



CHAPTER 66.

An Act for the constitution of a Supreme Court, and for other purposes relating to the better Administration of Justice in England ; and to authorise the transfer to the Appellate Division of such Supreme Court of the Jurisdiction of the Judicial Committee of Her Majesty's Privy Council.

A.D. 1873.

[5th August 1873.]

WHEREAS it is expedient to constitute a Supreme Court, and to make provision for the better administration of justice in England :

And whereas it is also expedient to alter and amend the law relating to the Judicial Committee of Her Majesty's Privy Council :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

1. This Act may be cited for all purposes as the "Supreme Court of Judicature Act, 1873." Short title.

2. This Act, except any provision thereof which is declared to take effect on the passing of this Act, shall commence and come into operation on the second day of November 1874. Commencement of Act.

PART I.

Constitution and Judges of Supreme Court.

3. From and after the time appointed for the commencement of this Act, the several Courts herein-after mentioned, (that is to say,) The High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the

Union of existing Courts into one Supreme Court.

A.D. 1873. — Court for Divorce and Matrimonial Causes, and the London Court of Bankruptcy, shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Supreme Court of Judicature in England.

Division of
Supreme
Court into a
Court of
original and
a Court
of appellate
jurisdiction.

4. The said Supreme Court shall consist of two permanent Divisions, one of which, under the name of "Her Majesty's High Court of Justice," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is herein-after mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal," shall have and exercise appellate jurisdiction, with such original jurisdiction as herein-after mentioned as may be incident to the determination of any appeal.

Constitution
of High
Court of
Justice.

5. Her Majesty's High Court of Justice shall be constituted as follows:—The first Judges thereof shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the several Vice-Chancellors of the High Court of Chancery, the Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, the several Puisne Justices of the Courts of Queen's Bench and Common Pleas respectively, the several Junior Barons of the Court of Exchequer, and the Judge of the High Court of Admiralty, except such, if any, of the aforesaid Judges as shall be appointed ordinary Judges of the Court of Appeal.

Subject to the provisions herein-after contained, whenever the office of a Judge of the said High Court shall become vacant, a new Judge may be appointed thereto by Her Majesty, by Letters Patent. All persons to be hereafter appointed to fill the places of the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, and their successors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in the same manner, respectively, as heretofore. Every Judge who shall be appointed to fill the place of any other Judge of the said High Court of Justice shall be styled in his appointment "Judge of Her Majesty's High Court of Justice," and shall be appointed in the same manner in which the Puisne Justices and Junior Barons of the Superior Courts of Common Law have been heretofore appointed: Provided always, that if at the commencement of this Act the number of Puisne Justices and Junior Barons who shall become Judges of the said High Court shall exceed twelve in the whole, no new Judge of the

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said High Court shall be appointed in the place of any such Puisne Justice or Junior Baron who shall die or resign while such whole number shall exceed twelve, it being intended that the permanent number of Judges of the said High Court shall not exceed twenty-one.

All the Judges of the said Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction; and shall be addressed in the manner which is now customary in addressing the Judges of the Superior Courts of Common Law.

The Lord Chief Justice of England for the time being shall be President of the said High Court of Justice in the absence of the Lord Chancellor.

6. Her Majesty's Court of Appeal shall be constituted as follows:—There shall be five ex officio Judges thereof, and also so many ordinary Judges (not exceeding nine at any one time) as Her Majesty shall from time to time appoint. The ex officio Judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer. The first ordinary Judges of the said Court shall be the existing Lords Justices of Appeal in Chancery, the existing salaried Judges of the Judicial Committee of Her Majesty's Privy Council, appointed under the "Judicial Committee Act, 1871," and such three other persons as Her Majesty may be pleased to appoint by Letters Patent; such appointment may be made either within one month before or at any time after the day appointed for the commencement of this Act, but if made before shall take effect at the commencement of this Act.

Constitution
of Court of
Appeal.

