

Queensland



EQUITY ACT 1867

**Reprinted as in force on 19 July 1994
(includes amendments up to Act No. 68 of 1991)**

Reprint No. 1

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Information about this reprint

This Act is reprinted as at 19 July 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)
- number and renumber provisions and references (s 43).

Also see Endnotes for—

- **details about when provisions commenced**
- **any provisions that have not commenced and are not incorporated in the reprint**
- **further information about editorial changes made in the reprint, including—**
 - **Table of changed names and titles**
 - **Table of renumbered provisions**
 - **Table of comparative legislation.**

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EQUITY ACT 1867

[as amended by all amendments that commenced on or before 19 July 19942]

An Act to consolidate and amend the laws relating to proceedings in equity

INTERPRETATION

Construction of terms

1. In the construction of this Act the words “bill of complaint” shall mean also and include information the word “affidavit” shall mean also and include affirmation and wherever the Supreme Court is mentioned or indicated herein the enactment shall be taken to refer either to the Judge acting as primary Judge in equity or to the Court of Appeal (or equally to one and the other) as the context or the nature of the case (having regard to their present jurisdictions respectively) may require and the words “master” and “registrar” shall mean the proper officer and no part of Australia nor any island adjacent thereto being part of the dominions of Her Majesty shall be deemed to be beyond the seas within the meaning of this Act.

SUBSTITUTED SERVICE

Equity process to be served in parts beyond jurisdiction

15. It shall be lawful for the Supreme Court in its equitable jurisdiction in any suit instituted in the said court—

- (a) concerning lands or hereditaments situate in the State; or
- (b) concerning any charge lien judgment or encumbrance thereon; or

- (c) concerning any money vested in any Government or public stock or public shares in public or joint stock companies or concerns in the said State; or
- (d) concerning the interests dividends or produce thereof;

upon special motion in open court on behalf of the complainant in such suit founded upon affidavit and such other documents as may be applicable for the purpose of ascertaining the residence of defendants in such suit or parties sought to be served and the particulars material to identify them and their residence and also specifying the means whereby such service may be authenticated and especially where there are any officers civil or military appointed or serving under the Government of the said State residing at or near the place of the alleged residence of the said defendants or parties to order that service of any bill and endorsement thereon and of all subsequent process thereupon upon any defendant in such suit then residing out of the jurisdiction of the said court in such parts in which the defendant shall so reside and be so served or in case the said court shall deem fit upon the receiver steward agent or other person receiving or remitting the rents of the premises or the dividends and profits of the said stock or concerns hereinbefore mentioned (if any) the subject or in part the subject matter of the suit returnable at such time as the court shall direct shall be deemed good service on every such defendant or party and afterwards upon an affidavit of such service had to order an appearance to be entered for such defendant or party in such manner and at such times as the court shall direct and thereupon it shall be lawful for such court and the plaintiff to proceed upon such appearance entered or such service so made as aforesaid as fully and effectually as if such appearance had been duly entered by a defendant residing or such service had been duly made within the jurisdiction of the said court.

Substitution of such service

16. When it shall appear upon affidavit to the satisfaction of the said court that any defendant in any such suit can not by reasonable diligence be served with the bill and endorsement thereon or that upon inquiry at the defendant's last or usual place of abode the defendant could not be found so as to be served with such process and there is just ground for believing that such defendant secretes or withdraws himself or herself so as to avoid being served with the process of such court then it shall be lawful for the said

court to order such substitution of such service of the bill and endorsement thereon as the said court shall think reasonable.

Special order for absolute decree

17.(1) However, no decree in cases within sections 15 and 16 shall be made absolute in the said court without the special order of such court made upon a special motion for that purpose.

(2) In addition, nothing in this Act shall be held to make it compulsory upon the complainant in any suit to serve or bring before such court any party or person further or otherwise than such complainant is now by law or the practice of such court required to do.

JOINDER OF PARTIES

Court may proceed without representative of deceased person or may appoint one

18. If in any suit or proceeding before the court it shall appear to the court that any deceased person who was interested in the matters in question has no legal personal representative it shall be lawful for the court either to proceed in the absence of any person representing the estate of such deceased person or to appoint some person to represent such estate for all the purposes of the suit or proceeding on such notice (if any) as the court shall think fit either specially or generally by public advertisement and every order made by the said court in reference to the matter and any orders consequent thereon shall bind the estate of such deceased person in the same manner in every respect as if there had been a duly constituted legal personal representative of such deceased person and such legal personal representative had been a party to the suit or proceeding and had duly appeared and submitted the personal representative's rights and interests to the protection of the court.

Court may decide between some of the parties without making other interested persons parties

20.(1) It shall be lawful for the court to adjudicate on questions arising between parties notwithstanding that they may be some only of the parties interested in the property respecting which the question may have arisen or that the property in question is comprised with other property in the same settlement will or other instrument without making the other parties interested in the property respecting which the question may have arisen or interested under the same settlement will or other instrument parties to the suit and without requiring the whole trusts and purposes of the settlement will or other instrument to be executed under the direction of the court and without taking the accounts of the trustees or other accounting parties or ascertaining the particulars or amount of the property touching which the question or questions may have arisen.

Proviso

(2) However, if the court shall be of opinion that the application is fraudulent or collusive or for some other reason ought not to be entertained it shall have power to refuse to make the order prayed.

