the cause was removed had not jurisdiction to entertain the matter of defence or could not entertain it in the same cause.

PART VIII.—MEMBERS AND OFFICERS OF THE HIGH COURT.

Salaries of Justices.

Salary.

47. (1) There shall be paid to the Chief Justice a salary at the rate of Three thousand five hundred pounds a year, and to each other Justice a salary at the rate of Three thousand pounds a year.

(2) There shall also be paid to each Justice of the High Court, on account of his expenses in travelling to discharge the duties of his office, such sums as are considered reasonable by the Governor-General.

48. (1) The

48. (1) The salaries of the Justices of the High Court shall be charged on and paid out of the Consolidated Revenue Fund.

Payment of salaries.

(2) They shall grow due from day to day, but shall be payable monthly.

Barristers and Solicitors.

49. (1) Any person entitled to practise as a barrister or solicitor or both in any State shall have the like right to practise in any federal Court.

Barristers and solicitors.

(2) Provided that before so doing he shall produce to the Principal Registrar evidence showing that he is so entitled and in what capacity, and the Principal Registrar shall thereupon enter his name in a Register of Practitioners to be kept at the Principal Registry.

(3) A copy of the Register shall be kept at every District Registry.

(4) The High Court may direct the name of any person to be struck off the Register upon proof that he has been guilty of conduct which renders him unfit to be allowed to continue to practise as a barrister or solicitor, or that he has been deprived by the Supreme Court of the State, by virtue of his right to practise wherein he was registered, of the right to practise in that State as a barrister or solicitor.

50. The Crown Solicitor for the Commonwealth shall, in respect of his office, be entitled to practise as a solicitor in any federal Court or Court exercising federal jurisdiction, and be entitled to all the rights and privileges of a solicitor in each State, whether he is or is not enrolled as a solicitor in any State.

Crown Solicitor entitled to rights and privileges of a solicitor in every State.
Cf. U.K., 37 & 38 Vict., c. 68, s. 12.

Registrars.

51. (1) At the Principal Registry of the High Court there shall be an officer to be called the Principal Registrar and such other officers as are necessary.

Registrars.

(2) There shall also be at every District Registry a District Registrar and such other officers as are necessary.

(3) Provided that after the first day of July One thousand nine hundred and four no new office shall be created either in the Principal Registry or in any District Registry unless the Chief Justice certifies in writing to the Governor-General that the new office is necessary.

Qd. Sup. Ct. Act.

52. The Principal Registrar and the several District Registrars shall have power to administer oaths and perform such duties in respect of any proceedings pending in the High Court as are assigned to them by Rules of Court or by any special order of the Court.

Power of Registrars.
Jud. Act 1873 s. 62.

The

The Marshal.

Marshal.

53. There shall be an officer to be called the Marshal, who shall be charged with the service and execution of all writs, summonses, orders, warrants, precepts, process, and commands of the High Court which are directed to him, and shall make such return of the same to the Court together with the manner of the execution thereof as he is thereby required, and who shall take receive and detain all persons who are committed to his custody by the Court, and shall discharge all such persons when thereunto directed by the Court or by law.

Qd. Sup. Ct. Act.

Deputy Marshal.

54. There shall also be in and for each State in which there is a District Registry a Deputy or Deputies of the Marshal, each of whom shall, when required by the High Court by any writ process or other proceeding to him directed, execute and perform within the State all such acts as the Marshal would be bound to perform if he was personally present and acting in the State.

Marshal's officers
Qd. law.

55. The Governor-General may appoint such officers as he thinks fit to assist the Marshal and his Deputies in the execution of their duties, and all acts done by those officers shall be deemed to be done by and under the authority of the Marshal.

PART IX.—SUITS BY AND AGAINST THE COMMONWEALTH AND
THE STATES.

Suits against the
Commonwealth

56. Any person making any claim against the Commonwealth, whether in contract or in tort, may in respect of the claim bring a suit against the Commonwealth in the High Court or in the Supreme Court of the State in which the claim arose.

Suits by a State
against the
Commonwealth.

57. Any State making any claim against the Commonwealth whether in contract or in tort, may in respect of the claim bring a suit against the Commonwealth in the High Court.

Suits against a
State in matters
of federal
jurisdiction.

58. Any person making any claim against a State, whether in contract or in tort, in respect of a matter in which the High Court has original jurisdiction or can have original jurisdiction conferred on it, may in respect of the claim bring a suit against the State in the Supreme Court of the State, or (if the High Court has original jurisdiction in the matter) in the High Court.

Suits between
States.

59. Any State making any claim against another State may in respect of the claim bring a suit against that State in the High Court.

Injunction against
a State and its
officers.

