

Memorandum to be subscribed on the Writ.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance [or Appearances] to this writ may be entered by the defendant [or defendants] either personally or by solicitor at the Principal [or District] Registry of the High Court at (*Registry from which writ is issued*).

Additional memorandum to be subscribed on writs issued from District Registries.

If any defendant neither resides nor carries on business in the State of (*State in which District Registry is situated*), his appearance may, at his option, be entered either at the place above mentioned or at the Principal Registry of the High Court at (*Principal Seat of the Court*).

Indorsements to be made on the writ before issue.

The plaintiff's claim is, &c. (*state briefly the nature of the relief claimed in the action*).

This writ was issued by the plaintiff in person, who resides at _____, and whose address for service is at the same place [or at _____] [or This writ was issued by X.Y., of _____, whose address for service is at _____, solicitor for the plaintiff, who resides at _____, or This writ was issued by V.W., of _____, whose address for service is _____, agent for X.Y., of _____, solicitor for the plaintiff, who resides at _____] (*mention the locality and situation of the plaintiff's residence in such a manner as to enable it to be easily discovered*).

Indorsement to be made on the writ after service thereof.

This writ was served by me on the defendant _____ at _____ on _____ day, the _____ day of _____, 19____.

Indorsed the _____ day of _____, 19____.

(Signed) M.N.

(Address)

No. 2—Writ of Summons in Actions in rem.

In the High Court of Australia.

A.B., Plaintiff,

against

The Ship X

[or The Ship X and freight

or the Ship X, her cargo and freight

or (*if the action is against cargo only*) The cargo ex the Ship (*state the name of ship on board of which the cargo is or lately was laden*),

or, (*if the action is against the proceeds realized by the sale of a Ship or cargo*) The proceeds of the Ship X (*or of the cargo ex the Ship X*),

or Fifty cases of Opium (*or as the case may be*).

GEORGE THE FIFTH, by the Grace of God, &c.

To the owners and all others interested in the Ship X, her cargo and freight (*or as the case may be, describing the subject-matter of the action*):

We command you, &c. (*as in Form No. 1*).

(*Memoranda and indorsements as in Form No. 1.*)

Note.—If the action is by the Crown, instead of the plaintiff's name put "Our Sovereign Lord the King," adding, if necessary, "in His Office of Admiralty."

No. 3.—Writ of Service beyond the Jurisdiction, or when notice in lieu of Service is to be given beyond the Jurisdiction.

[*Title, &c., as in Form No. 1.*]

GEORGE, &c.

To C.D., of _____ :

We command you that within _____ days after the service of this writ [or notice of this writ (*as the case may be*)] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our High Court of Australia, in an

(Memoranda and indorsements as in Form No. 1.)

N.B.—This writ is to be used where the defendant or all the defendants, or one or more defendant or defendants, is or are to be served beyond the Commonwealth of Australia. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ, and not the writ itself, is to be served upon him.

Between A.B., Plaintiff.
and
C.D. and E.F., Defendants.

(Signed) A.B., of cc.
 or
 X.Y., of cc.
 Solicitor for A.B.

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(Signature and memoranda as in Form No. 1, omitting reference to statement of claim.)

No. 8.—*Affidavit for Entry of Appearance as Guardian.*

(Title, &c., as in writ of summons or originating proceeding.)

I, Y.Z., of _____, solicitor, make oath and say as follows:—

G.H., of (state residence and description), is a fit and proper person to act as guardian *ad litem* of the above-named infant defendant, and has no interest in the matters in question in this cause adverse to that of the said infant, and the consent of the said G.H. to act as such guardian is hereto annexed marked with the letter A.

Signed and sworn, &c.

Note.—To this affidavit must be annexed the document signed by the guardian in testimony of his consent to act, which may be in the following form:—

I, G.H., of (state residence and description), consent to act as guardian *ad litem* of C.D., an infant defendant in this cause, and I authorize Mr. Y.Z., of, &c., solicitor, to defend this cause as solicitor for me as such guardian.

G.H.

Witness X.Y.

No. 9.—*General Form of Notice of Appearance by Defendant.*

(Title, &c., as in writ of Summons.)

Take notice that I have this day entered an appearance in this action at the Principal [or District] Registry of the High Court of Australia at _____ [for the defendant C.D.]

I require [or do not require] [or The said defendant requires (or does not require)] a statement of claim to be delivered.

C.D., defendant in person

[or Y.Z., Solicitor for the Defendant C.D.]

The address of C.D. is

His address for service is

[or The place of business of Y.Z. is

His address for service is

In the case of a conditional appearance insert the word "conditional" before appearance."

The Fees and Percentages to be taken in the several Offices of the High Court of Australia by the several officers thereof shall be as set forth in the following Schedule, that is to say:—

THE SCHEDULE.

SCALE OF FEES.

I.—TO BE TAKEN IN THE REGISTRIES.

Summonses, Writs, and Commissions.

	£	s.	d.
On sealing a writ of summons for commencement of an action ..	0	10	0
On sealing a concurrent writ of summons for commencement of an action ..	0	2	6
On sealing a writ of subpoena for not more than three persons ..	0	5	0
For every additional person named in the subpoena ..	0	1	0
On sealing any writ of execution ..	0	5	0
On sealing writ of mandamus, certiorari, habeas corpus, or prohibition ..	1	0	0
On sealing writ of assistance ..	0	10	0
On sealing writ of inquiry ..	0	10	0
On sealing any other writ ..	0	5	0
On sealing a renewed or amended writ of summons ..	0	5	0
On sealing any originating summons ..	0	5	0
On sealing summons for directions under Order XV. ..	0	5	0
On sealing any other summons ..	0	3	0
On sealing any commission issued by authority of the Court or a Justice whether under the authority of a Statute or of Rules of Court ..	1	0	0
On sealing any document issued from the Court for use beyond the jurisdiction of the Court, not being a writ or other document for service on a party to a cause or matter ..	0	10	0
On sealing any other document with the Seal of the Court ..	0	10	0

The above fees include the filing of all copies or *præcipes* or other documents required to be filed on the sealing or issuing of the above documents.

Appearances.

	£	s.	d.
On entering an appearance, for each person	0	2	6
If by a corporation or joint stock company or a company incorporated by Statute or Royal Charter	0	10	0

Copies.

For an office copy of any record of the Court, or of any document filed in the Registry, if in the English language, for every folio	0	0	8
If in a foreign language, the actual cost of making and examining same, and in addition for marking and sealing same as an office copy	0	2	6
For an office copy of a plan, map, section, drawing, photograph, or diagram, the actual cost of making and examining same, and in addition for marking and sealing same as an office copy	0	2	6

Attendances.

On an application, with or without a subpoena, for any officer, not being the Associate of the Justice presiding at the Court, to attend with any record or document at any Court or place out of the Court building, in addition to the just charges and expenses of the officer for each day or part of a day he shall necessarily be absent from his office	1	0	0
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The officer may require a deposit on account of any further fees, charges, or expenses which may probably become payable beyond the amount paid for fees, charges, and expenses on the application, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof on the application.

The officer may also require an undertaking in writing to pay any further fees, charges, and expenses which may become payable beyond the amounts so paid and deposited.

Securities.

On making appointment to inquire into sufficiency of sureties	0	1	0
On attesting execution of instrument of security under Order XXVIII., whether by one or more sureties, and whether entered into by all at one time or not	0	10	0
On inquiring as to sureties under Order XXVIII., and indorsing approval on instrument of security	0	5	0
On vacating a recognisance	0	10	0

Filing.

On filing a special case	1	0	0
On filing special case, being an appeal from an inferior Court	0	10	0
On filing an instrument of security under Order XXVIII.	0	5	0
On filing a copy of a notice of motion originating a cause or matter	0	10	0
On filing a petition originating a cause or matter, including the sealing of the indorsement of time appointed for hearing on all copies of the petition intended for service	0	10	0
On filing any other petition	0	5	0
On filing any pleading or other document required to be delivered, when no appearance entered	0	2	6
On filing a notice of change of solicitor	0	2	6
On filing, unless otherwise provided, an affidavit, deposition, or set of depositions, including any annexures to any such affidavit or deposition	0	2	6
On filing exhibits referred to in an affidavit or deposition and not annexed thereto, and required to be filed, for each exhibit	0	1	0
But not to exceed	0	5	0
On filing a writ of execution with return	0	2	6
On filing a preliminary Act in actions for damage by collision	0	5	0
On depositing in any cause or matter any documents ordered to be deposited for safe custody or to be impounded, for each document	0	1	0
On a receipt for any document or documents to which the last fee applies when delivered out	0	1	0
On filing notice of discontinuance of an action or withdrawal of part of a cause of action by a plaintiff or a counter-claiming defendant	0	2	6
On filing a consent in writing signed by the parties withdrawing a cause which has been entered for trial	0	2	6
On filing a copy of the pleadings and issues or such other proceedings as show the questions for trial by the party entering the trial	0	2	6
On filing a written request to set down a cause or matter for further consideration	0	5	0

Filing—continued.

	£	s.	d.
On filing a written authority to use a person's name as next friend ..	0	2	6
On filing a disclaimer of office by defendant under Order XLVII. ..	0	5	0
On filing notice under Queensland Justices Act	0	5	0
On filing a bill of costs for taxation	0	2	6
On filing a certificate of an examiner of refusal of a witness to attend or to be sworn	0	2	6
On an examiner filing a question to which a witness objects, together with the objection	0	2	6
On filing a copy of notice of motion instituting an appeal ..	0	5	0
On filing any document in respect of which no other fee is provided ..	0	1	0

Payment into Court.

On payment of money into Court	0	5	0
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Certificates.

For a certificate of an associate of the result of trial	1	0	0
For a certificate of taxing officer of result of taxation of bill of costs ..	0	2	6
For a certificate of the Registrar of the result of any proceeding before him	0	5	0

Searches.

On a search for appearance.. ..	0	1	0
Unless otherwise expressly provided by any Act of Parliament, Rules of Court, or this Schedule, on a search in any register kept in the Registry, or on searching an index or calendar to the files or bundles of documents filed, and inspecting the documents, for every hour or part of an hour occupied	0	2	6
Not to exceed per day	0	10	0
Provided that if a search is made in more than one register an additional search fee shall be charged for every register beyond the first.			
Inspecting any documents deposited pursuant to an order for safe custody, or impounded	0	2	6

Examination of Witnesses.

On obtaining appointment for examination of a witness before an officer of the Court	0	5	0
In respect of every witness sworn and examined by an officer of the Court in his office, unless otherwise provided, including oath, for each hour or part of an hour	0	10	0
For an examination of witnesses by any such officer away from the office, in addition to reasonable travelling and other expenses, per day or part of a day	3	0	0
The officer may require a deposit on account of fees and expenses which may probably become payable beyond any amount paid for fees and expenses upon the examination; and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof and deliver the same to the party making the deposit.			
The officer may also require an undertaking, in writing, to pay any further fees and expenses which may become payable beyond the amount so paid and deposited.			
On examination of witnesses by persons other than officers of the Court (these fees to be retained by examiner for his own use).			
Upon giving an appointment to take an examination	0	5	0
Or, if evidence taken on commission, for giving such appointment, to each commissioner who acts at the examination	0	5	0
If the time occupied in an examination is less than three hours ..	3	0	0
If the time occupied in an examination is more than three hours, for each day or part of a day	5	0	0

When evidence is taken on commission, the two preceding fees shall be paid to each commissioner who acts at the examination.

