

Queensland



# INTERDICT ACT 1867

**Reprinted as in force on 26 October 1994  
(includes amendments up to Act No. 34 of 1973)**

**Reprint No. 1**

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the Office of the Queensland Parliamentary Counsel  
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# Information about this reprint

This Act is reprinted as at 26 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)
- update references (Pt 4, Div 3)
- express gender specific provisions in a way consistent with current legislative drafting practice (s 24)
- use different spelling consistent with current legislative drafting practice (s 26(2))
- use standard punctuation consistent with current legislative drafting practice (s 27)
- use expressions consistent with current legislative drafting practice (s 29)
- 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)
- correct minor errors (s 44).

**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 changed names and titles**
  - **Table of obsolete and redundant provisions**
  - **Table of corrected minor errors**
  - **Table of renumbered provisions**
  - **Table of comparative legislation.**

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## **INTERDICT ACT 1867**

[as amended by all amendments that commenced on or before 26 October 19942]

**An Act to consolidate and amend the laws relating to arbitration  
interpleader mandamus quo warranto prohibition and  
injunction**

### **Interpretation**

#### **Interpretation**

**1.** The words “**Court**” and “**Judge**” in this Act shall mean the Supreme Court and a Judge thereof respectively unless some other meaning expressly appear or be necessarily implied.

### **Interpleader**

**Upon application by a defendant in an action of assumpsit etc. stating that the right in the subject matter is in a third party the court may order such third party to appear and maintain or relinquish the third party’s claim and in the meantime stay proceedings in such action**

**22.** Upon application made by or on behalf of any defendant sued in the Supreme Court in any action of assumpsit debt detinue or trover such application being made after declaration and before plea by affidavit or otherwise showing that such defendant does not claim any interest in the subject matter of the suit but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same and that such defendant does not in any manner collude with such third party but is ready to bring into court or to pay or dispose of the subject matter of the action in such manner as the Court (or any Judge thereof) may

order or direct it shall be lawful for the Court or any Judge thereof to make rules and orders calling upon such third party to appear and to state the nature and particulars of his or her claim and maintain or relinquish his or her claim and upon such rule or order to hear the allegations as well of such third party as of the plaintiff and in the meantime to stay the proceedings in such action and finally to order such third party to make himself or herself defendant in the same or some other action or to proceed to trial on 1 or more feigned issue or issues and also to direct which of the parties shall be plaintiff or defendant on such trial or with the consent of the plaintiff and such third party their counsel or attorneys to dispose of the merits of their claims and determine the same in a summary manner and to make such other rules and orders therein as to costs and all other matters as may appear to be just and reasonable.

### **Judgment and decision to be final**

**23.** The judgment in any such action or issue as may be directed by the Court or Judge and the decision of the Court or Judge in a summary manner shall be final and conclusive against the parties and all persons claiming by from or under them.

### **If such third party shall not appear etc. the Court may bar his or her claim against the original defendant**

**24.** If such third party shall not appear upon such rule or order to maintain or relinquish his or her claim being duly served therewith or shall neglect or refuse to comply with any rule or order to be made after appearance it shall be lawful for the Court or Judge to declare such third party and all persons claiming by from or under him or her to be for ever barred from prosecuting his or her claim against the original defendant his or her executors or administrators saving nevertheless the right or claim of such third party against the plaintiff and thereupon to make such order between such defendant and the plaintiff as to costs and other matters as may appear just and reasonable.

### **Proviso as to orders made by a single Judge**

**25.** However, every order to be made in pursuance of this Act by a single

Judge not sitting in open Court shall be liable to be rescinded or altered by the Court in like manner as other orders made by a single Judge.

**If a Judge thinks the matter more fit for the decision of the Court the Judge may refer it**

26. In addition, if upon application to a Judge in the first instance or in any later stage of the proceedings the Judge shall think the matter more fit for the decision of the Court it shall be lawful for the Judge to refer the matter to the Court and thereupon the Court shall and may hear and dispose of the same in the same manner as if the proceeding had originally commenced by rule of court instead of the order of a Judge.