60. In a suit against a State brought in the High Court, the High Court may grant an injunction against the State and against all officers of the State and persons acting under the authority of the State, and may enforce the injunction against all such officers and persons.

61. Suits

61. Suits on behalf of the Commonwealth may be brought in the name of the Commonwealth by the Attorney-General of the State or by any person appointed by him in that behalf.

Suits by
Commonwealth.

62. Suits on behalf of a State may be brought in the name of the State by the Attorney-General or by any person appointed by him in that behalf.

Suits by a State.

63. Where the Commonwealth or a State is a party to a suit, all process in the suit required to be served upon that party shall be served upon the Attorney-General of the Commonwealth or of the State, as the case may be, or upon some person appointed by him to receive service.

Service of
process when
Commonwealth
or State is party.

64. In any suit to which the Commonwealth or a State is a party, the rights of parties shall as nearly as possible be the same, and judgment may be given and costs awarded on either side, as in a suit between subject and subject.

Rights of parties.

65. No execution or attachment, or process in the nature thereof, shall be issued against the property or revenues of the Commonwealth or a State in any such suit; but when any judgment is given against the Commonwealth or a State, the Registrar shall give to the party in whose favour the judgment is given a certificate in the form of the Schedule to this Act, or to a like effect.

No execution against
Commonwealth
or a State.
(Tas.) 55 Vict. No.
24, s. 10.

Schedule.

66. On receipt of the certificate of a judgment against the Commonwealth or a State the Treasurer of the Commonwealth or of the State as the case may be shall satisfy the judgment out of moneys legally available.

Performance by
Commonwealth
or State.
(Tas.) 55 Vict. No.
24, s. 11.

67. When in any such suit a judgment is given in favour of the Commonwealth or of a State and against any person, the Commonwealth or the State, as the case may be, may enforce the judgment against that person by process of extent, or by such execution, attachment, or other process as could be had in a suit between subject and subject.

Execution by
Commonwealth
or State.
(Tas.) 55 Vict.
No. 24, s. 12.

PART X.—CRIMINAL JURISDICTION. Application of Laws.

68. (1) The laws of each State respecting the arrest and custody of offenders or persons charged with offences, and the procedure for—

State laws to apply
as to preliminary
proceedings in
criminal cases.

- (a) their summary conviction ; and
- (b) their examination and commitment for trial on indictment; and
- (c) their trial and conviction on indictment ;

and

and for holding accused persons to bail, shall apply and be applied so far as they are applicable to persons who are charged with offences against the laws of the Commonwealth committed within that State, or whose trial for offences committed elsewhere may lawfully be held therein.

(2) The several Courts of a State exercising jurisdiction with respect to—

- (a) the summary conviction ; or
- (b) the examination and commitment for trial on indictment;
- or
- (c) the trial and conviction on indictment ;

of offenders or persons charged with offences against the laws of the State shall have the like jurisdiction with respect to persons who are charged with offences against the laws of the Commonwealth committed within the State, or who may lawfully be tried within the State for offences committed elsewhere :

(3) Provided that such jurisdiction shall not be judicially exercised with respect to the summary conviction or examination and commitment for trial of any person except by a Stipendiary or Police or Special Magistrate, or some Magistrate of the State who is specially authorized by the Governor-General to exercise such jurisdiction.

Indictable Offences.

Indictments.

69. (1) Indictable offences against the laws of the Commonwealth shall be prosecuted by indictment in the name of the Attorney-General of the Commonwealth or of such other person as the Governor-General appoints in that behalf.

(2) Any such appointment shall be by commission in the King's name and may extend to the whole Commonwealth or to any State or part of the Commonwealth.

(3) Any person committed for trial for an indictable offence against the laws of the Commonwealth may at any time within fourteen days after committal and before the jury is sworn apply to a Justice in Chambers or to a Judge of the Supreme Court of a State for the appointment of counsel for his defence. If it be found to the satisfaction of the Justice or Judge that such person is without adequate means to provide defence for himself, and that it is desirable in the interests of justice that such an appointment should be made, the Justice or Judge shall certify this to the Attorney-General, who may if he thinks fit thereupon cause arrangements to be made for the defence of the accused person. Upon committal the person committed shall be supplied with a copy of this sub-section.

Offences
committed in
several States.
U.S. 731.

70. When an offence against the laws of the Commonwealth is begun in one State or part of the Commonwealth and completed in another,

another, the offender may be dealt with tried and punished in either State or part in the same manner as if the offence had been actually and wholly committed therein.

71. When any person is under commitment upon a charge of an indictable offence against the laws of the Commonwealth, the Attorney-General or such other person as the Governor-General appoints in that behalf may decline to proceed further in the prosecution, and may, if the person is in custody, by warrant under his hand direct the discharge of the person from custody, and he shall be discharged accordingly.

