

# AUSTRALIAN CAPITAL TERRITORY

---

## Imperial Acts Application Ordinance 1986

No. 93 of 1986

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 18 December 1986.

N. M. STEPHEN  
Governor-General

By His Excellency's Command,

LIONEL BOWEN  
Attorney-General

---

An Ordinance relating to the application in the Territory of certain Acts of the United Kingdom

### Short title

1. This Ordinance may be cited as the *Imperial Acts Application Ordinance 1986*.<sup>1</sup>

### Commencement

2. (1) Subject to this section, this Ordinance shall come into operation on the date on which notice of this Ordinance having been made is published in the *Gazette*.

(2) Sub-section 4 (2) shall come into operation on such date as is fixed by the Minister of State for Territories by notice in *Gazette*.

(3) Sub-section 4 (3) shall come into operation on such date as is fixed by the Minister of State for Territories by notice in the *Gazette*.

### Interpretation

3. (1) In this Ordinance, unless the contrary intention appears—“applied Imperial Act” means—

- (a) an Imperial Act that—
  - (i) extended to the Territory as part of the law of the Territory of its own force immediately before 3 September 1939; and
  - (ii) had not ceased so to extend to the Territory before the commencing date; and
- (b) an Imperial Act, other than an Imperial Act referred to in paragraph (a)—
  - (i) that came into force as part of the law of the Colony of New South Wales—
    - (A) by virtue of the common law upon the foundation of that Colony;
    - (B) by virtue of section 24 of the Australian Courts Act, 1828 of the United Kingdom; or
    - (C) by virtue of an Act of the State;
  - (ii) that was in force in the State immediately before 1 January 1911;
  - (iii) that was continued in force in the Territory by section 6 of the *Seat of Government Acceptance Act 1909*; and
  - (iv) that had not ceased to be in force in the Territory before the commencing date;

“commencing date” means the date on which notice of this Ordinance having been made was published in the *Gazette*;

“Imperial Act” means—

- (a) a public Act of the Parliament of England included in the public Acts of the Parliament of England from and including the Act 20 Hen. 3 c. 1 (the Statute of Merton), enacted in 1235, to and including the Act 6 Anne c.34, enacted in 1706;
- (b) a public Act of the Parliament of Great Britain included in the public Acts of the Parliament of Great Britain from and including the Act 6

Anne c.35, enacted in 1707, to and including the Act 41 Geo. 3 c. 32, enacted in 1800; or

- (c) a public Act of the Parliament of the United Kingdom included in the public Acts of the Parliament of the United Kingdom from and including the Act 41 Geo. 3 c.1, enacted in 1801, to and including the Act 2 and 3 Geo. 6 c.80, enacted in 1939;

“State” means the State of New South Wales.

(2) Subject to sub-section (4), where an applied Imperial Act that extended to the Territory as part of the law of the Territory of its own force immediately before the commencing date had been amended before 3 September 1939 under a provision of that Act or by or under a provision of another Imperial Act, a reference in this Ordinance to that applied Imperial Act shall be read as a reference to that applied Imperial Act as so amended.

(3) Subject to sub-section (4) a reference in this Ordinance to an applied Imperial Act other than such an Act to which sub-section (2) applies shall be read as a reference to that applied Imperial Act—

- (a) as amended before 25 July 1828 under a provision of that Act or by or under a provision of another Imperial Act;
- (b) as amended on or after that date and before 1 January 1911 by or under a provision of another Imperial Act that extended to the State as part of the law of the State of its own force; and
- (c) as amended on or after 1 January 1911 and before 3 September 1939 by or under a provision of another Imperial Act that extended to the Territory as part of the law of the Territory of its own force,

as the case requires.

(4) Where an applied Imperial Act, including such an Act that has been amended as mentioned in sub-section (2) or (3) has been amended, before the commencing date, by a law of the Commonwealth or of the Territory, a reference in this Ordinance to that applied Imperial Act shall be read as a reference to that applied Imperial Act, or to that applied Imperial Act as amended as mentioned in sub-section (2) or (3) of this section, as the case requires, as amended or further amended by that law.

## **Repeal**

**4. (1)** Subject to sub-sections (2), (3) and (6), the applied Imperial Act 8 and 9 Will. 3 c.11 and the applied Imperial Act 4 and 5 Anne c.3 continue to be in force in the Territory on and after the commencing date as if—

- (a) in the case of Act 8 and 9 Will. 3 c.11—the provisions of that Act other than section 8; or
- (b) in the case of Act 4 and 5 Anne c.3—the provisions of that Act other than section 12 and 13,

ceased, by virtue of this Ordinance, to be in force in the Territory on the commencing date.

**(2)** Subject to sub-section (6), the applied Imperial Act 8 and 9 Will. 3 c.11, as it has effect in the Territory by virtue of sub-section (1), ceases to be in force in the Territory on the commencement of this sub-section.

**(3)** Subject to sub-section (6), the applied Imperial Act 4 and 5 Anne c.3, as it has effect in the Territory by virtue of sub-section (1), ceases to be in force in the Territory on the commencement of this sub-section.

**(4)** Subject to sub-section (6), where there is specified in column 3 of Schedule 1, opposite to the citation of an applied Imperial Act in column 1, a section or sections of that Act, the remaining sections of that Act, to the extent (if any) to which they were in force in the Territory immediately before the commencing date, cease, by virtue of this Ordinance, to be in force in the Territory on the commencing date.

**(5)** The applied Imperial Act 43 Eliz. 1 c.4 (known as the Charitable Uses Act, 1601) ceases to be in force in the Territory on the commencing date.

**(6)** Where a provision (in this sub-section referred to as the “principal provision”) of an applied Imperial Act that ceases to be in force in the Territory by virtue of sub-section (1), (2), (3), (4) or (5) amends a provision (in this sub-section referred to as the “other provision”) of another applied Imperial Act that is in force in the Territory on the day on which the principal provision would, but for this sub-section, cease to be in force in the Territory, the principal provision, in so far only as it amends the other provision, does not cease to be in force in the Territory until the other provision ceases to be in force in the Territory.

### **Amendment of certain applied Imperial Acts**

**5. (1)** An applied Imperial Act the citation of which is specified in column 1 of Schedule 2 shall be deemed to be amended by this Ordinance to the extent necessary for it to be in force in the Territory in the terms set out in the Part of Schedule 3 specified in column 3 of the Schedule 2 opposite to the citation of that Act in column 1.

**(2)** Subject to sub-section (3), where a section or other part of an applied Imperial Act the citation of which is specified in column 1 of Schedule 2, being a section or other part that was in force in the Territory immediately before the commencing date, is omitted from the text of that Act set out in Schedule 3, that section or other part ceases, upon the commencing date, to be in force in the Territory by virtue of this sub-section and section 7 of this Ordinance applies to and in relation to that section or other part accordingly.

**(3)** Where a section or other part of an applied Imperial Act referred to in sub-section (2) of this section amends an applied Imperial Act that continues to be in force in the Territory, that section or other part, in so far as it amends that applied Imperial Act, does not cease to be in force in the Territory unless and until the provision of the applied Imperial Act that it amends ceases to be in force in the Territory.

**(4)** In the case of an applied Imperial Act the citation of which is specified in column 1 of Schedule 2 (being an Act that was enacted before the reign of Henry 7), the translation from the original Latin or Norman-French in Schedule 3 shall, for all purposes, be deemed to be correct.

**(5)** In the case of an applied Imperial Act the citation of which is specified in column 1 of Schedule 2 (being an Act that was enacted before the reign of George 2), the conversion of words spelt according to the spelling of the time when the Act was enacted into the modern form of spelling shall, for all purposes, be deemed to be correct.

### **Application of applied Imperial Acts**

**6. (1)** Nothing in section 5 shall be taken to prevent—

- (a) such of the applied Imperial Acts specified in column 1 of Schedule 2 as extended to the Territory, immediately before the commencing date, as part of the law of the Territory by virtue of their own express provisions or by necessary implication, from so continuing to extend to the Territory on and after that date as amended by this Ordinance; and

- (b) the other applied Imperial Acts so specified, being those Acts as amended by this Ordinance, from continuing in force in the Territory, on and after the commencing date, as part of the law of the Territory that has effect under, and in accordance with, the provisions of, section 6 of the *Seat of Government Acceptance Act 1909*.

(2) Sub-section (3) applies to—

- (a) an Imperial Act the citation of which is specified in column 1 of Schedule 1;
- (b) an Imperial Act the citation of which is specified in column 1 of Schedule 2; or
- (c) an Imperial Act the citation of which is specified in sub-section 4 (1).

(3) If an Imperial Act to which this sub-section applies, or a part of such an Act specified in column 3 of Schedule 1 opposite to the citation of that Act in column 1 of Schedule 1—

- (a) has never been in force in the Territory as part of the law of the Territory; or
- (b) ceased, before the commencing date, to be in force in the Territory as part of the law of the Territory,

that Act, or that part of that Act, as amended by this Ordinance, has effect in the Territory as a law of the Territory by virtue of this Ordinance and this Ordinance applies to and in relation to that Act, or that part of that Act, as the case may be, as if that Act were an applied Imperial Act for the purposes of this Ordinance and had been in force in the Territory immediately before the commencing date.

(4) Nothing in sub-section (3)—

- (a) shall be taken to alter the law of the Territory as in force at any time before the commencing date; or
- (b) shall be taken to render invalid, on and after the commencing date, any act or thing that was done or suffered before that date and was duly and validly done or suffered according to the law in force in the Territory when the Act or thing was done or suffered.

## **Savings**

**7. (1)** The ceasing of an applied Imperial Act, or of a part of an applied Imperial Act, to be in force in the Territory by virtue of this Ordinance does not—

- (a) revive anything not in force or existing within the Territory at the time when that Act, or that part of that Act, so ceased to be in force;
- (b) affect the previous operation of that Act, or of that part of that Act, within the Territory, or anything duly done or suffered under that Act, or that part of that Act, in its application in the Territory;
- (c) affect a right, privilege, obligation or liability acquired, accrued or incurred under that Act, or that part of that Act, in its application in the Territory, or an investigation, legal proceeding or remedy in respect of such a right, privilege, obligation or liability; or
- (d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against that Act, or that part of that Act, in its application in the Territory, or an investigation, legal proceeding or remedy in respect of such a penalty, forfeiture or punishment,

and such an investigation, legal proceeding or remedy may be instituted, continued or enforced, and such a penalty, forfeiture or punishment may be imposed, as if this Ordinance had not been made.

**(2)** Without limiting the generality of sub-section (1)—

- (a) the ceasing of the applied Imperial Act 43 Eliz. c. 4 (known as The Charitable Uses Act, 1601) to be in force in the Territory as part of the law of the Territory does not prevent references in and under the law of the Territory to charities from continuing to be construed as references to charities within the meaning and scope of the Preamble to that Act; and
- (b) the ceasing of any applied Imperial Act, or of any part of any such Act, to be in force in the Territory by virtue of this Ordinance does not affect any rule of law or equity in force in the Territory otherwise than by virtue of that Act, or of that part of that Act.

**(3)** For all purposes of the law of the Territory, the text set out in Schedule 4 shall be taken to be the text of the Preamble to the Imperial Act 43 Eliz. c. 4 (known as The Charitable Uses Act, 1601).

**(4)** Where an applied Imperial Act, or a part of such an Act, that ceases, by virtue of this Ordinance, to be in force in the Territory repealed (expressly or by

necessary implication), confirmed, revived or perpetuated another Imperial Act, or a part of another such Act, that did not so cease to be in force in the Territory, that repeal, confirmation, revivor or perpetuation is not affected by reason that the first-mentioned Imperial Act, or the part of the first-mentioned Imperial Act, so ceased to be in force in the Territory.

### **Inconsistencies between certain applied Imperial Acts and other laws**

**8.** Where, upon the commencing date—

- (a) a provision of an applied Imperial Act the citation of which is specified in column 1 of Schedule 1 (being a provision that is to continue to be in force in the Territory on and after the commencing date); or
- (b) a provision of an applied Imperial Act the citation of which is specified in column 1 of Schedule 2 (being that Act as amended by this Ordinance),

is inconsistent with a provision of another law in force in the Territory (not being another applied Imperial Act the citation of which is so specified), the provision of that applied Imperial Act, to the extent of the inconsistency, has no force or effect in the Territory.

### **Headings and footnotes in Schedules**

**9. (1)** The headnotes to sections of an applied Imperial Act the text of which is set out in a Part of Schedule 3 do not form part of that Act or of this Ordinance.

**(2)** The footnotes appearing at the end of a Part of Schedule 3 do not form part—

- (a) of the applied Imperial Act the text of which is set out in that Part of that Schedule; or
- (b) of this Ordinance.

### **Administration of applied Imperial Acts**

**10. (1)** An applied Imperial Act the citation of which is specified in column 1 of Schedule 1 shall be administered by the Minister of State of the Commonwealth specified in column 4 of that Schedule opposite to the citation of that Act in column 1.

**(2)** An applied Imperial Act the citation of which is specified in column 1 of Schedule 2 shall be administered by the Minister of State of the



Commonwealth specified in column 4 of that Schedule opposite to the citation of that Act in column 1.

### **References to the Sovereign**

**11.** In an Imperial Act that continues to be in force in the Territory on and after the commencing date in accordance with this Ordinance, unless the contrary intention appears, a reference to the Sovereign reigning at the time of the enactment of the Act or to the Crown, shall be read as a reference to the Sovereign for the time being.

### **Application of Ordinance**

**12. (1)** This Ordinance, and every applied Imperial Act that continues to be in force in the Territory by virtue of this Ordinance, shall be read and construed subject to the Constitution, and so as not to exceed the legislative power in respect of the Territory, to the intent that where any part of this Ordinance, or of such an Act, would, but for this sub-section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

**(2)** Nothing in this Ordinance affects the operation in the Territory of an Imperial Act that extends to, or has force or effect in, the Commonwealth as part of the law of the Commonwealth by express words or necessary implication.