**Interpleader may be granted though titles have not a common origin**

27. Where an action has been commenced in respect of a common law claim for the recovery of money or goods or when the goods and chattels have been taken or are intended to be taken in execution under process issued from the Supreme Court or any court of record in the State and the defendant in such action or the sheriff or other officer has applied for relief under the provisions of this Act it shall be lawful for the Court or a Judge to whom such application is made to exercise all the powers and authorities given to them by this Act though the titles of the claimants to the money goods or chattels in question or to the value or proceeds thereof have not a common origin but are adverse to and independent of one another.

**Power to Court or Judge to decide summarily in certain cases**

28. Upon hearing of any rule or order calling upon persons to appear and state the nature and particulars of their claims it shall be lawful for the Court or a Judge wherever the amount in dispute or the value of the goods seized shall not exceed \$100 if it shall appear to them or the Judge desirable and right to do so at the request of either party to dispose of the merits of the respective claims of such parties and to determine the same in a summary manner upon such terms as they or the Judge shall think fit to impose and to make such other rules and orders therein as to costs and all other matters as may be just.

**Special case may be stated where facts undisputed**

29. In all cases of interpleader proceedings where the question is one of law and the facts are not in dispute the Judge shall be at liberty at the Judge's discretion to decide the question without directing an action or issue and if the Judge shall think it desirable to order that a special case be stated for the opinion of the Court.

**Proceedings on special cases**

30. The proceedings upon such case shall as nearly as may be be the same as upon a special case stated under the *Common Law Pleading Act 1867*.

**Judgment and decision when to be final**

31. The judgment in any such action or issue as may be directed by the Court or a Judge in any interpleader proceedings and the decision of the Court or a Judge in a summary manner shall be final and conclusive against the parties and all persons claiming by from or under them.

**Interpleader by the sheriff****For relief of sheriffs and other officers in execution of process against goods and chattels**

32. And whereas difficulties sometimes arise in the execution of process against goods and chattels issued by or under the authority of the Supreme Court by reason of claims made to such goods and chattels by assignees of bankrupts and other persons not being the parties against whom such process has issued whereby sheriffs and other officers are exposed to the hazard and expense of actions and it is reasonable to afford relief and protection in such cases to such sheriffs and other officers be it therefore further enacted That when any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process or to the proceeds or value thereof it shall and may be lawful to and for the Supreme Court or any Judge thereof upon application of such sheriff or other officer made before or after the return of such process and as well

before as after any action brought against such sheriff or other officer to call before them, him or her by rule of court as well the party issuing such process as the party making such claim and thereupon to exercise for the adjustment of such claims and the relief and protection of the sheriff or other officer all or any of the powers and authorities hereinbefore contained and make such rules and decisions as shall appear to be just according to the circumstances of the case and the costs of all such proceedings shall be in the discretion of the said Court or Judge.

### **Court or Judge may direct sale of goods seized in execution**

33. Where goods or chattels have been seized in execution by a sheriff or other officer under process of the Supreme Court and some third party claims to be entitled under a bill of sale or otherwise to such goods or chattels by way of security for a debt the Court or a Judge may order a sale of the whole or part thereof upon such terms as to the payment of the whole or part of the secured debt or otherwise as they, he or she shall think fit and may direct the application of the proceeds of such sale in such manner and upon such terms as to such Court or Judge may seem just.

### **Sheriff's costs**

34. Where it shall appear to the Supreme Court or a Judge thereof that the sheriff or other officer has acted bona fide and with due diligence in making application for relief under this Act in case of adverse claims it shall be lawful for the said Court or a Judge thereof to allow the sheriff or other officer all reasonable costs and expenses which the sheriff or other officer shall have incurred as to the Court or a Judge shall seem fit.

## **Rules orders etc. in interpleader proceedings**

### **Rules orders etc. made in interpleader proceedings may be entered of record and made evidence**

35. All rules orders matters and decisions to be made and done in interpleader proceedings under this Act (excepting only any affidavits) may together with the declaration in the cause (if any) be entered of record with a note in the margin expressing the true date of such entry to the end that the

same may be evidence in future times if required and to secure and enforce the payments of costs directed by any such rule or order and every such rule or order so entered shall have the force and effect of a judgment of the Supreme Court.