On a request to examine witnesses abroad, such fee shall be payable to the examiner as is prescribed by the laws of the country where the examination is to take place, and shall be paid to the Registrar to be transmitted with the request.

The term "Officer of the Court" does not include an Associate.

Hearing.

	£	s.	d.
On setting down an appeal to the Full Court from a judgment of the Supreme Court of a State or of a Judge of the Supreme Court of a State ..	2	0	0
If from an order made in Chambers	1	0	0
On setting down an appeal from an inferior Court to the Full Court, whether by special case or otherwise	1	0	0
On entering a special case or demurrer for argument, either before a single Judge or before the Full Court, in the first instance, including in the latter case, when necessary, the filing of the memorandum requiring same to be entered before the Full Court.. .. .	1	0	0
On filing like memorandum of another party	0	5	0
On entering an action for trial before a Justice, with or without a jury, in addition to the fees, if any, payable in respect of the jury	1	0	0
On entering an election petition for trial	1	0	0
On hearing an action on motion for judgment	0	10	0
On hearing any cause or matter set down for further consideration	0	10	0
On hearing any cause or matter commenced by motion on notice or by petition, except when otherwise provided.. .. .	1	0	0
On hearing any other petition in Court	0	5	0
On setting down an appeal from a Justice of the High Court	2	0	0
On setting down any appeal not above mentioned	1	0	0

Drawing up and entering Judgments and Orders.

If made in Court on the original hearing, or hearing on further consideration of a cause, or on the hearing of a special case or petition, or on application to the Full Court, unless otherwise provided	1	0	0
If a judgment without hearing, or by consent	0	10	0
If a judgment under Order XXVI., Rule 7 or Rule 8, or Order XXX., Rule 3, or Order XXXI., Rule 2	0	10	0
Any other order, whether made in Court or at Chambers	0	5	0

The above fees include filing the duplicate original.

Taxation of Costs.

For taxing a bill of costs when the amount allowed does not exceed £10 ..	0	2	0
When the amount exceeds £10, for every £5 allowed or a fraction thereof ..	0	0	6

These fees, except where otherwise provided, shall be taken on signing the certificate or on the allowance of the bill of costs as taxed, but the fees shall be due and payable, if no certificate or allocatur is required, on the amount of the bill as taxed, or on the amount of such part thereof as may be taxed, and the solicitor, or party suing in person, shall in such case pay the proper sum, the amount whereof shall be fixed by the taxing officer.

The taxing officer may require a deposit on account of fees before taxation, not exceeding the fees on the full amount of the costs as submitted for taxation, and the officer on taking such deposit shall make a memorandum thereof on the bill of costs.

Miscellaneous.

On a fiat of a Justice	0	5	0
On a party attending before a Judge signifying his consent to a consent order being drawn, to enter judgment against him.. .. .	0	5	0
On entering a satisfaction of judgment	0	5	0

II.—TO BE TAKEN IN THE MARSHAL'S OFFICES.

The same fees are to be taken as by the practice of the Supreme Court of the State in which the proceeding is taken or the act is done or authorized and required to be taken by the Sheriff in respect of a like proceeding or act in a cause pending in that Court.

A deposit on account of the fees applicable to any proceeding or act may be required before such proceeding is commenced or act done, or at any time during the course thereof, and a memorandum of the amount deposited shall be delivered to the party making the deposit.

In case of dispute as to any of the charges the amount is to be taxed by the taxing officer without fees.

Part VI.—Exclusive and Invested Jurisdiction, ss. 38, 39.

Part VII.—Removal of Causes, ss. 40-46.

Part VIII.—Members and Officers of the High Court. { Salaries of Justices, ss. 47, 48.
Barristers and Solicitors, ss. 49, 50.
Registrars, ss. 51, 52.
The Marshal, ss. 53-55.

Part IX.—Suits by and against the Commonwealth and the States, ss. 56-67.

Part X.—Criminal Jurisdiction. { Application of Laws, s. 68.
Indictable Offences, ss. 69-71.
Appeal, ss. 72-77.

Part XI.—Supplementary Provisions. { Appearance of Parties, s. 78.
Application of Laws, ss. 79-81.
Venue, ss. 82-85.
Rules of Court, ss. 86, 87.

Part XII.—Reference of Constitutional Questions, ss. 88-94.

Added by No. 34, 1910, s. 2.

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 powers 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.

Interpretation.

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

Repeal of Act No. 21 of 1902.

PART II.—CONSTITUTION AND SEAT OF THE HIGH COURT.

Justices of the High Court.

4. The High Court shall be a superior court of record, and shall consist of the Chief Justice and four other Justices, who shall respectively be appointed by commission.

Justices.
Amended by No. 5, 1906, s. 2.

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.)

Seniority.
U.S. 674.

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.

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

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.

(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.

Justices not to
hold other office.

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.

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

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:—

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.

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.^(a)

Registries.

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

(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.

^(a) By a minute dated 2nd October, 1903, the Governor-General ordered and declared that until the seat of Government should be established, or until otherwise ordered, the principal seat of the High Court should be at Melbourne, Victoria. See *Gazette*, 3rd October, 1903, p. 626.

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. Place of sitting.

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

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. Reserved judgments.
Cf. Q. 57 Viet.,
No. 17 s. 8.

(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.

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. Exercise of jurisdiction.

Single Justices.

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

- (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 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.^(a) State Supreme Courts invested with jurisdiction in Chambers.

^(a) As to the jurisdiction of the Judge of a State Supreme Court under this section, see *Markell v. Wollaston*, (1906) 23 W.N. (N.S.W.) 36.

(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.

Reference to
Full Court.

Jud. Act 1873
s. 46.

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 or question.^(a)

A Full Court.

Quorum of 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.

Appeals from
Judges of
federal
jurisdiction.

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

- (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.

Applications for
leave to appeal
to High 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.

Quorum of
Justices on
appeals from
State Supreme
Courts.

(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 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

^(a) In *Lee Fay v. Vincent*, (1908) 7 C.L.R. 389, the Supreme Court of a State, assuming that a case which had been stated by a magistrate for its consideration fell within section 40A of this Act, ordered the proceedings to be transmitted to the High Court. It was held by the High Court that no question as to the limits *inter se* of the constitutional powers of the Commonwealth and the State was involved, and that therefore the Supreme Court had power to determine the case. The High Court, however, decided that under the circumstances the case should be treated as a case stated by the Supreme Court under this section for the consideration of the High Court.

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.

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

Decision in case of difference of opinion.

(a) the question shall be decided according to the decision of the majority, if there is a majority; but

Qd. law.

(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.

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

Contempt.
See *Jud. Act*
1873 s. 16.

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.

Powers of court to extend to whole Commonwealth.

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.

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.

No appeal as to costs.

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

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

(a) Held by the High Court that statements made concerning a Judge of the High Court do not constitute a contempt of the High Court unless they are calculated to obstruct or interfere with the course of justice, or the due administration of the law, in the High Court. *R. v. Nicholls*, (1911) 12 C.L.R. 280.

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.

Absent
defendants.

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.

PART IV.—ORIGINAL JURISDICTION OF THE HIGH COURT.

Extent of Jurisdiction.

Original
jurisdiction
conferred.

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.

Judgment and
execution.

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.

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

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 brought forward by them respectively in the cause or matter; so that 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.

*Sec. 75. In all matters—

Original
jurisdiction of
High Court.

- 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.

- 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 the exercise of any federal jurisdiction which it does not possess^(a); 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^(b); or
 - (f) of *habeas corpus*.

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

(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.

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
Justices of
High Court.
(See ss. 27, 77.)

35.—(1.) The^(c) appellate jurisdiction of the High Court with respect to judgments of the Supreme Court of a State^(d), or of any

Appeals from
Supreme Courts
of States.

(a) As to the jurisdiction of the High Court to issue prohibition to the Commonwealth Court of Conciliation and Arbitration, see *R. v. Commonwealth Court of Conciliation and Arbitration; Ex parte Whybrow and Co.* (1910) 11 C.L.R. 1. (Note.—Since this case was decided section 31 of the Commonwealth Conciliation and Arbitration Act has been amended).

(b) Held by the High Court that the jurisdiction in respect of mandamus, conferred upon the High Court by the Constitution, sec. 75 (v), has not been enlarged by this section. *R. v. The Governor of the State of South Australia*, (1907) 4 C.L.R. 1497.

(c) Held by the High Court that on an appeal to the High Court from the judgment of the Supreme Court of a State the High Court has no jurisdiction to receive fresh evidence. *New Lambton Land and Coal Co. Ltd. v. London Bank of Australia Ltd.*, (1904) 1 C.L.R. 524; *Ronald v. Harper*, (1910) 11 C.L.R. 63; *Scott Fell v. Lloyd*, (1911) 13 C.L.R. 230. Held also that the conditions imposed by this section on appeals to the High Court from judgments of the Supreme Court of a State are exhaustive. *Parkin v. James*, (1905) 2 C.L.R. 315. But held, that an appeal from a decision of the Chief Judge in Equity of New South Wales is a re-hearing, and in dealing with his findings on questions of fact, the High Court will reconsider the materials that were before the Judge, applying the rules laid down in *Goglan v. Cumberland*, (1898) 1 Ch. 704. *McLaughlin v. Daily Telegraph Newspaper Co.* (No. 2), (1904) 1 C.L.R. 243.

(d) Held by the High Court that the words "Supreme Court of a State" in section 73 of the Constitution—where the words occur in a similar collocation to the present—are used to designate the Court which at the time of the establishment of the Commonwealth was in any particular State known by the name of the Supreme Court of that State. Held, therefore, that an order made by a Judge of the Supreme Court of Victoria, sitting in Chambers upon an originating summons, by which the rights of the parties under a will are finally decided, is an order from which an appeal will lie to the High Court, inasmuch as such an order is, by the Statute law of the State, an order of the Supreme Court. *Parkin v. James*, (1905) 2 C.L.R. 315. Held, also, that an order made by a Judge of the Supreme Court of New South Wales, sitting in Chambers in the exercise of the jurisdiction conferred by section 107 of the *Justices Act* 1902 of that State, is a judgment of the Supreme Court from which an appeal will lie to the High Court. *Saunders v. Borthistle*, (1904) 1 C.L.R. 379. Held, also, that a decision of a Judge of the Supreme Court of Victoria on an interpleader summons under Order LVII. of the Rules of the Supreme Court is a judgment of the Supreme Court from which an appeal will lie to the High Court. *O'Connor v. Quinn*, (1911) 12 C.L.R. 239. But held that the Supreme Court upon which jurisdiction is conferred by the *Electoral Act* 1904 of Western Australia is a special tribunal, and is not the Supreme Court of the State of Western Australia, and that therefore an appeal will not lie to the High Court. *Holmes v. Angwin*, (1906) 4 C.L.R. 297. Held, also, that certain jurisdiction conferred on a Judge of the Supreme Court of South Australia by the *Lands Clauses Consolidation Act* 1881 of that State is conferred not upon the Supreme Court of the State but upon a Judge of the Supreme Court as a *persona designata* with a right of appeal to the Full Court, and that therefore a judgment of a Judge exercising the jurisdiction so conferred is not a judgment of the Supreme Court from which an appeal will lie to the High Court. *Macdonald v. South Australian Railways Commissioners*, (1911) 12 C.L.R. 221. As to appeals to the High Court from judgments of the Supreme Courts of the States founded on the verdict of a jury see *Musgrove v. McDunn*, (1905) 3 C.L.R. 132; *Brisbane Shipwrights' Provident Union v. Heggie*, (1906) 3 C.L.R. 686.

other Court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council,^(a) 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^(b) or interlocutory^(c), which—

- (1) is given or pronounced for or in respect of any sum or matter at issue amounting to or of the value^(d) of Three hundred pounds^(e); 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^(f) of Three hundred pounds^(g); or
- (3) affects the status of any person under the laws relating to aliens, marriage, divorce^(h), bankruptcy, or insolvency;

(a) Held by the High Court that the words "judgments . . . of any other Court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council" include judgments from which an appeal lay either with or without special leave of the Privy Council, *Parkin v. James*, (1905) 2 C.L.R. 315. But see also *Kamarooka Gold Mining Co. No Liability v. Kerr*, (1908) 6 C.L.R. 255.

