

Queensland



JUDICATURE ACT 1876

**Reprinted as in force on 12 October 1994
(includes amendments up to Act No. 68 of 1991)**

Reprint No. 1

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy

Information about this reprint

This Act is reprinted as at 12 October 1994. The reprint—

- shows the law as amended by all amendments that commenced on or before that day
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

The reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (Pt 4, Div 2)
- express gender specific provisions in a way consistent with current legislative drafting practice (s 24)
- correct spelling and use different spelling consistent with current legislative drafting practice (s 26)
- use standard punctuation consistent with current legislative drafting practice (s 27)
- use expressions consistent with current legislative drafting practice (s 29)
- reorder definitions consistent with current legislative drafting practice (s 30)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current legislative drafting practice (s 35)
- omit provisions that are no longer required (s 39)
- omit historical notes (s 42)
- omit the enacting words (s 42A)
- number and renumber certain provisions and references (s 43).

Also see Endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in the reprint, including—**
 - **Table of obsolete and redundant provisions**
 - **Table of renumbered provisions**
 - **Table of comparative legislation.**

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JUDICATURE ACT 1876

[as amended by all amendments that commenced on or before 12 October 19942]

An Act to provide for the administration of a uniform system of law in courts of justice and to simplify and amend the practice of the Supreme Court

Interpretation of terms

1. In this Act—

“**action**” shall mean a civil proceeding commenced by writ or in such other manner as may be prescribed by rules of court.

“**cause**” shall include any suit action or other original proceeding between a plaintiff and a defendant.

“**Court**” shall mean the Supreme Court.

“**defendant**” shall include every person served with any writ of summons or process or served with notice of or entitled to attend any proceedings.

“**existing**” shall mean existing at the time appointed for the commencement of this Act.

“**judgment**” shall include decree.

“**matter**” shall include every proceeding in the Court not in a cause.

“**order**” shall include rule.

“**party**” shall include every person served with notice of or attending any proceeding although not named on the record.

“**petitioner**” shall include every person making any application to the Court either by petition motion or summons otherwise than as against any defendant.

“**plaintiff**” shall include every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding whether the same be taken by action suit petition motion summons or otherwise.

“**pleading**” shall include any petition or summons and also shall include the statements in writing of the claim or demand of any plaintiff and of the defence of any defendant thereto and of the answer of the plaintiff to any set-off or counterclaim of a defendant.

“**rules of court**” shall include forms.

“**suit**” shall include action.

Rules of law to apply to all courts

2. The several rules of law enacted and declared by this Act shall be in force and receive effect in all courts whatsoever in Queensland so far as the matters to which such rules relate shall be respectively cognisable by such courts.

Provision for saving of existing procedure of courts when not inconsistent with this Act or rules of court

3. Save as by this Act or by any rules of court may be otherwise provided all forms and methods of procedure which at the commencement of this Act were in force in the Supreme Court under or by virtue of any law custom general order or rules whatsoever and which are not inconsistent with this Act or with any rules of court may continue to be used and practised in the said Court in such and the like cases and for such and the like purposes as those to which they would have been applicable if this Act had not passed.

Law and equity to be administered in all suits by Supreme Court

4. In every civil cause or matter commenced in the Court after the passing of this Act law and equity shall be administered by such court and shall be administered according to the rules following—

Equitable relief claimed by plaintiff to be given in all cases

(1) If any plaintiff or petitioner claims to be entitled to any equitable estate or right or to relief upon any equitable ground against any deed instrument or contract or against any right title or claim whatsoever asserted by any defendant or respondent in such cause or matter or to any relief founded upon a legal right which heretofore could only have been given by a court of equity the said Court and every Judge thereof shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the said Court in its equitable jurisdiction in a suit or proceeding for the same or the like purpose properly instituted before the passing of this Act.

Equitable relief to be given to defendants

(2) If any defendant claims to be entitled to any equitable estate or right or to relief upon any equitable ground against any deed instrument or contract or against any right title or claim asserted by any plaintiff or petitioner in such cause or matter or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter the said Court and every Judge thereof shall give to every equitable estate right or ground of relief so claimed and to every equitable defence so alleged such and the same effect by way of defence against the claim of such plaintiff or petitioner as the said Court in its equitable jurisdiction ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act.

Or such equitable relief as defendant might obtain by cross bill

(3) The said Court and every Judge thereof shall also have power to grant to any defendant in respect of any equitable estate or right or other matter of equity and also in respect of any legal estate right or title claimed or asserted by the defendant all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by the defendant's pleading and as such Court or any Judge thereof might grant in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner and also all such relief relating to or connected with the original subject of the cause or matter and in like manner claimed against any other person whether already a party to the same cause or matter or not who shall have duly served with notice in writing of such claim pursuant to any rule of court or any order of the Court as might properly have been granted against any such person if the person had been made a defendant to a cause duly

instituted by the same defendant for the like purpose.