## **Prerogative writ of mandamus<sup>1</sup>**

### **Return to be made to first writ**

**36.** Persons required to make a return to a writ of mandamus shall make their return to the first writ.

### **As soon as the return is made the prosecutor in such writ may plead etc.—To which the person returning may reply etc.—How proceedings shall be**

**37.** As often as any writ of mandamus shall issue out of the Supreme Court and a return shall be made thereunto it shall and may be lawful to and for the person or persons suing or prosecuting such writ of mandamus to plead to or traverse all or any the material facts contained within the said return to which the person or persons making such return shall reply take issue or demur and such further proceedings and in such manner shall be had therein for the determination thereof as might have been had if the person or persons suing such writ had brought his, her or their action on the

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<sup>1</sup> Section 41 of the Judicial Review Act 1991 provides—

### **Certain prerogative writs not to be issued**

**41.(1)** The prerogative writs of mandamus, prohibition or certiorari are no longer to be issued by the Court.

**(2)** If, before the commencement of this Act, the Court had jurisdiction to grant any relief or remedy by way of a writ of mandamus, prohibition or certiorari, the Court continues to have the jurisdiction to grant the relief or remedy, but must grant the relief or remedy by making an order, the relief or remedy under which is in the nature of, and to the same effect as, the relief or remedy that could, but for subsection (1), have been granted by way of such a writ.

**(3)** In an enactment in force immediately before the commencement of this Act, a reference to a writ of mandamus, prohibition or certiorari is taken to be a reference to an order of a kind that the Court is empowered to make under this section.

case for a false return and if any issue shall be joined on such proceedings the person or persons suing such writ shall and may try the same in such place as an issue joined in such action on the case should or might have been tried and in such case a verdict shall be found for the person or persons suing such writ or judgment given for the person or thereupon a demurrer or *nil dicit* or for want of a replication or other pleading he, she or they shall recover his, her or their damages and costs in such manner as he, she or they might have done in such action on the case as aforesaid such costs and damages to be levied by *capias ad satisfaciendum fieri facias* or *elegit* and a peremptory writ of mandamus shall be granted without delay for him, her or them for whom judgment shall be given as might have been if such return had been adjudged insufficient and in case judgment shall be given for the person or persons making such return to such writ he, she or they shall recover his, her or their costs of suit to be levied in manner aforesaid.

### **Person against whom damages shall be recovered not liable to be sued in other actions**

**38.** Provided always that if any damages shall be recovered by virtue of this Act against any such person or persons making such return to such writ as aforesaid he, she or they shall not be liable to be sued in any other action or suit for the making such return any law usage or custom to the contrary thereof in anywise notwithstanding.

### **For protection of certain officers to whom writs of mandamus are directed**

**39.** And whereas writs of mandamus are sometimes issued to officers and other persons commanding them to admit to offices or do or perform other matters in respect whereof the persons to whom such writs are directed claim no right or interest or whose functions are merely ministerial in relation to such offices or matters and it may be proper that such officers and persons should in certain cases be protected against the payment of damages or costs to which they may otherwise become liable Be it therefore enacted that—

(1) It shall be lawful for the Court to which application may be made for any writ of mandamus if such Court shall see fit so to do to make rules and orders calling not only upon the person to whom such writ may be required

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to issue but also all and every other person having or claiming any right or interest in or to the matter of such writ to show cause against the issuing of such writ and payment of costs of the application and upon the appearance of such other person in compliance with such rules or in default of appearance after service thereof to exercise all such powers and authorities and make all such rules and orders applicable to the case as are or may be given or mentioned by or in this or any Act for giving relief against adverse claims made upon persons having no interest in the subject of such claims.

