



JUDICATURE ACT 1960

[Consolidated as at 7 April 2000
on the authority of the Administrator
and in accordance with
the *Enactments Reprinting Act 1980*]

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Judicature Act 1960

An Act relating to the Administration of Law in Norfolk Island

Short title

1. This Act may be cited as the *Judicature Act 1960*.

Definitions

2. In this Act, unless the contrary intention appears —
 - “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 to the proceedings;
 - “judgment” includes any decree, order or rule;
 - “matter” includes any proceeding in a Court, whether between parties or not, and any incidental proceeding in a suit or matter;
 - “plaintiff” includes any person seeking relief against any other person by any form of proceeding in a Court;
 - “suit” includes any action or original proceeding of a civil nature between parties;
 - “the Judge” means the Judge of the Supreme Court and includes an acting Judge of that Court;
 - “the Judicature Act” means the *Supreme Court of Judicature Act, 1873* (36 and 37 Vic.cap. 66) of the United Kingdom;
 - “the Territory” means Norfolk Island.

Law in force in Norfolk Island

3. Subject to any Acts, Imperial Acts and Ordinances in force in the Territory and to any laws made under such an Act, Imperial Act or Ordinance —

- (a) all statutes, and laws made under statutes, in force in England on 25 July 1828, being the date of the passing of the *Imperial Act 9 Geo. IV, c. 83*; and
- (b) subject to the statutes and laws referred to in paragraph 3(a), all the principles and rules of common law and equity,

are, by force of this Act, so far as they are applicable and *mutatis mutandis*, in force in the Territory as laws of the Territory.

Law and equity to be administered concurrently

4. Subject to the provisions of any other law in force in the Territory, in every suit or matter commenced in the Supreme Court, law and equity shall be administered in accordance with the provisions of sections 5 to 11 (inclusive) of this Act.

Equities of plaintiff

5. If a plaintiff claims to be entitled to any equitable estate or right, or to relief on any equitable ground against any deed, instrument or contract, or against any right, title or claim asserted by any defendant in the suit or matter, or to any relief founded upon a legal right, that could, in England immediately before the commencement of the Judicature Act, only have been given by a Court of Equity, the Supreme Court or the Judge shall give to the plaintiff the same relief as ought then to have been given by the English Court of Chancery in a suit or proceeding for the like purpose properly instituted.

Equities of defendant

6. If a defendant claims to be entitled to any equitable estate or right, or to relief on any equitable ground against any deed, instrument or contract, or against any right, title or claim asserted by any plaintiff in the suit or matter, or alleges any ground of equitable defence to such a claim of the plaintiff, the Supreme Court or the Judge shall give to every equitable estate, right or ground of relief so claimed, and to every equitable defence so alleged, the same effect by way of defence against the claim of the plaintiff as the English Court of Chancery ought, immediately before the commencement of the Judicature Act, to have given if the like matters had been relied on by way of defence in a suit or proceeding instituted in that Court for the like purpose.

Counter claims and third parties

7. (1) The Supreme Court or the Judge has 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 —

- (a) all such relief against any plaintiff as the defendant has properly claimed by his pleading, and as the Court or Judge might have granted in a suit instituted for that purpose by that defendant against that plaintiff; and
- (b) all such relief relating to or connected with the original subject of the suit or matter, claimed in like manner against any other person, whether already a party to the suit or matter or not, who has been duly served with notice in writing of the claim in pursuance of rules of court or any order of the Court, as might properly have been granted against that person if he had been made a defendant to a suit duly instituted by the same defendant for the like purpose.

(2) A person served with a notice referred to in paragraph 7(1)(b) shall be deemed to be a party to the suit or matter with the same rights in respect of his defence against the claim as if he had been duly sued in the ordinary way by the defendant.

Equities appearing incidentally

8. The Supreme Court or the Judge shall take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of a suit or matter, in like manner as the English Court of Chancery would, immediately before the commencement of the *Judicature Act 1960*, have taken notice of those matters in a suit or proceeding properly instituted in that Court.

Defence or stay instead of injunction or prohibition

9. (1) A suit or proceeding at any time pending in the Supreme Court shall not be restrained by prohibition or injunction, but every matter of equity on which an injunction against the prosecution of such a suit or proceeding, if that suit or proceeding had been a suit or proceeding properly instituted in the English Court of Chancery for the like purpose, might, immediately before the commencement of the *Judicature Act 1960*, have been obtained, whether unconditionally or on any terms or conditions, may be relied on by way of defence to the suit or proceeding.

(2) Subsection 9(1) does not prevent the Supreme Court, if it thinks fit so to do, from directing a stay of proceedings in any suit or matter pending before it.

(3) Any person, whether a party or not to a suit or matter pending before the Supreme Court, who, if the suit or matter had been a suit or proceeding properly instituted in the English Court of Chancery for the like purpose would, immediately before the commencement of the *Judicature Act 1960*, have been entitled to apply to a court to restrain the prosecution of the suit or proceeding, or who may be entitled to enforce, by attachment or otherwise, a judgment in contravention of which all or any part of the proceedings in the suit or matter have been taken, may apply to the Court by motion in a summary way, for a stay of proceedings in the suit or matter, either generally, or so far as may be necessary for the purposes of justice, and the Court shall thereupon make such order as is just.

Common law and statutory rights and duties

10. Subject to the provisions of this Act for giving effect to equitable rights and other matters of equity, the Supreme Court or the Judge shall 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 Act, Imperial Act, Ordinance, regulation or bylaw in force in the Territory.

Determination of matter completely and finally

11. The Supreme Court, in the exercise of the jurisdiction vested in it, shall, in every suit or matter pending before the Court, grant, either absolutely or on such terms and conditions as the Court thinks just, all remedies to which any of the parties to the suit or matter appears to be entitled in respect of any legal or equitable claim properly brought forward by him in the suit or matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided.

Rules of equity to prevail

12. In questions relating to the custody and education of infants and generally in all matters not particularly mentioned in this Act in which there was before the commencement of this Act, or is, any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

Power of Court of Petty Sessions to grant relief

13. The Court of Petty Sessions shall, in the exercise of the jurisdiction vested in it, in every suit or matter pending before it —

- (a) have power to grant, and grant, either absolutely, or on such terms and conditions as the Court thinks just, such remedies as might and ought to be granted;
- (b) have power to make such orders as could be made; and
- (c) give effect to every ground of defence or counterclaim, whether equitable or legal, in as full and sufficient manner as could be given,

in a like suit or matter by the Supreme Court or the Judge.

Barristers and solicitors

14. The parties to any suit or matter before the Supreme Court or the Court of Petty Sessions may appear personally, by such barristers or solicitors as have the right to practise in any federal court or, with leave of the Supreme Court or the Court of Petty Sessions, as the case may be, by any other person.

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