

SEAT OF GOVERNMENT SUPREME COURT.

No. 34 of 1933.

An Act to establish a Supreme Court of the Territory for the Seat of Government, and for other purposes.

[Assented to 9th December, 1933.]

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.

- Short title.** 1. This Act may be cited as the *Seat of Government Supreme Court Act 1933*.
- Parts.** 2. This Act is divided into Parts, as follows:—
- Part I.—Preliminary.
 - Part II.—Constitution and Jurisdiction of the Supreme Court.
 - Part III.—Proceedings by and against the Commonwealth.
 - Part IV.—Officers.
 - Part V.—General matters of procedure.
 - Part VI.—Appeals.
 - Part VII.—Miscellaneous.
- Commencement.** 3. This Act shall commence on the first day of January, One thousand nine hundred and thirty-four or on an earlier date to be fixed by Proclamation.
- Repeal.** 4. Sections thirty B and thirty-four A of the *Judiciary Act 1903–1932* are repealed.
- Definitions.** 5. In this Act, unless the contrary intention appears—
- “cause” includes any suit, and also includes criminal proceedings;
 - “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;
 - “judgment” includes any decree, order or sentence;
 - “matter” includes any proceeding in the Supreme Court, whether between parties or not, and also any incidental proceeding in a cause or matter;
 - “Ordinance” means an Ordinance made by the Governor-General in pursuance of the *Seat of Government (Administration) Act 1910–1933*;

- “ plaintiff ” includes any person seeking any relief against any other person by any form of proceeding in a Court ;
- “ suit ” includes any action or original proceeding between parties of a civil nature ;
- “ the Judge ” means the Judge of the Supreme Court and includes an Acting Judge ;
- “ the Judicature Act ” means the *Supreme Court of Judicature Act 1873* (36 & 37 Vic., Cap. 66) of the United Kingdom ;
- “ the Supreme Court ” means the Supreme Court of the Australian Capital Territory ;
- “ the Territory ” or “ the Australian Capital Territory ” means the Territory for the Seat of Government.

PART II.—CONSTITUTION AND JURISDICTION OF THE SUPREME COURT.

6.—(1.) There shall be a Supreme Court of the Territory which shall be known as the Supreme Court of the Australian Capital Territory. Establishment of Supreme Court.

(2.) The Court shall be a superior court of record and shall consist of one Judge.

7. The Supreme Court shall be constituted by the Judge of the Supreme Court sitting as such Supreme Court. Constitution of Supreme Court.

8.—(1.) The Governor-General may appoint by commission a Judge of the Federal Court of Bankruptcy or of the Commonwealth Court of Conciliation and Arbitration to be the Judge of the Supreme Court. Judges who may be appointed Judge or acting Judge of the Supreme Court.

(2.) The Governor-General may appoint by commission a Judge of the Federal Court of Bankruptcy or of the Commonwealth Court of Conciliation and Arbitration to act as Judge of the Supreme Court during any period in respect of which the Governor-General is satisfied that the Judge appointed under the last preceding sub-section is or will be unable to act.

(3.) The Judge of the Supreme Court shall be remunerated with the salary which he receives as a Judge of the Federal Court of Bankruptcy or as a Judge of the Commonwealth Court of Conciliation and Arbitration, as the case may be.

9.—(1.) The Supreme Court may sit at Canberra, and at such other places in the Commonwealth as are from time to time specified by the Governor-General by notice in the *Gazette*. Principal seat of court and sittings.

(2.) The times of the sittings of the Supreme Court shall be such as are from time to time specified by Rules of Court.

(3.) The offices of the Supreme Court shall be at Canberra.

10. The Judge and an Acting Judge shall, before proceeding to discharge the duties of the office of Judge, take before the Governor-General, or some person appointed by the Governor-General in that Oath of allegiance and office by Judge.

behalf, an oath or affirmation of allegiance in accordance with the form in the Schedule to the Constitution of the Commonwealth, and also an oath or affirmation in accordance with the following form :—

“ I, A.B., do swear that I will well and truly serve our Sovereign Lord the King in the office of Judge of the Supreme Court of the Australian Capital Territory, 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 I will well and truly serve our Sovereign Lord the King in the office of Judge of the Supreme Court of the Australian Capital Territory, and I will do right to all manner of people according to law, without fear or favour, affection or ill-will.”.