(b) Held by the High Court that a judgment of the Supreme Court of a State dismissing an application to expunge a trade mark from the register is a final judgment from which an appeal lies to the High Court without leave. *Ashton and Parsons Ltd v. Gould*, (1909) 7 C.L.R. 598.

(c) Held by the High Court that under this section an appeal from an interlocutory judgment may be brought to the High Court by leave in every case in which there would be an appeal to that Court as of right from the final judgment in the action or suit in which the interlocutory judgment was given. *Willis v. Trequair*, (1906) 3 C.L.R. 912. As to whether an order of the Supreme Court of a State refusing to grant a rule nisi for a new trial on certain grounds, but granting it on others, is, *quoad* the refusal, an interlocutory judgment, see *Nolan v. Clifford*, (1904) 1 C.L.R. 429. Held by the Supreme Court of New South Wales (Frings, J.) that the rule absolute setting aside a non-suit and granting a new trial is an interlocutory judgment. *McKeon v. Miller*, (1905) 22 W.N. (N.S.W.) 22.

(d) Held by the High Court that in ascertaining the appealable amount under this section in the case of a plaintiff who has failed and seeks to appeal to the High Court the test is the amount of the sum which he has claimed and failed to recover. Where a plaintiff obtained a judgment in the Supreme Court for £600, which on appeal to the Full Court was reduced to £500, it was held that for the purposes of his appeal to the High Court the adverse judgment was in respect of £100 only, and that an appeal would not lie without leave. *Jenkins v. Lanfranchi*, (1910) 10 C.L.R. 595.

(e) As to whether special leave to appeal is necessary when the judgment of a State Supreme Court indirectly involves a sum amounting to or of the value of £300, see *Markell v. Lockyer*, (1905) 11 A.L.R. 485. On a rule nisi for probate of a will in respect of property amounting in value to over £1,000, it appeared that the interest of the caveator, one of three sons of the testatrix, none of whom took any benefit under the will, would on an intestacy have amounted to less than £300. The Supreme Court having decided in favour of the validity of the will, it was held by the High Court that the judgment was one for or in respect of a matter at issue of the value of over £300. *Tipper v. Moore*, (1911) 13 C.L.R. 248.

(f) Per O'Connor, J. The measure of the appealable amount is the value of the appellant's interest in the property or civil right. *Amos v. Fraser*, (1906) 4 C.L.R. 78. Held by the High Court that in an affidavit under the High Court Rules, as to the appealable nature of a judgment, the statement that the judgment involves indirectly a question respecting property of the value of £300 is, in the absence of evidence to the contrary, a sufficient statement of the value. *Ashton and Parsons Ltd. v. Gould*, (1909) 7 C.L.R. 598.

(g) An action was brought by a remainderman asking for a declaration that the trustees were liable to keep and maintain certain property valued at £2,000, and buildings and fences thereon valued at £300, in repair during the life of the tenant for life. Held by the High Court that a judgment of the Supreme Court of a State refusing any relief was a judgment which involved a claim, demand, or question to or respecting property amounting to or of the value of £300 within the meaning of this paragraph, and that an appeal to the High Court lay without leave. *Amos v. Fraser*, (1906) 4 C.L.R. 78. A plaintiff brought an action for a declaration of right to a strip of land, having upon it a wall, over which the defendant claimed an easement of support for the beams supporting the upper floor of his adjoining building. He also claimed a mandatory injunction and damages. The land and wall were worth £290, and the plaintiff had suffered actual damage to the extent of £15. Held by the High Court that the judgment was one involving a claim respecting property amounting to or of the value of £300 within the meaning of this paragraph. *Milne v. James*, (1910) 13 C.L.R. 165.

(h) Held by the High Court that an order of the Judge in Divorce under section 4 of the New South Wales *Matrimonial Causes Act* 1899, awarding the husband (the successful petitioner in a suit for dissolution of marriage) the custody of a child of the marriage, is not a judgment which affects the status of any person under the laws relating to divorce, within the meaning of this section. *Daniel v. Daniel*, (1906) 4 C.L.R. 563.

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^(a) :
- (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 :

(a) Under this paragraph many decisions have been given by the High Court as to the cases in which special leave to appeal will or will not be granted. The following are a few of the more important decisions which have been so given:—

In dealing with applications for special leave to appeal in cases below the appealable amount, the High Court will substantially follow the rule laid down by the Privy Council in the case of *Prince v. Gagnon* (8 A.C. 103, at p. 105), that leave will not be given except where the case is of gravity involving matter of public interest, or some important question of law, or affecting property of considerable amount, or where the case is otherwise of some public importance or of a very substantial character. *Hannah v. Dalgarno*, (1903) 1 C.L.R. 1; *Backhouse v. Moderana*, (1904) 1 C.L.R. 675. In *Norton v. Taylor* the High Court, in dealing with an application for special leave to appeal, adopted the rule laid down by Lord Watson in *La Cite de Montreal v. Les Ecclesiastiques du Seminaire de St. Sulpice de Montreal*, (14 A.C. 660, at p. 662) that a case may be of a substantial character, may involve matter of great public interest, and may raise an important question of law, and yet the judgment from which leave to appeal is sought may appear to be plainly right, or at least to be unattended with sufficient doubt to justify their lordships in advising Her Majesty to grant leave to appeal. *Norton v. Taylor*, (1905) 2 C.L.R. 291. The High Court will not grant special leave to appeal in cases which do not raise questions of general importance likely to arise in the future, or (in general) in cases depending upon the terms of particular documents. *Baxter v. New South Wales Clickers' Association*, (1909) 10 C.L.R. 114. Nor will special leave be granted where the questions involved are mere questions of fact, nor, even in a case involving an important question of law, if the judgment from which leave to appeal is sought appears to the Court to be unattended with sufficient doubt to justify the granting of leave. *Johansen v. City Mutual Life Assurance Society Ltd.*, (1905) 2 C.L.R. 186. Nor where there is no reason to doubt the correctness of the decision from which it is desired to appeal. *Manton v. Williams*, (1907) 4 C.L.R. 1046; *Resch's Ltd. v. Allan*, (1911) 13 C.L.R. 194. Nor where the decision is manifestly right. *Rae v. Simmons*, (1910) 11 C.L.R. 246; *Waterhouse v. R.*, (1911) 13 C.L.R. 228; *Hey v. Brookes*, (1911) 13 C.L.R. 219. Nor where a very small amount is involved, and where the appellant has lain by in the lower Court and taken the chance of a judgment in his favour. *Zimpel v. Allard*, (1904) 2 C.L.R. 117. Nor, in cases where the sum involved is much below the appeal limit, even though the judgment of the Supreme Court appears to be erroneous, if the error has arisen from a wrong inference of fact, or from a wrong application to the facts of a well-known rule of law. *Learnmouth v. Atkinson*, (1905) 11 A.L.R. 287. Nor where the matter to be decided is purely a question of fact. *Murray v. Munro*, (1906) 3 C.L.R. 738; *Dwyer v. Findin*, (1906) 4 C.L.R. 216; *Cameron v. Irwin*, (1908) 5 C.L.R. 856; *Jones v. Gedge*, (1909) 9 C.L.R. 262. Nor where the amount involved is very small, while the case raises a very difficult question of law. *Baggall v. White*, (1906) 4 C.L.R., 89. But in some circumstances leave to appeal will be given as a matter of course. *Wilcox v. Donahoe*, (1905) 3 C.L.R. 83. And in some cases it will be granted on a condition. *a'Beckett v. Backhouse* (1907) 4 C.L.R. 1334. Where costs are in the discretion of the Supreme Court, special leave to appeal as to costs alone will only be granted in very special circumstances. *Jenkins v. Lanfranchi*, (1910) 10 C.L.R. 595. See also *O'Sullivan v. Morton*, (1911) 12 C.L.R. 390. In *MacDonald v. Beare*, (1904) 1 C.L.R. 513, a motion to rescind special leave to appeal was dismissed on the ground that the question involved was of great public importance, and that on it depended the liability or non-liability of the appellant to a number of actions. In *Donahoe v. Britz*, (1904) 1 C.L.R. 391, it was held that the fact that the question raised was an important question of law, and of general interest to the mercantile community, was an adequate reason for granting special leave to appeal.

In dealing with applications for special leave in criminal cases the High Court has adopted the principle laid down by the Privy Council in *re Dillet*, (12 A.C. 459, at p. 467), that special leave to appeal will not be granted unless it is shown that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done. See *Bataillard v. R.*, (1907) 4 C.L.R. 1282; *McGee v. R.*, (1907) 4 C.L.R. 1453; *R. v. Neil*, (1909) 8 C.L.R. 671; *Hise v. R.* (1909) 9 C.L.R. 257. Special leave will be granted in criminal cases only where questions of great public importance are involved. *Connolly v. Meagher*, (1906) 3 C.L.R. 682; *Millard v. R.*, (1908) 3 C.L.R. 827. It will not be granted from a decision of the Supreme Court quashing a conviction on a Crown case reserved, on the ground that the point upon which the decision went was not one of those specifically reserved at the trial, if that point appears clearly on the face of the case stated (per Griffith, C.J.). *Attorney-General of N.S.W. v. Jackson*, (1906) 3 C.L.R. 730. Nor will it be granted where the accused, who had been acquitted in the Court below, is at most only technically guilty of the offence charged. *Connolly v. Meagher*, (1906) 3 C.L.R. 682. Nor on questions of fact. *Bataillard v. R.*, (1907) 4 C.L.R. 1282; *Collis v. Smith*, (1909) 9 C.L.R. 490; *Soby v. Levy*, (1909) 9 C.L.R. 497.

As to the principles upon which the High Court acts in dealing with applications for special leave to appeal in cases of suspension of practitioners from practice or readmission to practice, see *In re Coleman* (1905) 2 C.L.R. 834; *In re Daley*, (1907) 5 C.L.R. 193; *Incorporated Law Institute of New South Wales v. Meagher*, (1909) 9 C.L.R. 655.

Practice. In applications for special leave to appeal counsel for the respondent may be allowed to appear and oppose. *Collis v. Smith*, (1909) 9 C.L.R. 490. In *Campbell v. Kitchen and Sons Ltd. and Brisbane Soap Co. Ltd.*, (1910) 12 C.L.R. 513, leave was given to one director of a company to institute and carry on an appeal to the High Court, notwithstanding that his co-director was opposed to such an appeal. The action was one involving an amount in excess of the appealable amount.

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.

New Trials.
U.S. 726.

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.

Form of
judgment on
appeal.
U.S. 709.

