ss. 1, 2. \textit{Acts.} \textit{[Vol. I.-}

\textbf{THE ACTS SHORTENING ACTS.}

\textbf{ACTS SHORTENING ACT OF 1867.}

\textbf{(31 Vic. No. 6.)}

\textit{AS AMENDED BY}

The Acts Shortening Act Amendment Act of 1903 (3 Edw. VII. No. 10).
The Statute Law Revision Act of 1908 (8 Edw. VII. No. 18).
The Cremation Act Amendment Act of 1935 (26 Geo. V. No. 28).

\textit{An Act for Shortening Acts of the Legislature.}

\textit{[Assented to 26th November, 1867.]}

\textit{[Preamble repealed by The Statute Law Revision Act of 1908,
\hspace{1em} s. 2, post.]}

\textbf{Repeal of Acts.}

1. Acts of the Governor and Council may be altered, &c., in the
same session. 13 and 14 Vic. c. 21, s. 1.—Every Act of the Legislature
of Queensland for the time being however constituted may be altered
amended or repealed in the same legislative session any law or usage to
the contrary notwithstanding.

The section referred to in the marginal note has since been replaced by
s. 10 of the Interpretation Act, 1889 (Imperial), for which see Halsbury’s

\textbf{[2. (i.) Effect of repeal of Act. [52 and 53 Vic. c. 63, ss. 11, 38.]}

The repeal of an Act or part thereof by which a previous Act or part
thereof was repealed shall not have the effect of reviving such last-
mentioned Act or part thereof without express words.

(ii.) Where an Act repeals in the whole or in part a former Act,
then, unless the contrary intention appears, the repeal shall not—

(a) Revive anything not in force or existing at the time at which
the repeal takes effect; or

(b) Affect the previous operation of any Act so repealed, or
anything duly done or suffered under any Act so repealed; or

(c) Affect any right, privilege, obligation, or liability acquired,
accrued, or incurred under any Act so repealed; or

(d) Affect any penalty, forfeiture, or punishment incurred in
respect of any offence committed against any Act so repealed;

(e) Affect any investigation, legal proceeding, or remedy in
respect of any such right, privilege, obligation, liability,
penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be
instituted, continued, or enforced, and any such penalty, forfeiture, or
punishment may be imposed, as if the repealing Act had not been passed.

(iii.) Where an Act repeals in the whole or in part a former Act
and substitutes provisions in lieu thereof, the repealed provisions shall,
unless the contrary intention appears, remain in force until the
substituted provisions come into operation.

(iv.) References to repealed provisions.—Where an Act repeals
and re-enacts with or without modification any provisions of a former
Acts Shortening Act of 1867. ss. 2, 3.

Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

This section was substituted for the original section by s. 2 of The Acts Shortening Act Amendment Act of 1903, post.

The provisions referred to in the marginal note are ss. 11, 38 of the Interpretation Act, 1889 (Imperial), Halsbury's Statutes of England, Vol. 18, pp. 994, 1005. These sections make provisions equivalent to the subsections of this section.

Subsection (i).—This provision does not apply to a repeal by implication (Aarons v. Rocx (1898), 15 N.S.W.W.N. 88).

Subsection (ii).—Of. The Statute Law Revision Act of 1908, s. 2, proviso, this title, post: The Criminal Code Act, 1899, s. 3, third proviso, and the Criminal Code (1899), s. 11, title CRIMINAL LAW.

This subsection alters the common law rule. See South Australian Harbors Board v. South Australian Gas Co. (1934), 51 C.L.R. 456.

As to the effect of repeal and re-enactment of section in the same terms, see R. v. Licensing Authority of Roma, [1906] St. R. Qd. 199; [1906] Q.W.N. 34.

Subsection (ii.) (c) was applied in relation to an industrial award in R. v. Berge (1930), 25 Q.J.P.R. 39.

Where after judgment and notice of appeal therefrom under a Local Courts Act, that Act was repealed, a similar provision was held to preserve the right of appeal under the Act (Harris v. A. G. Healing & Co. Pty. Ltd., [1927] S.A.S.R. 131).