Jurisdiction of
Supreme Court.

11.—(1.) Subject to this Act, in all matters arising under any law of the Territory, and generally in relation to the Territory, the Supreme Court shall have—

- (a) the same original jurisdiction, both civil and criminal, as immediately before the first day of January, One thousand nine hundred and eleven, the Supreme Court of the State of New South Wales had in relation to that State ; and
- (b) such jurisdiction, both civil and criminal, and whether original or otherwise, as is from time to time vested in the Supreme Court by Ordinances made by the Governor-General ; and
- (c) jurisdiction, with such exceptions and subject to such conditions as are provided by Ordinance, to hear and determine appeals from all judgments, convictions, orders, and sentences of inferior Courts having jurisdiction in the Territory.

Jurisdiction in
Chambers.

12.—(1.) The jurisdiction of the Supreme Court may be exercised by the Judge sitting in Chambers, in the following cases :—

- (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 which, by the terms of any law of the State of New South Wales continued in force in the Territory, may be made to a Judge of the Supreme Court of New South Wales sitting in Chambers ; and
- (d) Applications for directions and other applications which, by or under this, or any other Act, or by Rules of Court, are authorized to be made to the Judge sitting in Chambers ;

but the Judge may order the application to be adjourned into Court and heard in open Court.

(2.) The jurisdiction of the Supreme Court exercisable by the Judge sitting in Chambers may be so exercised at Canberra or at any other place in the Commonwealth.

13. The Judge, whether in Court or in Chambers, may state any case or reserve any question for the consideration of a Full Court of the High Court, or may direct any case or question to be argued before a Full Court of the High Court, and a Full Court of the High Court shall thereupon have power to hear and determine the case or question.

Reference to Full Court of High Court.

14.—(1.) In every suit in the Supreme Court, unless the Court or the Judge otherwise orders, the trial shall be by the Court without a jury.

Trial without jury.

(2.) The Supreme Court or the Judge may, if it appears just, order specially that any action or any issue of fact in any suit shall be tried before the Court with a jury.

(3.) The Supreme Court shall exercise the same jurisdiction as the Supreme Court of New South Wales sitting in Banco has, at the commencement of this Act, to set aside a verdict or finding of a jury, to enter judgment notwithstanding any such verdict or finding and to order a new trial after a trial with a jury.

15.—(1.) The Supreme Court, and the Judge sitting in Chambers, shall have jurisdiction to award costs in all matters brought before the Court, including matters dismissed for want of jurisdiction.

Costs.

(2.) Subject to Rules of Court and to the express provisions of any other Act, the costs of and incidental to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or Judge, and the Court or Judge shall have full power to determine by whom and to what extent the costs are to be paid.

(3.) Nothing in this section shall alter the practice which would otherwise be followed in any criminal cause or matter or in proceedings on the Crown side of the Court.

16. Writs of summons issued out of the Supreme Court and notices of such writs may be served out of the jurisdiction of the Court in the manner and to the extent provided by the Rules of Court contained in the First Schedule to this Act.

Service of writs out of the jurisdiction of the Court.

17. Subject to the express provisions of any other Act, in every civil cause or matter commenced in the Supreme Court law and equity shall be administered according to the provisions of sections eighteen to twenty-four (inclusive) of this Act.

Law and equity to be concurrently administered.

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

Equities of plaintiff.

**Equities of
defendant.**

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

**Counter claims
and third
parties.**

20.—(1.) The Supreme Court or the Judge shall have power to grant to any defendant in respect of any equitable estate or right or other matter of equity, and also in respect of any legal estate, right or title claimed or asserted by him—

(a) all such relief against any plaintiff or petitioner as the defendant has properly claimed by his pleading, and as the Court or Judge might have granted in any suit instituted for that purpose by that defendant against the same plaintiff or petitioner ; and

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

(2.) Every person served with any such notice shall thenceforth be deemed a party to the cause or matter with the same rights in respect of his defence against the claim as if he had been duly sued in the ordinary way by the defendant.