(2) However, the return to be made to any such writ and issues joined in fact or in law upon any traverse thereof or upon any demurrer shall be made and joined by and in the name of the person to whom such writ shall be directed but nevertheless the same shall and may if the Court shall think fit so to direct be expressed to be made and joined on the behalf of such other person as may be mentioned in such rules and in that case such other person shall be permitted to frame the return and to conduct the subsequent proceedings at the person's own expense and in such case if any judgment shall be given for or against the party suing such writ such judgment shall be given against or for the person or persons on whose behalf the return shall be expressed to be made and who shall have the like remedy for the recovery of costs and enforcing the judgment as the person to whom the writ shall have been directed might and would otherwise have had.

**Proceedings not to abate by removal of officer**

40. In case the return to any such writ shall in pursuance of the authority given by this Act be expressed to be made on behalf of any other person as aforesaid the further proceedings on such writ shall not abate or be discontinued by the death or resignation of or removal from office of the person having made such return but the same shall and may be continued and carried on in the name of such person and if a peremptory writ shall be awarded the same shall and may be directed to any successor in office or right to such person.

**Costs to be in the discretion of the court**

41. In all cases of application for any writ of mandamus whatsoever the costs of such application whether the writ shall be granted or refused and also the costs of the writ if the same shall be issued and obeyed shall be in

the discretion of the Court and the Court is hereby authorised to order and direct by whom and to whom the same shall be paid.

### **Proceedings for prerogative writ of mandamus accelerated**

42. Upon application by motion for any writ of mandamus the rule may in all cases be absolute in the first instance if the Court shall think fit and the writ may bear teste on the day of its issuing and may be made returnable forthwith whether in term or in vacation but time may be allowed to return it by the Court or a Judge either with or without terms.

### **The enactments herein relating to returns to writs of mandamus therein mentioned and the proceedings thereon extended to all other writs of mandamus**

43. The several enactments contained herein relating to the return to writs of mandamus and the proceedings on such returns and to the recovery of damages and costs shall be and the same are hereby extended and made applicable to all other writs of mandamus and the proceedings thereon.

## **Action for mandamus**

### **Action for mandamus to enforce the performance of duties**

44. The plaintiff in any action in the Supreme Court except replevin and ejectment may endorse upon the writ and copy to be served a notice that the plaintiff intends to claim a writ of mandamus and the plaintiff may thereupon claim in the declaration either together with any other demand which may now be enforced in such action or separately a writ of mandamus commanding the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested.

### **Declaration in action for mandamus**

45. The declaration in such action shall set forth sufficient grounds upon which such claim is founded and shall set forth that the plaintiff is personally interested therein and that the plaintiff sustains or may sustain

damage by the non-performance of such duty and that performance thereof has been demanded by the plaintiff and refused or neglected.

### **Proceedings upon claim for mandamus**

46. The pleadings and other proceedings in any action in which a writ of mandamus is claimed shall be the same in all respects as nearly as may be and costs shall be recoverable by either party as in an ordinary action for the recovery of damages.

### **Judgment and execution**

47. In case judgment shall be given to the plaintiff that a mandamus do issue it shall be lawful for the Court if it shall see fit besides issuing execution in the ordinary way for the costs and damages also to issue a peremptory writ of mandamus to the defendant commanding the defendant forthwith to perform the duty to be enforced.

### **Form of peremptory writ**

48. The writ need not recite the declaration or other proceedings or the matter therein stated but shall simply command the performance of the duty and in other respects shall be in the form of an ordinary writ of execution except that it shall be directed to the party and not to the sheriff and may be issued in term or vacation and returnable forthwith and no return thereto except that of compliance shall be allowed but time to return it may upon sufficient grounds be allowed by the Court or a Judge either with or without terms.

### **Effect of mandamus**

49. The writ of mandamus so issued as aforesaid shall have the same force and effect as a peremptory writ of mandamus and in case of disobedience may be enforced by attachment.

**The Court may order the act to be done at the expense of the defendant**

**50.** The Court may upon application by the plaintiff besides or instead of proceeding against the disobedient party by attachment direct that the act required to be done may be done by the plaintiff or some other person appointed by the Court at the expense of the defendant and upon the act being done the amount of such expense may be ascertained by the Court either by writ of inquiry or reference to the prothonotary as the Court or a Judge may order and the Court may order payment of the amount of such expenses and costs and enforce payment thereof by execution.