Besides the said ex officio Judges and ordinary Judges, it shall be lawful for Her Majesty (if she shall think fit), from time to time to appoint, under Her Royal Sign Manual, as additional Judges of the Court of Appeal, any persons who, having held in England the office of a Judge of the Superior Courts of Westminster hereby united and consolidated, or of Her Majesty's Supreme Court hereby constituted, or in Scotland the office of Lord Justice General or Lord Justice Clerk, or in Ireland the office of Lord Chancellor or Lord Justice of Appeal, or in India the office of Chief Justice of the High Court of Judicature at Fort William in Bengal, or Madras, or Bombay, shall respectively signify in writing their willingness to serve as such additional Judges in the Court of Appeal. No such additional Judge shall be deemed to have undertaken the duty of

A.D. 1873. sitting in the Court of Appeal when prevented from so doing by attendance in the House of Lords, or on the discharge of any other public duty, or by any other reasonable impediment.

The ordinary and additional Judges of the Court of Appeal shall be styled Lords Justices of Appeal. All the Judges of the said Court shall have, in all respects, save as in this Act is otherwise expressly mentioned, equal power, authority, and jurisdiction.

Whenever the office of an ordinary Judge of the Court of Appeal becomes vacant, a new Judge may be appointed thereto by Her Majesty by Letters Patent.

The Lord Chancellor for the time being shall be President of the Court of Appeal.

Vacancies by resignation of Judges and effect of vacancies generally.

7. The office of any Judge of the said High Court of Justice, or of the said Court of Appeal, may be vacated by resignation in writing, under his hand, addressed to the Lord Chancellor, without any deed of surrender; and the office of any Judge of the said High Court shall be vacated by his being appointed a Judge of the said Court of Appeal. The said Courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any Judge of either of such Courts.

Qualifications of Judges. Not required to be Serjeants-at-Law.

8. Any barrister of not less than ten years standing shall be qualified to be appointed a Judge of the said High Court of Justice; and any person who if this Act had not passed would have been qualified by law to be appointed a Lord Justice of the Court of Appeal in Chancery, or has been a Judge of the High Court of Justice of not less than one year's standing, shall be qualified to be appointed an ordinary Judge of the said Court of Appeal: Provided, that no person appointed a Judge of either of the said Courts shall henceforth be required to take, or to have taken, the degree of Serjeant-at-Law.

Tenure of office of Judges, and oaths of office. Judges not to sit in the House of Commons.

9. All the Judges of the High Court of Justice, and of the Court of Appeal respectively, shall hold their offices for life, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No Judge of either of the said Courts shall be capable of being elected to or of sitting in the House of Commons. Every Judge of either of the said Courts (other than the Lord Chancellor) when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.

10. The ex officio Judges of the Court of Appeal shall rank in the Supreme Court in the order of their present respective official precedence. The other Judges (whether ordinary or additional) of the Court of Appeal shall rank in the Supreme Court, if Peers or Privy Councillors, in the order of their respective precedence; and the rest of the Judges of the Court of Appeal shall rank according to the priority of their respective appointments to be Judges thereof.

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Precedence
of Judges.

The Judges of the High Court of Justice, who are not also Judges of the Court of Appeal, shall rank next after the Judges of the Court of Appeal, and among themselves (subject to the provisions herein-after contained as to existing Judges) according to the priority of their respective appointments.

11. Every existing Judge, who is by this Act made a Judge of the High Court of Justice or an ordinary Judge of the Court of Appeal, shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this Act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, each of the said existing Judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this Act had not passed. No Judge appointed before the passing of this Act shall be required to act under any Commission of Assize, Nisi Prius, Oyer and Terminer, or Gaol Delivery, unless he was so liable by usage or custom at the commencement of this Act.

Saving of
rights and
obligations
of existing
Judges.

Service as a Judge in the High Court of Justice, or in the Court of Appeal, shall, in the case of an existing Judge, for the purpose of determining the length of service entitling such Judge to a pension on his retirement, be deemed to be a continuation of his service in the Court of which he is a Judge at the time of the commencement of this Act.

12. If, in any case not expressly provided for by this Act, a liability to any duty, or any authority or power, not incident to the administration of justice in any Court, whose jurisdiction is transferred by this Act to the High Court of Justice, shall have been imposed or conferred by any statute, law, or custom upon the Judges or any Judge of any of such Courts, save as herein-after mentioned, every Judge of the said High Court shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority, and power, in the same manner as if this Act had not passed, and as if he had

Provisions
for extraor-
dinary duties
of Judges of
the former
Courts.