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^(a), 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.^(b)

(a) As to the duty of the High Court under this section to disregard formal defects and irregularities in the proceedings, and to make all such amendments as the Court appealed from should have made, see *McLaughlin v. Fosbery*, (1904) 1 C.L.R. 546. Held by the High Court, in a case in which a magistrate had imposed a fine under the *Immigration Restriction Act* 1901, s. 9, but had omitted to impose a term of imprisonment in default of payment of the fine, that the High Court had power under this section to amend the conviction by adding the alternative. *Alexander v. Donohoe*, (1906) 4 C.L.R. 781.

(b) In *Re Lovell, Ex parte Dixon* (No. 2), 1904 S.R. (Q.) 147, a judgment of the High Court on appeal remitting a case back to the Supreme Court "for further hearing and inquiry as to the facts and for the said Court to do therein as shall be just and in accordance with law," was made a rule of the Supreme Court. *Per Darley, C.J.* of New South Wales: It is not necessary to make a judgment of the High Court a rule of the Supreme Court for the purpose of enforcing it. *Macintosh v. Dun*, (1906) 6 S.R. (N.S.W.) 451. Held by the Full Court of Western Australia that it has no power to stay execution on a judgment of the High Court pending an appeal therefrom to the Privy Council. *Bechtel v. Goode*, (1904) 7 W.A.L.R. 112. Held similarly by the Full Court of New South Wales. *Macintosh v. Dun* (*supra*). Held by the High Court that where the High Court has remitted a cause to the Supreme Court for the execution of the judgment of the High Court, the Supreme Court has jurisdiction to make any order for the purpose of executing the judgment of the High Court, but has not jurisdiction to make an order which has the effect of preventing or obstructing the execution of that order, and that an order staying proceedings until further order, or until the decision of the Privy Council in the case should be made known, is not an order which the Supreme Court has power to make. *Peacock v. Osborne*, (1907) 4 C.L.R. 1564; *Bayne v. Blake*, (1908) 5 C.L.R. 497. Held further by the High Court that this section, in so far as it authorizes the High Court in the exercise of its appellate jurisdiction to remit a cause to the Supreme Court of a State for the execution of the judgment of the High Court, and imposes on the Supreme Court the duty of executing the judgment of the High Court in the same manner as if that judgment were the judgment of the Supreme Court, is a valid exercise by the Parliament of the power conferred by section 51 (xxxix) of the Constitution. *Bayne v. Blake* (*supra*). As to the power of the High Court to order an officer of the Supreme Court to obey a judgment of the High Court, see *ibid.* In a case which was taken to the High Court on appeal from the Supreme Court of a State, the High Court remitted the cause to the Supreme Court with a declaration of rights and an order for accounts and inquiries. It was held by the High Court that the High Court had no jurisdiction to determine questions arising on the taking of the accounts by the Chief Clerk of the Supreme Court as to the extent of the accounts and inquiries actually directed. *Cock v. Smith*, (1910) 12 C.L.R. 11.

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 Court exclusive.

- (a) matters arising directly under any treaty ;
- (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^(a) is sought against an officer of the Commonwealth or a federal Court.

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.

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

Inserted by
No. 8, 1907,
s. 2.

39.—(1.) The jurisdiction of the High Court, 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, shall be exclusive of the jurisdiction of the several Courts of the States, except as provided in this section.

Federal jurisdiction of State Courts in other matters.

Amended by
No. 8, 1907,
s. 3.

(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^(b), be invested with federal jurisdiction^(c), 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

(a) Held by the High Court (overruling *Ex parte Stelling*, (1904) 4 S.R. (N.S.W.) 201), that the writ of prohibition referred to in this section is the prerogative writ for the control by superior courts of inferior courts exceeding their jurisdiction, and does not include the statutory writ of prohibition in New South Wales, which is in reality a form of appeal. *Wilcox v. Donohoe*, (1905) 3 C.L.R. 83.

(b) Held by the High Court that the federal jurisdiction which is conferred on a State Court by this section is subject to any limitations imposed by the laws of the State upon its State jurisdiction, unless otherwise expressly declared. *Federated Saw-mill Timberyard and General Woodworkers Employees Association v. Alexander*, (1912) 19 A.L.R. 22.

(c) Held by the High Court that under this section the Courts of the several States have federal appellate jurisdiction, as regards the matters enumerated in sections 75 and 76 of the Constitution, to the same extent that, and subject to the same conditions as, under the State laws they have appellate jurisdiction in matters to which the State laws apply. *Ah Yick v. Lehmert*, (1905) 2 C.L.R. 593.

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.^(a)

(b) Wherever an appeal lies from a decision of any Court or Judge of a State^(b) to the Supreme Court of the State, an appeal from the decision may be brought to the High Court.^(c)

Special leave to appeal from decisions of State Courts though State law prohibits appeal.

Exercise of federal jurisdiction by State Courts of summary jurisdiction.

(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)

(d) The federal jurisdiction^(e) 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.

PART VII.—REMOVAL OF CAUSES.

Removal by order of the High Court.

Amended by No. 8, 1907, s. 4.

40.—(1.) Any cause or part of a cause arising under the Constitution or involving its interpretation^(f) which is at any time pending in any Court of a State 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, 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.

(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.

(a) As to whether this paragraph applies to decisions of a Supreme Court given after the passage of the Judiciary Act in actions commenced before such passage, see *Colonial Sugar Refining Co. Ltd. v. Irving*, 1904 S.R. (Q.) 18. As to the validity or otherwise of this paragraph, see *In Re Income Tax Acts*; *Outtrim's case*, 1905 V.L.R. 463; *Webb v. Outtrim*, (1907) A.C. 81; 4 C.L.R. 356; *Baxter v. Commissioner of Taxation, N.S.W.*, (1907) 4 C.L.R. 1087.

(b) Held by the High Court that the expression "Court or Judge of a State" does not include a Judge sitting in Chambers exercising the jurisdiction of the Supreme Court. *Wilcox v. Donohoe*, (1905) 3 C.L.R. 83.

(c) As to appeals direct to the High Court from inferior Courts under this paragraph, see *Roberts v. Ahern*, (1904) 1 C.L.R. 406. The High Court has laid it down that this paragraph will be construed liberally in favour of a party desiring to appeal. *Ex parte Gordon*, (1906) 3 C.L.R. 724.

(d) In *Prentice v. Amalgamated Mining Employees' Association of Victoria and Tasmania* the High Court entertained an appeal by way of order to review from the decision of a Police Magistrate exercising federal jurisdiction, notwithstanding that in the case in question no appeal lay to the Supreme Court. *Prentice v. Amalgamated Mining Employees' Association of Victoria and Tasmania*, (1912) 18 A.L.R. 343.

(e) Held by the High Court that a court of summary jurisdiction of a State exercises federal jurisdiction within the meaning of this paragraph if it is necessary in the particular case for the Court to decide any question arising under the Constitution or involving its interpretation. If, however, whether that question is answered rightly or wrongly, the Court answers another question, not arising under the Constitution or involving its interpretation, and its answer to that other question enables it to decide the case, the Court does not exercise federal jurisdiction, and therefore no appeal lies to the High Court from that decision. *Miller v. Hareis*, (1907) 5 C.L.R. 89. Held by the Full Court of Tasmania that the question whether the Licensing Act of that State is a proper exercise of the police powers of the State is a question involving the interpretation of the Constitution, and that such a question, being one of federal jurisdiction, cannot be determined by a court of summary jurisdiction not constituted in accordance with paragraph (d) of this section. *Conlan v. Watts*, (1911) 7 Tas. L.R. 40.

(f) As to whether the passage, by the Parliament of a State, of legislation inconsistent with a previous decision of the High Court gives rise to a cause arising under the Constitution or involving its interpretation, see *Hogan v. Ochiltree*, (1910) 10 C.L.R. 535.

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^(a), 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.

Removal by
virtue of this
Act.

Inserted by
No. 8, 1907,
s. 5.

(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.

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. 1875
c. 137 s. 6.

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.

Added by
No. 8, 1907,
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,^(a) and shall make such order as to costs as is just.

Remittal of
cases
improperly
brought or
removed.

Ib. 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 or ought to be 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

Amended by
No. 8, 1907,
s. 7.

(a) In *Lee Fay v. Vincent*, (1908) 7 C.L.R. 339, objection having been taken to the validity of a State Act on the ground that it imposed a discrimination between residents of different States, the Supreme Court of the State ordered the proceedings to be transmitted to the High Court. It was held by the High Court that no question as to the limits *inter se* of the constitutional powers of the Commonwealth and the States had arisen, and that, therefore, the Supreme Court had power to determine the case. The High Court, however, decided that under the circumstances the case should be treated as a case stated by the Supreme Court under section 18 of this Act for the consideration of the High Court.

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.

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—

- (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.

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

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 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.^(a) 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 every State. Crown Solicitor entitled to rights and privileges of a solicitor in every State.
Cf. U.K., 37 and 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 offices 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 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 Marshal.
Qd. Sup. Ct. Act.

(a) Cited by High Court in a case in which it was argued unsuccessfully that the High Court had no jurisdiction to entertain an appeal from an order of the Supreme Court of a State readmitting to practice a solicitor who had been struck off the roll for misconduct. *Incorporated Law Institute of New South Wales v. Meagher*, (1909) 9 C.L.R. 655.

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.

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 were 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 Common-
wealth.

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.^(a)

Suits by a
State against
the Common-
wealth.

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.

Suits by
Common-
wealth.

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

(a) Held by the Full Court of New South Wales that this section is retrospective, and applies to actions begun after the passing of the Act, although the cause of action existed or occurred before the Act was passed. *Baume v. Commonwealth*, (1904) S.R. (N.S.W.) 709. Held by the High Court that this section operates as a submission by the Commonwealth to the jurisdiction of a State Court in cases falling within the section. *Commonwealth v. Baume*, (1905) 2 C.L.R. 405; *Commonwealth v. Miller*, (1910) 10 C.L.R. 742. Held by the High Court that sections 56 and 64 of this Act give a subject the same rights of action against the Commonwealth as he would have against a subject in matters of tort as well as contract; and that the Commonwealth is therefore responsible in an action for the tortious acts of its servants in every case in which the gist of the cause of action is an infringement of a legal right, if the act complained of is not justified by law, and the person doing it is not exercising an independent discretion imposed upon him by Statute, but is performing a merely ministerial duty. *Baume v. Commonwealth*, (1906) 4 C.L.R. 97.

62. Suits on behalf of a State may be brought in the name of the State by the Attorney-General of the State, 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^(a) 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.^(b)

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.
Ib. 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.
Ib. 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^(c) for—

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

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

(a) As to the extent of the rights given by this section to subjects against the Commonwealth, and as to the meaning of the words "as nearly as possible", see *Commonwealth v. Baume*, (1905) 2 C.L.R. 405; *Baume v. Commonwealth*, (1906) 4 C.L.R. 97; *Commonwealth v. Miller*, (1910) 10 C.L.R. 742; *R. v. Associated Northern Collieries*, (1910) 11 C.L.R. 738.

(b) Held by the High Court that the Supreme Court of New South Wales has no jurisdiction, in an action at common law brought by an individual against the Commonwealth, to make an order against the Commonwealth under section 102 of the *Common Law Procedure Act 1899* of New South Wales for discovery of documents. *Commonwealth v. Baume*, (1905) 2 C.L.R. 405. But in an action brought in the Supreme Court of Victoria against the Commonwealth, that Court has, by the combined effect of sections 56 and 64 of the *Judiciary Act*, the *Victorian Supreme Court Act 1890*, and the *Supreme Court Rules 1906*, jurisdiction to order the Commonwealth to answer interrogatories and make discovery of documents. *Commonwealth v. Miller*, (1910) 10 C.L.R. 742. See also *Clutterbuck Brothers v. Ringwood*, 1908 S.A.L.R. 130.