Other parties may be made parties by notice

(3A) And every person served with any such notice shall thenceforth be deemed a party to such cause or matter with the same rights in respect of the person's defence against such claim as if the person had been duly sued in the ordinary way by such defendant.

Court to recognise equitable estates rights and liabilities

(4) The said Court and every Judge thereof shall recognise and take notice of all equitable estates titles and rights and all equitable duties and liabilities appearing incidentally in the course of any cause or matter depending before it in the same manner in which the said Court in its equitable jurisdiction would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.

No injunction to restrain proceedings

(5) No cause or proceeding at any time pending in the said Court shall be restrained by injunction but every matter of equity on which an unconditional injunction against the prosecution of any such cause or proceeding might have been obtained if this Act had not passed may be relied on by way of defence thereto.

Stay of proceedings may be directed either generally or on terms

(6) The said Court or any Judge thereof may direct a stay of proceedings in any cause or matter pending before it if the Court or Judge shall think fit and any person whether a party or not to any such cause or matter who would have been entitled if this Act had not passed to apply to the said Court to restrain the prosecution thereof or who may be entitled to enforce by attachment or otherwise any judgment decree rule or order contrary to which all or any part of the proceedings in such cause or matter may have been taken shall be at liberty to apply to the Court or a Judge by motion in a summary way for a stay of proceedings in such cause or matter either generally or so far as may be necessary for the purposes of justice and the Court or Judge shall thereupon make such order as shall be just.

All legal claims to be recognised

(7) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid and to the other express provisions of this Act the said Court and every Judge thereof shall recognise

and give effect to all legal claims and demands and all estates titles rights duties obligations and liabilities existing by the common law or by any custom or created by any statute in the same manner as the same would have been recognised and given effect to by the said court if this Act had not passed.

Complete justice to be done in 1 suit so far as possible

(8) The said Court and every Judge thereof in the exercise of the jurisdiction conferred by this Act in every cause or matter pending before them respectively shall have power to grant and shall grant either absolutely or on such reasonable terms and conditions as to them shall seem just all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter so that as far as possible all matters so in controversy between the said parties respectively may be completely and finally determined and all multiplicity of legal proceedings concerning any of such matters avoided.

5. And whereas it is expedient to amend and declare the law to be hereafter administered in Queensland as to the matters next hereinafter mentioned Be it enacted as follows—

Estates of persons deceased to be administered as in insolvency

(1) In the administration by any court of the assets of any person who may die after the passing of this Act and whose estate may prove to be insufficient for the payment in full of the person's debts and liabilities and in the winding up of any company under the *Companies Act 1863* whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding-up the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to the debts and liabilities provable and as to the valuation of annuities and future or contingent liabilities respectively as may be in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent.

(2) And all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person or out of the assets of any such company may come in under the decree or order for the administration of such estate or under the winding-up of such company

and may make such claims against the same as they may respectively be entitled to by virtue of this Act.

Writs of mandamus and injunction may be granted and receivers appointed in all cases when just or convenient

(8) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just and if an injunction is asked either before or at or after the hearing of any cause or matter to prevent any threatened or apprehended waste or trespass such injunction may be granted if the Court shall think fit whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title and whether the estates claimed by both or by either of the parties are legal or equitable.

In cases of collision rules of Admiralty to prevail

(9) In any cause or proceeding for damages arising out of a collision between 2 ships if both ships shall be found to have been in fault the rules hitherto in force in the High Court of Admiralty so far as they have been at variance with the rules in force in the courts of common law shall prevail.

In questions relating to infants rules of equity to prevail

(10) In questions relating to the custody and education of infants the rules of equity shall prevail.

Rules of equity to prevail where any conflict between them and rules of law

(11) Generally in all matters not hereinbefore particularly mentioned in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter the rules of equity shall prevail.

Powers of 1 or more Judges

6.(1) Any Judge of the Court may subject to any rules of court exercise in court or in chambers all or any part of the jurisdiction of the said Court in

all such causes and matters and in all such proceedings in any causes or matters as before the commencement of this Act might have been heard in court or in chambers respectively by a single Judge of the said Court or as may be directed or authorised to be so heard by any rules of court to be hereafter made.

(2) In all such cases any Judge sitting in court shall be deemed to constitute the Court.