### **Administration of Ordinance**

**13.** Except as otherwise provided by this Ordinance, this Ordinance shall be administered by the Attorney-General.

---

**SCHEDULE 1**

Sub-sections 4 (4) and 10(1)

**CERTAIN APPLIED IMPERIAL ACTS CONTINUING TO BE IN FORCE IN THE  
TERRITORY**

Column 1	Column 2	Column 3	Column 4
Year and Citation of Act	Subject-matter of Act	Provisions continuing to be in force	Minister by whom administered
(1536) 28 Hen. 8 c. 15	Offences at sea	Sections 1, 2 and 4	Attorney-General
(1698) 11 Will. 3 c. 7	Piracy	Whole Act	Attorney-General
(1717) 4 Geo. 1 c. 11	Piracy	Section 7	Attorney-General
(1721) 8 Geo. 1 c. 24	Piracy	Whole Act	Attorney-General
(1744) 18 Geo. 2 c. 30	Piracy	Whole Act	Attorney-General
(1824) 5 Geo. 4 c. 113	Slave Trade Act, 1824	Whole Act	Attorney-General
(1833) 3 and 4 Will. 4 c. 73	Slavery Abolition Act, 1833	Section 12	Attorney-General
(1843) 6 and 7 Vic. c. 98	Slave Trade Act, 1843	Whole Act	Attorney-General
(1864) 27 and 28 Vic. c. 25	The Naval Prize Act, 1864	Whole Act	Attorney-General
(1873) 36 and 37 Vic. c. 88	Slave Trade Act, 1873	Whole Act	Attorney-General
(1894) 57 and 58 Vic. c. 39	Prize Courts Act, 1894	Whole Act	Attorney-General
(1894) 57 and 58 Vic. c. 60	Merchant Shipping Act, 1894	Whole Act	Minister for Transport
(1914) 4 and 5 Geo. 5 c. 13	Prize Courts (Procedure) Act, 1914	Whole Act	Attorney-General
(1915) 5 and 6 Geo. 5 c. 57	Prize Courts Act, 1915	Whole Act	Attorney-General
(1916) 6 and 7 Geo. 5 c. 2	Naval Prize (Procedure) Act, 1916	Whole Act	Attorney-General
(1939) 2 and 3 Geo. 6 c. 65	Prize Act, 1939	Whole Act	Attorney-General

**SCHEDULE 2** Sub-sections 5 and sub-section 10 (2)

APPLIED IMPERIAL ACTS OF CONSTITUTIONAL, HISTORICAL OR OTHER  
SIGNIFICANCE CONTINUING TO BE IN FORCE IN THE TERRITORY

Column 1	Column 2	Column 3	Column 4
Year and Citation of Act	Subject-matter or short title of Act	Part of Schedule 3 where Act printed	Minister by whom Act administered
(1285) 13 Edw. 1 c. 22	Waste by tenant in common	Part 1	Minister for Territories
(1297) 25 Edw. 1 c. 29	Magna Carta	Part 2	Attorney-General
(1351) 25 Edw. 3, St.5, c. 4	Due process of law	Part 3	Attorney-General
(1354) 28 Edw. 3 c. 3	Due process of law	Part 4	Attorney-General
(1368) 42 Edw. 3 c. 3	Due process of law	Part 5	Attorney-General
(1400) 2 Hen. 4 c. 1	Free access to courts	Part 6	Attorney-General
(1547) 1 Edw. 6 c. 7	Demise of the Crown	Part 7	Minister for Territories
(1575) 18 Eliz. 1 c. 5	Common informers	Part 8	Attorney-General
(1623) 21 Jas. 1 c. 16	Actions for trespass or slander	Part 9	Attorney-General
(1627) 3 Chas. 1 c. 1	The Petition of Right	Part 10	Attorney-General
(1688) 1 Will. and Mary, Sess. 2, c. 2	The Bill of Rights	Part 11	Attorney-General
(1700) 12 and 13 Will. 3 c. 2	The Act of Settlement	Part 12	Minister for Territories
(1702) 1 Anne c. 2	Legal proceedings not affected by demise of Crown	Part 13	Minister for Territories
(1707) 6 Anne c. 41	Use of Crown seals not affected by demise of Crown	Part 14	Minister for Territories
(1729) 2 Geo. 2 c. 22	Set-off of debts	Part 15	Attorney-General
(1735) 8 Geo. 2 c. 24	Set-off of debts	Part 16	Attorney-General
(1760) 1 Geo. 3 c. 23	Demise of the Crown	Part 17	Attorney-General
(1772) 12 Geo. 3 c. 11	Royal Marriages Act, 1772	Part 18	Attorney-General
(1828) 9 Geo. 4 c. 83	Australian Courts Act, 1828	Part 19	Attorney-General
(1856) 19 and 20 Vic. c. 113	Foreign Tribunals Evidence Act, 1856	Part 20	Attorney-General
(1859) 22 Vic. c. 20	Evidence by Commission Act, 1859	Part 21	Attorney-General
(1959) 22 and 23 Vic. c. 63	British Law Ascertainment Act, 1859	Part 22	Attorney-General
(1865) 28 and 29 Vic. c. 63	Colonial Laws Validity Act, 1865	Part 23	Attorney-General
(1874) 37 and 38 Vic. c. 27	The Courts (Colonial) Jurisdiction Act, 1874	Part 24	Attorney-General
(1878) 41 and 42 Vic. c. 73	Territorial Waters Jurisdiction Act, 1878	Part 25	Attorney-General

(1885) 48 and 49 Vic c. 74	Evidence by Commission Act, 1885	Part 26	Attorney-General
(1890) 53 and 54 Vic. c. 27	Colonial Courts of Admiralty Act 1890	Part 27	Attorney-General
(1901) 1 Edw. 7 c. 5	Demise of the Crown Act, 1901	Part 28	Minister for Territories

---

### **SCHEDULE 3**

#### **TEXTS OF APPLIED IMPERIAL ACTS OF CONSTITUTIONAL, HISTORICAL OR OTHER SIGNIFICANCE CONTINUING TO BE IN FORCE IN THE TERRITORY**

##### **PART 1—13 EDW. 1 C. 22, SECTION 1 (1285)**

###### **Waste committed by one tenant in common**

1. Where two or more do hold wood, turfland or fishing, or other such thing, in common, wherein none knows his several, and some of them do waste against the minds of the other, an action may lie by a writ of waste.

###### **NOTE**

Sections 2, 3 and 4, which deal with legal procedures that are obsolete, have been omitted by the *Imperial Acts Application Ordinance 1986*.

##### **PART 2—25 EDW. 1 C. 29 (1297) — THE GREAT CHARTER OF THE LIBERTIES OF ENGLAND AND THE LIBERTIES OF THE FOREST CONFIRMED BY KING EDWARD**

Edward, by the grace of God, King of England, Lord of Ireland and Duke Guyan: To all archbishops, bishops, &c.: We have seen the Great Charter of the Lord Henry sometimes King of England, our father, of the liberties of England in these words:

Henry, by the Grace of God, King of England, Lord of Ireland, Duke of Normandy and Guyan, and Earl of Anjou, to all archbishops, bishops abbots, priors, earls, barons, sheriffs, provosts, officers, and to all bailiffs and other our faithful subjects, who shall see this present Charter, greeting:

Know you that We, unto the honour of Almighty God, and for the salvation of the souls of our progenitors and successors, Kings of England, to the advancement of Holy Church and amendment of our realm, of our free will, have given and granted to all archbishops, bishops, abbots, priors, earls, barons, and to all freemen of this our realm these liberties following, to be kept in our Kingdom of England forever:

###### **Imprisonment, &c., contrary to law**

29. No freeman shall be taken or imprisoned, or disseised of his freehold, liberties or free customs, or be outlawed or exiled or in any other wise destroyed; nor will We pass upon him nor condemn him, but by lawful

judgment of his peers or by the law of the land. We will sell to no man, and we will not deny or defer to any man, either justice or right.

We, ratifying and approving these gifts and grants aforesaid, confirm and make strong all the same for use and our heirs perpetually, and by the tenor of these presents do renew the same: willing and granting for us and our heirs that this Charter and all and singular its articles for ever shall be steadfastly, firmly and inviolably observed.

### NOTES

1. Chapters 1 to 28 (inclusive) and 30 to 37 (inclusive), to the extent (if any) to which they were in force in the Territory immediately before the date referred to in sub-section 2 (1) of the *Imperial Acts Application Ordinance 1986* ceased to be so in force by virtue of sub-section 5 (2) of that Ordinance.

2. The enacting provision, and the confirmation provision at the end have been printed in this case for their historical significance, but have been amended by the *Imperial Acts Application Ordinance 1986* to omit obsolete and unnecessary words.

### **PART 3—25 EDW. 3, ST. 5, C. 4 (1351)**

#### **None shall be taken upon suggestion without lawful presentment**

Whereas it is contained in the Great Charter of the Franchises of England, that none shall be imprisoned nor put out of his freehold, nor of his franchises nor free custom, unless it be by the law of the land; it is accorded, assented, and established, that from henceforth none shall be taken by petition or suggestion made to our Lord the King, or to his Council, unless it be by indictment or presentment of good and lawful people of the same neighbourhood where such deeds be done, in due manner, or by process made by writ original at the common law; and that none be deprived of his franchises, or of his freeholds, unless he be duly brought into answer, and forejudged of the same by the course of the law; and if any thing be done against the same, it shall be redressed and holden for none.

### **PART 4—28 EDW. 3 C. 3 (1354)**

#### **None shall be condemned without due process of law**

No man of what estate or condition that he be, shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of the law.

**PART 5—42 EDW. 3 C. 3 (1368)**

**None shall be put to answer without due process of law**

No man be put to answer without presentment before justices, or matter of record, or by due process and writ original, according to the old law of the land: And if any thing from henceforth be done to the contrary, it shall be void in the law, and holden for error.

**NOTE**

The preamble and enacting words were omitted by the *Imperial Acts Application Ordinance 1986*.

**PART 6—2 HEN. 4 C. 1, SECTIONS 4 AND 5 (1400)**

**Every person shall be in peace**

4. All his liege people and subjects may freely and peaceably, in his sure and quiet protection, go and come to his courts, to pursue the laws, or defend the same, without disturbance or impediment of any.

**Full justice shall be done**

5. Full justice and right be done, as well to the poor as to the rich, in his courts aforesaid.

**NOTE**

Sections 1, 2 and 3, which confirm the rights of the Church and the rights, liberties and franchises granted by the King's predecessors, are obsolete and unnecessary. To the extent (if any) to which they had effect in the Territory immediately before the date referred to in sub-section 2 (1) of the *Imperial Acts Application Ordinance 1986*, they ceased so to have effect by virtue of that Ordinance.

**PART 7—1 EDW. 6 C. 7, SECTION 1 (1547)**

**Death of the King shall not discontinue any suit, &c.**

1. \* \* \* \* \*

(4) From thenceforth by the death or demise of the King's majesty that now is, (whose life Almighty God long preserve, keep and maintain in his most royal estate) nor by the death or demise of any that hereafter shall be King of this realm, any action, suit, bill or plaint, now or that hereafter shall depend

between party and party, in any of the King's majesty's courts and other courts of record, shall not in any wise be discontinued or put without day.

(5) The processes, pleas, demurrers and continuances in every action, actions, suits, bills or complaints which now or that hereafter shall depend, shall stand good and effectual, and be prosecuted and sued forth in such manner and form, and in the same estate, condition and order, as if the same King had lived or continued in full life, the death or demise hereafter of any King of this realm notwithstanding.

(6) All, and all manner of, judicial processes, that hereafter shall be had or pursued in the time of the reign of any other King, then reigning at the time of the pursuit of the original or former processes, shall be made in the name of the King that, for the time, shall reign and be King of this realm, and that variance touching the same processes between the names of the Kings shall not be in any wise material, as concerning any default to be alleged or objected therefore.

#### NOTES

1. Sub-sections 1 (1), (2) and (3) constituted recitals to this Act. These recitals and the enacting words at the beginning of sub-section (4) were omitted by the *Imperial Acts Application Ordinance 1986*.

2. The words "the King's majesty's courts and other courts of record" have been substituted in sub-section (4) for "courts aforesaid" by the *Imperial Acts Application Ordinance 1986*. The "courts aforesaid" was a reference back to "the King's majesty's courts and other courts of record" in sub-section (1) of the recitals.

3. Sections 2 to 6 dealt with rules of practice and procedure. To the extent (if any) to which they had effect in the Territory immediately before the date referred to in sub-section 2 (1) of the *Imperial Acts Application Ordinance 1986*, they ceased so to have effect by virtue of that Ordinance.

#### **PART 8—18 ELIZ. 1 C. 5 (1575)**

An Act to redress disorders in common informers upon penal laws

#### **Informers on penal statutes shall sue in person**

1. (1) Every informer upon any penal statute shall exhibit his suit in proper person, and pursue the same only by himself, or by his attorney in court.



(2) None shall be admitted or received to pursue against any person or persons upon any penal statute but by way of information or original action and not otherwise.

(3) None shall have nor use any deputy or deputies at all.

(4) Upon every such information which shall be exhibited, a special note be made of the very day, month and year of the exhibiting thereof into any office or to any officer which lawfully may receive the same, without any manner of antedating thereof to be made; the same information be accounted and taken to be of record from that time forward and not before.

(5) No process be sued out upon any such information until the information be exhibited as aforesaid.

(6) Upon every such process shall be endorsed as well the party's name that pursues the same process, as also the statute upon which the information in that behalf is grounded.

**Informer not to compound with defendant until after answer or without leave of the court**

3. (1) No such informer or plaintiff shall or may compound or agree with any person or persons that shall offend or shall be surmised to offend against any penal statute for such offence committed or pretended to be committed, but after answer made in court unto the information or suit in that behalf exhibited or prosecuted.

(2) Nor after answer but by the order or consent of the court in which the same information or suit shall be pending upon the pain and penalties hereafter in this Act set down and declared.

(3) If any such informer or plaintiff as aforesaid shall willingly delay his suit, or shall discontinue to be non-suited in the same, or shall have the trial or matter go against him therein by verdict of judgment of law, then in every such case, the same informer or plaintiff shall yield, satisfy and pay unto the party defendant, his costs, charges and damages, to be assigned by the court in which the suit shall be prosecuted.