It appears that where liability under an Act arises only on the happening of several events and repeal takes place before the happening of some of them, no liability can arise by virtue of the remaining events subsequently taking place (Registrar of Probate vs. Angas (1921), 29 C.L.R. 477; [1921] S.A.S.R. 130.


The repeal of an enactment displacing the common law did not necessarily revive the common law which had been displaced; it merely raised a presumption that such revival was intended. See Marshall v. Smith (1907), 4 C.L.R. 161.

Subsection (iii).—Though provisions of a repealing Act (operative on a fixed date) are applicable to a locality only when proclaimed so, former provisions applicable to it are by this subsection preserved only until the fixed date (Mathews v. Stevens, [1921] V.L.R. 111). Quere, as to the position where the repealing Act provides that it shall not be operative as regards the locality until proclaimed so. (Ibid., p. 114.)

Subsection (iv).—Cf. s. 4 (5) of The Criminal Code Act, 1899, title CRIMINAL LAW.

“References” in this provision does include references to a repealed provision for the purpose of amendment or repeal only. (Bennett v. Minister for Public Works (1908), 7 C.L.R. 372.)

[Expiration of Acts.]

[3. Expiration of Act.—The expiration of an Act shall not affect any civil proceeding previously commenced under such Act, but every such proceeding may, unless the contrary intention appears in such Act, be continued and everything in relation thereto be done in all respects as if the Act continued in force.]

This section was substituted for the original section by s. 2 of The Acts Shortening Act Amendment Act of 1903, post. The heading appearing above it was inserted in pursuance of the power conferred by s. 29a of this Act, post.
**Form of Acts.**

4. Acts to be divided into sections without introductory words. 13 and 14 Vic. c. 21, s. 2.—Such Acts shall be divided into sections if there be more enactments than one which sections shall be deemed to be substantive enactments without any introductory words.

The section referred to in the marginal note has since been replaced by s. 6 of the Interpretation Act, 1889 (Imperial), Halsbury's Statutes of England, Vol. 18, p. 993.

The word "such" at the commencement of this section appears to be inapt as the statute in the original form appears to have contained no antecedent reference.

The Statute Law Revision Act of 1908, post, repealed the enacting words preceding a large number of sections in early Acts.

5. References to former enactments. 13 and 14 Vic. c. 21, s. 3.—When any Imperial Act or any Act of the Legislature or of any former Legislature or any section therein shall be referred to in any Act it shall be sufficient to cite the same by the year of the reign in which such Act was made and the chapter or number of such Act and the number of such section without reciting the title of such Act or the provisions of such section so referred to and the references in all cases shall be made according to the copies of such Acts printed by the Government Printer. Provided that where it is only intended to amend or repeal a portion only of a section it shall still be necessary either to recite such portion or to set forth the matter or thing intended to be amended or repealed.

The section referred to in the marginal note has since been replaced by s. 35 of the Interpretation Act, 1889 (Imperial), Halsbury's Statutes of England, Vol. 18, p. 1004.

**Commencement of Acts.**

6. Time of commencement of Acts. 33 Geo. III. c. 13, s. 1.—Every Act heretofore or hereafter passed by the Legislature for the time being shall be deemed to have commenced and shall take effect on the day on which such Act received or shall receive the Royal assent unless a contrary intention be expressed therein. And the date purporting to be that of such assent which shall appear on the copy of any such Act printed by the Government Printer or purporting so to be or which shall be printed on the copy of any such Act in the Gazette shall be received for all purposes as evidence of the date of such assent and be judicially taken notice of.

The Act referred to in the marginal note is the Acts of Parliament (Commencement) Act, 1793, for which see Halsbury's Statutes of England, Vol. 18, p. 969.

Acts of the Imperial Parliament were formerly deemed to commence from the first day of the session in which they were passed, unless some specific date for commencement were mentioned. See R. v. Smith, [1910] 1 K.B. 17, at p. 24.

As to expression of a contrary intention, see Federal Commissioner of Taxation v. Reid (1927), 40 C.L.R. 196.

