

# JUDICIARY.

## No. 8 of 1907.

An Act to amend the *Judiciary Act* 1903.

[Assented to 14th October, 1907.]

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

1. This Act may be cited as the *Judiciary Act* 1907, and the *Judiciary Act* 1903 (in this Act called the Principal Act) as amended by the *Judiciary Act* 1906 and by this Act, may be cited as the *Judiciary Act* 1903–1907.

Short title and citation.

2. After section thirty-eight of the Principal Act the following section is inserted :—

Matter in which jurisdiction of High Court is exclusive of jurisdiction of State Supreme Courts.

“38A. In matters (other than trials of indictable offences) involving any question, however arising, 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, the jurisdiction of the High Court shall be exclusive of the jurisdiction of the Supreme Courts of the States ; so that the Supreme Court of a State shall not have jurisdiction to entertain or determine any such matter, either as a Court of first instance or as a Court of Appeal from an inferior Court.”

Federal  
jurisdiction of  
State Courts.

3. Section thirty-nine of the Principal Act is amended by omitting the words "in matters not mentioned in the last preceding section," and inserting in lieu thereof the words "so far as it is not exclusive of the jurisdiction of any Court of a State by virtue of either of the last two preceding sections."

Removal by  
order of the  
High Court.

4. Section forty of the Principal Act is amended—

- (a) by omitting the words "on appeal";
- (b) by omitting the words "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," and inserting in lieu thereof the words "which may, upon the application of any party for sufficient cause shown, be made on such terms as the Court thinks fit, and shall be made as of course upon motion in open Court by or on behalf of the Attorney-General of the Commonwealth or the Attorney-General of a State."

Removal by  
virtue of this  
Act.

5. After section forty of the Principal Act the following section is inserted :—

"40A.—(1.) When, in any cause pending in the Supreme Court of a State, there arises any 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, it shall be the duty of the Court to proceed no further in the cause, and the cause shall be by virtue of this Act, and without any order of the High Court, removed to the High Court.

(2.) Thereupon the proceedings in the cause, and such documents if any relating thereto as are filed of record in the Supreme Court of the State, shall be transmitted by the Registrar, Prothonotary, or other proper officer of the Court, to the Registry of the High Court in the State; or if there are more Registries than one in the State, to such Registry as is prescribed by Rules of Court."

6. Section forty-one of the Principal Act is amended by adding at the end thereof the following proviso :—

"Provided that, where the trial of any person for an indictable offence against the law of the Commonwealth or of a State is removed from any Court of a State into the High Court, the trial in the High Court shall be, as nearly as may be, according to the course and practice of the Court from which the trial was removed; and to that end the laws of the State relating to the trial and conviction of persons charged with indictable offences against the laws of the State shall extend and apply to the trial as if the trial were proceeding in the Court of the State."

Records.

7. Section forty-three of the Principal Act is amended by inserting after the words "When a cause is," the words "or ought to be."