(c) Held by the High Court that where a person is charged with an offence against the laws of the Commonwealth committed within a State, the taking of a recognisance is a matter of procedure within this sub-section, in the execution of which a Justice of the Peace may act, and is not a judicial exercise of jurisdiction within sub-section (3) of this section. *R. and Commonwealth v. Thom Sing*, (1911) 13 C.L.R. 32.

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^(a) 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^(b) in the name of the Attorney-General of the Commonwealth or of such other person as the Governor-General appoints in that behalf^(c).

(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^(d) 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^(e), and that it is desirable in the interests of justice^(f) 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.^(g) Upon committal the person committed shall be supplied with a copy of this sub-section.

(a) See footnote (c) on the previous page.

(b) Held by Chomley, J., in the Court of General Sessions, Victoria, that indictment includes information, and that this provision is not in conflict with section 80 of the Constitution. *R. v. Judd*, (1904) 10 A.L.R. (C.N.) 73.

(c) In a case in which a Crown Prosecutor presented an information against a person for an indictable offence against a law of the Commonwealth, but was not authorised to do so by the Governor-General or the Attorney-General, it was held by the District Court, Bundaberg, Queensland, that the accused must be discharged. *R. v. Lynch*, 1904 Q.W.N. 17.

(d) Held by Hodges, J., of the Supreme Court of Victoria, that under this sub-section a certificate cannot be given that it is desirable to appoint a solicitor as well as counsel. *R. v. Douglas*, (1904) 10 A.L.R. 100. See also *In re Forrest*, 1912 V.L.R. 466; 34 A.L.T. 95; 18 A.L.R. 495.

(e) As to what proof is required that a person is "without adequate means to provide defence for himself," see *R. v. Douglas* (*supra*). See also *In re Forrest* (*supra*).

(f) As to cases in which it is "desirable in the interests of justice" that an appointment of counsel be made, see *R. v. Douglas* (*supra*). See also *In re Forrest* (*supra*).

(g) Per Cussen, J., of the Supreme Court of Victoria: Under this section the Attorney-General has power to provide not only counsel for the defence, but also a solicitor to instruct such counsel. *In re Forrest* (*supra*).

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

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

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.

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 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.^(a)

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 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 taxes.
U.S. 733.

(a) See *Federated Saw-mill Timberyard and General Woodworkers Employees Association v. Alexander*, (1912) 19 A.L.J. 22.

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 ;
- (ga) Providing for the admission of persons to practise as barristers or solicitors in any federal Court, and prescribing the conditions of and qualifications for admission, and continuance of the right to practise as aforesaid ;
- (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.

Inserted by No.
5, 1906, s. 3.

To be laid
before the
Parliament.

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

England.
Qd.
Va.

PART XII.—REFERENCE OF CONSTITUTIONAL QUESTIONS^(a).

**Jurisdiction of
High Court as
to constitutional
questions
referred by the
Governor-
General**

Cf. Canada,
54-5 Vic.c. 25 s. 4.
No. 34, 1910,
s. 3.

Hearing and determination of the matter.

No. 34, 1910,
s. 3.

Notification to
State Attorney-
General.

No. 34, 1910,
s. 3.

Power to direct
that persons
interested be
notified.

No. 34, 1910,
s. 3.

Power to request
counsel to argue
as to any
interest not
represented.
No. 34, 1910,
s. 3.

Determination
of Court to be
final.

No. 34, 1910, s.3.
Rules of Court.
No. 34, 1910,
s. 3.

THE SCHEDULE.

FORM OF CERTIFICATE OF JUDGMENT.

Section 65.

C.D., Registrar.

(a) This Part was added by the *Judiciary Act* 1910, s. 3.

SERVICE AND EXECUTION OF PROCESS ACTS 1901-1905.^(a)

An Act to provide for the Service and Execution throughout the Commonwealth of the Civil and Criminal Process and the Judgments of the Courts of the States and of other parts of the Commonwealth, and for other purposes connected therewith.

[Assented to 16th October, 1901.^(b)]

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 *Service and Execution of Process Act* 1901^(a) and is divided into Parts as follows :—

Part I.—Preliminary, ss. 1-3.

Part II.—Service of Process.

Service of Writs of Summons, ss. 4-13.

Service of other Process, ss. 14-16.

Proof of Service, s. 17.

Part III.—Execution of Warrants, &c., ss. 18, 19.

Part IV.—Enforcement of Judgments, ss. 20-26.

Part V.—Rules and Regulations, ss. 27, 28.

Schedules.

Repeal of Acts
of Federal
Council.

2.—(1.) The Acts of the Federal Council of Australasia mentioned in the First Schedule hereto, so far as the same may be in force in any State, are hereby repealed.

(2.) This repeal shall not affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any Act so repealed, or affect any legal proceeding or remedy in respect of any such right, privilege, obligation, or liability; and any such legal proceeding or remedy may be instituted, continued, or enforced as if this Act had not been passed.

Definitions.

3. In this Act unless the contrary intention appears—

(a) " Suit " means any suit action or original proceeding between parties or *in rem* ;

(a) The *Service and Execution of Process Acts* 1901-1905 comprise the *Service and Execution of Process Act* 1901 (No. 11 of 1901), and the *Service and Execution of Process Act* 1905 (No. 5 of 1905). See Act No. 5, 1905, s. 1. These Acts have since been amended by the *Service and Execution of Process Act* 1912 (No. 18 of 1912), which will be found in No. XI. of the Sessional Volumes of Commonwealth Acts, page 41. A copy of the *Service and Execution of Process Act* 1901-1912 will be found in Appendix B to that volume.

(b) This is the date of assent to the *Service and Execution of Process Act* 1901. The *Service and Execution of Process Act* 1905 was assented to on 25th August, 1905.

- (b) "Writ of summons"^(a) includes any writ or other mesne process by which a suit is commenced or of which the object is to require the appearance of any person against whom relief is sought in a suit or who is interested in resisting such relief;
- (c) "Court" includes any Judge or Justice of the Peace acting judicially;
- (d) "Court of Record" includes any Court which is required to keep a record of its proceedings^(b);
- (e) "Party" includes the Commonwealth or a State or any person suing or being sued on behalf of the Commonwealth or a State;
- (f) "Plaintiff" includes the King or any person suing on behalf of the King and any party seeking relief in a suit against any other party;
- (g) "Defendant" includes any party against whom relief is sought in a suit or who is required to attend the proceedings in an action as a party thereto;
- (h) "Judgment" includes any judgment decree rule or order given or made by a Court in any suit whereby any sum of money is made payable or any person is required to do or not to do any act or thing other than the payment of money.

PART II.—SERVICE OF PROCESS.

Service of Writs of Summons.

4.—(1.) A writ of summons issued out of any Court of Record^(c) of a State or part of the Commonwealth may be served on the defendant in any other State or part of the Commonwealth.^(d)

(2.) Such service may, subject to any Rules of Court which may be made under this Act, be effected in the same manner as if the writ were served on the defendant in the State or part of the Commonwealth in which the writ was issued.

Writ of summons may be served in any part of the Commonwealth.
49 Vict. No. 3.
(Fed. Council)
s. 3.
Mode of service.

5.—(1.) Every writ of summons for service under this Act out of the State or part of the Commonwealth in which it was issued shall, in addition to any other indorsement or notice required by the

Indorsement on writ for service outside State.
49 Vict. No. 3
(F.C.) s. 4.

(a) Held by the Supreme Court of Victoria that the words "writ of summons" include a summons issued by a Victorian Court of Petty Sessions (*Fallshaw Brothers v. Ryan*, [1902] 28 V.L.R. 279; 24 A.L.T. 45; 8 A.L.R. 172); and a summons issued by a Victorian Justice of the Peace under section 42 of the *Victorian Marriage Act 1890* (*Buckingham v. Weatherup*, [1903] 29 V.L.R. 381; 25 A.L.T. 61; 9 A.L.R. 180). Held by Pring, J., of the Supreme Court of New South Wales, that the words in question do not include a summons issued in pursuance of an agreement between parties to refer to arbitration disputes as to the employment of one party (*Re Max Rowen*, [1903] 9 A.L.R. (C.N.) 27).

(b) Held by the Supreme Court of Victoria that a Victorian Court of Petty Sessions is a Court of Record as herein defined. *Fallshaw Brothers v. Ryan*, (1902) 28 V.L.R. 279; 24 A.L.T. 45; 8 A.L.R. 172.

(c) Held by the Supreme Court of Victoria that a summons issued by a Victorian Justice of the Peace under section 42 of the *Victorian Marriage Act 1890* is not issued out of a Court, and therefore cannot be served in another State under s. 4 of this Act. *Buckingham v. Weatherup*, (1903) 29 V.L.R. 381; 25 A.L.T. 61; 9 A.L.R. 180.

(d) Held (per Real, J., of the Supreme Court of Queensland) that by this section process of one State now runs throughout the Commonwealth. *In Re Benjamin*, 1903 Q.W.N. 37. As to whether this section extends the previously existing jurisdiction of State Courts, see *Blunt v. Collingwood Prop. Tinning Co. No Liability*, (1903) 20 W.N. (N.S.W.) 158; *Pringle v. Musgrove*, (1903) 20 W.N. (N.S.W.) 280; and *Atlas Company of Engineers v. York*, (1903) 29 V.L.R. 92; 25 A.L.T. 64; 9 A.L.R. 183.

law of such State^(a) or part of the Commonwealth, have indorsed thereon a notice to the following effect (that is to say):—

“This summons [*or as the case may be*] is to be served out of the State [*or as the case may be*] of _____ and in the State [*or as the case may be*] of _____.”

(2.) Every such writ of summons to which, by the law of such State or part, an appearance is required to be entered, shall have indorsed thereon a notice to the following effect (that is to say):—

“Your appearance to this summons [*or as the case may be*] must give an address at some place within five miles of the office of the _____ Court of _____ at _____ at which address proceedings and notices for you may be left.”

(3.) Every writ of summons for service under this Act shall also contain or have indorsed thereon or annexed thereto a short statement of the nature of the claim made or the relief sought by the plaintiff in the suit, and if the plaintiff sues in a representative capacity shall also state such capacity.

Effect where writ of summons not properly indorsed.

49 Vict. No. 3 (F.C.) s. 5.
15 & 16 Vict., c. 76 s. 20.

Concurrent writs may be issued.

15 & 16 Vict., c. 76 s. 22.

Time limited for appearance.

Ib. (F.C.) s. 6.

6. If a writ of summons or copy thereof does not bear all the indorsements hereby required it shall be ineffective for service under this Act.^(b)

7. A writ of summons for service out of the State or part of the Commonwealth in which it was issued may be issued as a concurrent writ with one for service within such State or part of the Commonwealth and shall in that case be marked as concurrent.

8. The time to be limited^(c) by the writ of summons for appearance being entered or made by the defendant shall be such as may be prescribed by the Rules of the Court out of which it is issued, but shall not be less than the following, that is to say:—

(a) If the writ is issued or is to be served in the State of Western Australia or in the Northern Territory of the State of South Australia—Forty-five days;

(b) In any other case—Thirty days.

Appearance to state address for service.

Ib. (F.C.) s. 7.
15 & 16 Vict., c. 76 s. 30.

9.—(1.) Every appearance entered by or on behalf of a defendant to a writ of summons served on him under this Act shall give an address at some place within five miles of the office of the Court out of which the writ was issued, at which address all proceedings and notices may be left for him.