Issues of law how determined

(3) However, every issue of law and every special case stated by consent of parties shall be heard and determined by a single Judge in the first instance unless either party shall require that the same be heard and determined by the Court of Appeal in the first instance in which case the same shall be so heard and determined accordingly.

Cases and points may be reserved for or directed to be argued before the Court of Appeal

7. Subject to any rules of court, a Judge of the Supreme Court sitting in the Trial Division may reserve any case or any point in a case for the consideration of the Court of Appeal or may direct any case or point in a case to be argued before the Court of Appeal.

Motions for new trials to be heard by Court of Appeal

8. Every motion for a new trial of any cause or matter on which a verdict has been found by a jury or by a Judge without a jury and every motion for judgment other than a motion for judgment on default in delivering a defence or demurrer and every motion to reduce damages shall be heard before the Court of Appeal.

What orders shall not be subject to appeal

9. No order made by any Judge of the said Court by the consent of parties or as to costs only which by law are left to the discretion of the Judge shall be subject to any appeal except by leave of the Judge making such order.

As to appeals from orders made by single Judge

10. An appeal shall lie to the Court of Appeal from every order made by a Judge in court or chambers except orders made in the exercise of such discretion as aforesaid.

Referees and assessors

11.(1) Subject to any rules of court and to such right as may now exist to have particular cases submitted to the verdict of a jury any question arising in any cause or matter before the Court may be referred by the Court or Judge before whom such cause or matter may be pending for inquiry and report to a special referee and the report of any such referee may be adopted wholly or partially by the Court and may (if so adopted) be enforced as a judgment by the Court.

(2) The Court or Judge may also in any such cause or matter as aforesaid in which it may think it expedient so to do call in the aid of one or more assessors specially qualified and try and hear such cause or matter wholly or partially with the assistance of such assessors.

(3) The remuneration (if any) to be paid to such special referees or assessors shall be determined by the Court or Judge.

Power to direct trials before referees

12.(1) In any cause or matter before the said Court in which all parties interested who are under no disability consent thereto and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts or any scientific or local investigation which cannot in the opinion of the Court or a Judge conveniently be made before a jury or conducted by the Court through its other ordinary officers the Court or a judge may at any time on such terms as may be thought proper order any question or issue of fact or any question of account arising therein to be tried before a special referee to be appointed by the Court or Judge.

(2) All such trials before referees shall be conducted in such manner as may be prescribed by rules of court and subject thereto in such manner as the Court or Judge ordering the same shall direct.

Power of referees and effect of their finding

13.(1) In all cases of any reference to or trial by referees under this Act the referees shall be deemed to be officers of the Court and shall have such authority for the purpose of such reference or trial as shall be prescribed by rules of court or (subject to such rules) by the Court or Judge ordering such reference or trial.

(2) And the report of any referee upon any question of fact on any such trial shall (unless set aside by the Court) be equivalent to the verdict of a jury.

Powers of Court with respect to proceedings before referees

14. With respect to all such proceedings before referees and their reports the Court or such Judge as aforesaid shall have in addition to any other powers the same or the like powers as are given to the Court or a Judge with respect to references to arbitration and proceedings before arbitrators and their awards respectively by the *Interdict Act 1867*.

Duty of judge and jury

15.(1) It shall be the duty of a jury to answer any question of fact that may be left to them by the presiding judge at the trial.

(2) But nothing herein or in any rule of court contained shall take away or prejudice the right of any party to any action to have the questions submitted and left by the Judge to the jury with a proper and complete direction to the jury upon the law and as to the evidence applicable to such questions.

Repeal

24. From and after the commencement of this Act all enactments inconsistent therewith shall be repealed.

Commencement and short title

26. This Act shall commence on 1 January 1877 and shall be styled and may be cited as the *Judicature Act 1867*³⁻⁷.

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 12 October 1994. Future amendments of the Judicature Act 1876 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 List of legislation**Judicature Act (1876) 40 Vic No. 6**

date of assent 9 October 1876
commenced 1 January 1877 (see s 26)
as amended by—

Repealing Rules 1900 s 1 Sch 1

pubd Gaz 17 October 1900 pp 1146–7
commenced 1 January 1901 (see s 5)

Acts Citation Act 1903 3 Edw 7 No. 10 s 10 Sch 3

date of assent 13 November 1903
commenced on date of assent

Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 Sch 1

date of assent 23 December 1908
commenced on date of assent

Supreme Court Act 1921 12 Geo 5 No. 15 s 12(2)(i)

date of assent 5 November 1921
commenced 31 March 1922 (proc pubd Gaz 30 March 1922 p 999)

Property Law Act 1974 No. 76 s 3(2) Sch 6 Pt 3

date of assent 1 November 1974

commenced 1 December 1975 (see s 1(2))