**Penalty**

4. If any person or persons (except the clerks of the court only for making out of process otherwise than as above appointed) shall offend in suing out of process, making of composition or other misdemeanour contrary to the true intent and meaning of this statute, or shall by colour or pretence of process, or without process upon colour or pretence of any matter of offence against any

penal law, make any composition, or take any money, reward or promise of reward for himself, or to the use of any other without order or consent of a court, then he or they so offending, being thereof lawfully convicted—

- (a) shall from and after such conviction forever be disabled to pursue, or be plaintiff or informer in, any suit or information upon any statute popular or penal; and
- (b) shall also for every such offence forfeit and lose \$20, the one-half thereof to the Commonwealth of Australia and the other half to the party so grieved thereby, to be recovered as a debt in any court of competent jurisdiction.

### **Corporations, &c., entitled to forfeitures**

6. This Act shall not restrain any certain person, or any body politic or corporate, to whom or to whose use any forfeiture, penalty or suit is or shall be especially limited or granted by virtue of any law in force in the Australian Capital Territory, and not generally to any person that will sue, but every such certain person, or body politic or corporate, which might sue or inform as if this Act were not made, may, in such case, sue, inform and pursue as he or they might have done as if this Act had not been made.

### **Officers may exhibit informations**

7. (1) Neither this Act, nor any thing therein contained, shall in any wise extend to any such officers of record as have, in respect of their offices, heretofore lawfully used to exhibit informations, or sue upon penal laws, nor to any officers informing or suing for matters only concerning their offices.

(2) They and every one of them may inform and sue in that behalf, as they might have done before the making of this Act, any thing in this Act contained to the contrary in any wise notwithstanding.

### **NOTES**

1. Sub-section 1 (7), which imposed a penalty on clerks of the courts, ceased to have effect in the Territory by virtue of the *Imperial Acts Application Ordinance 1986*.

2. Sections 2, 5 and 8, to the extent (if any) to which they had effect in the Territory immediately before the date referred to in sub-section 2 (1) of the *Imperial Acts Application Ordinance 1986*, ceased so to have effect by virtue of that Ordinance.

3. Sub-section 3 (4) ceased to have effect in the Territory by virtue of the *Imperial Acts Application Ordinance 1986*. It set out procedures for recovering damages that were obsolete.

4. Section 4 provided the penalty of 2 hours in the pillory in addition to the pecuniary penalty. The punishment of pillory was abolished in the United Kingdom for offences which included offences against section 4 before 25 July 1828 and this part of the section was omitted by the *Imperial Acts Application Ordinance 1986*.

5. The parts of section 4 conferring jurisdiction on certain courts of the United Kingdom to deal with offences have been omitted by the *Imperial Acts Application Ordinance 1986*.

6. The provision in paragraph 4 (b) for one-half of the amount of the forfeiture to be paid to the Commonwealth was substituted by the *Imperial Acts Application Ordinance 1986* for a provision requiring one-half of that amount to be paid to the Sovereign.

7. In section 6, “law in force in the Territory” was substituted for “statute” by the *Imperial Acts Application Ordinance 1986*.

#### **PART 9—21 JAS. 1 C. 16, SECTIONS 5 AND 6 (1623)**

An Act for avoiding suits in law

##### **After judgment or non-suit in a *quare clausum fregit*, plaintiff barred**

5. (1) In all actions for trespass *quare clausum fregit* wherein the defendant or defendants shall disclaim his or their plea to make any title or claim to the land in which the trespass is by the statement of claim alleged to be done, and the trespass be by negligence or involuntary, the defendant or defendants shall be admitted to plead a disclaimer, and that the trespass was by negligence or involuntary, and a tender or offer of sufficient amends for such trespass before the action brought, whereupon or upon some of them, the plaintiff or plaintiffs shall be enforced to join issue.

(2) If the said issue be found for the defendant, or defendants, or the plaintiff or plaintiffs shall be non-suited, the plaintiff or plaintiffs shall be clearly barred from the said action or actions and all other suit concerning the same.

### **Actions of slander**

6. In all actions upon the case for slanderous words, to be sued or prosecuted by any person or persons in any courts of competent jurisdiction, if the jury upon the trial of the issue in such action, or the jury that shall inquire of the damages, do find or assess the damages under \$4, then the plaintiff or plaintiffs in such action shall have and recover only so much costs as the damages so given or assessed amount unto without any further increase of the same, any law, statute, custom or usage to the contrary in any way notwithstanding.

### **NOTES**

1. Sections 1 and 2 have been omitted by the *Imperial Acts Application Ordinance 1986* as their operation was exhausted before 25 July 1828 or was superseded by the Real Property (Limitation of Actions) Act (Imperial) 1833 in its application in the Territory. That Act ceased to be in force in the Territory by virtue of sub-section 2 (1) of the *Limitation Ordinance 1985*.

2. Sections 3 and 4 ceased to be in force in the Territory by virtue of sub-section 2 (2) of the *Limitation Ordinance 1985*.

3. In section 6, references to the courts at Westminster have been altered to courts of competent jurisdiction by the *Imperial Acts Application Ordinance 1986*.

4. Section 7 ceased to be in force in the Territory by virtue of sub-section 2 (2) of the *Limitation Ordinance 1985*.

5. The reference to limitation of actions was omitted from the Title by the *Imperial Acts Application Ordinance 1986* as this Act, in its application in the Territory, no longer deals with limitation of actions.

### **PART 10—3 CHAS. 1 C. (1627)—THE PETITION OF RIGHT**

The Petition exhibited to His Majesty by the lords spiritual and temporal and commons in this present Parliament assembled concerning divers rights and liberties of the subject: with the Kings Majesty's royal answer thereunto in full Parliament.

To the King's most excellent Majesty.

Humbly shew unto our sovereign lord the King the lords spiritual and temporal and commons in Parliament assembled that:

**Reciting that by 34 Edw. 1 St. 4, c. 1, by authority of Parliament holden 25 Edw. 3, and by other laws of this realm, the King's subjects should not be taxed but by consent in Parliament**

1. Whereas it is declared and enacted by a Statute made in the time of the reign of King Edward the First commonly called *Statutum de Tallagio non concedendo*, that no tallage or aid should be laid or levied by the King or his heirs in this realm without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses and other the freemen of the commons of this realm, and by authority of Parliament holden in the five and twentieth year of the reign of King Edward the third, it is declared and enacted, that from thenceforth no person should be compelled to make any loans to the King against his will because such loans were against reason and the franchise of the land, and by other laws of this realm it is provided, than none should be charged by any charge or imposition called a benevolence nor by such like charge by which the statutes before mentioned and other the good laws and statutes of this realm your subjects have inherited this freedom that they should not be compelled to contribute to any tax, tallage, aid or other like charge not set by common consent in Parliament.

**And that commissions have of late issued on which proceedings have been had contrary to law**

2. Yet nevertheless of late divers commissions directed to sundry commissioners in several counties with instructions have issued, by means whereof your people have been in divers places assembled and required to lend certain sums of money unto your Majesty, and many of them upon their refusal so to do have had an oath administered unto them not warrantable by the laws or statutes of this realm and have been constrained to become bound to make appearance and give attendance before your privy council and in other places; and others of them have been therefore imprisoned, confined and sundry other ways molested and disquieted and divers other charges have been laid and levied upon your people in several counties by lord lieutenants, deputy lieutenants, commissioners for musters, justices of peace and others by command or direction from your Majesty or your privy council against the laws and free customs of the realm.

**Reciting 9 Hen. M.C. c. 29**

3. And where also by the Statute called the Great Charter of the liberties of England, it is declared and enacted, that no freeman may be taken or imprisoned or be disseised of his freehold or liberties of his free customs or be outlawed or exiled or in any manner destroyed, but by the lawful judgment of his peers or by the law of the land.

**Reciting 28 Edw. 3 c. 3**

4. And in the eight and twentieth year of the reign of King Edward the Third it was declared and enacted by authority of Parliament, that no man of what estate or condition that he be, should be put out of his land or tenements nor taken nor imprisoned nor disherited nor put to death without being brought to answer by due process of law.

**And that divers subjects have been imprisoned without cause shown or cause of detainer certified**

5. Nevertheless against the tenor of the said statutes and other the good laws and statutes of your realm to that end provided, divers of your subjects have of late been imprisoned without any cause shown: And when for their deliverance they were brought before your justices by your Majesty's writs of *habeas corpus* there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's special command signified by the lords of your privy council and yet were returned back to several prisons without being charged with anything to which they might make answer according to the law.

**And that soldiers have been dispersed in divers counties, and inhabitants compelled to receive them**

6. And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn against the laws and customs of this realm and to the great grievance and vexation of the people.

**Reciting 25 Edw. 3, and that commissions have issued under the great seal for proceedings according to martial law**

7. And whereas also by authority of Parliament in the five and twentieth year of the reign of King Edward the Third it is declared and enacted that no man should be forejudged of life or limb against the form of the Great Charter and the law of the land, and by the said Great Charter, and other the laws and statutes of this your realm no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of the same realm or by Acts of Parliament. And whereas no offender of what kind soever is exempted from the proceedings to be used and punishments to be inflicted by the laws and statutes of this your realm, nevertheless of late time divers commissions under your Majesty's great seal have issued forth, by which certain persons have been assigned and appointed commissioners with power and authority to

proceed within the land according to the justice of martial law against such soldiers or mariners or other dissolute persons joining with them as should commit any murder, robbery, felony, mutiny or other outrage or misdemeanor whatsoever, and by such summary course and order as is agreeable to martial law and is used in armies in time of war to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial.

By pretext whereof some of your Majesty's subjects have been by some of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to, have been judged and executed.

And also sundry grievous offenders by colour thereof claiming an exemption have escaped the punishment due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the same laws and statutes upon pretence that the said offenders were punishable only by martial law and by authority of such commissions as aforesaid. Which commissions and all other of like nature are wholly and directly contrary to the said laws and statutes of this your realm.

## **THE PETITION**

8. They do therefore humbly pray your most excellent Majesty, that no man hereafter be compelled to make or yield any gift loan benevolence tax or such like charge without common consent by Act of Parliament, and that none be called to make answer or take such oath or to give attendance or be confined or otherwise molested or disquieted concerning the same or for refusal thereof. And that no freeman in any such manner as is before mentioned be imprisoned or detained. And that your Majesty would be pleased to remove the said soldiers and mariners and that your people may not be so burdened in time to come. And that the aforesaid commissions for proceeding by martial law may be revoked and annulled. And that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by colour of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchise of the land.

All which they most humbly pray of your most excellent Majesty as their rights and liberties according to the laws and statutes of this realm, and that your Majesty would also vouchsafe to declare that the awards, doings and proceedings to the prejudice of your people in any of the premises shall not be drawn hereafter into consequence or example. And that your Majesty would be also graciously pleased for the further comfort and safety of your people to

declare your royal will and pleasure, that in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm as they care for the honour of your Majesty and the prosperity of this kingdom.

**Qua Quidem petitione lecta & plenius intellecta per dictum dominium regem taliter est responsum in pleno parlamento videlicet.**

**R<sup>o</sup> Soit droit come est desire**

**PART 11—1 WILL. AND MARY, SESS. 2, C. 2 (1688)—THE BILL OF RIGHTS**

An Act declaring the rights and liberties of the subject and settling the succession of the Crown

Whereas the lords spiritual and temporal and commons assembled at Westminster lawfully fully and freely representing all the estates of the people of this realm did upon the thirteenth day of February in the year of our Lord one thousand six hundred and eighty-eight present unto their Majesties then called and known by the names and style of William and Mary Prince and Princess of Orange being present in their proper persons a certain declaration in writing made by the said lords and commons in the words following:

Whereas the late King James the Second by the assistance of divers evil councillors, judges and ministers employed by him did endeavour to subvert and extirpate the Protestant religion and the laws and liberties of this kingdom.

1. By assuming and exercising a power of dispensing with and suspending of laws and execution of laws without consent of Parliament.
2. By committing and prosecuting divers worthy prelates for humbly petitioning to be excused from concurring to the said assumed power.
3. By issuing and causing to be executed a commission under the great seal for erecting a court called the court of commissioners for ecclesiastical causes.
4. By levying money for and to the use of the Crown by pretence of prerogative for other time and in other manner than the same was granted by Parliament.
5. By raising and keeping a standing army within this kingdom in time of peace without consent of Parliament and quartering soldiers contrary to law.
6. By causing several good subjects being protestants to be disarmed at the same time when papists were both armed and employed contrary to law.



7. By violating the freedom of election of members to serve in Parliament.

8. By prosecutions in the Court of King's Bench for matters and causes cognizable only in Parliament and by divers others arbitrary and illegal courses.

9. And whereas of late years partial, corrupt and unqualified persons have been returned and served on juries in trials and particularly divers jurors in trials for high treason which were not freeholders.

10. An excessive bail has been required of persons committed in criminal cases to elude the benefit of the laws made for the liberty of the subjects.

11. And excessive fines have been imposed; and illegal and cruel punishments inflicted.

12. And several grants and promises made of fines and forfeitures before any conviction or judgment against the persons upon whom the same were to be levied.

All which are utterly and directly contrary to the known laws and statutes and freedom of this realm:

And whereas the said late King James the Second having abdicated, the government and the throne being thereby vacant, his Highness the Prince of Orange (whom it has pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the lords spiritual and temporal and divers principal persons of the commons) cause letters to be written to the lords spiritual and temporal being protestants and other letters to the several counties, cities, universities, boroughs and cinque ports for the choosing of such persons to represent them as were of right to be sent to Parliament to meet and sit at Westminster upon the two and twentieth day of January in this year one thousand six hundred and eighty-eight in order to such an establishment as that their religion, laws and liberties might not again be in danger of being subverted, upon which letters, elections having been accordingly made:

And thereupon the said lords spiritual and temporal and commons pursuant to their respective letters and elections being now assembled in a full and free representative of this nation taking into their most serious consideration the best means for attaining the ends aforesaid do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties, declare:

**Suspending power**

1. That the pretended power of suspending of laws or the execution of laws by regal authority without consent of Parliament is illegal.

**Late dispensing power**

2. That the pretended power of dispensing with laws or the execution of laws by regal authority as it has been assumed and exercised of late is illegal.