### **Prerogative writ of mandamus preserved**

**51.** Nothing herein contained shall take away the jurisdiction of the Supreme Court to grant writs of mandamus nor shall any writ of mandamus issued out of that Court be invalid by reason of the right of the prosecutor to proceed by action for mandamus under this Act.

## **Injunction**

### **Claim of writ of injunction**

**52.** In all cases of breach of contract or other injury where the party injured is entitled to maintain and has brought an action the party may in like case and manner as hereinbefore provided with respect to mandamus claim a writ of injunction against the repetition or continuance of such breach of contract or other injury or the committal of any breach of contract or injury of a like kind arising out of the said contract or relating to the same property or right and the party may also in the same action include a claim for damages or other redress.

### **Form of writ of summons and endorsement thereon**

**53.** The writ of summons in such action shall be in the same form as the writ of summons in any personal action but on every such writ and copy thereof there shall be endorsed a notice that in default of appearance the plaintiff may besides proceeding to judgment and execution for damages and costs apply for and obtain a writ of injunction.

**Form of proceedings and of judgment**

**54.** The proceedings in such action shall be the same as nearly as may be and subject to the like control as the proceedings in an action to obtain a mandamus under the provisions hereinbefore contained and in such action judgment may be given that the writ of injunction do or do not issue as justice may require and in case of disobedience such writ of injunction may be enforced by attachment by the Court or where such Court shall not be sitting by a Judge.

**Writ of injunction may be applied for at any stage of the cause**

**55.(1)** It shall be lawful for the plaintiff at any time after the commencement of the action and whether before or after judgment to apply ex parte to the Court or a Judge for a writ of injunction to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract complained of or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right and such writ may be granted or denied by the Court or Judge upon such terms as to the duration of the writ keeping an account giving security or otherwise as to such Court or Judge shall seem reasonable and just and in case of disobedience such writ may be enforced by attachment by the Court or out of term by a Judge.

**(2)** However, an order for a writ of injunction made by a Judge or any writ issued by virtue thereof may be discharged or varied or set aside by the Court on application made thereto by any party dissatisfied with such order.

**Mode of enforcing writs of injunction against corporations**

**56.** Writs of injunction against a corporation may be enforced either by attachment against the directors or other officers thereof as in the case of a mandamus or by writ of sequestration against their property and effects to be issued in such form and tested and returnable in like manner as writs of execution and to be proceeded upon and executed in like manner as writs of sequestration issuing out of the Court of Chancery.

**Mandamus and injunction**

**Costs of writs of mandamus and injunctions may be included in writs**

**57.** In all cases in which a writ of mandamus or of injunction is issued under the provisions of this Act for the time being such writ shall unless otherwise ordered by the Court or a Judge in addition to the matter directed to be inserted therein command the defendant to pay to the plaintiff the costs of preparing issuing and serving such writ and payment of such costs may be enforced in the same manner as costs payable under a rule of court are now by law enforceable.

**Quo warranto<sup>2</sup>****How informations in the nature of quo warranto may be exhibited against such as intrude etc. into offices etc.**

**58.** From and after the commencement of this Act in case any person or persons shall usurp intrude into or unlawfully hold and execute any offices or franchises it shall and may be lawful to and for the proper officer with the leave of the Supreme Court to exhibit 1 or more information or informations in the nature of a quo warranto at the relation of any person or persons desiring to sue or prosecute the same and who shall be mentioned in such information or informations to be the relator or the relators against

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<sup>2</sup> Section 42 of the Judicial Review Act 1991 provides—

**Abolition of *quo warranto***

**42.(1)** Informations in the nature of *quo warranto* are abolished.

**(2)** If—

- (a) a person acts in an office in which the person is not entitled to act; and
- (b) an information in the nature of *quo warranto* would, but for subsection (1), lie against the person;

the Court may—

- (c) grant an injunction restraining the person from acting in the office; and
- (d) declare the office to be vacant.