Supreme Court of Queensland Act 1991 No. 68 s 111 Sch 2

date of assent 24 October 1991

commenced 14 December 1991 (1991 SL No. 173)

4 List of annotations

Key to abbreviations in list of annotations

amd	=	amended
Ch	=	Chapter
cl	=	clause
def	=	definition
Div	=	Division
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
R1	=	Reprint No. 1
RA	=	Reprints Act 1992
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Preamble

om 1908 8 Edw 7 No. 18 s 2 Sch 1

s 5 amd 1903 3 Edw 7 No. 10 s 10 Sch 3; 1974 No. 76 s 3(2) Sch 6 Pt 3

Powers of 1 or more Judges

s 6 amd 1991 No. 68 s 111 Sch 2

Cases and points may be reserved for or directed to be argued before the Court of Appeal

prov hdg amd 1991 No. 68 s 111 Sch 2

s 7 amd 1991 No. 68 s 111 Sch 2

Motions for new trials to be heard by Court of Appeal

prov hdg amd 1991 No. 68 s 111 Sch 2

s 8 amd 1991 No. 68 s 111 Sch 2

As to appeals from orders made by single Judge

s 10 amd 1991 No. 68 s 111 Sch 2

Rules in Schedule

s 16 om 1921 12 Geo 5 No. 15 s 12(2)(i)

Provision as to making &c. of Rules of Court before or after the commencement of the Act

s 17 om 1921 12 Geo 5 No. 15 s 12(2)(i)

Provision as to Rules in Probate Insolvency and Matrimonial Causes Jurisdiction

s 18 om 1921 12 Geo 5 No. 15 s 12(2)(i)

Provision as to criminal procedure subject to future rules remaining unaltered

s 19 om 1921 12 Geo 5 No. 15 s 12(2)(i)

Provision as to Act not affecting rules of evidence or juries

s 20 om 1921 12 Geo 5 No. 15 s 12(2)(i)

Additional power as to regulation of practice and procedure by Rules of Court

s 21 om 1921 12 Geo 5 No. 15 s 12(2)(i)

Orders and Rules to be laid before Parliament and may be annulled on address from either House

s 22 om 1921 12 Geo 5 No. 15 s 12(2)(i)

Fixing and collection fees

s 23 om 1921 12 Geo 5 No. 15 s 12(2)(i)

Not to affect pending actions

s 25 om 1908 8 Edw 7 No. 18 s 2 Sch 1

SCHEDULE—RULES OF COURT

om rules pubd Gaz 17 October 1900 pp 1146–7

5 Table of obsolete and redundant provisions

TABLE OF OBSOLETE AND REDUNDANT PROVISIONS
under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
definitions to be read in context	Acts Interpretation Act 1954 s 32A
references to Queensland implied	Acts Interpretation Act 1954 s 35

6 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS under the Reprints Act 1992 s 43

Previous	Renumbered as
4(3), 2nd sentence	4(3A)
5(1), 2nd sentence	5(2)
6, 1st sentence	6(1)
6, 2nd sentence	6(2)
6, proviso	6(3)
11, 1st sentence	11(1)
11, 2nd sentence	11(2)
11, 3rd sentence	11(3)
12, 1st sentence	12(1)
12, 2nd sentence	12(2)
13, 1st sentence	13(1)
13, 2nd sentence	13(2)
15, 1st sentence	15(1)
15, 2nd sentence	15(2)

7 Table of comparative legislation

s 1	36 & 37 Vic c 66 s 100
s 2	36 & 37 Vic c 66 Ib s 91
s 3	38 & 39 Vic c 77 s 21
s 4	36 & 37 Vic c 66 s 24
s 4(1)	36 & 37 Vic c 66 s 24(1)
s 4(2)	36 & 37 Vic c 66 s 24(2)
s 4(3)	36 & 37 Vic c 66 s 24(3)
s 4(4)	36 & 37 Vic c 66 s 24(4)
s 4(5)	36 & 37 Vic c 66 s 24(5)
s 4(6)	36 & 37 Vic c 66 s 24(5)
s 4(7)	36 & 37 Vic c 66 s 24(6)
s 4(8)	36 & 37 Vic c 66 s 24(7)
s 5(1)	38 & 39 Vic c 77 s 10
s 6	36 & 37 Vic c 66 Ib s 39
s 7	Ib s 46
s 8	Ib s 48
s 9	Ib s 49
s 10	Ib s 50
s 11	Ib s 56
s 12	36 & 37 Vic c 66 Ib s 57
s 13	Ib s 58
s 14	Ib s 59

s 15 38 & 39 Vic c 77 s 22
s 24 Ib s 33