**Ecclesiastical courts illegal**

3. That the commission for erecting the late court of commissioners for ecclesiastical causes and all other commissions and courts of like nature are illegal and pernicious.

**Levying money**

4. That levying money for or to the use of the Crown by pretence of prerogative without grant of Parliament for longer time or in other manner than the same is or shall be granted is illegal.

**Right to petition**

5. That it is the right of the subjects to petition the King and all commitments and prosecutions for such petitioning are illegal.

**Standing army**

6. That the raising or keeping a standing army within the kingdom in time of peace unless it be with consent of Parliament is against law.

**Subjects' arms**

7. That the subjects which are protestants may have arms for their defence suitable to their conditions and as allowed by law.

**Freedom of election**

8. That election of members of Parliament ought to be free.

**Freedom of speech**

9. That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

**Excessive bail**

10. That excessive bail ought not to be required nor excessive fines imposed nor cruel and unusual punishments inflicted.

**Juries**

11. That jurors ought to be duly empanelled and returned.

**Grants of forfeiture**

12. That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.

**Frequent Parliaments**

13. And that for redress of all grievances and for the amending, strengthening and preserving of the laws, Parliaments ought to be held frequently.

**Undoubted rights and liberties**

I. And they do claim, demand and insist upon all and singular the premises as their undoubted rights and liberties and that no declarations, judgments, doings or proceedings to the prejudice of the people in any of the said premises ought in any wise to be drawn hereafter into consequence or example.

To which demand of their rights they are particularly encouraged by the declaration of his Highness the Prince of Orange as being the only means for obtaining a full redress and remedy therein.

Having therefore an entire confidence that his said Highness the Prince of Orange will perfect the deliverance so far advanced by him and will still preserve them from the violation of their rights which they have here asserted and from all other attempts upon their religion, rights and liberties.

**Tender of crown**

II. The said lords spiritual and temporal and commons assembled at Westminster do resolve that William and Mary Prince and Princess of Orange be and be declared King and Queen of England, France and Ireland and the dominions thereunto belonging to hold the crown and royal dignity of the said kingdoms and dominions to them the said prince and princess during their lives and the life of the survivor of them. And that the sole and full exercise of the regal power be only in and executed by the said Prince of Orange in the names of the said prince and princess during their joint lives and after their deceases the said crown and royal dignity of the said kingdoms and dominions to be to

the heirs of the body of the said princess and for default of such issue to the Princess Anne of Denmark and the heirs of her body and for default of such issue to the heirs of the body of the said Prince of Orange. And the lords spiritual and temporal and commons do pray the said prince and princess to accept the same accordingly.

### **New oaths of allegiance**

**III.** And that the oaths hereafter mentioned be taken by all persons to whom the oaths of allegiance and supremacy might be required by law instead of them and that the said oaths of allegiance and supremacy be abrogated.

I, A B, do sincerely promise and swear that I will be faithful and bear true allegiance to their Majesties King William and Queen Mary.

So help me God.

I, A B, do swear that I do from my heart abhor, detest and abjure as impious and heretical this damnable doctrine and position that princes excommunicated or deprived by the Pope or any authority of the see of Rome may be deposed or murdered by their subjects or any other whatsoever.

And I do declare that no foreign prince, person, prelate, state or potentate has or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm.

So help me God.

### **Acceptance of crown**

**IV.** Upon which their said Majesties did accept the crown and royal dignities of the kingdoms of England, France and Ireland and the dominions thereunto belonging according to the resolution and desire of the said lords and commons contained in the said declaration.

### **Two houses to sit**

**V.** And thereupon their Majesties were pleased that the said lords spiritual and temporal and commons being the two Houses of Parliament should continue to sit and with their Majesties' royal concurrence make effectual provision for the settlement of the religion, laws and liberties of this kingdom so that the same for the future might not be in danger again of being subverted, to which the said lords spiritual and temporal and commons did agree and proceed to act accordingly.

### **Subjects' liberties to be allowed**

**VI.** Now in pursuance of the premises the said lords spiritual and temporal and commons in Parliament assembled for the ratifying, confirming and establishing the said declaration and the articles, clauses, matters and things therein contained by the force of a law made in due form by authority of Parliament do pray that it may be declared and enacted that all and singular the rights and liberties asserted and claimed in the said declaration are the true, ancient and indubitable rights and liberties of the people of this kingdom and so shall be esteemed, allowed, adjudged, deemed and taken to be and that all and every the particulars aforesaid shall be firmly and strictly holden and observed as they are expressed in the said declaration. And all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all times to come.

### **William and Mary declared King and Queen**

**VII.** And the said lords spiritual and temporal and commons seriously considering how it hath pleased Almighty God in his marvellous providence and merciful goodness to the nation to provide and preserve their said Majesties' royal person most happily to reign over us upon the throne of their ancestors for which they render unto him from the bottom of their hearts their humblest thanks and praises do truly, firmly, assuredly and in the sincerity of their hearts think and do hereby recognize, acknowledge and declare that King James the Second having abdicated the government and their Majesties having accepted the crown and royal dignity as aforesaid their said Majesties did become, were, are and of right ought to be by the laws of this realm our sovereign liege lord and lady King and Queen of England, France and Ireland and the dominions thereunto belonging in and to whose princely persons the royal state crown and dignity of the said realms with all honours, styles, titles, regalities, prerogatives, powers, jurisdictions and authorities to the same belonging and appertaining are most fully and rightfully and entirely invested and incorporated, united and annexed.

### **Limitation of crown**

**VIII.** And for preventing all questions and divisions in this realm by reason of any pretended titles to the crown and for preserving a certainty in the succession thereof in and upon which the unity, peace, tranquility and safety of this nation doth under God wholly consist and depend the said lords spiritual and temporal and commons do beseech their Majesties that it may be enacted, established and declared that the crown and regal government of the said kingdoms and dominions with all and singular the premises thereunto belonging and appertaining shall be and continue to their said Majesties and the

survivor of them during their lives and the life of the survivor of them and that the entire, perfect and full exercise of the regal power and government be only in and executed by his Majesty in the names of both their Majesties during their joint lives and after their deceases the said crown and premises shall be and remain to the heirs of the body of her Majesty and for default of such issue to her royal Highness the Princess Anne of Denmark and the heirs of her body and for default of such issue to the heirs of the body of his said Majesty. And thereunto the said lords spiritual and temporal and commons do in the name of all the people aforesaid most humbly and faithfully submit themselves, their heirs and posterities for ever and do faithfully promise that they will stand to maintain and defend their said Majesties and also the limitation and succession of the crown herein specified and contained to the utmost of their powers with their lives and estates against all persons whatsoever that shall attempt any thing to the contrary.

#### **Papists debarred the crown**

**IX.** And whereas it has been found by experience that it is inconsistent with the safety and welfare of this protestant kingdom to be governed by a popish prince or by any King or Queen marrying a papist the said lords spiritual and temporal and commons do further pray that it may be enacted that all and every person and persons that is, are or shall be reconciled to or shall hold communion with the see or church of Rome and shall profess the popish religion or shall marry a papist shall be excluded and be for ever incapable to inherit, possess or enjoy the crown and government of this realm and Ireland and the dominions thereunto belonging or any part of the same or to have, use or exercise any regal power, authority or jurisdiction within the same.

And in all and every such case or cases the people of these realms shall be and are hereby absolved of their allegiance and the said crown and government shall from time to time descend to and be enjoyed by such person or persons being protestants as should have inherited and enjoyed the same in case the said person or persons so reconciled, holding communion or professing or marrying as aforesaid were naturally dead.

#### **All Kings, &c., to take the declaration**

**X.** And that every King and Queen of this realm who at any time hereafter shall come to and succeed in the imperial crown of this kingdom shall on the first day of the meeting of the first Parliament next after his or her coming to the crown sitting in his or her throne in the House of Peers in the presence of the lords and commons therein assembled or at his or her coronation before such person or persons who shall administer the coronation oath to him or her at the time of his taking the said oath (which shall first happen) make, subscribe

and audibly repeat the declaration required by law. But if it shall happen that such King or Queen upon his or her succession to the crown of this realm shall be under the age of twelve years then every such King or Queen shall make, subscribe and audibly repeat the said declaration at his or her coronation or the first day of the meeting of the first Parliament as aforesaid which shall first happen after such King or Queen shall have attained the said age of twelve years.

### **Kings assent**

**XI.** All which their Majesties are contented and pleased shall be declared, enacted and established by authority of this present Parliament and shall stand, remain and be the law of this realm for ever. And the same are by their said Majesties by and with the advice and consent of the lords spiritual and temporal and commons in Parliament assembled and by the authority of the same declared, enacted and established accordingly.

### **Non obstantes made void**

**XII.** No dispensation by non obstante of or to any statute or any part thereof shall be allowed but the same shall be held void and of no effect except a dispensation be allowed of in such statute.

## **NOTES**

**1.** The division of the Statute into numbered paragraphs is in accordance with the text in Statutes at Large.

**2.** Section 11 was impliedly amended by section 62 of 9 Geo. 4 c.50 which repealed so much of section 11 as declared that jurors who pass upon men in trials for high treason ought to be freeholders. The text of section 11 has been altered to give effect to this provision.

**3.** Section X required the declaration mentioned in it to be taken in accordance with Act 30 Chas. 2 St. 2 c.1. That Act was repealed in the United Kingdom by Act 29 and 30 Vic. c.19. The declaration to be taken by the Sovereign is now prescribed by the Accession Declaration Act, 1910 of the United Kingdom. Section X has been amended by the *Imperial Acts Application Ordinance 1986* to reflect these changes in the law of the United Kingdom.

**4.** Parts of section XII, the operation of which was exhausted before 25 July 1828, were omitted by the *Imperial Acts Application Ordinance 1986*.

**5.** Section XIII was omitted by the *Imperial Acts Application Ordinance 1986* as its operation was exhausted before 25 July 1828.

**PART 12—12 AND 13 WILL. 3 C. 2 (1700)—THE ACT OF SETTLEMENT**

An Act for the further limitation of the crown and better securing the rights and liberties of the subject

Whereas in the first year of the reign of your Majesty and of our late most gracious sovereign lady Queen Mary (of blessed memory) an Act of Parliament was made intituled (An Act for declaring the rights and liberties of the subject and for settling the succession of the crown) wherein it was (amongst other things) enacted, established and declared that the crown and regal government of the kingdoms of England, France and Ireland and the dominions thereunto belonging should be and continue to your Majesty and the said late Queen during the joint lives of your Majesty and the said Queen and to the survivor and that after the decease of your Majesty and of the said Queen the said crown and regal government should be and remain to the heirs of the body of the said late Queen and for default of such issue to her royal highness the Princess Anne of Denmark and the heirs of her body and for default of such issue to the heirs of the body of your Majesty: And it was thereby further enacted that all and every person and persons that then were or afterwards should be reconciled to or shall hold communion with the see or church of Rome or should profess the popish religion or marry a papist should be excluded and are by that Act made for ever incapable to inherit, possess or enjoy the crown and government of this realm and Ireland and the dominions thereunto belonging or any part of the same or to have, use or exercise any regal power, authority or jurisdiction within the same and in all and every such case and cases the people of these realms shall be and are thereby absolved of their allegiance and that the said crown and government shall from time to time descend to, and be enjoyed by, such person or persons, being protestants, as should have inherited and enjoyed the same in case the said person or persons so reconciled, holding communion, professing or marrying as aforesaid were naturally dead.

After the making of which statute and the settlement therein contained your Majesty's good subjects who were restored to the full and free possession and enjoyment of their religion, rights and liberties by the providence of God giving success to your Majesty's just undertakings and unwearied endeavours for that purpose had no greater temporal felicity to hope or wish for than to see a royal progeny descending from your Majesty to whom (under God) they owe their tranquility and whose ancestors have for many years been principal assertors of the reformed religion and the liberties of Europe and from our said most gracious sovereign lady whose memory will always be precious to the subjects of these realms.



And it having since pleased Almighty God to take away our said sovereign lady and also the most hopeful Prince William Duke of Gloucester (the only surviving issue of her royal Highness the Princess Anne of Denmark) to the unspeakable grief and sorrow of your Majesty and your said good subjects who under such losses being sensibly put in mind that it standeth wholly in the pleasure of Almighty God to prolong the lives of your Majesty and of her royal Highness and to grant to your Majesty or to her royal Highness such issue as may be inheritable to the crown and regal government aforesaid by the respective limitations in the said recited Act contained do constantly implore the divine mercy for those blessings.

And your Majesty's said subjects having daily experience of your royal care and concern for the present and future welfare of these kingdoms and particularly recommending from your throne a further provision to be made for the succession of the crown in the protestant line for the happiness of the nation and the security of our religion and it being absolutely necessary for the safety, peace and quiet of this realm to obviate all doubts and contentions in the same by reason of any pretended titles to the crown and to maintain a certainty in the succession thereof to which your subjects may safely have recourse for their protection in case the limitations in the said recited Act should determine.

Therefore for a further provision of the succession of the crown in the protestant line we your Majesty's most dutiful and loyal subjects the lords spiritual and temporal and commons in this present Parliament assembled do beseech your Majesty that it may be enacted and declared and be it enacted and declared by the King's most excellent Majesty by and with the advice and consent of the lords spiritual and temporal and commons in this present Parliament assembled and by the authority of the same:

**The Princess Sophia, Electress and Duchess dowager of Hanover, daughter of the late Queen of Bohemia, daughter of King James the First, to inherit after the King and the Princess Anne, in default of issue of the said princess and his Majesty, respectively; and the heirs of her body, being protestants**

1. The most excellent Princess Sophia Electress and Duchess dowager of Hanover daughter of the most excellent Princess Elizabeth late Queen of Bohemia daughter of our late sovereign lord King James the First of happy memory be and is hereby declared to be the next in succession in the protestant line to the imperial crown and dignity of the said realms of England, France and Ireland with the dominions and territories thereunto belonging after his Majesty and the Princess Anne of Denmark and in default of issue of the said Princess Anne and of his Majesty respectively and that from and after the deceases of his

said Majesty our now sovereign lord and of her royal Highness the Princess Anne of Denmark and for default of issue of the said Princess Anne and of his Majesty respectively the crown and regal government of the said kingdoms of England, France and Ireland and of the dominions thereunto belonging with the royal state and dignity of the said realms and all honours, styles, titles, regalities prerogatives, powers, jurisdictions and authorities to the same belonging and apertaining shall be, remain and continue to the said most excellent Princess Sophia and the heirs of her body being protestants. And thereunto the said lords spiritual and temporal and commons shall and will in the name of all the people of this realm most humbly and faithfully submit themselves, their heirs and posterities and do faithfully promise that after the deceases of his Majesty and her royal Highness and the failure of the heirs of their respective bodies to stand to maintain and defend the said princess Sophia and the heirs of her body being protestants according to the limitation and succession of the crown in this Act specified and contained to the utmost of their powers with their lives and estates against all persons whatsoever that shall attempt any thing to the contrary.