**Equities
appearing
incidentally.**

21. The Supreme Court or the Judge shall take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the English Court of Chancery would, immediately before the commencement of the Judicature Act, have taken notice of those matters in any suit or proceeding properly instituted therein.

**Defence or stay
instead of
injunction or
prohibition.**

22. No cause or proceeding at any time pending in the Supreme Court shall be restrained by prohibition or injunction, but every matter of equity on which an injunction against the prosecution of any such cause or proceeding, if such cause or proceeding had been a suit or proceeding properly instituted in the English Court of

Chancery for the like purpose, might, immediately before the commencement of the Judicature Act, have been obtained, whether unconditionally or on any terms or conditions, may be relied on by way of defence thereto ;

Provided that—

- (a) nothing in this Act shall disable the Court, if it thinks fit so to do, from directing a stay of proceedings in any cause or matter pending before it ; and
- (b) any person, whether a party or not to any such cause or matter, who, if the cause or matter had been a suit or proceeding properly instituted in the English Court of Chancery for the like purpose would, immediately before the commencement of the Judicature Act, have been entitled to apply to any court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule or order, in contravention of which all or any part of the proceedings in the cause or matter have been taken, may apply to the Court by motion in a summary way, for a stay of proceedings in the cause or matter, either generally, or so far as may be necessary for the purposes of justice, and the Court shall thereupon make such order as is just.

23. Subject to the provisions of this Act for giving effect to equitable rights and other matters of equity, the Supreme Court or the Judge shall give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations and liabilities existing by the common law or by any custom, or created by any statute.

Common law and statutory rights and duties.

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

Determination of matter completely and finally.

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

Rules of equity to prevail.

26.—(1.) The Supreme Court may grant a mandamus or an injunction or appoint a receiver by any interlocutory order in all cases in which it appears to the Court to be just or convenient so to do.

Mandamus, injunctions and receivers.

(2.) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks just.

(3.) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the Court thinks fit, whether the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

Procedure and practice.

27. The procedure and practice of the Supreme Court shall be governed by Rules of Court, and, where no special provision is contained in this Act, and until provision is made by Rules of Court, or where no special provision is contained in the Rules of Court, it shall be governed by the procedure and practice of the High Court of Australia in its original jurisdiction so far as applicable, and, otherwise, by the procedure and practice of the Supreme Court of New South Wales so far as applicable.

Rules of Court.

28.—(1.) The Judge may make Rules of Court, not inconsistent with this Act, for regulating and prescribing the practice and procedure, including the method of pleading, to be followed in the Supreme Court (including the practice and procedure to be followed in the offices of the Court), for altering, repealing or adding to the Rules of Court contained in the First Schedule to this Act and for regulating and prescribing all matters and things incidental to or relating to any such practice and procedure, or necessary or convenient to be prescribed for the conduct of any business of the Supreme Court.

(2.) In particular the Rules of Court may provide—

- (a) for the places of sitting of the Court ;
- (b) for the service and execution of the process of the Court ;
- (c) for the execution of the judgments of the Court ;
- (d) for the service and execution in the Territory, in accordance with any treaty or convention to which the Commonwealth is a party, of the process of any Court of a State or of a Territory under the authority of the Commonwealth or of any foreign Court ;
- (e) for the issue by the Supreme Court of letters of request for the service in any foreign country of any process of the Supreme Court ;
- (f) for regulating any matters relating to the costs of proceedings in the Court ; and
- (g) for regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given in any proceedings, or on any application in connexion with, or at any stage of, any proceedings.

(3.) All Rules of Court made in pursuance of this section shall be notified in the *Gazette*, and copies thereof shall be forwarded to the Attorney-General within fourteen days after the making thereof.

(4.) The Attorney-General may, by notification in the *Gazette*, disallow any Rule of Court, and thereupon the Rule so disallowed shall cease to have effect.

PART III.—PROCEEDINGS BY AND AGAINST THE COMMONWEALTH.

29. Any person making any claim against the Commonwealth, whether in contract or in tort, in respect of a matter arising under the law of the Territory, may in respect of the claim bring a suit against the Commonwealth in the Supreme Court. Suits against the Commonwealth in the Territory.