Objections for want of parties

22. It shall not be competent to any defendant to take any objection for want of parties in any case to which the rules next hereinafter set forth extend and such rules shall be taken as part of the law and practice of the court and any law or practice inconsistent therewith is hereby annulled—

Rule 1. Any residuary legatee or next of kin may without serving the remaining residuary legatees or next of kin have a decree for the administration of the personal estate of a deceased person.

Rule 2. Any legatee interested in a legacy charged upon real estate and any person interested in the proceeds of real estate directed to be sold may without serving any other legatee or person interested in the proceeds of the estate have a decree for the administration of the estate of a deceased person.

Rule 3. Any residuary devisee or heir may without serving any co-residuary devisee or coheir have the like decree.

Rule 4. Any 1 of several cestui que trust under any deed or instrument may without serving any other of such cestuis que trust have a decree for

the execution of the trusts of the deed or instrument.

Rule 5. In all cases of suits for the protection of property pending litigation and in all cases in the nature of waste one person may sue on behalf of himself or herself and of all persons having the same interest.

Rule 6. Any executor administrator or trustee may obtain a decree against any one legatee next of kin or cestui que trust for the administration of the estate or the execution of the trusts.

Rule 7. In all the above cases the court if it shall see fit may require any other person or persons to be made a party or parties to the suit and may if it shall see fit give the conduct of the suit to such person as it may deem proper and may make such order in any particular case as it may deem just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with the defendant in the matters in question.

Rule 8. In all the above cases the persons who according to the previous practice of the court would be necessary parties to the suit shall be served with notice of the decree and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit and they may by an order of course have liberty to attend the proceedings under the decree and any party so served may within such time as shall in that behalf be prescribed by the general order of the Supreme Court apply to the court to add to the decree.

Rule 9. In all suits concerning real or personal estate which is vested in trustees under a will settlement or otherwise such trustees shall represent the persons beneficially interested under the trust in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate and in such cases it shall not be necessary to make the persons beneficially interested under the trusts parties to the suit but the court may upon consideration of the matter on the hearing if it shall so think fit order such persons or any of them to be made parties.

EXAMINATION OF DEFENDANTS

In the court of equity defendant may be examined on behalf of the plaintiff or a ny codefendant

48. In the court of equity any defendant to any cause pending in such court may be examined as a witness on the behalf of the plaintiff or of any codefendant in any such cause saving just exceptions and any interest which such defendant so to be examined may have in the matters or any of the matters in question in the cause shall not be deemed a just exception to the testimony of such defendant but shall only be considered as affecting or tending to affect the credit of such defendant as a witness.

Limited commissions

50. In order to relieve persons in prison from the expense of a master's attendance to take affidavits or answers the Chief Justice may in the Chief Justice's discretion by 1 or more commission or commissions under the seal of the court upon or in respect of which no fee shall be payable nominate and appoint the warden keeper or other chief officer of any prison within the State and their deputies to be commissioners for the Supreme Court in equity for the purpose of taking and receiving such affidavits and answers as any person or persons within any such prison shall be willing or desirous to make and for no other purpose and the person so taking such affidavit or answer shall in respect thereof be entitled to receive a fee of 10c and no more.

EVIDENCE ON MOTIONS PETITIONS ETC.

Any party in a cause may by subpoena require attendance of any witness

51.(1) Any party in any cause or matter depending in the said court may by a writ of subpoena ad testificandum or duces tecum require the attendance of any witness before the master in equity or before a commissioner specially appointed for the purpose and examine such witness orally for the purpose of using the witness's evidence upon any

motion petition or other proceeding before the court in like manner as such witness would be bound to attend and be examined with a view to the hearing of a cause.

Parties who have deposed by affidavit bound to attend for cross-examination if required

(2) And any party having made an affidavit to be used or which shall be used on any motion petition or other proceeding before the court shall be bound on being served with such writ to attend before the court master in equity or a commissioner for the purpose of being cross-examined.

(3) However, the court shall always have a discretionary power of acting upon such evidence as may be before it at the time and of making such interim orders or otherwise as may appear necessary to meet the justice of the case.

EVIDENCE TAKEN OUT OF THE JURISDICTION

Pleas declarations etc. how to be sworn and taken in places out of this State

53. All pleas answers disclaimers examinations affidavits declarations affirmations and attestations of honour in causes or matters depending in the Supreme Court in equity may be sworn and taken in any place out of this State under the dominion of Her Majesty before any Judge court notary public or person lawfully authorised to administer oaths at such place or before any of Her Majesty's consuls or vice-consuls or before any Australian Consular Officer within the meaning of the *Australian Consular Officers' Notarial Powers and Evidence Act 1946* or before any other person who is a consular officer within the meaning of section 37A of the *Evidence and Discovery Act 1867*, in any place out of Her Majesty's dominions and the Judges and other officers of the said Supreme Court shall take judicial notice of the seal or signature as the case may be and authority of any such court Judge notary public person consul or vice-consul or of such Australian Consular Officer or, as the case may be, of such other person who is a consular officer within the meaning of section 37A of the *Evidence and Discovery Act 1867* attached appended or

subscribed to any such plea answer disclaimer examination affidavit affirmation attestation of honour declaration or other document to be used in the said court.