**The persons inheritable by this Act, holding communion with the church of Rome, incapacitated as by the former Act, to take the oath at their coronation**

2. Provided always and it is hereby enacted that all and every person and persons who shall or may take or inherit the said crown by virtue of the limitation of this present Act and is, are or shall be reconciled to or shall hold communion with the see or church of Rome or shall profess the popish religion or shall marry a papist shall be subject to such incapacities as in such case or cases are by the said recited Act provided, enacted and established. And that every King and Queen of this realm who shall come to and succeed in the imperial crown of this kingdom by virtue of this Act shall have the coronation oath administered to him, her or them at their respective coronations according to law and shall make, subscribe and repeat the declaration required by law.

**Further provisions for securing the religion, laws and liberties of these realms**

3. And whereas it is requisite and necessary that some further provision be made for securing our religion, laws and liberties from and after the death of his Majesty and the Princess Anne of Denmark and in default of issue of the body of the said princess and of his Majesty respectively: Be it enacted by the King's most excellent Majesty by and with the advice and consent of the lords spiritual and temporal and commons in Parliament assembled and by the authority of the same:

That whosoever shall hereafter come to the possession of this crown shall join in communion with the Church of England as by law established.

That in case the crown and imperial dignity of this realm shall hereafter come to any person not being a native of this kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the crown of England without the consent of Parliament.

That after the said limitation shall take effect as aforesaid, no person born out of the kingdoms of England, Scotland or Ireland or the dominions thereunto belonging, although he be naturalized or made a denizen (except such as are born of English parents), shall be capable to be of the privy council or a member of either House of Parliament or to enjoy any office or place of trust either civil or military or to have any grant of lands, tenements or hereditaments from the Crown to himself or to any other or others in trust for him.

That no pardon under the great seal of England be pleadable to an impeachment by the commons in Parliament.

#### **The laws and statutes of the realm confirmed**

4. And whereas the laws of England are the birthright of the people thereof and all the Kings and Queens who shall ascend the throne of this realm ought to administer the government of the same according to the said laws and all their officers and ministers ought to serve them respectively according to the same: The said lords spiritual and temporal and commons do therefore further humbly pray that all the laws and statutes of this realm for securing the established religion and the rights and liberties of the people thereof and all other laws and statutes of the same now in force may be ratified and confirmed. And the same are by his Majesty by and with the advice and consent of the said lords spiritual and temporal and commons and by authority of the same ratified and confirmed accordingly.

#### **NOTES**

1. This Act is printed as amended before 25 July 1828 by 4 and 5 Anne c. 20 (1705) and by 1 Geo. 1, St. 2. c. 51 (1715). It was subsequently amended in the United Kingdom by the Statute Law and Civil Procedure Act, 1881, but the amendments so made after 25 July 1828 are not incorporated in the text in Part 12.

2. The Act, the title of which is set out in the Recital, is the Bill of Rights, a copy of which is set out in Part 11 of the *Imperial Acts Application Ordinance 1986*.

3. Section 1 was affected in the United Kingdom by His Majesty's Declaration of Abdication Act, 1936.

4. Section 2 of the Act of Settlement, as in force in the United Kingdom on 1 January 1911, was expressed to require the coronation oath and declaration to be according to Act 1 Will. and Mary c.6. However, that provision has been superseded in the United Kingdom by the Accession Declaration Act, 1910, but the later Act did not amend the text of the Act of Settlement. Section 2 of the Act of Settlement has been amended by the *Imperial Acts Application Ordinance 1986* to require that oath and declaration to be taken according to law so as to avoid the need to amend the Act, as in force in the Territory, whenever the form of the oath and declaration is altered in the United Kingdom.

5. Section 3, as in force on 25 July 1828, contained a paragraph relating to commissions for judges, the payment of judges' salaries and the removal of judges. This paragraph, to the extent (if any) to which it had effect in the Territory immediately before the date referred to in sub-section 2 (1) of the *Imperial Acts Application Ordinance 1986* ceased so to have effect by virtue of that Ordinance. Provision for these matters in respect of judges of the Supreme Court of the Territory is made by the *Australian Capital Territory Supreme Court Act 1933*.

#### **PART 13—1 ANNE C. 2, SECTIONS 4 AND 6 (1702)**

An Act for explaining a clause in an Act made at the Parliament begun and holden at Westminster the two and twentieth of November in the seventh year of the reign of our Sovereign Lord King William the Third intituled An Act for the better security of His Majesty's royal person and government

#### **The like enactment as to writs and proceeding in time to come**

4. No writ, plea or process or any other proceeding upon any indictment or information for any offence or misdemeanor or any writ, process or proceeding for any debt or account that shall be due or to be made to her Majesty her heirs or successors for or concerning any lands, tenements or other revenue that shall belong to her or them that shall be depending of the time of her Majesty's demise (whom God long preserve) or of any of her heirs or successors shall be discontinued or put without day by reason of her or any of their deaths or demises but shall continue and remain in full force and virtue to be proceeded upon notwithstanding any such death or demise.

**Act extended to Ireland, &c.**

6. All and singular the provisions, matters, clauses and things whatsoever contained in this Act shall extend and be construed to extend to the Kingdom of Ireland, to the islands of Jersey and Guernsey and to all her Majesty's dominions in America and elsewhere.

**NOTES**

1. The Act referred to in the Title is 7 Will. 3 c. 27, which was enacted by reason of threats against the Crown and government in 1695. Its provisions are either operation exhausted or obsolete.

2. Sections 1 and 2 of 1 Anne c. 2 continue patents granted by the Crown in force for 6 months after the death of the Sovereign. Section 3 allowed justices to continue in office, and for writs, etc., to continue in force, after the death of King William 3. Section 5 relates to legal proceedings pending on the death of the sovereign. Section 7 provides for the date of commencement. These sections have all been repealed in the United Kingdom. They are operation exhausted, obsolete or superseded by later laws in force in the Territory. To the extent (if any) to which they had effect in the Territory immediately before the date referred to in sub-section 2 (1) of the *Imperial Acts Application Ordinance 1986*, they ceased so to have effect by virtue of that Ordinance.

**PART 14—6 ANNE c. 41, SECTION 9 (1707)—THE SUCCESSION TO THE CROWN ACT, 1707**

An Act for the security of Her Majesty's person and government and of the succession to the crown of Great Britain in the protestant line

**Great seal, &c., to continue**

9. The great seal of Great Britain, the privy seal, privy signet and all other public seals in being at the time of the demise of her Majesty, her heirs and successors shall continue and be made use of as the respective seals of the successor until the successor shall give order to the contrary.

**NOTES**

1. Sections 1, 2 and 3 are inconsistent with Part II of the *Crimes Act 1914* and have been omitted by the *Imperial Acts Application Ordinance 1986*.

2. The preamble and section 4 to 8 and 10 to 30, to the extent (if any) to which they had effect in the Territory immediately before the date referred to in sub-section 2 (1) of the *Imperial Acts Application Ordinance 1986* ceased so to

apply by virtue of that Ordinance. They are concerned only with the Parliament of the United Kingdom and the Privy Council.

**PART 15—2 GEO. 2 c. 22, SECTION 13 (1729)**

An Act for the relief of debtors with respect to the imprisonment of their persons

**Mutual debts to be set one against the other**

**13.** Where there are mutual debts between the plaintiff and defendant, or if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other, and such matter may be given in evidence upon the general issue, or pleaded in bar, as the nature of the case shall require, so as at the time of his pleading the general issue, where any such debt of the plaintiff, his testator or intestate, is intended to be insisted on in evidence, notice shall be given of the particular sum or debt so intended to be insisted on, and upon what account it became due, or otherwise such matter shall not be allowed in evidence upon such general issue.

**NOTES**

**1.** The operation of this section in the Territory, particularly in so far as it deals with the practice and procedure for establishing the set-off of mutual debts, has probably been affected by the rules of court of the courts in the Territory.

**2.** Section 1 to 12 and 14 to 16, relate to procedures for the enforcement of debts that are obsolete or probably never applied in the Territory. To the extent (if any) to which they had effect in the Territory immediately before the date referred to in sub-section 2 (1) of the *Imperial Acts Application Ordinance 1986*, they ceased to have effect by virtue of that Ordinance.

**PART 16—8 GEO. 2 c. 24, SECTIONS 4 AND 5 (1735)**

An Act to explain and amend an Act passed in the second year of the reign of his present Majesty, intituled, an Act for the relief of debtors with respect to the imprisonment of their persons

**Clause in 2 Geo. 2 c. 22 relating to mutual debts made perpetual**

**4.** Whereas the provision for setting mutual debts one against the other contained in section 13 of the Act 2 Geo. 2 c. 22 is highly just and reasonable at all times: the said clause in the said Act, for setting mutual debts one against the other, shall be and remain in full force for ever.

**Exception**

5. By virtue of the said clause in the said Act contained, and hereby made perpetual, mutual debts may be set against each other, either by being pleaded in bar, or given in evidence on the general issue, in the manner therein mentioned, notwithstanding that such debts are deemed in law to be of a different nature; unless in cases where either of the said debts shall accrue by reason of a penalty contained in any bond or specialty; and in all cases where either the debt for which the action has been or shall be brought, or the debt intended to be set against the same has accrued, or shall accrue, by reason of any such penalty, the debt intended to be set off shall be pleaded in bar, in which plea shall be shown how much is truly and justly due on either side; and in case the plaintiff shall recover in any such action or suit, judgment shall be entered for no more than shall appear to be truly and justly due to the plaintiff, after one debt being set against the other as aforesaid.

**NOTES**

1. Sections 4 and 5 have been amended by the *Imperial Acts Application Ordinance 1986* to refer expressly to section 13 of Act 2 Geo. 2 c. 22 instead of to the clause in the first recited Act. Section 13 of Act 2 Geo. 2 c. 22 is printed in Part 15 of the *Imperial Acts Application Ordinance 1986*.

2. The operation of section 5, particularly in so far as it deals with the practice and procedure of the courts in the Territory, has probably been affected by the rules of court of those courts.

3. Sections 1, 2, 3 and 6 are operation exhausted or obsolete. To the extent (if any) to which they had effect in the Territory immediately before the date referred to in sub-section 2 (1) of the *Imperial Acts Application Ordinance 1986*, they ceased so to have effect by virtue of that Ordinance.

**PART 17—1 GEO. 3 C. 23, SECTION 1 (1760)**

An Act for rendering more effectual the provisions in an Act made in the twelfth and thirteenth years of the reign of his late majesty King William the Third (intituled, an Act for the further limitaion of the crown, and better securing the rights and liberties of the subject, relating to the commissions and salaries of judges)

**Judges continue in office notwithstanding demise of the Crown**

1. The commissions of judges for the time being shall be, continue and remain, in full force, during their good behaviour, notwithstanding the demise

of his Majesty (whom God long preserve) or of any of his heirs and successors; any law, usage or practice to the contrary thereof in any wise notwithstanding.

#### **NOTE**

Sections 2, 3 and 4 dealt with removal of judges from office and payment of their salaries. These matters are covered in the Territory by sections 7 and 8B of the *Australian Capital Territory Supreme Court Act 1933*.

#### **PART 18—12 GEO. 3 C. 11 (1772)—ROYAL MARRIAGES ACT, 1772**

An Act for the better regulating the future marriages of the Royal Family

Most Gracious Sovereign,

Whereas your Majesty, from your paternal affection to your own family, and from your royal concern for the future welfare of your people, and the honour and dignity of your crown was graciously pleased to recommend to your Parliament to take into their serious consideration, whether it might not be wise and expedient to supply the defect of the laws now in being, and by some new provision more effectually to guard the descendants of his late Majesty King George the Second (other than the issue of princesses who have married, or may hereafter marry, into foreign families) from marrying without the approbation of your Majesty, your heirs or successors, first had and obtained, we have taken this weighty matter into our serious consideration; And being sensible that marriages in the royal family are of the highest importance to the State, and that therefore the kings of this realm have ever been entrusted with the care and approbation thereof, and being thoroughly convinced of the wisdom and expediency of what your Majesty has thought fit to recommend upon this occasion;

#### **Certain royal marriages void**

**1.** No descendant of the body of his late Majesty King George the Second, male or female, (other than the issue of princesses who have married, or may hereafter marry, into foreign families) shall be capable of contracting matrimony without the previous consent of his Majesty, his heirs or successors, signified under the great seal, and declared in council (which consent, to preserve the memory thereof, is hereby directed to be set out in the licence and register of marriage, and to be entered into the books of the Privy Council); and that every marriage, or matrimonial contract, or any such descendant, without such consent first had and obtained, shall be null and void to all intents and purposes whatsoever.



### **Royal marriage after notice valid**

2. Provided always that in case any such descendant of the body of his late Majesty King George the Second, being above the age of 25 years, shall persist in his or her resolution to contract a marriage disapproved of, or dissented from, by the King, his heirs or successors; that then such descendant, upon giving notice to the King's Privy Council, which notice is hereby directed to be entered in the books thereof, may, at any time from the expiration of 12 calendar months after such notice given to the Privy Council as aforesaid, contract such marriage; and his or her marriage with the person before proposed and rejected, may be duly solemnized, without the previous consent of his Majesty, his heirs or successors; and such marriage shall be good, as if this Act had never been made, unless both Houses of Parliament of the United Kingdom shall, before the expiration of the said 12 months, expressly declare their disapprobation of such intended marriage.