30. In any suit, brought in pursuance of this Act, to which the Commonwealth is a party, the rights of the parties shall as nearly as possible be the same, and judgment may be given and costs awarded on either side, as in a suit between subject and subject. Rights of parties.

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

32. On receipt of the certificate of a judgment against the Commonwealth, the Treasurer of the Commonwealth shall satisfy the judgment out of moneys legally available. Performance by the Commonwealth.

33. When in any such suit a judgment is given in favour of the Commonwealth and against any person, the Commonwealth 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 the Commonwealth.

PART IV.—OFFICERS.

34. The Governor-General may—

- (a) appoint persons to be respectively Registrar of the Supreme Court and Sheriff of the Territory; and Appointment of officer.
- (b) appoint such other officers of the Supreme Court as are necessary.

35. The Registrar shall have power to administer oaths, and to perform such duties in respect of any proceedings pending in the Supreme Court as are assigned to him by Rules of Court or by any special order of the Court. Powers and duties of Registrar.

(2.) When, under any law of New South Wales which is continued in force in the Territory as a law of the Territory, any power is exercisable, or any duty is to be performed, or thing is to be done, by the Master in Equity, the Prothonotary or a Registrar, it may be exercised, performed, or done by the Registrar.

Sheriff.

36. The Sheriff shall be charged with the service and execution of all writs, summonses, orders, warrants, precepts, process, and commands of the Supreme Court which are directed to him, and shall make such return thereof to the Court, together with the manner of the execution thereof, as he is thereby required, and 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.

Powers of officers.

37. All powers and functions exercisable by, and all rights, privileges, immunities, duties and liabilities belonging to, the Sheriff of New South Wales in the State of New South Wales under any law of that State which is continued in force in the Territory as a law of the Territory, shall, in the Territory, be exercisable by and belong to the Sheriff of the Territory.

PART V.—GENERAL MATTERS OF PROCEDURE.

Evidence by affidavit.

38.—(1.) On the hearing of any matter, not being the trial of a cause, evidence may be given by affidavit or orally as the Supreme Court or the Judge directs.

(2.) At the trial of a cause, proof may be given by affidavit of the service of any document incidental to the proceedings in the cause, or of the signature of a party to the cause or his solicitor to any such document.

(3.) The Supreme Court or the Judge may, at any time for sufficient reason, order that any particular facts in issue in a cause may be proved by affidavit at the trial, or that the affidavit of any person may be read at the trial of a cause, on such conditions in either case as are just :

Provided that such an order shall not be made if any party to the cause desires in good faith that the proposed witness shall attend at the trial for cross examination.

Evidence at trial to be given orally in open Court except in certain cases.

39. Except as otherwise provided in this Act, or unless in any suit the parties agree to the contrary, testimony at the trial of causes shall be given orally in open court.

Appearance by barrister or solicitor.

40. The parties in any cause or matter may appear before the Supreme Court either personally or by such barristers or solicitors as have the right to practise in any federal Court.

Orders and commissions for examination of witnesses.

41. The Supreme Court or the Judge may, in any suit or civil matter pending in the Court, and at any stage of the proceedings—

(a) order the examination of any person upon oath, orally or on interrogatories, before the Court or Judge or before any officer of the Court or other person ; and at any place within the Commonwealth ;

(b) order a commission or letters of request to be issued to take evidence ;

- (c) by the same or any subsequent order, give any necessary directions touching the time place and manner of any such examinations ; and
- (d) empower any party to the suit or civil matter to give in evidence in the suit or matter the testimony so taken on such terms (if any) as the Court or Judge directs.

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

Non-appearance or absence of some defendants.

(2.) When, in any suit of which the Supreme Court has 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.

43. The Supreme Court or the Judge may at any time, and on such terms as it or he thinks just, amend any defect or error in any proceedings in the Court ; and all necessary amendments shall be made for the purpose of determining the real questions in controversy or otherwise depending on the proceedings.

Amendment of defect in proceedings.

44.—(1.) No proceedings in the Supreme Court shall be invalidated by any formal defect or by any irregularity, unless the Court is of opinion that substantial injustice has been caused thereby and that the injustice cannot be remedied by an order of the Court.