SCIENTIFIC ASSISTANCE

Court in equity may obtain assistance of scientific persons and others

54. It shall be lawful for the Supreme Court or any Judge thereof in such way as they may think fit to obtain the assistance of conveyancing counsel accountants merchants engineers actuaries or other scientific persons the better to enable such court or Judge to determine any matter at issue in any cause or proceeding depending in the equity jurisdiction of the court and to act upon the certificate of such persons.

Fees to such persons

55. The allowances in respect of fees to such conveyancing counsel accountants merchants engineers actuaries and other scientific persons shall be regulated by the taxing officer of the said court subject to an appeal to any Judge whose decision shall be final.

DECLARATIONS

Suit may be for declaratory order only

73. No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby and it shall be lawful for the Court to make binding declarations of right without granting consequential relief.

DIRECTIONS

Where account required to be taken court may give special directions as to the mode of taking same

75. It shall be lawful for the court in any case where any account is required to be taken to give such special directions (if any) as it may think fit with respect to the mode in which the account should be taken or vouched and such special directions may be given either by the decree or order directing such account or by any subsequent order or orders upon its appearing to the court that the circumstances of the case are such as to require such special directions and particularly it shall be lawful for the court in cases where it shall think fit so to do to direct that in taking the account the books of account in which the accounts required to be taken have been kept or any of them shall be taken as prima facie evidence of the truth of the matters therein contained with liberty to the parties interested to take such objections thereto as they may be advised.

Where property is the subject of proceedings court may allow to parties the annual income

77. Where any real or personal property shall form the subject of any proceedings in the Supreme Court in equity and the court shall be satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such suit it shall be lawful for the said court at any time after the commencement of such proceedings to allow to the parties interested therein or any 1 or more of them the whole or part of the annual income of such real property or a part of such personal property or a part or the whole of the income thereof up to such time as the said court shall direct and for that purpose to make such orders as may appear to the said court necessary or expedient.

Heir or devisee of real estate not to claim payment of mortgage out of personal assets

78.(1) When any person shall after 31 December 1855 have died seized of or entitled to any estate or interest in any land or other hereditaments which shall at the time of the person's death have been charged with the

payment of any sum or sums of money by way of mortgage and such person shall not by the person's will or deed or other document have signified any contrary or other intention the heir or devisee to whom such land or hereditaments shall descend or be devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate or any other real estate of such person but the land or hereditaments so charged shall as between the different persons claiming through or under the deceased person be primarily liable to the payment of all mortgage debts with which the same shall be charged every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

(2) However, nothing herein contained shall affect or diminish any right of the mortgagee on such lands or hereditaments to obtain full payment or satisfaction of the mortgagee's mortgage debt either out of the personal estate of the person so dying as aforesaid or otherwise.

Not to affect rights claimed under any will etc. before 1 January 1856

(3) In addition, nothing herein contained shall affect the rights of any person claiming under or by virtue of any will deed or document made before 1 January 1856.

CONTEMPT

Sheriff to keep a register of persons committed and report 4 times a year to the court

120. The sheriff shall keep a register of the names of all persons committed by the Supreme Court in equity for contempts stating the dates and the grounds of their several commitments and the dates of their respective discharges and shall in every term make a report to the Supreme Court of the names and descriptions of such prisoners in the sheriff's custody on each of such days respectively with the causes and dates of their respective commitments.

Defendants brought into court by habeas corpus or in custody and refusing to enter appearance court may enter it for them

121. If any defendant by virtue of any writ of habeas corpus or other process issuing out of the court in equity shall be brought into court and shall refuse or neglect or being within the walls of any prison in Queensland under or charged with an attachment or other process of contempt shall after 14 days previous notice in writing requiring the defendant to enter an appearance refuse or neglect to enter the defendant's appearance according to the rules or method required by the said court or to appoint an attorney of such court to act on the defendant's behalf such court may appoint an attorney of such court to enter an appearance for such defendant and such proceedings may thereupon be had in the cause as if the party had actually appeared.

Any person in custody for contempt for not executing any deed etc. and after 2 months still refusing to execute court may order registrar to execute the same

132. When any person shall have been directed by any decree or order to execute any deed or other instrument or make a surrender or transfer and shall have refused or neglected to execute make or transfer the same and shall have been committed to prison under process for such contempt or being confined in prison for any other cause shall have been charged with or detained under process for such contempt and shall remain in such prison the court may upon motion or petition and upon affidavit that such person has after the expiration of 2 calendar months from the time of the person being committed under or charged with or detained under such process again refused to execute such deed or instrument order or appoint the registrar or if the act is to be done out of Brisbane then if necessary one of the commissioners of the Supreme Court in equity to execute such deed or other instrument or to make such surrender or transfer for and in the name of such person and the execution of the said deed or other instrument and the surrender or transfer made by the said registrar or commissioner shall in all respects have the same force and validity as if the same had been executed or made by the party himself or herself and within 10 days after the execution or making of any such deed or other instrument or surrender or transfer notice thereof shall be given by the adverse solicitor to the party in whose name the same is executed or made and such party as soon as the

deed or other instrument surrender or transfer shall be executed made levied or suffered shall be considered as having cleared the party's contempt except as far as regards the payment of the costs of the contempt and shall be entitled to be discharged therefrom under any of the provisions of this Act applicable to the party's case and the court shall make such order as shall be just touching the payment of the costs of or attending any such deed surrender instrument or transfer.