### **NOTES**

1. Section 2 was amended by the *Imperial Acts Application Ordinance 1986* to make it clear that only the Parliament of the United Kingdom can disapprove the intended marriage.

2. Section 3, which made it an offence knowingly and wilfully to solemnize, or assist at or be present at the solemnization of, a marriage that contravenes sections 1 and 2 was repealed in the United Kingdom in 1967 and ceased to have effect in the Territory by virtue of the *Imperial Acts Application Ordinance 1986*.

3. The operation of the Royal Marriages Act, 1772 in the Territory may be affected by the *Marriage Act 1961* and section 51 of the *Family Law Act 1975* of the Commonwealth.

### **PART 19—9 GEO. 4 c. 83, SECTION 24 (1828)—AUSTRALIAN COURTS ACT, 1828**

An Act to provide for the administration of justice in New South Wales and Van Diemen's Land, and for the more effectual government thereof and for other purposes relating thereto.

### **Laws of England to be applied in the administration of justice**

24. All laws and statutes in force within the realm of England at the time of the passing of this Act (not being inconsistent herewith, or with any charter or letters patent or order in council which may be issued in pursuance hereof), shall be applied in the administration of justice in the courts of New South

Wales and Van Diemen's Land respectively, so far as the same can be applied within the said colonies; and as often as any doubt shall arise as to the application of any such laws or statutes in the said colonies respectively, it shall be lawful for the governors of the said colonies respectively, by and with the advice of the legislative councils of the said colonies respectively, by ordinances to be by them for that purpose made, to declare whether such laws or statutes shall be deemed to extend to such colonies, and to be in force within the same, or to make and establish such limitations and modifications of any such laws and statutes within the said colonies respectively as may be deemed expedient in that behalf: Provided always, that in the meantime and before any such ordinances shall be actually made, it shall be the duty of the said supreme courts, as often as any such doubts shall arise upon the trial of any information or action, or upon any other proceeding before them, to adjudge and decide as to the application of any such laws or statutes in the said colonies respectively.

#### NOTES

1. Sections 1 to 23 and 25 to 41, to the extent (if any) to which they had effect in the Territory immediately before the date referred to in sub-section 2 (1) of the *Imperial Acts Application Ordinance 1986*, ceased so to have effect by virtue of that Ordinance. They relate to courts in, and the government of, New South Wales and Victoria.

2. The Australian Courts Act, 1828 came into operation on 25 July 1828.

#### **PART 20—19 AND 20 VIC. C. 113 (1856)—FOREIGN TRIBUNALS EVIDENCE ACT, 1856**

An Act to provide for taking evidence in Her Majesty's Dominions in relation to civil and commercial matters pending before foreign tribunals

#### **Order for the examination of witnesses in relation to matters pending before a foreign tribunal**

1. Where, upon an application for this purpose, it is made to appear to any court or judge having authority under this Act that any court or tribunal of competent jurisdiction in a foreign country, before which any civil or commercial matter is pending, is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the jurisdiction of such first-mentioned court, or of the court to which such judge belongs, or of such judge, it shall be lawful for such court or judge to order the examination upon oath, upon interrogatories or otherwise, before any person or persons named in such order, of such witness or witnesses accordingly; and it shall be lawful for the said court or judge, by the same order, or for such court or judge, or any other

judge having authority under this Act, by any subsequent order to command the attendance of any person to be named in such order, for the purpose of being examined, or the production of any writings or other documents to be mentioned in such order, and to give all such directions as to the time, place and manner of such examination, and all other matters connected therewith, as may appear reasonable and just; and any such order may be enforced in like manner as an order made by such court or judge in a cause depending in such court or before such judge.

### **Certificate of ambassador, &c., sufficient evidence in support of application**

2. A certificate under the hand of the ambassador, minister, or other diplomatic agent of any foreign power, received as such by Her Majesty, or in case there be no such diplomatic agent, then of the consul general or consul of any such foreign power in Australia, received and admitted as such by Her Majesty, that any matter in relation to which an application is made under this Act is a civil or commercial matter pending before a court or tribunal in the country of which he is the diplomatic agent or consul having jurisdiction in the matter so pending, and that such court or tribunal is desirous of obtaining the testimony of the witness or witnesses to whom the application relates, shall be evidence of the matters so certified; but where no such certificate is produced, other evidence to that effect shall be admissible.

### **Examination of witnesses to be taken upon oath**

3. It shall be lawful for every person authorized to take the examination of witnesses by any order made in pursuance of this Act to take all such examinations upon the oath of the witnesses, or affirmation in cases where affirmation is allowed by law instead of oath, to be administered by the person so authorized.

### **Expenses of witnesses**

4. Provided always, that every person whose attendance shall be so required shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial.

### **Extent of right of refusal to answer questions and to produce documents**

5. Provided also, that every person examined under any order made under this Act shall have the like right to refuse to answer questions tending to criminate himself, and other questions, which a witness in any cause pending in the court by which or by a judge whereof or before the judge by whom the order for examination was made would be entitled to; and that no person shall

be compelled to produce under such order as aforesaid any writing or other document that he would not be compellable to produce at a trial of such a cause.

### **Certain courts and judges to have authority under this Act**

6. Her Majesty's Superior Courts of Common Law at Westminster and in Dublin respectively, the Court of Session in Scotland, and any Supreme Court in any of Her Majesty's colonies or possessions abroad, and any judge of any such court, and every judge in any such colony or possession who by any Order of Her Majesty in Council may be appointed for this purpose, shall respectively be courts and judges having authority under this Act.

### **NOTES**

1. The Foreign Tribunals Evidence Act, 1856 was amended before 3 September 1939 in the United Kingdom by the Statute Law Revision and Civil Procedure Act, 1881 and by the Perjury Act, 1911. The amendments so made have been incorporated in the text of the Foreign Tribunals Evidence Act, 1856 in Part 20. To the extent (if any) to which the amendments so made do not apply in the Territory of their own force, the like amendments are made by the *Imperial Acts Application Ordinance 1986*.

2. Section 2 has been amended by the *Imperial Acts Application Ordinance 1986* to allow consuls in Australia to give certificates under the section.

### **PART 21—22 VIC. C. 20 (1859)—EVIDENCE BY COMMISSION ACT, 1859**

An Act to provide for taking evidence in suits and proceedings pending before tribunals in Her Majesty's Dominions in places out of the jurisdiction of such tribunals

### **Examination of witnesses out of the jurisdiction of any tribunal in Her Majesty's possessions in relation to any suit pending before such tribunal**

1. Where upon an application for this purpose it is made to appear to any court or judge having authority under this Act that any court or tribunal of competent jurisdiction in Her Majesty's dominions has duly authorized, by commission, order, or other process, the obtaining the testimony in or in relation to any action, suit, or proceeding pending in or before such court or tribunal of any witness or witnesses out of the jurisdiction of such court or tribunal, and within the jurisdiction of such first-mentioned court, or of the court to which such judge belongs, or of such judge, it shall be lawful for such court or judge to order the examination before the person or persons appointed,

and in manner and form directed by such commission, order, or other process as aforesaid, of such witness or witnesses according; and it shall be lawful for the said court or judge by the same order, or for such court of judge, or any other judge having authority under this Act, by any subsequent order, to command the attendance of any person to be named in such order for the purpose of being examined, or the production of any writings or other documents to be mentioned in such order, and to give all such directions as to the time, place and manner of such such examination, and all other matters connected therewith, as may appear reasonable and just; and any such order may be enforced, and any disobedience thereof punished, in like manner as in case of an order made by such court or judge in a cause depending in such court or before such judge.

### **Payment of expenses**

3. Provided always, that every person whose attendance shall be so ordered shall be entitled to the like conduct money, and payment for expenses and loss of time, as upon attendance at a trial.

### **Power to persons to refuse to answer questions or to produce documents**

4. Provided also, that every person examined under any such commission, order, or other process as aforesaid, shall have the like right to refuse to answer questions tending to criminate himself, and other questions which a witness in any cause pending in the court by which, or by a judge whereof, or before the judge by whom the order for examination was made, would be entitled to; and that no person shall be compelled to produce under any such order as aforesaid any writing or other document that he would not be compellable to produce at a trial of such a cause.

### **What courts and judges to have authority under this Act**

5. Her Majesty's Superior Courts of Common Law at Westminster and in Dublin respectively, the Court of Session in Scotland, and any Supreme Court in any of Her Majesty's colonies or possessions abroad, and any judge of any such court, and every judge in any such colony or possession who, by any order of Her Majesty in Council, may be appointed for this purpose, shall respectively be courts and judges having authority under this Act.

### **Power to frame rules, &c., for giving effect to provisions of this Act**

6. It shall be lawful for the Lord Chancellor of Great Britain, with the assistance of two of the judges of the Courts of Common Law at Westminster, so far as relates to England, and for two of the judges of the Court of Session, so far as relates to Scotland, and for the chief or only judge of the Supreme

Court in any of Her Majesty's colonies or possessions abroad, so far as relates to such colony or possession, to frame such rules and orders as shall be necessary or proper for giving effect to the provisions of this Act, and regulating the procedure under the same.

### NOTES

1. The Evidence by Commission Act, 1859 was amended before 3 September 1939 in the United Kingdom by the Perjury Act, 1911. The amendments so made have been incorporated in the text of the Evidence by Commission Act, 1859 in Part 21.

2. Section 2 was repealed by the Perjury Act, 1911. If the repeal effected by that Act did not have force and effect in the Territory, then the section is repealed by the *Imperial Acts Application Ordinance 1986*.

3. The provision in section 6 concerning the making of rules and orders in relation to Ireland was omitted in the United Kingdom by the Northern Ireland Act, 1962. The provision, in so far as it was in force in the Territory, was omitted by the *Imperial Acts Application Ordinance 1986*.

### **PART 22—22 AND 23 VIC. C. 63 (1859)—BRITISH LAW ASCERTAINMENT ACT, 1859**

An Act to afford facilities for the more certain ascertainment of the law administered in one part of Her Majesty's Dominions when pleaded in the Courts of another part thereof

#### **Courts in one part of Her Majesty's dominions may remit a case for the opinion in law of a court in any other part thereof**

1. If, in any action depending in any court within Her Majesty's dominions, it shall be the opinion of such court that it is necessary or expedient for the proper disposal of such action to ascertain the law applicable to the facts of the case as administered in any other part of Her Majesty's dominions on any point on which the law of such other part of Her Majesty's dominions is different from that in which the court is situate, it shall be competent to the court in which such action may depend to direct a case to be prepared setting forth the facts, as these may be ascertained by verdict of a jury or other mode competent, or may be agreed upon by the parties, or settled by such person or persons as may have been appointed by the court for that purpose in the event of the parties not agreeing; and upon such case being approved of by such court or a judge thereof, they shall settle the questions of law arising out of the same on which they desire to have the opinion of another court, and shall pronounce

an order remitting the same, together with the case, to the court in such other part of Her Majesty's dominions, being one of the superior courts thereof, whose opinion is desired upon the law administered by them as applicable to the facts set forth in such case, and desiring them to pronounce their opinion on the questions submitted to them in the terms of the Act; and it shall be competent to any of the parties to the action to present a petition to the court whose opinion is to be obtained, praying such last-mentioned court to hear parties or their counsel, and to pronounce their opinion thereon in terms of this Act, or to pronounce their opinion without hearing parties or counsel; and the court to which such petition shall be presented shall, if they think fit, appoint an early day for hearing parties or their counsel on such case, and shall thereafter pronounce their opinion upon the questions of law as administered by them which are submitted to them by the court; and in order to their pronouncing such opinion they shall be entitled to take such further procedure thereupon as to them shall seem proper.

#### **Certified copies of opinion to be given**

2. Upon such opinion being pronounced, a copy thereof, certified by an officer of such court, shall be given to each of the parties to the action by whom the same shall be required, and shall be deemed and held to contain a correct record of such opinion.

#### **Opinion to be applied by the court making the remit, &c.**

3. It shall be competent to any of the parties to the action, after having obtained such certified copy of such opinion, to lodge the same with an officer of the court in which the action may be depending, who may have the official charge thereof, together with a notice of motion, setting forth that the party will, on a certain day named in such notice, move the court to apply the opinion contained in such certified copy thereof to the facts set forth in the case hereinbefore specified; and the said court shall thereupon apply such opinion to such facts, in the same manner as if the same had been pronounced by such court itself upon a case reserved for opinion of the court, or upon special verdict of a jury; or the said last-mentioned court shall, if it think fit, when the said opinion has been obtained before trial, order such opinion to be submitted to the jury with the other facts of the case as evidence, or conclusive evidence, as the court may think fit, of the foreign law therein stated; and the said opinion shall be so submitted to the jury.

#### **Interpretation of terms**

5. In the construction of this Act, the word "action" shall include every judicial proceeding instituted in any court, civil, criminal or ecclesiastical; and

the words “Superior Courts” shall include, in England, the Superior Courts of Law at Westminster, the Lord Chancellor, the Lords Justices, the Master of the Rolls or any Vice Chancellor, the Judge of the Court of Admiralty, the Judge Ordinary of the Court of Divorce and Matrimonial Causes, and the Judge of the Court of Probate; in Scotland, the High Court of Justiciary, and the Court of Session acting by either of its divisions; in Ireland, the Superior Courts of Law at Dublin, the Master of the Rolls, and the Judge of the Admiralty Court; and in any other part of Her Majesty’s dominions, the Superior Courts of Law or Equity therein.

#### NOTE

Section 4 conferred certain rights of appeal to the Privy Council or House of Lords. The section may have ceased to operate in the Territory by reason of the operation of the *Privy Council (Limitation of Appeals) Act 1968*, the *Privy Council (Appeals from the High Court) Act 1975* and the *Australia Act 1986*. To the extent (if any) to which it had effect in the Territory immediately before the date referred to in sub-section 2 (1) of the *Imperial Acts Application Ordinance 1986*, section 4 ceased so to have effect by virtue of that Ordinance.