Discharge of persons
committed for trial

Appeal.

72. (1) When any person is indicted for any indictable offence against the laws of the Commonwealth, the Court before which he is tried shall on the application by or on behalf of the accused person made before verdict, and may in its discretion either before or after judgment without such application, reserve any question of law which arises on the trial for the consideration of a Full Court of the High Court or of a Full Court of the Supreme Court of the State.

Reservation of
points of law.
Qd. Cr. Code s.668.

(2) If the accused person is convicted, and a question of law has been so reserved before judgment, the Court before which he was tried may either pronounce judgment on the conviction and respite execution of the judgment, or postpone the judgment until the question has been considered and decided, and may either commit the person convicted to prison or admit him to bail on recognisance with or without sureties, and in such sum as the Court thinks fit, conditioned to appear at such time and place as the Court directs and to render himself in execution or to receive judgment as the case may be.

(3) The presiding Judge is thereupon required to state in a case signed by him the question of law so reserved with the special circumstances upon which it arose, and if it be reserved for the High Court the case shall be transmitted to the Principal Registry.

73. Any question so reserved shall be heard and determined after argument by and on behalf of the Crown and the convicted person or persons if they desire that the question shall be argued, and the Court may—

Hearing.
Ib. s. 669.

- (a) affirm the judgment given at the trial ; or
- (b) set aside the verdict and judgment and order a verdict of not guilty or other appropriate verdict to be entered;
- or
- (c) arrest the judgment; or
- (d) amend the judgment ; or
- (e) order a new trial ; or
- (f) make such other order as justice requires ;

or the Court may send the case back to be amended or restated.

74. (1) If

Effect of order of
Full Court.
Qd. Cr. Code s.
670.

74. (1) If the trial was had in a State in which the principal seat of the Court is not situated, the proper officer of the Court by which the question reserved was determined shall certify the judgment of the Court under his hand and the seal of the Court to the proper officer of the Court in which the trial was had, who shall enter the same on the original record.

(2) If the convicted person is in custody, the proper officer of the Court by which the question reserved was determined shall also forthwith transmit another certificate of the same tenor under his hand and the seal of the Court to the superintendent of the prison or other person who has the custody of the convicted person. The certificate shall be a sufficient warrant to all persons for the execution of the judgment if it is certified to have been affirmed or as it is certified to be amended, and execution shall thereupon be executed upon the judgment as affirmed or amended: And if the judgment is set aside or arrested the certificate shall be a sufficient warrant for the discharge of the convicted person from further imprisonment under that judgment, and in that case the superintendent is required forthwith to discharge him from imprisonment under that judgment, and if he is at large on bail the recognisance of bail shall be vacated at the next criminal sitting of the Court in which the trial was had: And if that Court is directed to pronounce judgment, judgment shall be pronounced at the next criminal sitting of the Court at which the convicted person appears to receive judgment.

Certain errors not
to avoid
conviction
Ib. s. 671.

75. A conviction cannot be set aside upon the ground of the improper admission of evidence if it appears to the Court that the evidence was merely of a formal character or not material, nor upon the ground of the improper admission of evidence adduced for the defence.

Appeal from
arrest of
judgment.
Ib. s. 672.

76. (1) When the Court before which an accused person is convicted on indictment for an offence against the laws of the Commonwealth arrests judgment at the trial, the Court shall on the application of counsel for the prosecution state a case for the consideration of a Full Court of the High Court or a Full Court of the Supreme Court of the State in manner hereinbefore provided.

(2) On the hearing of the case the Full Court may affirm or reverse the order arresting judgment. If the order is reversed the Court shall direct that judgment be pronounced upon the offender, and he shall be ordered to appear at such time and place as the Court directs to receive judgment, and any Justice of the Peace may issue his warrant for the arrest of the offender.

(3) An offender so arrested may be admitted to bail by order of the Court which may be made in Court or in Chambers, at the time when the order directing judgment to be pronounced is made or afterwards.

77. Except

77. Except as aforesaid, and except in the case of error apparent on the face of the proceedings, an appeal shall not without the special leave of the High Court be brought to the High Court from a judgment or sentence pronounced on the trial of a person charged with an indictable offence against the laws of the Commonwealth.

No other appeal.

PART XI.—SUPPLEMENTARY PROVISIONS.

Appearance of Parties.

78. In every Court exercising federal jurisdiction the parties may appear personally or by such barristers or solicitors as by the laws and rules regulating the practice of those Courts respectively are permitted to appear therein.

Appearance by barrister or solicitor.
U.S. 747.

Application of Laws.

79. The laws of each State, including the laws relating to procedure, evidence, and the competency of witnesses, shall, except as otherwise provided by the Constitution or the laws of the Commonwealth, be binding on all Courts exercising federal jurisdiction in that State in all cases to which they are applicable.