7. Proviso. Reserved Acts.—Provided that every Act reserved for the signification of Her Majesty's pleasure thereon shall commence only on the day on which the fact of Her Majesty's assent shall be proclaimed by the Governor in the Gazette or on such day thereafter if any as the Act itself shall have prescribed.

As to evidence of assent or disallowance, see Colonial Laws Validity Act, 1865, s. 6 (Imperial), title Constitution.
Acts Shortening Act of 1867.

[7A. Exercise of statutory powers between passing and commencement of Act. [52 and 53 Vict. c. 63, s. 37].—When an Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument (including any rules, regulations, or by-laws), to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act for the purpose of bringing the Act into operation at the commencement thereof:

Provided that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.]

This section was inserted by s. 3 of The Acts Shortening Act Amendment Act of 1903, post.

The provision referred to in the marginal note is s. 37 of the Interpretation Act, 1889 (Imperial), Halsbury’s Statutes of England, Vol. 15, p. 1065.

This section was applied in Australian Alliance Assurance Co. Ltd. v. A.G., [1916] St. R. Qd. 157; [1917] A.C. 537.

Regulations made under The State Transport Act of 1932 (title TRANSPORT) prior to the passing of that Act, are afforded the same protection by ss. 25 and 27 of that Act against attack on the ground of invalidity as are regulations made after the commencement of that Act (England v. Penfold, [1934] St. R. Qd. 125; 28 Q.J.P.R. 90).


Public and Private Acts.

8. All Acts to be deemed public Acts. 13 and 14 Vic. c. 21, s. 7.—Every Act made after the twenty-sixth day of July one thousand eight hundred and fifty-two shall be deemed and taken to be a public Act and shall be judicially taken notice of as such unless the contrary be expressly provided and declared by such Act.

The provision referred to in the marginal note has been replaced by s. 9 of the Interpretation Act, 1889 (Imperial), Halsbury’s Statutes of England, Vol. 15, p. 994.

Express provision to the contrary may be shown by the context. See Chorros v. Leons (1868), L.R. 4 C.P. 374; In re England (1882), 13 N.S.W.L.R. (L.) 121. S. 3 of The Statutes Reprint Act of 1938, post, provides that the Statutes as printed in this reprint shall have certain probative effect and that the reprint shall be judicially noticed.

Provision for judicial notice and for proof of proclamations and Orders in Council made under statute and of private, local and personal Acts and journals of the Legislative Assembly is made by ss. 1, 2 of the Evidence and Discovery Act of 1887, title EVIDENCE.

The Commonwealth Parliament, under power contained in s. 51 (XXV.) of the Constitution (title COMMONWEALTH AND STATES), has passed the State and Territorial Laws and Records Recognition Acts, 1901 and 1928. S. 3 of the 1901 Act (as amended by the 1928 Act) provides that all courts are to take judicial notice of all Acts of the Parliament of any State and of all ordinances of any territory. The Acts make further provision with respect to judicial notice and proof of records and laws in courts in the Commonwealth. Cf. The Evidence Act, 1898 of this State, title EVIDENCE.

For the distinction between public and private Acts, see English and Empire Digest, Vol. 42, pp. 602, 603. As to judicial notice of public Acts, see ibid., Vol. 42, pp. 777, 778, and Vol. 28, pp. 144, 145.

9. No private Act to affect property of Crown or individuals not named.—Whenever any Act shall be passed in the nature of a private Act and whereby the property of any individual may be affected nothing
therein contained shall be deemed to affect the rights of Her Majesty Her Heirs and Successors or of any bodies politic or corporate or of any person excepting those at whose instance or for whose especial benefit such Act may have been passed and those claiming by through or under them but all such rights shall be deemed to be saved in any such Act in the same manner as if a proviso for that purpose had been expressly contained therein and enacted thereby.

A private Act will, if an intention inconsistent with this section appears, override this section. See In re Real Property Act, Ex parte Ponsington (1875), 13 N.S.W.S.C.R. 305.


Construction of Words.