A person committed for contempt for not delivering up books etc. any sequestrator may seize the same

133. Where a person shall be committed for a contempt in not delivering to any person or persons or depositing in court or elsewhere as by any order may be directed books papers or any other articles or things any sequestrator or sequestrators appointed under any commission of sequestration shall have the same power to seize and take such books papers writings or other articles or things being in the custody or power of the person against whom the sequestration issues as they would have over the person's own property and thereupon such articles or things so seized and taken shall be dealt with by the court as shall be just and after such seizure it shall be lawful for the court upon the application of the prisoner or of any other person in the cause or matter or upon any report to be made in pursuance of this Act to make such order for the discharge of the prisoner upon such terms and if it shall see fit making any costs in the cause as to the court shall seem proper.

Other cases of contempt court may order discharge upon terms

134. In any other case of a commitment for contempt not herein specially provided for the court may upon any such application as last aforesaid or upon any such report as aforesaid make such order for the discharge of the prisoner upon any such terms and making if the court shall see fit any costs in the cause as to the court shall seem proper.

A person committed for contempt omitting to apply for the person's discharge the court may compulsorily discharge the person

135. Where any person committed for a contempt shall be entitled to discharge upon applying to the court but shall omit to make such application

the court may upon any such report as aforesaid compulsorily discharge such person from the contempt and from custody and pay the costs of the contempt out of any funds belonging to the person over which the court may have power or make them costs in the cause as against the person or may discharge the person from the contempt but leave the person in custody for the costs which may be cleared if the person be insolvent under the provisions hereinafter contained in that behalf.

INSOLVENTS

Discharge of insolvent may extend to process for contempt in nonpayment of money and to costs incurred by creditor but subject to taxation

140. The discharge of any prisoner adjudicated upon under the authority of any Act already or which may hereafter be passed for the relief of insolvent debtors shall and may extend to all process issuing from any court of equity for any contempt of such court for nonpayment of money or of costs charges or expenses in any such court and in such case the said discharge shall be deemed to extend to all costs which such prisoner shall be liable to pay in consequence or by reason of such contempt or on purging the same and every discharge so adjudicated as aforesaid as to any debt or damages of any creditor of such prisoner shall be deemed to extend also to all costs incurred by such creditor before the filing of such prisoner's schedule in any action or suit brought by such creditor against such prisoner for the purpose for the recovery of the same and all persons as to whose demands for any such costs money or expenses any such persons shall be so adjudged to be discharged shall be deemed and taken to be creditors of such prisoner in respect thereof and entitled to the benefits of all the provisions made for creditors by the said Act or any future Act subject nevertheless to such ascertaining of the amount of the said demands as may be had by taxation or otherwise and to such examination thereof as is in the said last mentioned Act or as shall be in any future Act provided in respect of all claim to a dividend of such insolvent's estate and effects.

PRIVILEGE

Appearances may be put in for defendants having privilege of Parliament in court of equity on return of process of sequestration

142.(1) And whereas in many cases persons having privilege of Parliament are named as defendants in suits instituted in courts of equity against them either alone or jointly with other persons for enforcing against them demands and duties cognisable in courts of equity and in some cases such defendants having privileges of Parliament have stood out to the return of process of sequestration issued against them for enforcing appearance and such process of sequestration hath not been found sufficient to enforce such appearance be it therefore enacted.

(2) That in case any defendant having privilege of Parliament shall upon a return of process of sequestration issued against the defendant for not putting in an appearance to any original or other bill of complaint instituted against the defendant in a court of equity for enforcing discovery and relief or discovery alone (as the case may be) neglect to appear that then and in such case such court upon producing the return of such sequestration in court may on the motion or other application of the plaintiff in such cause appoint a solicitor to enter an appearance for such defendant so having privilege of Parliament and such proceedings may be thereupon had in the cause as if the party had actually appeared.

Commissioners and others may take attestations upon honour

146. Every person by law authorised to administer oaths and take declarations and affirmations shall be so authorised to take attestations upon honour.

JURISDICTION IN INFANCY

Mother petitioning may obtain access to mother's infant under regulations

148. It shall be lawful for the Supreme Court or for the primary Judge of the said court in equity or during the primary Judge's absence or illness for any other Judge of the said court upon hearing the petition of the mother of an infant being in the sole custody or control of the father thereof or of any person by the Judge's authority or of any guardian after the death of the father if the said court or Judge shall see fit to make order for the access of the petitioner to such infant at such times and subject to such regulations as the said court or Judge shall deem convenient and just and if such infant shall be within the age of 7 years to make order that such infant shall be delivered to and remain in the custody of the petitioner until attaining such age subject to such regulations as the said court or Judge shall deem convenient and just.

Orders may be enforced by process of contempt

149. All orders which shall be made by virtue of this Act by the said court or Judge shall be enforced by process of contempt of the said court.

Unless in cases of adultery

150. However, no order shall be made by virtue of this Act whereby the mother against whom adultery shall be established by the judgment decree or sentence of the court in its matrimonial causes jurisdiction shall have the custody of any infant or access to any infant anything herein contained to the contrary notwithstanding.