A.D. 1873. been duly appointed the successor of a Judge liable to such duty, or possessing such authority or power, before the passing of this Act. Any such duty, authority, or power, imposed or conferred by any statute, law, or custom, in any such case as aforesaid, upon the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron, shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this Act had not passed.

Salaries of
future
Judges.

13. Subject to the provisions in this Act contained with respect to existing Judges, there shall be paid the following salaries, which shall in each case include any pension granted in respect of any public office previously filled by him, to which the Judge may be entitled;

To the Lord Chancellor, the sums hitherto payable to him;

To the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, the same annual sums which the holders of those offices now respectively receive;

To each of the ordinary Judges of the Court of Appeal; and,

To each of the other Judges of the High Court of Justice, the sum of five thousand pounds a year.

No salary shall be payable to any additional Judge of the Court of Appeal appointed under this Act; but nothing in this Act shall in any way prejudice the right of any such additional Judge to any pension to which he may be by law entitled.

Retiring
pensions of
future Judges
of High
Court of
Justice, and
ordinary
Judges of
Court of
Appeal.

14. Her Majesty may, by Letters Patent, grant to any Judge of the High Court of Justice, or to any ordinary Judge of the Court of Appeal who has served for fifteen years as a Judge in such Courts, or either of them, or who is disabled by permanent infirmity from the performance of the duties of his office, a pension, by way of annuity, to be continued during his life:

In the case of the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, the same amount of pension which at present might under the same circumstances be granted to the holder of the same office:

In the case of any ordinary Judge of the Court of Appeal or any other Judge of the High Court of Justice, the same amount of pension which at present might under the same circumstances be granted to a Puisne Justice of the Court of Queen's Bench.

15. Subject to the provisions in this Act contained with respect to existing Judges, the salaries, allowances, and pensions payable to the Judges of the High Court of Justice, and the ordinary Judges of the Court of Appeal respectively, shall be charged on and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof: such salaries and pensions shall grow due from day to day, but shall be payable to the persons entitled thereto, or to their executors or administrators, on the usual quarterly days of payment, or at such other periods in every year as the Treasury may from time to time determine.

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Salaries and
pensions
how to be
paid.

PART II.

Jurisdiction and Law.

16. The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any of the Courts following; (that is to say,)

Jurisdiction
of High
Court of
Justice.

- (1.) The High Court of Chancery, as a Common Law Court as well as a Court of Equity, including the jurisdiction of the Master of the Rolls, as a Judge or Master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a Common Law Court;
- (2.) The Court of Queen's Bench;
- (3.) The Court of Common Pleas at Westminster;
- (4.) The Court of Exchequer, as a Court of Revenue, as well as a Common Law Court;
- (5.) The High Court of Admiralty;
- (6.) The Court of Probate;
- (7.) The Court for Divorce and Matrimonial Causes;
- (8.) The London Court of Bankruptcy;
- (9.) The Court of Common Pleas at Lancaster;
- (10.) The Court of Pleas at Durham;
- (11.) The Courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, or any of such Commissions:

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions herein-after contained) the jurisdiction which, at the commencement of this Act,

A.D. 1873. was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts, respectively, sitting in Court or Chambers, or elsewhere, when acting as Judges or a Judge, in pursuance of any statute, law, or custom, and all powers given to any such Court, or to any such Judges or Judge, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdictions so transferred.

Jurisdiction
not trans-
ferred to
High Court.

17. There shall not be transferred to or vested in the said High Court of Justice, by virtue of this Act,—

- (1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same Court sitting as a Court of Appeal in Bankruptcy :
- (2.) Any jurisdiction of the Court of Appeal in Chancery of the County Palatine of Lancaster :
- (3.) Any jurisdiction usually vested in the Lord Chancellor or in the Lords Justices of Appeal in Chancery, or either of them, in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind :
- (4.) Any jurisdiction vested in the Lord Chancellor in relation to grants of Letters Patent, or the issue of commissions or other writings, to be passed under the Great Seal of the United Kingdom :
- (5.) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of Her Majesty as visitor of any College, or of any charitable or other foundation :
- (6.) Any jurisdiction of the Master of the Rolls in relation to records in London or elsewhere in England.