(a) As to the necessity for inserting all the indorsements or notices required by the law of the State, see *Pringle v. Musgrove*, (1903) 20 W.N. (N.S.W.) 280; *B. v. D.*, 1903 Q.W.N. 18. In *Hinton Bros. v. Heath*, 1903 Q.W.N. 18, where one of the notices required by the law of the State had been omitted, an amendment of the writ of summons was allowed.

(b) An original writ of summons bore all the indorsements required by the Act, but the copy which was served did not bear them. The defendant not appearing, the plaintiff obtained liberty to proceed, and an order was subsequently made against the defendant. It was held by the Supreme Court of Victoria that the non-indorsement of the copy of the writ rendered it ineffective for service, but that the proceedings taken thereon were irregular only, and that the judgment was good until set aside. *Atlas Company of Engineers v. York*, (1903) 29 V.L.R. 92; 25 A.L.J. 64; 9 A.L.R. 183.

(c) As to the effect of errors in stating the time limited for appearance, see *Scougall v. Parke and Lacy Co. Ltd.*, 1902 Q.W.N. 23; *Pringle v. Musgrove*, (1903) 20 W.N. (N.S.W.) 280; *Cadd and Co. Ltd. v. Ludsei*, (1908) 10 W.A.L.R. 27.

(2.) If such address is not given or is fictitious or illusory the appearance may be set aside as irregular.

10. Any defendant who has been served under this Act with a writ of summons may apply to the Court out of which the writ was issued, or a Judge thereof, for an order compelling the plaintiff to give security for costs, and upon such application the Court or Judge may make the order.^(a)

Order for plaintiff to give security for costs.

11.—(1.) When no appearance is entered or made by a defendant to a writ of summons served on him under this Act^(b), if it is made to appear to the Court from which the writ was issued or a Judge thereof^(c)—

Proceedings where no appearance entered.
See 15 & 16 Vict., c. 76 s. 18.
Ib. (F.O.) s. 8.

(a) that the subject-matter^(d) of the suit so far as it concerns such defendant is—

- (1) land or other property situate or being within the State or part of the Commonwealth in which the writ was issued; or
- (2) shares or stock of a corporation or company having its principal place of business within that State or part; or
- (3) any deed, will, document, or thing affecting any such land, shares, stock, or property; or

(b) that any contract^(e) in respect of which relief is sought in the suit against such defendant by way of enforcing, rescinding, dissolving, annulling, or otherwise affecting

(a) Under this section a number of decisions have been given as to the grounds on which security for costs will or will not be ordered. The following are among the more important, the court by which each decision has been given being stated in brackets before the name of the case:—Security will not be ordered as a matter of course. Cause must be shown. (Madden, C. J. of the Supreme Court of Victoria.) *Ramsay v. Eager*, (1902) 27 V.L.R. 603; 23 A.L.T. 193; 8 A.L.R. 44. The Court must be guided by the facts in each particular case. (Hodges, J. of the Supreme Court of Victoria.) *Smith v. Chisholm*, 1908 V.L.R. 579; 30 A.L.T. 48; 14 A.L.R. 471. Circumstances under which a Court will order costs discussed. (Supreme Court of Western Australia.) *Badge v. Oldmeadow*, (1911) 13 W.A.L.R. 85. The fact that a plaintiff is an uncertificated insolvent is not *per se* a sufficient ground for ordering security. (Full Court of Victoria.) *Evans v. Sneddon*, (1902) 28 V.L.R. 396; 24 A.L.T. 79; 8 A.L.R. 215. Nor is the fact that he resides in another State. (Pring, J. of the Supreme Court of New South Wales.) *Conrad v. Muston*, (1903) 20 W.N. (N.S.W.) 28. Nor will the Court be disposed to make an order for security in cases where the plaintiff has chosen the proper forum of the action. (Ferguson, J. of the Supreme Court of New South Wales.) *Paull v. Pettitt*, (1912) 29 W.N. (N.S.W.) 44. But security will be ordered where the plaintiff has departed from the natural forum of the action. (Hodges, J. of the Supreme Court of Victoria.) *Smith v. Chisholm*, 1908 V.L.R. 579; 30 A.L.T. 48; 14 A.L.R. 471. It will also be ordered where a plaintiff, after issuing a writ of summons, leaves the State and is temporarily resident in another State preparatory to leaving Australia permanently. (Power, J. of the Supreme Court of Queensland.) *Stenger v. Matthias*, 1903 S.R. (Q.) 131. In some cases, however, the Court has no discretion to refuse to make an order for costs, as for instance in equity suits in New South Wales, where under Equity Rule No. 347 the defendant has a right to an order for security where the plaintiff resides out of the jurisdiction. (A. H. Simpson, C.J. in Equity, N.S.W.) *Low v. Brewer*, (1904) 21 W.N. (N.S.W.) 147. Goods within the jurisdiction, which are the subject-matter in dispute, cannot be considered as security for the costs of the action, but the nature and circumstances of the claim will be taken into account in fixing the amount of the security to be given. *Stenger v. Matthias* (*supra*).

(b) Held by Cohen, J. of the Supreme Court of New South Wales, that a defendant served with a summons under this Act may apply to set aside the writ before the plaintiff has obtained liberty to proceed. *Blunt v. Collingwood Prop. Tinning Co., No Liability*, (1903) 20 W.N. (N.S.W.) 158.

(c) As to jurisdiction where the cause of action arises partly in the State in which the writ is issued and partly in another State, see *Pringle v. Musgrove*, (1903) 20 W.N. (N.S.W.) 280.

(d) Held by Eagleson, J. of the County Court of Victoria, that it is not sufficient for an affidavit filed in connexion with an application for liberty to proceed under this section, to state merely that the subject-matter of the action arose within the State in which the application is being made. The facts of the case should be so stated that the Judge may see where the cause of action arose. *Johnson v. Wilkins*, (1905) 11 A.L.R. (C.N.) 50; 27 A.L.T. (Suppt.) 4.

(e) Held by the Full Court of Western Australia that paragraph (b) relates to contracts made before the passing of the Act as well as to those made subsequently; and that "contract" includes the liability of a person against whom a judgment has been obtained to pay the amount of the judgment. *Adcock v. Aarons*, (1903) 5 W.A.L.R. 140. Held by the Full Court of Queensland that "contract" includes the statutory obligation to pay rates due upon land under the Queensland Local Government Act of 1902. *Belyando Shire Council v. Rivers*, 1908 Q.W.N. 17.

such contract, or by way of recovering damages or other remedy against such defendant for a breach thereof, was made^(a) or entered into within that State or part ; or

(c) that the relief sought against the defendant is in respect of a breach, within that State or part, of a contract^(b) wherever made ; or

(d) that any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was done or is to be done or is situate within that State or part ; or

(e) that at the time when the liability sought to be enforced against the defendant arose he was within that State or part ; or

(f) that the domicile of the person against whom any relief is sought in a Matrimonial cause is within that State or part^(c) ;

and if it is also made to appear to such Court or Judge—

(g) that the writ was personally served^(d) on the defendant ; or in the case of a corporation served on its principal officer or manager or secretary within the State or part in which service is effected ; or

(h) that reasonable efforts were made to effect personal service thereof on the defendant, and that it came to his knowledge or in the case of a corporation that it came to the knowledge of such officer as aforesaid (in which case it shall be deemed to have been served on the defendant) ;

such Court or Judge may on the application of the plaintiff order from time to time that the plaintiff shall be at liberty to proceed^(e) in the suit in such manner and subject to such conditions as such Court or Judge may deem fit, and thereupon the plaintiff may proceed in the suit against such defendant accordingly.

(2.) Any such order may be rescinded or set aside or amended on the application of the defendant.

Effect of
judgment.
49 Vict. No. 3
(F.O.) s. 11.

12. When a judgment is given or made against a defendant who has been served with a writ of summons under this Act, such judgment shall have the same force and effect as if the writ had been served on the defendant in the State or part of the Commonwealth in which the writ was issued^(f).

(a) As to the place where a contract of life insurance, between a Life Assurance Company domiciled in one State and a person resident in another State in which the company has no office, is made and broken, see *Remilton v. City Mutual Life Assurance Society Ltd.*, (1908) 10 W.A.L.R. 19. Where the indorsements on a writ of summons did not show that the contract was entered into within the State in which the writ was issued, the Judge refused to allow an amendment to be made remedying the omission, but under the particular circumstances granted leave to proceed as if the writ had been served within the jurisdiction. *B. v. D.*, 1903 Q.W.N. 18.

(b) See footnote (e) on previous page, and note (a) on this page.

(c) Where the co-respondent in a suit for divorce on the ground of adultery was not domiciled in the State in which the suit was commenced, and neither costs nor damages were claimed against him, Cooper, C.J. of the Supreme Court of Queensland, gave the petitioner liberty to proceed as if the co-respondent had not been made a party to the suit, and directed that the title be amended accordingly. *Kenna v. Kenna and Gardiner*, 1904 Q.W.N. 47.

(d) As to the nature of the proof of service required to be given on applications for liberty to proceed, see *Cecil v. Cecil*, (1902) 28 V.L.R. 429 ; 24 A.L.T. 74 ; 8 A.L.R. 204 ; *Jarrett v. Brown*, 1908 V.L.R. 478 ; 30 A.L.T. 17 ; 14 A.L.R. 349.

(e) As to practice on the granting of applications for liberty to proceed, see *Finlay v. Miller*, (1905) 1 Tas. L.R. 144.

(f) As to enforcement in one State of a judgment obtained in another State after the passing of this Act on a judgment obtained in the latter State before the passing of the Act, see *Adcock v. Aarons*, (1903) 5 W.A.L.R. 140.

13. This Part of this Act does not confer on any Court jurisdiction to hear or determine any suit which it would not have jurisdiction to hear and determine if the writ of summons had been served within the State or part of the Commonwealth in which the writ was issued.^(a)

No increased jurisdiction conferred by this Part.

Service of other Process.

14.—(1.) When, in any suit in a Court of Record of a State or part of the Commonwealth, any writ (other than a writ of summons) notice decree or other process is required to be served on any party or person, such writ notice decree or process may be served on such party or person in any other State or part of the Commonwealth.

Process may be served in any part of the Commonwealth.

(2.) Such service may, subject to any Rules of Court which may be made under this Act, be effected in the same way, and shall have the same force and effect, as if the service were effected in the State or part of the Commonwealth in which the writ notice decree or process was issued.

Mode of service.

(3.) Thereupon all such proceedings may be taken as if the writ, notice, decree, or process had been served in the State or part of the Commonwealth in which it was issued.

15.—(1.) When a summons has been issued on information upon oath by any Court or Judge or Police, Stipendiary, or Special Magistrate having jurisdiction in any State or part of a State or part of the Commonwealth, commanding any person who is charged with any offence alleged to have been committed in such State or part, whether such offence is punishable by indictment or upon summary conviction^(b), to appear to answer to such charge or to be dealt with according to law, such summons may be served on such person in any other State or part of the Commonwealth.

Summons for offence may be served in any part of the Commonwealth.

(2.) Such service may, subject to any Rules of Court or regulations which may be made under this Act, be effected in the same way, and shall have the same force and effect, as if the summons had been served in the State or part of the Commonwealth in which it was issued.

(3.) If such person fails to appear at the time and place mentioned in such summons, and it appears to such Court, Judge, or Magistrate that the summons was duly served on the defendant a sufficient time before the day appointed for the hearing, all such proceedings may be taken as if the summons had been served in the State or part of the Commonwealth in which it was issued.