Infants may with the approbation of the Supreme Court make valid settlements or contracts for settlements of their real and personal estate upon marriage

151.(1) It shall be lawful for every infant upon or in contemplation of his or her marriage with the sanction of the Supreme Court in its equitable jurisdiction to make a valid and binding settlement or contract for a

settlement of all or any part of his or her property or property over which he or she has any power of appointment whether real or personal and whether in possession reversion remainder or expectancy and every conveyance appointment and assignment of such real or personal estate or contract to make a conveyance appointment or assignment thereof executed by such infant with the approbation of the said court for the purpose of giving effect to such settlement shall be as valid and effectual as if the person executing the same were of full age.

(2) However, this enactment shall not extend to powers of which it is expressly declared that they shall not be exercised by an infant.

In case infant die under age appointment etc. to be void

152. In addition, in case any appointment under a power of appointment or any disentailing assurance shall have been executed by any infant tenant in tail under the provisions of this Act and such infant shall afterwards die under age such appointment or disentailing assurance shall thereupon become absolutely void.

The sanction of the Supreme Court to be given upon petition

153. The sanction of the Supreme Court in its equitable jurisdiction to any such settlement or contract for a settlement may be given upon petition presented by the infant or his or her guardian in a summary way without the institution of a suit and if there be no guardian the court may require a guardian to be appointed or not as it shall think fit and the court also may if it shall think fit require that any persons interested or appearing to be interested in the property should be served with notice of such petition.

Not to apply to males under 17 or females under 17 years of age

154. However, nothing in this Act contained shall apply to any male infant under the age of 17 years or to any female infant under the age of 17 years.

Jurisdiction given to the primary Judge in equity or one other Judge in the primary Judge's absence or illness

155. The jurisdiction and powers by sections 151 to 154 vested in the Supreme Court may be exercised by the primary Judge thereof in equity or one other Judge acting as such in the primary Judge's absence or during the primary Judge's illness in the same manner as the ordinary equitable jurisdiction and powers of the Supreme Court are exercised and subject in like manner to appeal rehearing and review.

POWERS OF THE COURT

Power to Judges to make general rules and orders from time to time

156. It shall be lawful for the Judges of the said court or a majority of them whereof the Chief Justice shall be one from time to time to make rescind and alter general rules and orders for better enabling the opinion of the said court to be obtained on special cases and for effectuating the purposes of this Act as to the debts and liabilities of deceased persons and otherwise and for making any provision which may be or be deemed necessary or proper as to amendment reviver and supplemental matter or relief and as to costs of any proceedings under or in pursuance of this Act and for regulating the times and form and mode of procedure and generally the practice of the said court in respect of the matters to which this Act relates and every of them and 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 and so far as may be found expedient for altering the course of proceeding hereinbefore prescribed in respect to such matters or any of them.

COMMENCEMENT AND SHORT TITLE

Commencement of Act—Short title

157. This Act shall commence on 31 December 1867 and may be

Equity Act 1867

referred to as the *Equity Act 1867*³⁻⁷.

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 19 July 1994. Future amendments of the Equity Act 1867 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 List of legislation

Equity Act 1867 31 Vic No. 18

date of assent 28 December 1867
commenced 31 December 1867 (see s 157)
as amended by—

Supreme Court Funds Act 1895 59 Vic No. 7 s 4 Sch

date of assent 24 September 1895
commenced 1 January 1986 (see s 2)

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

date of assent 28 November 1899
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

**Australian Consular Officers' Notarial Powers and Evidence Act 1946 10 Geo 6
No. 43 s 5(iii), (v)**

date of assent 28 November 1946

commenced 28 November 1946 (see s 1(3))

**Evidence and Discovery Acts Other Acts Amendment Act 1960 9 Eliz 2 No. 22
Pt 3**

date of assent 14 November 1960

commenced on date of assent

Age of Majority Act 1974 No. 57 s 8 Sch

date of assent 27 September 1974

commenced 1 March 1975 (proc pubd Gaz 16 November 1974 p 1083)

Property Law Act 1974 No. 76 s 3(2) Sch 6 (as amd by Act No. 57 of 1975)

date of assent 1 November 1974

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

Succession Act 1981 No. 69 s 3(1) Sch 1

date of assent 7 October 1981

commenced 1 January 1982 (proc pubd Gaz 19 December 1981 p 1622)

Statute Law (Miscellaneous Provisions) Act 1989 No. 103 s 3 Sch

date of assent 25 October 1989

commenced on date of assent

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

Construction of terms

s 1 amd 1991 No. 68 s 111 Sch

Printing

hdg (prec s 2) om R1 (see RA s 39)

Power to Supreme Court to revive present practice as to filing of bills &c.