Formal defects to be amended.

(2.) The Court or the Judge may make an order declaring that any proceeding is valid notwithstanding any such defect or irregularity.

45. When any cause or matter has been heard at a sitting of the Supreme Court held at any place the Court may pronounce judgment or give further hearing or consideration to the cause or matter at a sitting of the Court held at another place, being a place at which the Court is empowered to sit.

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

46. The Supreme Court or the Judge may, at any stage of any suit pending in the Court, direct that the trial shall be had or continued at some particular place, being a place at which the Court is empowered to sit, to be specified in the order, subject to such conditions (if any) as the Court or Judge imposes.

Change of venue.

47. The Supreme Court shall have and use as occasion requires a Seal, having inscribed thereon the words "The Seal of the Supreme Court of the Australian Capital Territory". The Seal shall be kept in such custody as the Judge directs.

Seal.

Use of Seals.

48. All writs, commissions and process issued from the Supreme Court shall be in the name of the King, and shall be under the Seal of the Court or such other seal as is prescribed by Rules of Court, and shall be signed by the Registrar or other proper officer.

Date of process.

49. All writs and process issued from the Supreme Court shall be dated as of the day on which they are issued.

Oaths.

50.—(1.) Subject to Rules of Court, the forms of oath used in proceedings in the Supreme Court shall be the same, as nearly as may be, as those which are used in the Supreme Court of the State of New South Wales.

(2.) Any person who, by the law of that State, is entitled to make an affirmation instead of taking an oath may do so in any cause or matter in the Supreme Court, and shall do so in the form prescribed by that law.

PART VI.—APPEALS.

Appeals from Supreme Court in civil cases.

51.—(1.) The High Court shall have jurisdiction to hear and determine appeals from every judgment (whether final or interlocutory) of the Supreme Court in a civil matter, which—

- (a) is given or pronounced for, or in respect of, any sum or matter at issue amounting to or of the value of Three hundred pounds ;
- (b) involves directly or indirectly any claim, demand or question to or respecting any property or any civil right amounting to or of the value of Three hundred pounds ;
- (c) affects the status of any person under the laws relating to aliens, marriage, divorce, bankruptcy or insolvency ; or
- (d) is one with respect to which the High Court thinks fit to give special leave to appeal,

and the provisions of the Rules, from time to time in force, made under the *High Court Procedure Act* 1903 and the *Judiciary Act* 1903 or under those Acts as subsequently amended shall apply to appeals to the High Court from judgments of the Supreme Court as if those appeals were appeals from judgments of the Supreme Court of a State.

(2.) An appeal may not be brought from an interlocutory judgment or order except by leave of the Supreme Court or the Judge or of the High Court, but, except as provided in the next succeeding sub-section, it shall not be necessary to obtain the leave of the Supreme Court or the Judge to appeal to the High Court.

(3.) An appeal shall not lie to the High Court from a decision of the Supreme Court or the Judge with respect to costs which are in its or his discretion, except by leave of the Court or Judge or of the High Court.

(4.) No appeal shall lie from a judgment given by consent.

52. A person convicted on indictment before the Supreme Court may appeal to the Full Court of the High Court—

Appeal from Supreme Court in criminal cases.

- (a) against his conviction on any ground of appeal which involves a question of law alone ;
- (b) with the leave of the Supreme Court or Judge, on any ground of appeal which involves a question of fact alone or a question of mixed law and fact ;
- (c) with the leave of the Full Court of the High Court, on any ground of appeal mentioned in the last preceding paragraph, or on any other ground which appears to the Full Court of the High Court to be a sufficient ground of appeal ; and
- (d) with the leave of the Full Court of the High Court, against the sentence passed on his conviction, unless the sentence is one fixed by law,

and the Full Court of the High Court shall have jurisdiction to hear and determine the appeal.

PART VII.—MISCELLANEOUS.

53. Any person committed for trial for an indictable offence triable before the Supreme Court may be put upon his trial before the Supreme Court by information in the name of the Attorney-General, or of any other person who has been appointed by the Governor-General in that behalf.

How offenders may be put on their trial.