16.—(1.) When a subpoena or summons has been issued by any Court^(c) or Judge, or Police, Stipendiary, or Special Magistrate in any State or part of the Commonwealth, requiring any person to appear and give evidence in any civil or criminal trial or proceeding, such subpoena or summons may upon proof that the testimony of such

Subpoena or summons to witness may be served in another State by leave of a Judge.

(a) See footnote (d), *supra*, p. 749.

(b) Held by the Supreme Court of New South Wales that leaving a wife without means of support is not, under the New South Wales *Deserted Wives and Children Act* 1901, an offence punishable upon summary conviction within the meaning of this section. *Ex parte Hore*, (1903) 3 S.R. (N.S.W.) 462.

(c) Held by Cohen, J. of the Supreme Court of New South Wales, that where a subpoena has been issued by a Court, leave to serve it under this section may be granted by a Judge in Chambers. *Borthwick v. Birt and Co. Ltd.*, (1908) 25 W.N. (N.S.W.) 41.

person is necessary^(a) in the interests of justice by leave of such Court Judge^(b) or Magistrate on such terms^(c) as the Court Judge or Magistrate may impose be served on such person in any other State or part of the Commonwealth.^(d)

(2.) If such person fails to attend at the time and place mentioned in such subpœna or summons, such Court Judge or Magistrate or any other Police, Stipendiary, or Special Magistrate having jurisdiction in the State or part of the State or part of the Commonwealth in which the subpœna or summons was issued may on proof that the subpœna or summons was duly served on such person, and that a reasonable sum was tendered to him for his expenses issue such warrant for the apprehension of such person as such Court Judge or Magistrate might have issued if the subpœna or summons had been served in the State or part of the Commonwealth in which it was issued.

(3.) Such warrant may be executed in such other State or part of the Commonwealth in the manner provided in this Act in the case of warrants issued for the apprehension of persons charged with an offence.

Proof of Service.

Mode of proof of service.

17. When any writ notice decree or other process has under the provisions of this Act been served out of the State or part of the Commonwealth in which it was issued such service may be proved—

- (a) by affidavit sworn before any Justice of the Peace having jurisdiction in the State or part of the State or part of the Commonwealth in which such service was effected, or before a Commissioner for Affidavits or Declarations, or Notary Public for that State or part; or
- (b) in any manner in which such service might have been proved if it had been effected within the State or part of the Commonwealth in which the writ notice decree or process was issued.

PART III.—EXECUTION OF WARRANTS, ETC.

Warrants may be backed for execution in another State.
11 & 12 Vict., c. 42 s. 11.

18.—(1.) When a warrant has been issued by any Court or Judge or any Justice of the Peace having jurisdiction in any State or part of a State or part of the Commonwealth, for the apprehension of any person—

- (a) who is charged with any offence alleged to have been committed within such State or part, whether such offence is indictable or punishable upon summary conviction; or
- (b) against whom an indictment for any such offence has been found or presented,

(a) Held by Hood, J. of the Supreme Court of Victoria, that in order to prove the necessity for the presence of a witness, an affidavit must be filed showing what facts the witness is likely to prove. *Trapp, Couche & Co. v. H. McKenzie Limited*, (1909) 30 A.L.T. 200; 15 A.L.R. 179.

(b) Held by Cohen, J. of the Supreme Court of New South Wales, that where a subpœna has been issued by a Court, leave to serve it under this section may be granted by a Judge in Chambers. *Borthwick v. Birt and Co. Ltd.*, (1908) 25 W.N. (N.S.W.) 41.

(c) Held by Real, J. of the Supreme Court of Queensland, that when an application is being made under this section, some information should be supplied to the Judge as to the position of the person whose attendance is required, so that he may be guided in fixing the terms. *Kingston v. Robert Reid & Co. Ltd.*, 1903 Q.W.N. 11.

(d) Held by the Supreme Court of Victoria that in view of this provision an order for a commission for the examination of a witness will not be made merely on the ground that the witness is resident in another State of the Commonwealth. *National Mutual Life Association of Australasia Ltd. v. Australian Widows' Fund Life Assurance Society Ltd.*, 1910 V.L.R. 411; 32 A.L.T. 51; 16 A.L.R. 460.

- (c) against whom an order for the maintenance of his wife or children has been made,

any Justice of the Peace having jurisdiction in any other State or part of a State or part of the Commonwealth in which such person is or is supposed to be may on being satisfied that the warrant was issued by such Court or Judge or in the case of a warrant issued by a Justice of the Peace, upon proof on oath of the signature of the Justice issuing the warrant, make an indorsement on the warrant authorizing the execution thereof within such other State or part.

(2.) Such indorsement may be in the form or to the effect of the Second Schedule hereto, and shall be sufficient authority^(a) to the person bringing the warrant, and also to all constables and persons to whom the warrant was originally directed, and also to all constables or other peace officers in such other State or part, to execute the warrant in such other State or part, and to apprehend^(b) the person against whom the warrant was issued, and to bring him before a Justice of the Peace having jurisdiction in the State or part of the State or part of the Commonwealth in which the person was apprehended.

(3.) Such Justice of the Peace may—

- (a) Order the person to be returned to the State or part of the Commonwealth in which the warrant was issued, and for that purpose to be delivered into the custody of the person bringing the warrant,^(c) or of the constables and persons to whom the warrant was originally directed or any of them; which order may be made by warrant under the hand of such Justice of the Peace, and may be executed according to its tenor; or

- (b) admit the person to bail, on such recognizances as he thinks fit, conditioned to appear and answer the charge at an appointed time and place in the State or part of the Commonwealth in which the warrant was issued.

(4.) Such Justice of the Peace shall for the purposes of this section have the same power to remand the person and admit him to bail as he has in the case of persons apprehended under warrants issued by him; and if it be made to appear^(d) to him or to any

(a) Held by the Full Court of Western Australia that assuming that a fugitive is in custody under a warrant irregularly issued under the (Imperial) *Fugitive Offenders Act* 1881, sec. 16, the fact that he is in custody and the irregularity of his arrest cannot affect the validity of his apprehension and subsequent proceedings taken under a warrant regularly issued and indorsed under this section. *R. v. Horwitz*, (1904) 6 W.A.L.R. 184.

(b) As to the meaning of "apprehend" see *R. v. Horwitz* (*supra*).

(c) A Justice of the Peace made an order directing the delivery of a person, who had been apprehended, into the custody of a certain detective, who was in fact "the person bringing the warrant" from the State in which it had been issued. The order, however, did not state specifically that the detective was "the person bringing the warrant." On the return to a writ of *habeas corpus*, it was held by the Full Court of Western Australia (Burnside, J., doubting), that the omission of such a statement was not fatal to the validity of the order, as in the absence of evidence to the contrary the Court would presume that the Justice had directed the warrant for return to an individual to whom he was entitled by law to direct it. *R. v. Horwitz*, (1904) 6 W.A.L.R. 184.

(d) Held by the Full Court of Victoria that when a person who has been apprehended under a warrant issued in another State, which has been duly indorsed under sub-sections (1) and (2) of this section, is brought before a Justice of the Peace, the Justice should, on the production of the warrant, order the return of the person either in custody or on bail, unless the person satisfies the Justice that on one of the grounds specified in this sub-section he ought to be discharged or otherwise dealt with as provided by the sub-section. *O'Donnell v. Heslop*, 1910 V.L.R. 162; 31 A.L.J. 173; 16 A.L.R. 168. Held also that where a defendant proves facts which, unless contradicted, establish a good defence to the charge, but the prosecutor *bond fide* assures the Bench that such evidence will be contradicted at the trial, it is not unjust or oppressive to return the defendant to the place where the charge is laid. *O'Donnell v. Heslop* (*supra*). Held by *McBeckett, J.* of the Supreme Court of Victoria, that where it is made clear to the Justice or a Judge that if the person apprehended were put upon his trial for the alleged offence, he should, on the undisputed facts, be acquitted, the Justice or Judge should discharge the person. *In re George*, 1909 V.L.R. 15; 30 A.L.J. 141; 15 A.L.R. 27.

Judge^(a) of the State that the charge is of a trivial nature, or that the application for return^(b) has not been made in good faith in the interests of justice^(c), or that for any reason it would be unjust or oppressive^(c) to return the person either at all or until the expiration of a certain period, the Justice or Judge may discharge the person either absolutely or on bail, or order that he shall be returned after the expiration of the period named in the order, or may make such other order as he thinks just.^(d)

Provisional
Warrant.

Cf. 44-5 Vict.,
c. 69, s. 16.

Added by No. 5,
1905, s. 2.

(5.) Any Justice of the Peace, having jurisdiction in the State or part in which the person against whom the warrant was issued is or is supposed to be, may, before the indorsement of the warrant, issue a provisional warrant for the apprehension of that person, on such information and under such circumstances as would in his opinion justify the issue of a warrant if the offence of which that person is accused were an offence punishable by the law of that State or part, and had been committed within his jurisdiction; and the provisional warrant may be executed accordingly.

Provided that a person arrested under a provisional warrant shall be discharged unless the original warrant is produced and indorsed within a reasonable time.

Writ of
attachment may
be executed in
another State.

19.—(1.) When a writ of attachment has been issued against any person by a Court of Record of a State or a Judge thereof for a contempt of the Court or disobedience of an order thereof, such writ may^(e)—

(a) by leave of a Justice of the High Court be executed in any other State or part of the Commonwealth; or

(b) by leave of a Judge of the Supreme Court of any other State be executed in such other State.

(2.) Such leave shall be indorsed on the writ, and shall be sufficient authority to the Marshal and also to the Sheriff of the State or part of a State in which the writ was issued, and also to the Sheriff of the State or part of a State in which the writ is to be executed, and to all other officers named in such indorsement, to apprehend such person and bring him before the Court out of which such writ was issued.

(a) Held by the Supreme Court of Victoria that a Judge has jurisdiction to make an order under this sub-section, notwithstanding that a Justice of the Peace has already finally dealt with the matter, and has made an order in respect of the person under sub-section (3) of this section. *In re George*, 1909 V.L.R. 15; 30 A.L.T. 141; 15 A.L.R. 27. As to the procedure to be adopted in applications under this sub-section to a Judge, see *O'Donnell v. Heslop*, 1910 V.L.R. 162; 31 A.L.T. 173; 16 A.L.R. 168. As to the jurisdiction of a Judge, whether original or appellate, see *O'Donnell v. Heslop* (*supra*), *per Cussen, J.*

(b) Held by the Full Court of Victoria that the word "return" as used in sub-section (4) includes cases where a person is, under paragraph (b) of sub-section (3), admitted to bail, conditioned to appear and answer the charge in the State in which the warrant was issued, as well as cases where the person is, under paragraph (a), ordered to be returned to that State in custody. *O'Donnell v. Heslop* (*supra*).

(c) Where the return of a person charged with an offence against the South Australian *Intercolonial Debts Act* 1887, s. 11, was applied for, and it appeared that if the debt owing were paid the informant was prepared to stop or stifle the prosecution, it was held by the Supreme Court of Queensland that the application for the person's return had not been made in good faith in the interests of justice, and that under the circumstances it would be unjust and oppressive to order his return. *R. v. Boyce and Roberts, ex parte Rustichelli*, 1904 S.R. (Q.) 181. See also footnote (d) on previous page.

(d) This sub-section was very fully discussed by the Full Court of Victoria in *O'Donnell v. Heslop* (*supra*).