**(3)** In an enactment in force immediately before the commencement of this Act, a reference to an information in the nature of *quo warranto* is taken to be a reference to an injunction of the kind that the Court is empowered to grant under this section.

such person or persons so usurping intruding into or unlawfully holding and executing any of the said offices or franchises and to proceed therein in such manner as is usual in cases of information in the nature of a quo warranto and if it shall appear to the Court that the several rights of divers persons to the said offices or franchises may properly be determined on information it shall and may be lawful for the Court to give leave to exhibit such information against several persons in order to try their respective rights to such offices or franchises and such person or persons against whom such information or informations in the nature of a quo warranto shall be sued or prosecuted shall appear and plead as of the same term or sessions in which the said information or informations shall be filed unless the Court where such information shall be filed shall give further time to such person or persons against whom such information shall be exhibited to plead and such person or persons who shall sue or prosecute such information or informations in the nature of a quo warranto shall proceed thereupon with the most convenient speed that may be any law or usage to the contrary thereof in anywise notwithstanding.

**Judgment of ouster shall be given against persons found guilty of usurpation etc.**

**59.(1)** In case any person or persons against whom any information or informations in the nature of a quo warranto shall in any of the said cases be exhibited in the Supreme Court shall be found or adjudged guilty of an usurpation or intrusion into or unlawfully holding and executing any of the said offices or franchises it shall and may be lawful to and for the said Supreme Court as well to give judgment of ouster against such person or persons of and from any of the said offices or franchises as to fine such person or persons respectively for his, her or their usurping intruding into or unlawfully holding and executing any of the said offices or franchises.

**And the relator shall recover costs if judgment be given for the defendant he or she shall have costs against the relator**

**(2)** And also it shall and may be lawful to and for the said Court to give judgment that the relator or relators in such information named shall recover his, her or their costs of such prosecution and if judgment shall be given for the defendant or defendants in such information he, she or they for whom such judgment shall be given shall recover his, her or their costs therein expended against such relator or relators such costs to be levied in manner

aforesaid.

## **Prohibition<sup>3</sup>**

### **Applications for writs of prohibition may be made on affidavit only**

**60.(1)** It shall not be necessary to file a suggestion on any application for a writ of prohibition but such application may be made on affidavits only.

### **Contents of declaration in case the party is directed to declare in prohibition—Defendant may demur to declaration**

**(2)** And in case the party applying shall be directed to declare in prohibition before writ issued such declaration shall be expressed to be on behalf of such party only and not as heretofore on the behalf of the party and of Her Majesty and shall contain and set forth in a concise manner so much only of the proceeding in the Court below as may be necessary to show the ground of the application without alleging the delivery of a writ or any contempt and shall conclude by praying that a writ of prohibition may issue to which declaration the party defendant may demur or plead such matters by way of traverse or otherwise as may be proper to show that the writ ought not to issue and conclude by praying that such writ may not issue and judgment shall be given that the writ of prohibition do or do not issue as justice may require.

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<sup>3</sup> The Judicial Review Act 1991, section 41 provides—

### **Certain prerogative writs not to be issued**

**41.(1)** The prerogative writs of mandamus, prohibition or certiorari are no longer to be issued by the Court.

**(2)** If, before the commencement of this Act, the Court had jurisdiction to grant any relief or remedy by way of a writ of mandamus, prohibition or certiorari, the Court continues to have the jurisdiction to grant the relief or remedy, but must grant the relief or remedy by making an order, the relief or remedy under which is in the nature of, and to the same effect as, the relief or remedy that could, but for subsection (1), have been granted by way of such a writ.

**(3)** In an enactment in force immediately before the commencement of this Act, a reference to a writ of mandamus, prohibition or certiorari is taken to be a reference to an order of a kind that the Court is empowered to make under this section.

**Judgment**

(3) And the party in whose favour judgment shall be given whether on nonsuit verdict demurrer or otherwise shall be entitled to the costs attending the application and subsequent proceedings and have judgment to recover the same.

**Damages—Costs**

(4) And in case a verdict shall be given for the party plaintiff in such declaration it shall be lawful for the jury to assess damages for which judgment shall also be given but such assessment shall not be necessary to entitle the plaintiff to costs.