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

Engrossing bills and subsequent pleadings on parchment unnecessary

s 3 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Exceptions to Proceedings

hdg (prec s 4) om R1 (see RA s 39)

Excepting to bills &c. for impertinence abolished. Proviso as to costs

s 4 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Bills

hdg (prec s 5) om R1 (see RA s 39)

Bills of complaint to contain concise narratives of material facts &c. divided into numbered paragraphs but shall not contain interrogatories

s 5 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Plaintiff to deliver printed copies of bill or claim at rate fixed by Supreme Court

s 6 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Written copies of bills may be served in certain cases upon plaintiff undertaking to file a printed copy in fourteen days

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

Prochein Ami

hdg (prec s 8) om R1 (see RA s 39)

Person named as next friend to sign an authority

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

Amendment of Bill

hdg (prec s 9) om R1 (see RA s 39)

Amendments to original bill also to be filed &c. In certain cases a printed bill may contain written amendments

s 9 om 1908 8 Edw 7 No. 18 s 2 Sch 1

New facts &c. after commencement of suit to be introduced as amendments

s 10 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Service of Bill

hdg (prec s 11) om R1 (see RA s 39)

Writs of subpoena abolished

s 11 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Defendants to be served with a printed copy of bill in lieu of subpoena and summons

s 12 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Service of a bill to have same effect as the issuing of subpoena and summons

s 13 om 1908 8 Edw 7 No. 18 s 2 Sch 1

As to service of bill

s 14 om 1908 8 Edw 7 No. 18 s 2 Sch 1

No suit to be dismissed for misjoinder of plaintiffs

s 19 om 1908 8 Edw 7 No. 18 s 2 Sch 1

In case of abatement &c. an order may be made which shall have same effect as a bill of revivor

s 21 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Interrogatories

hdg (prec s 23) om R1 (see RA s 39)

Interrogatories to be filed in office of Master in Equity by plaintiff within time prescribed

s 23 om 1908 8 Edw 7 No. 18 s 2 Sch 1

In certain cases defendant after answer may file interrogatories for examination of plaintiff

s 24 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Discovery of Documents

hdg (prec s 25) om R1 (see RA s 39)

Court or judge may order defendant to produce documents on oath

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

Plaintiff may be required to produce documents on oath

s 26 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Admissions

hdg (prec s 27) om R1 (see RA s 39)

One party may call on another to admit documents

s 27 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Defence

hdg (prec s 28) om R1 (see RA s 39)

Defendants may answer without leave within the time allowed though not required so to do

s 28 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Answer to contain not only answers to interrogatories but such other statements as may be deemed necessary and to be divided into numbered paragraphs

s 29 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Motion for Dismissal

hdg (prec s 30) om R1 (see RA s 39)

Defendant not having been required to answer and not answering may move for dismissal of bill for want of prosecution

s 30 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Motion for Decree

hdg (prec s 31) om R1 (see RA s 39)

Plaintiff may on expiry of time for answering move for decree or decretal order

s 31 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Proceedings thereon

s 32 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Taking Bills Pro Confesso

hdg (prec s 33) om R1 (see RA s 39)

Manner of proceeding in case of persons not appearing within the usual time after subpoena or other process has been issued

s 33 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Persons so neglecting in custody or forthcoming to be served with a copy of the decree

s 34 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Persons out of the colony affected by such decrees if they return within seven years to be served with a copy or in case of death their heirs &c.

s 35 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Persons not petitioning a re-hearing of the cause within six months the decree to be absolutely confirmed

s 36 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Persons petitioning a re-hearing within seven years and giving security for costs admitted to answer and the cause to be heard again

s 37 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Persons not appearing within seven years and making such petition to be absolutely barred

s 38 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Not to affect persons beyond the seas unless in certain cases

s 39 om 1908 8 Edw 7 No. 18 s 2 Sch 1

As to courts having a limited jurisdiction

s 40 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Such bill shall be read in evidence as an answer admitting the facts

s 41 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Issue

hdg (prec s 42) om R1 (see RA s 39)

Issue may be joined by filing replication

s 42 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Mode and Time of Taking Evidence

hdg (prec s 43) om R1 (see RA s 39)

Plaintiff where suits by bill at issue may give notice to defendant to adduce evidence orally or by affidavit

s 43 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Affidavits as to particular facts &c. may be used

s 44 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Evidence on both sides to be closed within time prescribed by general order

s 45 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Court may require examination before itself of any witness

s 46 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Evidence subsequent to hearing

s 47 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Affidavits on Hearing and Further Directions

hdg (prec s 49) om R1 (see RA s 39)

Power for court notwithstanding any rule &c. to the contrary to receive proof by affidavit

s 49 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Answer of defendant on motion for injunction &c. to be regarded as an affidavit

s 52 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Pleas declarations &c. how to be sworn and taken in places out of this State

s 53 amd 10 Geo 6 No. 43 s 5(iii); 1960 9 Eliz 2 No. 22 s 8

Jury

hdg (prec s 56) om R1 (see RA s 39)

Damages may be assessed or question of fact arising in any suit may be tried by a jury before the court itself

s 56 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Questions ordered to be tried by jury to be reduced into writing

s 57 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Damages may be assessed or questions of fact tried before the court itself without a jury

s 58 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Damages may be assessed by jury before judge of Supreme Court at nisi prius or before a sheriff

s 59 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Injunction

hdg (prec s 60) om R1 (see RA s 39)

Practice as to injunctions to stay proceedings at law

s 60 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Writ of possession

s 61 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Damages

hdg (prec s 62) om R1 (see RA s 39)

Power to court in equity to award damages in certain cases

s 62 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Covenant to Insure

hdg (prec s 63) om R1 (see RA s 39)