Jurisdiction
transferred
to Court of
Appeal.

18. The Court of Appeal established by this Act shall be a Superior Court of Record, and there shall be transferred to and vested in such Court all jurisdiction and powers of the Courts following ; (that is to say,)

- (1.) All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same Court as a Court of Appeal in Bankruptcy :
- (2.) All jurisdiction and powers of the Court of Appeal in Chancery of the county palatine of Lancaster, and all jurisdiction and powers of the Chancellor of the duchy and county palatine of Lancaster when sitting alone or apart from the Lords Justices of Appeal in Chancery as a Judge of re-hearing or appeal from decrees or orders of the Court of Chancery of the county palatine of Lancaster :

(3.) All jurisdiction and powers of the Court of the Lord Warden of the Stannaries assisted by his assessors, including all jurisdiction and powers of the said Lord Warden when sitting in his capacity of Judge: A.D. 1873.

(4.) All jurisdiction and powers of the Court of Exchequer Chamber:

(5.) All jurisdiction vested in or capable of being exercised by Her Majesty in Council, or the Judicial Committee of Her Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy made by the Lord Chancellor, or any other person having jurisdiction in lunacy.

19. The said Court of Appeal shall have jurisdiction and power to hear and determine Appeals from any judgment or order, save as herein-after mentioned, of Her Majesty's High Court of Justice, or of any Judges or Judge thereof, subject to the provisions of this Act, and to such Rules and Orders of Court for regulating the terms and conditions on which such Appeals shall be allowed, as may be made pursuant to this Act. Appeals from High Court.

For all the purposes of and incidental to the hearing and determination of any Appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such Appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice.

20. No error or appeal shall be brought from any judgment or order of the High Court of Justice, or of the Court of Appeal, nor from any judgment or order, subsequent to the commencement of this Act, of the Court of Chancery of the county palatine of Lancaster, to the House of Lords or to the Judicial Committee of Her Majesty's Privy Council; but nothing in this Act shall prejudice any right existing at the commencement of this Act to prosecute any pending writ of error or appeal, or to bring error or appeal to the House of Lords or to Her Majesty in Council, or to the Judicial Committee of the Privy Council, from any prior judgment or order of any Court whose jurisdiction is hereby transferred to the High Court of Justice or to the Court of Appeal. No appeal from High Court or Court of Appeal to House of Lords, or Judicial Committee.

21. It shall be lawful for Her Majesty, if she shall think fit, at any time hereafter by Order in Council to direct that all Appeals and Petitions whatsoever to Her Majesty in Council which according to the laws now in force ought to be heard by or before Power to transfer jurisdiction of Judicial Committee

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by Order in
Council.

the Judicial Committee of Her Majesty's Privy Council, shall, from and after a time to be fixed by such Order, be referred for hearing to and be heard by Her Majesty's Court of Appeal; and from and after the time fixed by such Order, all such Appeals and Petitions shall be referred for hearing to and be heard by the said Court of Appeal accordingly, and shall not be heard by the said Judicial Committee; and for all the purposes of and incidental to the hearing of such Appeals or Petitions, and the reports to be made to Her Majesty thereon, and all Orders thereon to be afterwards made by Her Majesty in Council, and also for all purposes of and incidental to the enforcement of any such Orders as may be made by the said Court of Appeal or by Her Majesty, pursuant to this section (but not for any other purpose), all the power, authority, and jurisdiction now by law vested in the said Judicial Committee shall be transferred to and vested in the said Court of Appeal.