State laws to govern where applicable.
U.S. 721.

80. So far as the laws of the Commonwealth are not applicable or so far as their provisions are insufficient to carry them into effect, or to provide adequate remedies or punishment, the common law of England as modified by the Constitution and by the statute law in force in the State in which the Court in which the jurisdiction is exercised is held shall, so far as it is applicable and not inconsistent with the Constitution and the laws of the Commonwealth, govern all Courts exercising federal jurisdiction in the exercise of their jurisdiction in civil and criminal matters.

Common law to govern.
U.S. 722.

81. The Justices of the High Court, and the Judges and magistrates of the several States who are empowered by law to authorize arrests for offences against the laws of the Commonwealth, shall have the like authority to hold to security of the peace and for good behaviour in matters arising under the laws of the Commonwealth as may be lawfully exercised by any Judge or Magistrate of the respective States in other cases cognisable before them.

Security of the peace and for good behaviour.
U.S. 727.

Venue.

82. Suits to recover pecuniary penalties and forfeitures under the laws of the Commonwealth may be brought either in the State or part of the Commonwealth where they accrue or in the State or part where the offender is found.

Venue in suits for penalties.
U.S. 732.

83. Suits

Venue in suits for
taxes.
U.S. 733.

83. Suits to recover taxes accruing under any revenue law of the Commonwealth may be brought either in the State or part of the Commonwealth where the liability for the tax occurs or in the State or part where the debtor resides.

Venue in suits for
forfeiture.
U.S. 734.

84. Proceedings on seizures made on the high seas for forfeiture under any law of the Commonwealth may be prosecuted in any State into which the property seized is brought. Proceedings on such seizures made within any State or part of the Commonwealth shall be prosecuted in the State or part where the seizure is made, except in cases when it is otherwise provided by law.

Property seized as
forfeited.
U.S. 934.

85. All property taken or obtained by any officer or person under the authority of any revenue law of the Commonwealth shall be deemed to be in the custody of the law, and subject only to the orders and judgments of the Courts having jurisdiction thereof under this or any Act.

Rules of Court.

Rules of Court.

86. The Justices of the High Court or a majority of them may make Rules of Court not inconsistent with this Act for carrying this Act into effect, and in particular for the following matters, that is to say :—

- (a) Appointing and regulating the sittings of the High Court and of the Justices;
- (b) Regulating procedure pleading and practice in the High Court in civil or criminal matters in the exercise both of its original and of its appellate jurisdiction;
- (c) Regulating any matters relating to the duties of the officers of the High Court and of the Marshal and his Deputies and officers;
- (d) Prescribing the forms to be used for the purposes of the proceedings of the High Court;
- (e) Prescribing and regulating the fees to be charged by practitioners practising in the High Court for the work done by them in relation to proceedings in the Court and for the taxation of their bills of costs, either as between party and party or as between solicitor and client;
- (f) Prescribing the fees to be collected by the officers of the High Court and by the Marshal and his officers in respect of proceedings in the Court or of the execution of the process thereof;
- (g) Prescribing the extent to which the provisions of this Act shall be applicable to the Courts of Territories of the Commonwealth;
- (h) Generally regulating all matters of practice and procedure in the High Court and other federal courts, and so far as is necessary in courts of federal jurisdiction.

87. Every

87. Every Rule of Court made in pursuance of the last preceding section shall be laid before the Senate and the House of Representatives within forty days next after it is made if the Parliament is then sitting or if the Parliament is not then sitting then within forty days after the next meeting of the Parliament; and if an Address is presented to the Governor-General by either House of the Parliament within the next subsequent forty sitting days of the House praying that any such Rule may be annulled the Governor-General may thereupon annul it; and the Rule so annulled shall thenceforth become void and of no effect but without prejudice to the validity of any proceedings which have in the meantime been taken under it.

To be laid before
the Parliament.

England.
Qd.
Va.

THE SCHEDULE.

Section 65.

FORM OF CERTIFICATE OF JUDGMENT.

Nokes v Commonwealth [or as the case may be].—I hereby certify that A.B., of
, &c., did on the day of ,
obtain a judgment of the High Court in his favour, and that by such judgment the sum
of £ was awarded to him.

C.D., Registrar.

I HEREBY CERTIFY that the above is a fair print of the Bill intituled "An Act to make provision for the Exercise of the Judicial Power of the Commonwealth," which has been passed by the Senate and the House of Representatives, and that the said Bill originated in the House of Representatives.

In the name and on behalf of
His Majesty, I assent to this
Act.

[C. Gavan Duffy]
Clerk of the House of
Representatives.

[Tennyson]
Governor-General.

[25th August 1903]