(e) Held by the Full Court of Queensland that the discretion given under this section is judicial. That Court declined to exercise it, in order to authorise the execution in Queensland of a writ of attachment which, although nominally issued for contempt, was in substance a writ of execution for non-payment of money. *Lewis v. Lewis*, 1902 S.R. (Q.) 115. As to whether this section is retrospective, see *Lewis v. Lewis* (*supra*).

PART IV.—ENFORCEMENT OF JUDGMENTS.

20. Any person in whose favour a judgment is given or made, whether before or after the commencement of this Act, in a suit by any Court of Record of any State or part of the Commonwealth, may obtain from the prothonotary or registrar or other proper officer of such Court a certificate of such judgment in the form and containing the particulars set forth in the Third Schedule hereto or as near thereto as the circumstances will permit, which certificate such officer is hereby required to grant under his hand and the seal of such Court.

Certificate of judgment.
49 Vict. No. 4
(F.C.) s. 4.

21.—(1.) Upon production of such certificate—

- (a) to the prothonotary, registrar, or other proper officer of any Court of like jurisdiction in any other State or part of the Commonwealth; or
- (b) if there is no Court of like jurisdiction in such other State or part, to the registrar or other proper officer of a District or County Court or other inferior Court of Record having civil jurisdiction in such State or part,

Registration of judgments and proceedings thereunder.
49 Vict. No. 4
(F.C.) s. 5.

such officer shall forthwith register^(a) the same by entering the particulars thereof in a book to be kept by such officer and to be called "The Australian Register of Judgments."

(2.) From the date of such registration such certificate shall become and be a record of such Court, and shall have the same force and effect in all respects as a judgment of such Court, and the like proceedings^(b) may be taken upon such certificate as if the judgment had been a judgment of such Court.^(c)

(3.) No certificate of a judgment shall be so registered after the lapse of twelve months from the date of the judgment, unless leave^(d) in that behalf has first been obtained from the Court in which the certificate is proposed to be registered or from a Judge thereof.

(a) Held by the Full Court of New South Wales that where a certificate of a judgment obtained in any Court of Record of a State is produced to the proper officer in another State, that officer is bound to register the certificate, and has no jurisdiction to inquire into the validity of the judgment. *Ex parte Penglase*, (1903) 3 S.R. (N.S.W.) 680.

(b) Held by the Supreme Court of Victoria that the "proceedings" which are authorized by this section are proceedings for the enforcement of the judgment, and that proceedings in Victoria by a judgment creditor under the *Imprisonment of Fraudulent Debtors Act* 1890, to have the debtor examined under that Act, are not proceedings for the enforcement of the judgment. *McNamara v. Miller*, (1902) 28 V.L.R. 327; 24 A.L.J. 31; 8 A.L.R. 170. Held also by the County Court of Victoria that an application by a judgment creditor to have the debtor committed to gaol under that Act is not a proceeding for the enforcement of the judgment. *Bennett v. Cohen*, (1901) 7 A.L.R. (C.N.) 96. Held by the Supreme Court of New South Wales that the proceedings authorized by this section include the issue of a bankruptcy notice under the *Bankruptcy Act* 1898 of that State. *Re Richards, ex parte Maloney*, (1902) 2 S.R. (N.S.W.) (Bey. and Prob.) 3.

(c) Held by Power, J. of the Supreme Court of Queensland, that under this section interest can only be allowed from the date on which a judgment is registered, and not from the date on which it is obtained. *Australian Joint Stock Bank Ltd. v. Dowel*, 1904 Q.W.N. 40.

(d) Where leave had been obtained *ex parte* to register a judgment after the lapse of 12 months from the date of the judgment, the order granting leave was set aside by Pring, J. of the Supreme Court of New South Wales, on the ground that the judgment was a nullity in the State of New South Wales. *Mackenzie v. Manwell*, (1903) 20 W.N. (N.S.W.) 18. (But see *Ex parte Penglase*, (1903) 3 S.R. (N.S.W.) 680.)

Definition of Court for purposes of last preceding section.

22. For the purposes of the last preceding section any Court mentioned in any of the following sub-sections shall be deemed to be a Court of like jurisdiction with any other Court mentioned in such sub-section, namely :—

- (a) The Supreme Courts of the several States :
- (b) The Vice-Admiralty Courts in the States of New South Wales and Victoria, and the Supreme Court of any other State in its Admiralty jurisdiction :
- (c) District Courts and County Courts and any inferior Courts of Record having civil jurisdiction :
- (d) Small Debts Courts and Courts of Petty Sessions and any inferior Courts of Record having civil jurisdiction to hear and determine cases in a summary way.

Execution not to issue unless affidavit of liability filed.
49 Vict. No. 4
(F.C.) s. 6.

23. No execution shall be issued or other proceedings taken upon such certificate unless an affidavit is first filed^(a) in the Court out of which it is intended to issue such execution or take such proceedings made by the person in whose favour the judgment was given or made or by some other person cognizant of the facts of the case, stating—

- (a) that the amount for which execution is proposed to be issued is actually due and unpaid ; or
- (b) that an act ordered to be done remains undone ; or
- (c) that the person ordered to forbear from doing an act has disobeyed the order,

and no execution shall be issued for a larger amount than that sworn to.

Proceedings subject to the control of the Court.
Ib. (F.C.) s. 7.

24. The Court in which any such certificate of a judgment has been registered and the Judges thereof shall, in respect of execution upon the certificate and the enforcement of the judgment, have the same control and jurisdiction over the judgment as if the judgment were a judgment of such Court.

Stay of proceedings.

25.—(1.) The Court in which any such certificate of a judgment has been registered or a Judge thereof may, on the application of any person against whom the judgment has been given or made, order a stay of proceedings on such certificate.

(2.) Such order may be made on such terms as to giving security, or as to making application to the Court by which the judgment was given or made, to set aside the same, or otherwise, as to the Court or Judge may seem fit.

Notification of proceedings upon certificate and of satisfaction of judgment.

26.—(1.) When—

- (a) Any certificate of a judgment is registered in any Court ;
- or

(a) Held by the Supreme Court of New South Wales that before a bankruptcy notice can be issued in New South Wales on a certificate, obtained and registered in accordance with the provisions of this Act, of a judgment of the Supreme Court of another State, an affidavit must first be filed as provided by this section. *Re Richards, Ex parte Maloney*, (1902) 2 S.R. (N.S.W.) (Bey. and Prob.) 3.

- (b) Any execution is issued or other proceedings are taken in any Court upon any such certificate ; or
- (c) Satisfaction of the judgment either in whole or in part is entered in any Court upon any such certificate :

the Registrar or other proper officer of that Court shall forthwith notify the same in writing under the seal of the Court to the Registrar or other proper officer of the Court in which the judgment was given or made.

(2) When any judgment whereof a certificate has been registered in any Court has been satisfied in whole or in part, the Registrar or other proper officer of the Court in which the judgment was given or made shall forthwith, upon such satisfaction being made or notified as the case may be, enter such satisfaction upon the judgment and notify such satisfaction in writing under the seal of the Court to the Registrar or other proper officer of every other Court in which a certificate of the judgment has been registered, and such satisfaction shall thereupon be entered upon every such certificate.

PART V.—RULES AND REGULATIONS.

27.—(1.) The Judges of the Supreme Court of any State, or such of them as may make Rules of Court in other cases, may make rules—

Judges of
Supreme Courts
may make rules.

- (a) for prescribing the practice and procedure in connexion with the service of the process of the Courts of such State under this Act, and the execution and enforcement by such Courts of the process and judgments of the Courts of other States and parts of the Commonwealth ; and
- (b) for prescribing the fees to be paid in connexion with the service of the process of the Courts of such State under this Act, and the execution and enforcement by such Courts of the process and judgments of the Courts of other States and parts of the Commonwealth, and the costs to be allowed to any person upon enforcing any such judgment (which fees and costs may be recovered in the same manner as any money payable under the judgment).

(2.) Until such rules have been made and as far as any made do not provide for the circumstances of any particular case the practice and procedure of the State in which the process is issued or in which the service is effected or the execution is enforced respectively shall apply as far as practicable.

28.—(1.) The Governor-General may make regulations for carrying out the provisions of this Act and in particular for further applying the provisions of this Act or any of them to the service of the process of the Courts of the territories of the Commonwealth, and

Governor-
General may
make
regulations.

for the execution and enforcement by such Courts of the process and judgments of the Courts of the States and of other parts of the Commonwealth.

(2.) All such regulations shall be notified in the *Gazette*, and shall thereupon have the force of law.

(3.) All such regulations shall be laid before both Houses of the Parliament within thirty days after the making thereof, if the Parliament be then sitting, and if not then within thirty days after the next meeting of the Parliament.

SCHEDULES.

FIRST SCHEDULE.

ACTS OF FEDERAL COUNCIL REPEALED.

Reference to Act.	Short Title.
49 Vict. No. 3	The Australasian Civil Process Act 1886
49 Vict. No. 4	The Australasian Judgments Act 1886
60 Vict. No. 2	The Australasian Testamentary Process Act 1897

Section 18.

SECOND SCHEDULE.

State of Queens- }
*land** to wit. }

INDORSEMENT ON WARRANT.

WHEREAS proof upon oath has this day been made before me that the name of J. S. subscribed to the within warrant is in the handwriting of the within-mentioned [Justice of the Peace of the *State of New South Wales**], I hereby authorize W. T., who brings me this warrant, and all other persons to whom this warrant was originally directed or by whom it may be lawfully executed, and also all constables and other peace officers of the [State of *Queensland**], to execute this warrant within the [State of *Queensland**], and to bring the said A. B., if apprehended within the [State of *Queensland**], before me or before some [Justice of the Peace of the *State of Queensland**] to be dealt with according to law.

Given under my hand this day of , One thousand nine
hundred and .

J L.,

A Justice of the Peace of the [State of *Queensland**].

*Or as the case may be.

THIRD SCHEDULE.

Section 20.

CERTIFICATE OF JUDGMENT.

In the Court of

Title of suit and date of commencement.	Form or nature of suit.	Name and addition of party to whom payment is to be made, or in whose favour judgment is given or made.	Name and addition of party ordered to pay money, or to do or not to do any act.	Date of judgment.	Abstract of judgment stating amount (if any) ordered to be paid, and particulars of any act ordered to be done or not to be done.	Date of trial and amount of verdict, if any.

I certify that this certificate correctly and fully sets forth the particulars of a judgment given in this Court, on the day of , in a suit wherein A.B. was plaintiff and C D. was defendant [*or as the case may be*].

Dated this day of 19 .

L.M.

[Prothonotary, Registrar, or other proper officer.]

JURY.

JURY EXEMPTION ACT 1905.

No. 2 of 1905.

An Act to Exempt certain Persons holding Public Positions in the Commonwealth from Serving as Jurors.

[Assented to 17th August, 1905.]

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

Short title.

1. This Act may be cited as the *Jury Exemption Act 1905*.

Exemption of certain persons holding public positions from serving as jurors.

2. The following persons shall be exempt from serving as jurors whether summoned so to serve under the law of the Commonwealth or of a State:—

The Governor-General.

The members of the Federal Executive Council.

The Justices of the High Court and of other Courts created by the Parliament.

The Senators and the Members of the House of Representatives.

The members of the Inter-State Commission.

The Officers of the Public Service of the Commonwealth.

The members of the Permanent Naval and Military Forces of the Commonwealth.^(a)

(a) Section 43 of the *Defence Act 1903-1911* is as follows:—

"43. Members of the Permanent Forces shall be exempt from serving as jurors."

END OF FIRST VOLUME.