54. Every judgment debt shall carry interest at the rate of Five pounds per centum per annum from the date as of which the judgment is entered.

Interest on judgments.

55. The Judge of the Supreme Court shall have the like authority to hold to security of the peace and for good behaviour in matters arising under the laws of the Territory as may then be lawfully exercised by a Judge of the Supreme Court of New South Wales in cases cognizable before him.

Security of the peace and for good behaviour.

56. Where, by any law of the State of New South Wales which is continued in force in the Territory as a law of the Territory, any power or function is vested in the Supreme Court of New South Wales, or in a Judge of that Court, that power or function shall, in relation to the Territory, be vested in the Supreme Court or the Judge, as the case may be.

Powers of Judge.

57. When, in any cause pending in the Supreme Court, a receiver or manager appointed by the Court is in possession of any property, the receiver or manager shall manage and deal with the property according to the requirements of the laws of the State or part of the Commonwealth in which the property is situated, in the same manner in which the owner or possessor thereof would be bound to do if in possession thereof.

Duty of receiver and manager.

Liability and protection of receivers and managers.

58. A receiver or manager of any property appointed by the Supreme Court may, without the previous leave of the Court, be sued in respect of any act or transaction of his in carrying on the business connected with the property.

Action by or against Sheriff.

59. When the Sheriff is a party to a cause in the Supreme Court. all writs, summonses, orders, warrants, precepts, process and commands in the cause which should in the ordinary course be directed to him shall be directed to such disinterested person as the Court or the Judge appoints; and the person so appointed may execute and return them.

Transfer of causes, &c., to Supreme Court.

60. Any cause, matter or proceeding brought in the High Court, in the jurisdiction conferred by section thirty B of the *Judiciary Act 1903-1932*, which is pending in that Court at the commencement of this Act, shall be by virtue of this section transferred to the Supreme Court, and shall be continued in the Supreme Court as if it had originated in the Supreme Court and the documents filed in the Registry of the High Court in the cause, matter or proceeding, shall be transmitted accordingly to the Registrar of the Supreme Court.

THE SCHEDULES.

FIRST SCHEDULE.

RULES RELATING TO SERVICE OUT OF THE JURISDICTION.

1. Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or the Judge whenever—

- (a) the whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land within the jurisdiction; or
- (b) any act deed will contract obligation or liability affecting land or hereditaments situate within the jurisdiction is sought to be construed rectified set aside or enforced in the action; or
- (c) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or
- (d) the action is for the administration of the personal estate of any deceased person who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument of which the person to be served is a trustee and which ought to be executed according to the law of the Territory; or
- (e) the action is founded on any breach or alleged breach within the jurisdiction of any contract wherever made which according to the terms thereof ought to be performed within the jurisdiction or is founded on a tort committed within the jurisdiction; or
- (f) any injunction is sought as to anything to be done within the jurisdiction or any nuisance within the jurisdiction is sought to be prevented or removed whether damages are or are not also sought in respect thereof; or
- (g) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction.

2. Every application for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by affidavit or other evidence stating that in the belief of the deponent the plaintiff has a good cause of action and showing in what place or country such defendant is or probably may be found and whether such defendant is a British subject or not and the grounds upon which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court or Judge that the case is a proper one for service out of the jurisdiction under this Order.

3. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance such time to depend on the place or country where or within which the writ is to be served or the notice given.

4. When the defendant is neither a British subject nor in British dominions notice of the writ and not the writ itself is to be served upon him.

5. Where leave is given under the foregoing Rules 1 and 4 to serve notice of a writ of summons out of the jurisdiction such notice shall (subject to any direction given by the Court or the Judge as to the manner in which such notice shall be served or brought under the notice of the defendant) be served in the manner in which writs of summons are served.

SECOND SCHEDULE.

FORM OF CERTIFICATE OF JUDGMENT.

Noakes v. Commonwealth [or as the case may be].—

I hereby certify that *A.B.*, of _____ &c., did on
the _____ day of _____ obtain a judgment of
the Supreme Court of the Australian Capital Territory in his favour, and that by
such judgment the sum of £ _____ was awarded to him.

C.D., Registrar.