### **PART 23—28 AND 29 VIC. c. 63 (1865)—COLONIAL LAWS VALIDITY ACT, 1865**

An Act to remove doubts as to the validity of colonial laws

#### **Interpretation**

1. The term “colony” shall in this Act include all of Her Majesty’s possessions abroad in which there shall exist a legislature, as hereinafter defined, except the Channel Islands, the Isle of Man and such Territories as may for the time being be vested in Her Majesty under or by virtue of any Act of Parliament for the government of India:

The terms “legislature” and “colonial legislature” shall severally signify the authority, other than the Imperial Parliament or Her Majesty in Council, competent to make laws for any colony:

The term “representative legislature” shall signify any colonial legislature which shall comprise a legislative body of which one-half are elected by inhabitants of the colony:

The term “colonial law” shall include laws made for any colony either by such legislature as aforesaid or by Her Majesty in Council:



An Act of Parliament, or any provision thereof, shall, in construing this Act, be said to extend to any colony when it is made applicable to such colony by the express words or necessary intendment of any Act of Parliament:

The term “governor” shall mean the officer lawfully administering the government of any colony:

The term “letters patent” shall mean letters patent under the Great Seal of the United Kingdom of Great Britain and Ireland.

### **Colonial laws, when void for repugnancy**

2. Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.

### **Colonial laws, when not void for repugnancy**

3. No colonial law shall be or be deemed to have been void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, order, or regulation as aforesaid.

### **Colonial laws not void for inconsistency with instructions to governors**

4. No colonial law passed with the concurrence of or assented to by the governor of any colony, or to be hereafter so passed or assented to, shall be or be deemed to have been void or inoperative by reason only of any instructions with reference to such law or the subject thereof which may have been given to such governor by or on behalf of Her Majesty, by any instrument other than the letters patent or instrument authorizing such governor to concur in passing or to assent to laws for the peace, order, and good government of such colony, even though such instructions may be referred to in such letters patent or last-mentioned instrument.

## **NOTES**

1. By the *Statute of Westminster Adoption Act 1942* of the Commonwealth, the Commonwealth Parliament ceased to be bound by this Act after 3 September 1939. Sub-section 3 (1) of the *Australia Act 1986* of the Commonwealth provides that the Colonial Laws Validity Act, 1865 does not

apply to a law made, on or after 3 March 1986, by the Parliament of a State. The Act is of historical and legal significance and its provisions may be relevant in determining which New South Wales Acts continued in force in the Territory by virtue of the *Seat of Government Acceptance Act 1909*.

2. Sections 5 and 6, to the extent (if any) to which they had effect in the Territory immediately before the date referred to in sub-section 2 (1) of the *Imperial Acts Application Ordinance 1986* ceased so to have effect by virtue of that Ordinance. They dealt with the establishment of courts in a colony, the amendment of the constitution of a colony and evidence of the making of colonial laws. They are inconsistent with other laws of the Territory.

3. Section 7 related to South Australia and never had effect in the Territory.

#### **PART 24—37 AND 38 VIC. c. 27 (1874)—THE COURTS (COLONIAL) JURISDICTION ACT, 1874**

An Act to regulate the sentences imposed by colonial courts where jurisdiction to try is conferred by Imperial Acts

##### **Short title**

1. This Act may be cited for all purposes as The Courts (Colonial) Jurisdiction Act, 1874.

##### **Definition of term “colony”**

2. For the purposes of this Act,

The term “colony” shall not include any places within the United Kingdom, the Isle of Man or The Channel Islands, but shall include such territories as may for the time being be vested in Her Majesty by virtue of an Act of Parliament for the government of India and any plantation, territory or settlement situate elsewhere within Her Majesty’s dominions, and subject to the same local government; and for the purposes of this Act, all plantations, territories and settlements under a central legislature shall be deemed to be one colony under the same local government.

##### **At trials in any colonial courts by virtue of Imperial Acts, courts empowered to pass sentences as if crimes had been committed in the colony**

3. When, by virtue of any Act of Parliament now or hereafter to be passed, a person is tried in a court of any colony for any crime or offence committed upon the high seas or elsewhere out of the territorial limits of such colony and

of the local jurisdiction of such court, or if committed within such local jurisdiction made punishable by that Act, such person shall, upon conviction, be liable to such punishment as might have been inflicted upon him if the crime or offence had been committed within the limits of such colony and of the local jurisdiction of the court, and to no other, anything in any Act to the contrary notwithstanding:

Provided always, that if the crime or offence is a crime or offence not punishable by the law of the colony in which the trial takes place, the person shall, on conviction, be liable to such punishment (other than capital punishment) as shall seem to the court most nearly to correspond to the punishment to which such person would have been liable in case such crime or offence had been tried in England.

#### **NOTE**

Section 2A, which was inserted in 1937, related only to the application of the Act to India. The section, to the extent (if any) to which it had effect in the Territory before the date referred to in sub-section 2 (1) of the *Imperial Acts Application Ordinance 1986*, ceased so to have effect by virtue of that Ordinance.

### **PART 25—41 AND 42 VIC. C. 73 (1878)—TERRITORIAL WATERS JURISDICTION ACT, 1878**

An Act to regulate the law relating to the trial of offences committed on the sea within a certain distance of the coasts of her Majesty's Dominions.

Whereas the rightful jurisdiction of Her Majesty, her heirs and successors, extends and has always extended over the open seas adjacent to the coasts of the United Kingdom and of all other parts of Her Majesty's dominions to such a distance as is necessary for the defence and security of such dominions:

And whereas it is expedient that all offences committed on the open sea within a certain distance of the coasts of the United Kingdom and of all other parts of Her Majesty's dominions, by whomsoever committed, should be dealt with according to law:

#### **Short title**

1. This Act may be cited as the Territorial Waters Jurisdiction Act, 1878.

#### **Amendment of law as to jurisdiction of the Admiral**

2. An offence committed by a person, whether he is or is not a subject of Her Majesty, on the open sea within the territorial waters of Her Majesty's

dominions, is an offence within the jurisdiction of the Admiral, although it may have been committed on board or by means of a foreign ship, and the person who committed such offence may be arrested, tried, and punished accordingly.

### **Restriction on institution of proceedings for punishment of offence**

3. Proceedings for the trial and punishment of a person who is not a subject of Her Majesty, and who is charged with any such offence as is declared by this Act to be within the jurisdiction of the Admiral, shall not be instituted in any court of the United Kingdom, except with the consent of one of Her Majesty's Principal Secretaries of State, and on his certificate that the institution of such proceedings is in his opinion expedient, and shall not be instituted in the Australian Capital Territory except with the leave of the Governor-General of the Commonwealth of Australia and on his certificate that it is expedient that such proceedings should be instituted.

### **Provisions as to procedure**

4. On the trial of any person who is not a subject of Her Majesty for an offence declared by this Act to be within the jurisdiction of the Admiral, it shall not be necessary to aver in any indictment or information on such trial that such consent or certificate of the Secretary of State or Governor-General of the Commonwealth of Australia as is required by this Act has been given, and the fact of the same having been given shall be presumed unless disputed by the defendant at the trial; and the production of a document purporting to be signed by one of Her Majesty's Principal Secretaries of State as respects the United Kingdom, and by the Governor-General of the Commonwealth of Australia as respects the Australian Capital Territory and containing such consent and certificate, shall be sufficient evidence for all the purposes of this Act of the consent and certificate required by this Act.

Proceedings before a justice of the peace or other magistrate previous to the committal of an offender for trial or to the determination of the justice or magistrate that the offender is to be put upon his trial shall not be deemed proceedings for the trial of the offence committed by such offender for the purposes of the said consent and certificate under this Act.

### **Saving as to jurisdiction**

5. Nothing in this Act contained shall be construed to be in derogation of any rightful jurisdiction of Her Majesty, her heirs or successors, under the law of nations, or to affect or prejudice any jurisdiction conferred by Act of Parliament or now by law existing in relation to foreign ships or in relation to persons on board such ships.

### **Saving as to piracy**

6. This Act shall not prejudice or affect the trial in manner heretofore in use of any act of piracy as defined by the law of nations, or affect or prejudice any law relating thereto; and where any act of piracy as defined by the law of nations is also any such offence as is declared by this Act to be within the jurisdiction of the Admiral, such offence may be tried in pursuance of this Act, or in pursuance of any other Act of Parliament, law or custom relating thereto.

### **Interpretation**

7. In this Act, unless there is something inconsistent in the context, the following expressions shall respectively have the meanings hereinafter assigned to them; (that is to say)

“The jurisdiction of the Admiral”, as used in this Act, includes the jurisdiction of the Admiralty of England and Ireland, or either of such jurisdictions as used in any Act of Parliament; and for the purpose of arresting any person charged with an offence declared by this Act to be within the jurisdiction of the Admiral, the territorial waters adjacent to the United Kingdom, or any other part of Her Majesty’s dominions, shall be deemed to be within the jurisdiction of any judge, magistrate, or officer having power within such United Kingdom, or other part of Her Majesty’s dominions, to issue warrants for arresting or to arrest persons charged with offences committed within the jurisdiction of such judge, magistrate or officer:

“United Kingdom” includes the Isle of Man, the Channel Islands and other adjacent islands:

“The territorial waters of Her Majesty’s dominions”, in reference to the seas, means such part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of Her Majesty’s dominions, as is deemed by international law to be within the territorial sovereignty of Her Majesty; and for the purpose of any offence declared by this Act to be within the jurisdiction of the Admiral, any part of the open sea within one marine league of the coast measured from low-water mark shall be deemed to be open sea within the territorial waters of Her Majesty’s dominions:

“Governor-General of the Commonwealth of Australia” means the Governor-General of the Commonwealth of Australia, or the person for the time being administering the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council of the Commonwealth of Australia:

“Offence” as used in this Act means an act, neglect or default of such a description as would, if committed within the body of a county in England, be punishable on indictment according to the law of England for the time being in force:

“Ship” includes every description of ship, boat or other floating craft:

“Foreign ship” means any ship which is not a British ship.

#### **NOTE**

This Act has been amended by the *Imperial Acts Application Ordinance 1986*, as follows:

- (a) Section 3 has been amended to state expressly that it is the leave of the Governor-General that is necessary in respect of proceedings in the Australian Capital Territory.
- (b) A consequential amendment has been made to section 4.
- (c) The definition of “Governor” has been omitted from section 7 as that expression is not used in the Act as amended by the *Imperial Acts Application Ordinance 1986*.
- (d) A new definition of “Governor-General” has been inserted in section 7 to ensure that the expression has the meaning ordinarily given to it in laws of the Territory.

#### **PART 26—48 AND 49 VIC. c. 74 (1885)—EVIDENCE BY COMMISSION ACT, 1885**

An Act to amend the law relating to taking evidence by commission in India and the Colonies, and elsewhere in Her Majesty’s Dominions

##### **Short title**

1. This Act may be cited as the Evidence by Commission Act, 1885.

##### **Power to courts to nominate examiner in civil proceedings**

2. Where in any civil proceeding in any court of competent jurisdiction an order for the examination of any witness or person has been made, and a commission, mandamus, order, or request for the examination of such witness or person is addressed to any court, or to any judge of a court, in India or the Colonies, or elsewhere in Her Majesty’s dominions, beyond the jurisdiction of the court ordering the examination, it shall be lawful for such court, or the chief judge thereof, or such judge, to nominate some fit person to take such

examination, and any deposition or examination taken before an examiner so nominated shall be admissible in evidence to the same extent as if it had been taken by or before such court or judge.

**Power in criminal proceedings to nominate judge or magistrate to take depositions**

3. Where in any criminal proceeding a mandamus or order for the examination of any witness or person is addressed to any court, or to any judge of a court, in India or the Colonies, or elsewhere in Her Majesty's dominions, beyond the jurisdiction of the court ordering the examination, it shall be lawful for such court, or the chief judge thereof, or such judge, to nominate any judge of such court, or any judge of an inferior court, or magistrate within the jurisdiction of such first-mentioned court, to take the examination of such witness or person, and any deposition or examination so taken shall be admissible in evidence to the same extent as if it had been taken by or before the court or judge to whom the mandamus or order was addressed.

**Conduct money, &c.**

4. The provisions of the Evidence by Commission Act, 1859, as amended by this Act, shall apply to proceedings under this Act.

**Amendment of 22 Vic. c. 20, as to costs**

5. The power to make rules conferred by section six of the Evidence by Commission Act, 1859, shall be deemed to include a power to make rules with regard to all costs of or incidental to the examination of any witness or person, including the remuneration of the examiner, if any, whether the examination be ordered pursuant to that Act or under this or any other Act for the time being in force relating to the examination of witnesses beyond the jurisdiction of the court ordering the examination.

**Oath or affirmation of witness**

6. When pursuant to any such commission, mandamus, order or request as in this Act referred to any witness or person is to be examined in any place beyond the jurisdiction of the court ordering the examination, such witness or person may be examined on oath, affirmation or otherwise, according to the law in force in the place where the examination is taken, and any deposition or examination so taken shall be as effectual for all purposes as if the witness or person had been examined on oath before a person duly authorised to administer an oath in the court ordering the examination.

**NOTE**

Act 22 Vic. c. 20, the Evidence by Commission Act, 1859, is printed in Part 21 of Schedule 3 to the *Imperial Acts Application Ordinance 1986*.

**PART 27—53 AND 54 VIC. c. 27 (1890)—COLONIAL COURTS OF ADMIRALTY ACT, 1890**

An Act to amend the law respecting the exercise of admiralty jurisdiction in Her Majesty's Dominions and elsewhere out of the United Kingdom

**Short title**

1. This Act may be cited as the Colonial Courts of Admiralty Act, 1890.

**Colonial Courts of Admiralty**

2. (1) Every court of law in a British possession, which is for the time being declared in pursuance of this Act to be a court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a court of Admiralty, with the jurisdiction in this Act mentioned, and may for the purpose of that jurisdiction exercise all the powers which it possesses for the purpose of its other civil jurisdiction, and such court in reference to the jurisdiction conferred by this Act is in this Act referred to as a Colonial Court of Admiralty. Where in a British possession the Governor is the sole judicial authority, the expression "court of law" for the purposes of this section includes such Governor.

(2) The jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be over the like places, persons, matters, and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to international law and the comity of nations.