The Court of Appeal, when hearing any appeals in Ecclesiastical Causes which may be referred to it in manner aforesaid, shall be constituted of such and so many of the Judges thereof, and shall be assisted by such assessors being Archbishops or Bishops of the Church of England, as Her Majesty, by any General Rules made with the advice of the Judges of the said Court, or any five of them (of whom the Lord Chancellor shall be one), and of the Archbishops and Bishops who are members of Her Majesty's Privy Council, or any two of them (and which General Rules shall be made by Order in Council), may think fit to direct: Provided that such rules shall be laid before each House of Parliament within forty days of the making of the same, if Parliament be then sitting, or if not, then within forty days of the commencement of the then next ensuing session; and if an address is presented to Her Majesty by either House of Parliament within the next subsequent forty days on which the said House shall have sat, praying that any such rules may be annulled, Her Majesty may thereupon by Order in Council annul the same; and the rules so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Transfer of
pending
business.

22. From and after the commencement of this Act the several jurisdictions which by this Act are transferred to and vested in the said High Court of Justice and the said Court of Appeal respectively shall cease to be exercised, except by the said High Court of Justice and the said Court of Appeal respectively, as provided by this Act; and no further or other appointment of any Judge to any

Court whose jurisdiction is so transferred shall be made except as provided by this Act: Provided, that in all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given shall not have been signed, drawn up, passed, entered, or otherwise perfected at the time appointed for the commencement of this Act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this Act, in the name of the same Court, and by the same judges and officers, and generally in the same manner, in all respects as if this Act had not passed; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the commencement of this Act; and every judgment, decree, rule, or order of any Court whose jurisdiction is hereby transferred to the said High Court of Justice or the said Court of Appeal, which shall have been duly perfected at any time before the commencement of this Act, may be executed and enforced, and, if necessary, amended or discharged by the said High Court of Justice and the said Court of Appeal respectively, in the same manner as if it had been a judgment, decree, rule, or order of the said High Court or of the said Court of Appeal; and all causes, matters, and proceedings whatsoever, whether Civil or Criminal, which shall be pending in any of the Courts whose jurisdiction is so transferred as aforesaid at the commencement of this Act, shall be continued and concluded, as follows (that is to say), in the case of proceedings in Error or on Appeal, or of proceedings before the Court of Appeal in Chancery, in and before Her Majesty's Court of Appeal; and, as to all other proceedings, in and before Her Majesty's High Court of Justice. The said Courts respectively shall have the same jurisdiction in relation to all such causes, matters, and proceedings as if the same had been commenced in the said High Court of Justice, and continued therein (or in the said Court of Appeal, as the case may be) down to the point at which the transfer takes place; and, so far as relates to the form and manner of procedure, such causes, matters, and proceedings, or any of them, may be continued and concluded, in and before the said Courts respectively, either in the same or the like manner as they would have been continued and concluded in the respective Courts from which they shall have been transferred as aforesaid, or according to the ordinary course of the said High Court of Justice and the said Court of Appeal respectively (so far as the same may be applicable thereto), as the said Courts respectively may think fit to direct.

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Rules as to
exercise of
jurisdiction.

23. The jurisdiction by this Act transferred to the said High Court of Justice and the said Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such Rules and Orders of Court as may be made pursuant to this Act; and where no special provision is contained in this Act or in any such Rules or Orders of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective Courts from which such jurisdiction shall have been transferred, or by any of such Courts.

Law and
equity to be
concurrently
adminis-
tered.

24. In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the Rules following:

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

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

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(3.) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any Rule of Court or any Order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant.

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

(5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed,

to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any Judgment, Decree, Rule, or Order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such Order as shall be just.

(6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the Common Law or by any custom, or created by any Statute, in the same manner as the same would have been recognised and given effect to if this Act had not passed by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

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

Rules of law upon certain points.

25. And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the Law to be hereafter administered in England as to the matters next hereinafter mentioned: Be it enacted as follows:

Administration of assets of insolvent estates.

(1.) In the administration by the Court of the assets of any person who may die after the passing of this Act, and whose estate

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may prove to be insufficient for the payment in full of his debts and liabilities, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities proveable, and as to the valuation of annuities and future or contingent liabilities, respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person may come in under the decree or order for the administration of such estate and make such claims against the same as they may respectively be entitled to by virtue of this Act.

(2.) No claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations.

Statutes of Limitation inapplicable to express trusts.

(3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Equitable waste.

(4.) There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Merger.

(5.) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Suits for possession of land by mortgagors.

(6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor

Assignment of debts and choses in action.