**General provision****Proceedings on prerogative writ of mandamus**

61. The provisions of the *Pleading and Common Law Practice and Process Acts 1867* and of this Act so far as they are applicable shall apply to the pleadings and proceedings upon a prerogative or other writ of mandamus or for an injunction quo warranto or prohibition.

**Powers of the Court****General rules may be made by the Judges**

62.(1) It shall be lawful for the Judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for altering the number of days by this Act limited for the return of any writ or for the doing of anything by this Act prescribed or authorised to be done and substituting other days for the same as in their judgment shall be necessary or proper.

(2) However, nothing herein contained shall be construed to restrain the

authority or limit the jurisdiction of the said Court or the Judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein.

### **New forms of writs and other proceedings**

**63.** Such new or altered writs and forms of proceedings may be issued entered and taken as may be by the Judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one be deemed necessary or expedient for giving effect to the provisions hereinbefore contained and in such forms as the Judges of such Court or such majority of them shall from time to time think fit to order and such writs and proceedings shall be acted upon and enforced in such and the same manner as writs and proceedings of the said Court are now acted upon and enforced or as near thereto as the circumstances of the case will admit and any existing writ or proceeding the form of which shall be in any manner altered in pursuance of this Act shall nevertheless be of the same force and virtue as if no alteration had been made therein except as far as the effect thereof may be varied by this Act.

## **Commencement and short title**

### **Commencement of Act—Short title**

**64.** This Act shall commence on 31 December 1867 and may be referred to as the *Interdict Act 1867*<sup>3-9</sup>.

## ENDNOTES

### 1 Index to Endnotes

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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 26 October 1994. Future amendments of the Interdict Act 1867 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 List of legislation

**Interdict Act 1867 31 Vic No. 11**

date of assent 28 December 1867  
commenced 31 December 1867 (see s 64)

as amended by—

**Criminal Code Act 1899 63 Vic No. 9 s 3(2) Sch 3**

date of assent 28 November 1899  
commenced on date of assent

**Acts Citation Act 1903 3 Edw 7 No. 10 s 10 Sch 3 (prev Acts Shortening Act 1903)**

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

**Arbitration Act 1973 No. 34 s 3(1) Sch 1**

date of assent 26 April 1973

commenced on date of assent

**4 List of annotations****Key to abbreviations in list of annotations**

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

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

**Note**—References to ‘Pring’s Statutes’ and to Colonial Acts were omitted from the sectional notes throughout this Act by Act of 1903 3 Edw 7 No. 10 s 10 Sch 3

**Preamble**

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

**Merchants and traders &c. desiring to end controversies by arbitration may agree that their submission of the suit to the award of any person should be made a rule of any court of record &c.**

s 2 om 1973 No. 34 s 3(1) Sch 1

**Corrupt arbitration void and may be set aside**

prov hdg amd 1903 3 Edw 7 No. 10 s 10 Sch 3

s 3 om 1973 No. 34 s 3(1) Sch 1

**Submission to arbitration by rule of court &c. not to be revocable without leave of the court**

s 4 om 1973 No. 34 s 3(1) Sch 1

**Power to compel the attendance of witnesses**

s 5 om 1973 No. 34 s 3(1) Sch 1

**Power of the arbitrators under a rule of court to administer an oath**

s 6            amd 1899 63 Vic No. 9 s 3(2) Sch 3  
               om 1973 No. 34 s 3(1) Sch 1