Relief against forfeiture for breach of covenant to insure in certain cases

s 63 om 1974 No. 76 s 3(2) Sch 6

Record of relief granted

s 64 om 1974 No. 76 s 3(2) Sch 6

Court not to relieve more than once in respect of the same covenant

s 65 om 1974 No. 76 s 3(2) Sch 6

Lessor to have benefit of an informal insurance

s 66 om 1974 No. 76 s 3(2) Sch 6

Protection of purchaser against forfeiture under covenant for insurance against fire in certain cases

s 67 om 1974 No. 76 s 3(2) Sch 6

Preceding provisions to apply to leases for a term of years absolute &c.

s 68 om 1974 No. 76 s 3(2) Sch 6

Legal Titles

hdg (prec s 69) om R1 (see RA s 39)

Court may determine legal titles

s 69 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Illusory appointments

hdg (prec s 70) om R1 (see RA s 39)

Illusory appointments shall be valid in equity as well as at law

s 70 om 1974 No. 76 s 3(2) Sch 6

Not to affect any deed which declares the amount of the share

s 71 om 1974 No. 76 s 3(2) Sch 6

Nor to give any other force to any appointment than the same would have had

s 72 om 1974 No. 76 s 3(2) Sch 6

Court may direct sale of mortgaged property instead of foreclosure

s 74 om 1974 No. 76 s 3(2) Sch 6 (as amd 1975 No. 57 s 21(b))

Court may order real estate to be sold if required

s 76 om 1981 No. 69 s 3 Sch 1

Transaction of Business by the Registrar and by the Accountant-General

hdg (prec s 79) om R1 (see RA s 39)

Interpretation of “property”

s 79 om 1895 59 Vic No. 7 s 4 Sch

Money and property to be paid and delivered into the bank

s 80 om 1895 59 Vic No. 7 s 4 Sch

Suitors’ money in bank to be paid by order of the court

s 81 om 1895 59 Vic No. 7 s 4 Sch

When property deposited in bank ordered to be delivered out registrar shall certify

s 82 om 1895 59 Vic No. 7 s 4 Sch

Bank to receive interest &c. and the same to be interest &c. in accountant-general’s account

s 83 om 1895 59 Vic No. 7 s 4 Sch

Party paying money or delivering property shall take a certificate from cashier of bank

s 84 om 1895 59 Vic No. 7 s 4 Sch

Money directed to be laid out in Government securities same to be specified in order

s 85 om 1895 59 Vic No. 7 s 4 Sch

When securities ordered to be transferred to suitors registrar shall certify

s 86 om 1895 59 Vic No. 7 s 4 Sch

Such certificate to be authority to proper officer to transfer

s 87 om 1895 59 Vic No. 7 s 4 Sch

Appointment of accountant-general by rule of court

s 88 om 1895 59 Vic No. 7 s 4 Sch

After death &c. of accountant the securities vested in his successor

s 89 om 1895 59 Vic No. 7 s 4 Sch

Accountant not to meddle with the suitor's money but only keep account with the bank

s 90 om 1895 59 Vic No. 7 s 4 Sch

Cash and Property under Control of Court

hdg (prec s 91) om R1 (see RA s 39)

Power to judges to make general orders as to investment of cash under the control of the court

s 91 om 1895 59 Vic No. 7 s 4 Sch

Trustees &c. to invest trust funds in stock &c. in which cash under the control of the court may be invested

s 92 om 1895 59 Vic No. 7 s 4 Sch

Special Case

hdg (prec s 93) om R1 (see RA s 39)

Power to persons interested in questions to state special cases for the opinion of the court

s 93 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Case to be signed by counsel and files and appearances entered by defendants

s 94 om 1908 8 Edw 7 No. 18 s 2 Sch 1

After case filed and appearance by defendant parties to be bound except that married women infants and lunatics are not to be bound by statements in case till leave given to set it down

s 95 om 1908 8 Edw 7 No. 18 s 2 Sch 1

How such special cases to be entitled

s 96 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Form of special case

s 97 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Case to state how guardian constituted and the concurrence of married women

s 98 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Parties to Case under Disabilities

hdg (prec s 99) om R1 (see RA s 39)

How married women may concur

s 99 om 1908 8 Edw 7 No. 18 s 2 Sch 1

How infant may concur

s 100 om 1908 8 Edw 7 No. 18 s 2 Sch 1

How lunatic may concur

s 101 om 1908 8 Edw 7 No. 18 s 2 Sch 1

How special guardian to be appointed for a lunatic not found such by

inquisition and for infant

s 102 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Order to appoint special guardian of infant may be discharged

s 103 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Setting down Case

hdg (prec s 104) om R1 (see RA s 39)

How case to be set down for hearing

s 104 om 1908 8 Edw 7 No. 18 s 2 Sch 1

When a married woman infant or lunatic is a party application to be made to the court for leave to set the case down

s 105 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Declaration Thereon

hdg (prec s 106) om R1 (see RA s 39)

Upon hearing court to determine question and make a declaration

s 106 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Protection afforded to persons acting under declaration

s 107 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Re-hearing and appeal Thereon

hdg (prec s 108) om R1 (see RA s 39)

The court may suspend the acting upon declaration

s 108 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Summary Procedure

hdg (prec s 109) om R1 (see RA s 39)

Remedy by creditor &c. for administration of personal estate

s 109 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Copy of summons to be filed

s 110 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Remedy by creditor for administration of real estate

s 111 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Executors and Administrators

hdg (prec s 112) om R1 (see RA s 39)