(3) Subject to the provision of this Act any enactment referring to a Vice-Admiralty Court, which is contained in an Act of the Imperial Parliament or in a colonial law, shall apply to a Colonial Court of Admiralty, and be read as if the expression "Colonial Court of Admiralty" were therein substituted for "Vice-Admiralty Court" or for other expressions respectively referring to such Vice-Admiralty Courts or the judge thereof, and the Colonial Court of Admiralty shall have jurisdiction accordingly.

Provided as follows:—



- (a) Any enactment in an Act of the Imperial Parliament referring to the Admiralty jurisdiction of the High Court in England, when applied to a Colonial Court of Admiralty in a British possession, shall be read as if the name of that possession were therein substituted for England and Wales; and
- (b) A Colonial Court of Admiralty shall have under The Naval Prize Act, 1864 and under the Slave Trade Act, 1873 and any enactment relating to prize or the slave trade, the jurisdiction thereby conferred on a Vice-Admiralty Court and not the jurisdiction thereby conferred exclusively on the High Court of Admiralty or the High Court of Justice; but, unless for the time being duly authorized, shall not by virtue of this Act exercise any jurisdiction under the Naval Prize Act 1864 or otherwise in relation to prize; and
- (c) A Colonial Court of Admiralty shall not have jurisdiction under this Act to try or punish a person for an offence which according to the law of England is punishable on indictment; and
- (d) A Colonial Court of Admiralty shall not have any greater jurisdiction in relation to the laws and regulations relating to Her Majesty's Navy at sea, or under any Act providing for the discipline of Her Majesty's Navy, than may be from time to time conferred on such court by Order in Council.

(4) Where a Court in a British possession exercises in respect of matters arising outside the body of a county or other like part of a British possession any jurisdiction exercisable under this Act, that jurisdiction shall be deemed to be exercised under this Act and not otherwise.

### **Power of colonial legislature as to admiralty jurisdiction**

3. The legislature of a British possession may by any Colonial law—

- (a) declare any court of unlimited civil jurisdiction, whether original or appellate, in that possession to be a Colonial Court of Admiralty, and provide for the exercise by such court of its jurisdiction under this Act, and limit territorially, or otherwise, the extent of such jurisdiction; and
- (b) confer upon any inferior or subordinate court in that possession such partial or limited Admiralty jurisdiction under such regulations and with such appeal (if any) as may seem fit:

Provided that any such Colonial law shall not confer any jurisdiction which is not by this Act conferred upon a Colonial Court of Admiralty.

### **Local admiralty appeal**

5. Subject to rules of court under this Act, judgements of a court in a British possession given or made in the exercise of the jurisdiction conferred on it by this Act, shall be subject to the like appeal, if any, as judgements of the court in the exercise of its ordinary civil jurisdiction, and the court having cognizance of such appeal shall for the purpose thereof possess all the jurisdiction by this Act conferred upon a Colonial Court of Admiralty.

### **Rules of court**

7. (1) Rules of court for regulating the procedure and practice (including fees and costs) in a court in a British possession in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same authority and in the same manner as rules touching the practice, procedure, fees and costs in the said court in the exercise of its ordinary civil jurisdiction respectively are made.

(3) Such rules may provide for the exercise of any jurisdiction conferred by this Act by the full court, or by any judge or judges thereof, and subject to any rules, where the ordinary civil jurisdiction of the court can in any case be exercised by a single judge, any jurisdiction conferred by this Act may in the like case be exercised by a single judge.

### **Droits of Admiralty and of the Crown**

8. (1) Subject to the provisions of this section nothing in this Act shall alter the application of any droits of Admiralty or droits of or forfeitures to the Crown in a British possession.

(2) It shall be lawful for Her Majesty the Queen in Council by Order to direct that, subject to any conditions, exceptions, reservations and regulations contained in the Order, the said droits and forfeitures condemned by a court in a British possession shall form part of the revenues of that possession either for ever or for such limited term or subject to such revocation as may be specified in the Order.

(3) If and so long as any of such droits or forfeitures by virtue of this or any other Act form part of the revenues of the said possession the same shall, subject to the provisions of any law for the time being applicable thereto, be notified, accounted for and dealt with in manner directed by the Government of the possession.

**Power to appoint a vice-admiral**

10. Nothing in this Act shall affect any power of appointing a vice-admiral in and for any British possession or any place therein; and whenever there is not a formally appointed vice-admiral in a British possession or any place therein, the Governor of the possession shall be *ex-officio* vice-admiral thereof.

**Application of Act to courts under Foreign Jurisdiction Acts**

12. It shall be lawful for Her Majesty the Queen in Council by Order to direct that this Act shall, subject to the conditions, exceptions and qualifications (if any) contained in the Order, apply to any Court established by Her Majesty for the exercise of jurisdiction in any place out of Her Majesty's dominions which is named in the Order as if that Court were a Colonial Court of Admiralty, and to provide for carrying into effect such application.

**Rules for procedure in slave trade matters**

13. (1) It shall be lawful for Her Majesty the Queen in Council by Order to make rules as to the practice and procedure (including fees and costs) to be observed in and the returns to be made from Colonial Courts of Admiralty and Vice-Admiralty Courts in the exercise of their jurisdiction in matters relating to the slave trade.

(2) Except when inconsistent with such Order in Council, the rules of court for the time being in force in a Colonial Court of Admiralty or Vice-Admiralty Court shall, so far as applicable, extend to proceedings in such court in matters relating to the slave trade.

**Orders in Council**

14. It shall be lawful for Her Majesty in Council from time to time to make Orders for the purposes authorized by this Act, and to revoke and vary such Orders, and every such Order while in operation shall have effect as if it were part of this Act.

**Interpretation**

15. In the construction of this Act, unless the context otherwise requires—

The expression "representative legislature" means, in relation to a British possession, a legislature comprising a legislative body of which at least one-half are elected by inhabitants of the British possession.

The expression "unlimited civil jurisdiction" means civil jurisdiction unlimited as to the value of the subject-matter at issue, or as to the amount that may be claimed or recovered.

The expression “judgment” includes a decree, order and sentence.

The expression “appeal” means any appeal, rehearing or review.

The expression “Colonial law” means any Act, ordinance or other law having the force of legislative enactment in a British possession and made by any authority, other than the Imperial Parliament or Her Majesty in Council, competent to make laws for such possession.

### **Commencement of Act**

**16. (1)** This Act shall, save as otherwise in this Act provided, come into force in every British possession on the first day of July one thousand eight hundred and ninety-one.

Provided that—

- (a) This Act shall not come into force in any of the British possessions named in the First Schedule to this Act until Her Majesty so directs by Order in Council, and until the day named in that behalf in such Order; and
- (b) If before any day above-mentioned rules of court for the Colonial Court of Admiralty in any British possession have been approved by Her Majesty in Council, this Act may be proclaimed in that possession by the Governor thereof, and on such proclamation shall come into force on the day named in the proclamation.

**(2)** The day upon which this Act comes into force in any British possession shall, as regards that British possession, be deemed to be the commencement of this Act.

**(3)** If, on the commencement of this Act in any British possession, rules of court have not been approved by Her Majesty in pursuance of this Act, the rules in force at such commencement under the Vice-Admiralty Courts Act 1863, including any rules made with reference to proceedings instituted on behalf of Her Majesty’s ships, shall, so far as applicable, have effect in the Colonial Court or Courts of Admiralty of such possession, as rules of court under this Act, and may be revoked and varied accordingly; and all fees payable under such rules may be taken in such manner as the Colonial Court may direct, so however that the amount of each such fee shall so nearly as practicable be paid to the same officer or person who but for the passing of this Act would have been entitled to receive the same in respect of like business. So far as any such rules are inapplicable or do not extend, the rules of court for the exercise by a

court of is ordinary civil jurisdiction shall have effect as rules for the exercise by the same court of the jurisdiction conferred by this Act.

(4) At any time after the passing of this Act any Colonial law may be passed, and any Vice-Admiralty Court may be established and jurisdiction vested in such Court, but any such law, establishment or vesting shall not come into effect until the commencement of this Act.

### **Abolition of Vice-Admiralty Courts**

17. On the commencement of this Act in any British possession, but subject to the provisions of this Act, every Vice-Admiralty Court in that possession shall be abolished; subject as follows:

- (1) All judgments of such Vice-Admiralty Court shall be executed and may be appealed from in like manner as if this Act had not passed, and all appeals from any Vice-Admiralty Court pending at the commencement of this Act shall be heard and determined, and the judgment thereon executed as nearly as may be in like manner as if this Act had not passed:
- (2) All proceedings pending in the Vice-Admiralty Court in any British possession at the commencement of this Act shall, notwithstanding the repeal of any enactment by this Act, be continued in a Colonial Court of Admiralty of the possession in manner directed by rules of court, and, so far as no such rule extends, in like manner, as nearly as may be, as if they had been originally begun in such court:
- (3) Where any person holding an office, whether that of judge, registrar or marshal, or any other office in any such Vice-Admiralty Court in a British possession, suffers any pecuniary loss in consequence of the abolition of such court, the Government of the British possession, on complaint of such person, shall provide that such person shall receive reasonable compensation (by way of an increase of salary or a capital sum, or otherwise) in respect of his loss, subject nevertheless to the performance, if required by the said Government, of the like duties as before such abolition:
- (4) All books, papers, documents, office furniture and other things at the commencement of this Act belonging, or appertaining to, any Vice-Admiralty Court shall be delivered over to the proper officer of the Colonial Court of Admiralty or be otherwise dealt with in such manner as, subject to any directions from Her Majesty, the Governor may direct:

- (5) Where, at the commencement of this Act in a British possession, any person holds a commission to act as advocate in any Vice-Admiralty Court abolished by this Act, either for Her Majesty or for the Admiralty, such commission shall be of the same avail in every court of the same British possession exercising jurisdiction under this Act, as if such court were the court mentioned or referred to in such commission.

## SCHEDULES

### FIRST SCHEDULE

Sections 16

#### BRITISH POSSESSIONS IN WHICH OPERATION OF ACT IS DELAYED

New South Wales

Victoria

St. Helena

British Honduras

### NOTES

1. Section 4, and so much of section 7 as required the approval of the Crown in Council to any rules of court made under section 7, ceased to have effect in the Commonwealth as from 3 September 1939 (*see* section 6 of the Statute of Westminster, 1931). Section 4 has been omitted and section 7 amended accordingly.

2. Section 6, in its application in the Territory, was repealed by sub-section 11 (2) of the *Australia Act 1986* of the Commonwealth.

3. The Colonial Courts of Admiralty Act, 1890 came into force in New South Wales on 1 July 1911 (*see* Statutory Rules and Orders 1911, No. 440, of the United Kingdom). Thus, the jurisdiction conferred on the Supreme Court of the Territory by paragraph 11 (a) of the *Australian Capital Territory Supreme Court Act 1933* did not include the jurisdiction conferred by this Act on the Supreme Court of New South Wales on or after 1 July 1911.

4. Section 8 has been amended by the *Imperial Acts Application Ordinance 1986* to make it clear that droits of Admiralty, and droits of, or forfeitures to, the Crown, that form part of the revenues of the Commonwealth shall be dealt with as directed by the Administration of the Territory and not by the Treasury of the United Kingdom.

5. Section 9, which enabled the Admiralty to establish Vice-Admiralty Courts in a British possession, ceased to be in force in the Territory by virtue of the *Imperial Acts Application Ordinance 1986*.

6. Section 11 was omitted by the *Imperial Acts Application Ordinance 1986*. Sub-section (1) dealt with the application of the Act in the Channel Islands. Sub-section (2) conferred power on the Queen in Council to declare that the jurisdiction conferred by the Act on a Colonial Court of Admiralty should not vest in a court in a possession that did not have a representative legislative.

7. Sub-section 13 (1) has been amended by omitting the reference to East Africa Courts, and sub-section 13 (3), which deals with appeals from judgments of an East African Court, has been omitted by the *Imperial Acts Application Ordinance 1986*.

8. The definition of “local appeal” has been omitted from section 15 by the *Imperial Acts Application Ordinance 1986*. The definition is unnecessary as appeals from the Supreme Court of the Territory are regulated by the laws of the Commonwealth.

9. Sub-section 16 (3) has been amended by the *Imperial Acts Application Ordinance 1986* by omitting the provisions relating to India and the provisions relating to the Vice-Admiralty Courts established under the Act. As mentioned in note 4 above, the provision for establishing Vice-Admiralty Courts in the Territory has ceased to be in force in the Territory.

10. Section 18 and the Second Schedule repealed certain provisions of certain Imperial Acts. The section and Schedule were omitted by the *Imperial Acts Application Ordinance 1986* (see, however, sub-section 5 (3) of that Ordinance). These repeals do not affect any Imperial Act printed in Schedule 3 of that Ordinance.

## **PART 28—1 EDW. 7 C. 5 (1901)—DEMISE OF THE CROWN ACT, 1901**

An Act to amend the law relating to the holding of offices in case of the demise of the Crown

### **Effect of demise of Crown on holding of office**

1. (1) The holding of any officer under the Crown, whether within or without His Majesty’s dominions, shall not be affected, nor shall any fresh appointment thereto be rendered necessary, by the demise of the Crown.

(2) This Act shall take effect as from the last demise of the Crown.

**Short title**

2. This Act may be cited as the Demise of the Crown Act, 1901.

---

**SCHEDULE 4**

Sections 7 (3)

**PREAMBLE TO IMPERIAL ACT 43 ELIZ. 1 c, 4—THE CHARITABLE  
USES ACT, 1601**

Whereas lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money and stocks money have been heretofore given, limited, appointed and assigned, as well by the Queen's most excellent Majesty and her most noble progenitors, as by sundry other well disposed persons, some for relief of aged, impotent and poor people, some for maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars in universities, some for repair of bridges, ports, havens, causeways, churches, sea-banks and highways, some for education and proferment of orphans, some for or towards relief, stock or maintenance for houses of correction, some for marriages of poor maids, some for support, aid and help of young tradesmen, handicraftsmen, and decayed persons, and others for relief or redemption of prisoners or captives and for aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes; which lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money and stocks of money nevertheless have not been employed according to the charitable intent of the givers and founders thereof by reason of the frauds, breaches of trusts and negligence in those that should pay, deliver and employ the same.

---

**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 12 January 1987.