**Suits may be settled by arbitration**

s 7            om 1973 No. 34 s 3(1) Sch 1

**Submission in writing when may be made rule of court**

s 8            om 1973 No. 34 s 3(1) Sch 1

**If action commenced after agreement to refer to arbitration court or judge may stay proceedings**

s 9            om 1973 No. 34 s 3(1) Sch 1

**Power to court or judge to direct arbitration before trial**

s 10          om 1973 No. 34 s 3(1) Sch 1

**Special case may be stated and question of fact tried**

s 11          om 1973 No. 34 s 3(1) Sch 1

**Arbitrator may state special case**

s 12          om 1973 No. 34 s 3(1) Sch 1

**Proceedings before and power of such arbitrator**

s 13          om 1973 No. 34 s 3(1) Sch 1

**Application to set aside award**

s 14          om 1973 No. 34 s 3(1) Sch 1

**Enforcing of awards within period for setting them aside**

s 15          om 1973 No. 34 s 3(1) Sch 1

**On failure of parties or arbitrators judge may appoint single arbitrator or umpire**

s 16          om 1973 No. 34 s 3(1) Sch 1

**When reference is to two arbitrators and one party fails to appoint**

s 17          om 1973 No. 34 s 3(1) Sch 1

**Two arbitrators may appoint umpire**

s 18          om 1973 No. 34 s 3(1) Sch 1

**Award to be made in three months unless parties or court enlarge time**

s 19          om 1973 No. 34 s 3(1) Sch 1

**Rule to deliver possession of land pursuant to award**

s 20          om 1973 No. 34 s 3(1) Sch 1

**Power to send back to arbitrator**

s 21          om 1973 No. 34 s 3(1) Sch 1

**For relief of sheriffs and other officers in execution of process against goods and chattels**

s 32 prov hdg    amd 1903 3 Edw 7 No. 10 s 10 Sch 3

**5 Table of changed names and titles**TABLE OF CHANGED NAMES AND TITLES  
under the Reprints Act 1992 ss 23 and 23A

Old	New	Reference provision
colony	State	see Commonwealth Constitution

**6 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
references to Queensland implied	Acts Interpretation Act 1954 s 35

**7 Table of corrected minor errors**TABLE OF CORRECTED MINOR ERRORS  
under the Reprints Act 1992 s 44

Provision	Description
30	om 'Pleading Act' ins 'Common Law Pleading Act'
57	om 'the Interdict Act' ins 'this Act'
63	om 'ar' ins 'as'

**8 Table of renumbered provisions**TABLE OF RENUMBERED PROVISIONS  
under the Reprints Act 1992 s 43

Previous	Renumbered as
39, after 'enacted that—'	39(1)
39, proviso	39(2)
55, 1st sentence	55(1)

55, proviso	55(2)
59, 1st part	59(1)
59, 2nd part	59(2)
60, 1st part	60(1)
60, 2nd part	60(2)
60, 3rd part	60(3)
60, 4th part	60(4)
62, 1st sentence	62(1)
62, proviso	62(2)

## **9 Table of comparative legislation**

s 22	1 & 2 Wm 4 c 58 s 1
s 23	1 & 2 Wm 4 c 58 s 2
s 24	1 & 2 Wm 4 c 58 s 3
s 25	1 & 2 Wm 4 c 58 s 4
s 26	1 & 2 Wm 4 c 58 s 5
s 27	23 & 24 Vic c 126 s 12
s 28	23 & 24 Vic c 126 s 14
s 29	23 & 24 Vic c 126 s 15
s 30	23 & 24 Vic c 126 s 16
s 31	23 & 24 Vic c 126 s 17
s 32	1 & 2 Wm 4 c 58 s 6
s 33	23 & 24 Vic c 126 c 13
s 35	23 & 24 Vic c 126 s 18
s 36	9 Anne c 20 s 1
s 37	9 Anne c 20 s 2
s 38	9 Anne c 20 s 3
s 39	1 Wm 4 c 21 s 4
s 39(2)	1 & 2 Wm 4 c 58 s 8
s 40	1 Wm 4 c 21 s 5
s 41	1 Wm 4 c 21 s 6
s 43	1 Wm 4 c 21 s 3
s 52	17 & 18 Vic c 125 s 79
s 53	17 & 18 Vic c 125 s 80
s 54	17 & 18 Vic c 125 s 81
s 55	17 & 18 Vic c 125 s 82
s 56	23 & 24 Vic c 126 s 33
s 57	23 & 24 Vic c 126 s 32
s 58	9 Anne c 20 s 4
s 59	9 Anne c 20 s 5
s 60	1 Wm 4 c 21 s 1
s 61	17 & 18 Vic c 125 s 77
s 62	15 & 16 Vic c 76 s 223
s 63	23 & 24 Vic c 126 s 38