Court on application of executors or administrators may by order of course direct it to be referred to a master to take an account of debts and liabilities

s 112 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Order to take account of debts &c. of deceased person under preceding section may be made immediately after probate granted

s 113 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Master's report may be objected to by motion upon notice

s 114 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Proceeding of the court on such motion

s 115 om 1908 8 Edw 7 No. 18 s 2 Sch 1

If debts or certain liabilities allowed be not paid or provided an order may be made for payment or for taking accounts

s 116 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Court on the application of executors or administrators may direct appropriation of money to answer contingent liability

s 117 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Court may restrain proceedings against executors and administrators

s 118 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Protection afforded to executors and administrators

s 119 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Persons in Contempt or in Custody

hdg (prec s 122) om R1 (see RA s 39)

Unexecuted attachment

s 122 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Refusal to answer

s 123 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Poor defendant

s 124 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Answer for defendant

s 125 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Where defendant in contempt for not answering bill is committed or remanded plaintiff may sue out habeas corpus and in case of no answer after the court may order bill to be taken pro confesso

s 126 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Where prisoner turned over pro forma

s 127 om 1908 8 Edw 7 No. 18 s 2 Sch 1

The party prosecuting any contempt may without order sue forth the several writs in process of contempt

s 128 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Defendant in contempt and in custody if not sooner cleared plaintiff shall bring him to the bar of the court within thirty days

s 129 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Court upon application of the plaintiff may remand

s 130 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Defendant in custody for contempt for not appearing plaintiff may cause appearance to be entered and after two months may take the bill pro confesso

s 131 om 1908 8 Edw 7 No. 18 s 2 Sch 1

In Forma Pauperis

hdg (prec s 136) om R1 (see RA s 39)

Defendant brought up under habeas corpus making oath of poverty court may refer it to a master to inquire and report &c.

s 136 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Registrar by special order to visit and examine prisoners confined for contempt and report &c.

s 137 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Registrar visiting prison to examine prisoner &c.

s 138 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Prisoners under Disabilities

hdg (prec s 139) om R1 (see RA s 39)

If court satisfied that prisoner is an idiot &c. court shall appoint a guardian

s 139 om 1908 8 Edw 7 No. 18 s 2 Sch 1

When process of contempt is for non-performance of an act

s 141 om 1908 8 Edw 7 No. 18 s 2 Sch 1

In default of answer to bill in equity against persons having privilege of Parliament bill shall be taken pro confesso

s 143 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Mistakes

hdg (prec s 144) om R1 (see RA s 39)

In case directions as to practice &c. not followed court may rectify proceedings

s 144 om 1908 8 Edw 7 No. 18 s 2 Sch 1

Penalty for falsely swearing &c.

s 145 om 1899 63 Vic No. 9 s 3(2) Sch 3

Penalty for forging signature or seal of judge &c. empowered to administer oaths under this Act

s 147 om 1899 63 Vic No. 9 s 3(2) Sch 3

Infants may with the approbation of the Supreme Court make valid settlements or contracts for settlements of their real and personal estate upon marriage

s 151 amd 1974 No. 57 s 8 Sch

Not to apply to males under seventeen or females under seventeen years of age

s 154 amd 1974 No. 57 s 8 Sch; 1989 No. 103 s 3 Sch

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 renumbered provisions

TABLE OF RENUMBERED PROVISIONS under the Reprints Act 1992 s 43

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| 15, 3rd unnum para | 15(c) |
| 15, 4th unnum para | 15(d) |
| 17, 1st proviso | 17(1) |
| 17, 2nd proviso | 17(2) |
| 20, 1st sentence | 20(1) |
| 20, proviso | 20(2) |
| 51, 1st sentence | 51(1) |
| 51, 2nd sentence | 51(2) |
| 51, 2nd sentence, proviso | 51(3) |
| 74, 1st sentence | 74(1) |
| 74, proviso | 74(2) |
| 78, 1st sentence | 78(1) |
| 78, 1st proviso | 78(2) |
| 78, 2nd proviso | 78(3) |
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| 142, 2nd sentence | 142(2) |
| 151, 1st sentence | 151(1) |
| 151, proviso | 151(2) |

7 Table of comparative legislation

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| s 28 | 15 & 16 Vic c 86 s 13 |
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| s 35 | 11 Geo IV and 1 Wm IV c 36 s 5 |
| s 36 | 11 Geo IV and 1 Wm IV c 36 s 6 |
| s 37 | 11 Geo IV and 1 Wm IV c 36 s 7 |
| s 38 | 11 Geo IV and 1 Wm IV c 36 s 8 |
| s 39 | 11 Geo IV and 1 Wm IV c 36 s 9 |
| s 40 | 11 Geo IV and 1 Wm IV c 36 s 10 |
| s 41 | 11 Geo IV and 1 Wm IV c 36 s 14 |
| s 42 | 15 & 16 Vic c 86 s 26 |
| s 43 | 15 & 16 Vic c 86 s 29 |
| s 44 | 15 & 16 Vic c 86 s 36 |
| s 45 | 15 & 16 Vic c 86 s 38 |
| s 46 | 15 & 16 Vic c 86 s 39 |
| s 47 | 15 & 16 Vic c 86 s 4 [Sic but see s 41] |
| s 49 | 13 & 14 Vic c 35 s 26 |
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| s 51 | 15 & 16 Vic c 86 s 40 |
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