10. Meaning of the words 'Her Majesty.'—Whenever the word "Her" or "His" Majesty shall be used in any Act the same shall be taken to include the successors to the Crown of England and

Queensland.—"Queensland" shall mean Queensland and the dependencies thereof and

Legislature.—"Legislature" the Legislature thereof for the time being however constituted and

Governor.— whenever the word "Governor" shall be used the same shall be construed to mean the Governor or other person for the time being lawfully administering the Government of this colony and

Governor in Council.—the words "Governor in Council" shall mean the Governor or such other person acting by and with the advice of the Executive Council and

whenever any person holding or occupying a particular office or position shall be mentioned or referred to in general terms such mention or reference shall be taken to include all persons who shall at any time thereafter occupy for the time being the said office or position.

Judges of Supreme Court. 15 and 16 Vic. c. 76, s. 223. 17 and 18 Vic. c. 126, s. 98. 23 and 24 Vic. c. 126, s. 37.—and whenever any power or authority shall be given to the Judges of the Supreme Court collectively to make or approve of any general rules or orders of the Supreme or any inferior Court the same shall be exercised by a majority of them of whom the Chief Justice (or in case of illexancy of such office then the senior Puisne Judge) shall be one unless a contrary intention shall appear.

"Queensland": For the boundaries of Queensland, see Letters Patent of June 6, 1859, constituting the State of Queensland and The Queensland Coast Islands Act of 1879, title CONSTITUTION.

"Legislature": With respect to the constitution of the Legislature, see title CONSTITUTION, particularly The Constitution Act Amendment Act of 1922.

References to holders of offices: The Governor may authorise any Minister of the Crown to perform the duties of any other Minister. See The Officials in Parliament Act of 1890, s. 8, and The Department of Justice Act of 1876, title CONSTITUTION.

A similar provision was applied in Australasia United Steam Navigation Co. Ltd. v. Sandham, [1924] St. R. Qd. 90; 28 Q.J.P.R. 36.

Rule-making power: For the Imperial Common Law Procedure Acts, 1852, s. 223, 1864, s. 96, and 1860, s. 37, being the sections referred to in the marginal note, see Halsbury's Statutes of England, Vol. 13, pp. 160, 192, 203.
11. Interpretation of certain words in Acts. 13 and 14 Vic. c. 21,
s. 4.—In all Acts and in all forms and schedules therein contained or
referred to or thereto annexed

Gender and number.—words importing the masculine gender shall
be deemed and taken to include females and the singular to include the
plural and the plural the singular unless the contrary as to gender or
number is expressly provided and

Person or party.—the word “person” or “party” to include
bodies politic or corporate or collegiate as well as individuals if the
context be applicable thereto and

Month.—the word “month” to mean calendar month unless words
be added showing lunar month to be intended and

Land.—the word “land” shall include messuages tenements and
hereditaments corporeal or incorporeal of any tenure or description and
whatever may be the estate or interest therein unless where there are
words to exclude houses and buildings or to restrict the meaning to
tenements of some particular tenure or to some particular estate or
interest and

Estate.—the word “estate” shall include any estate or interest
charge right title claim demand lien or encumbrance at law or in equity
unless a more limited meaning is indicated by the context and

[Burial.—unless the context otherwise requires, the word
“burial” shall include any cremation duly performed under the
provisions of “The Cremation Acts, 1913 to 1935” (or any Act amend-
ing the same) and without limiting the generality of this provision all
Acts and laws relating to the registration of deaths shall be read and
construed accordingly and]

Oath, &c.—the words “oath” “swear” and “affidavit” shall
include affirmation declaration affirming and declaring in the case of
persons by law allowed to declare or affirm instead of swearing.

[Writing. [52 and 53 Vict. c. 63, s. 20.]—Expressions referring to
writing shall, unless the contrary intention appears, be construed as
including references to printing, lithography, photography, and other
modes of representing or reproducing words in a visible form.

Service by post. [52 and 53 Vict. c. 63, s. 26].—Where an Act
whenever passed authorises or requires any document to be served by
post, whether the expression “serve” or the expression “give” or
“send” or any other expression is used, then, unless the contrary inten-
tion appears, the service shall be deemed to be effected by properly
addressing, prepaying, and posting a letter containing the document,
and, unless the contrary is proved, to have been effected at the time at
which the letter would be delivered in the ordinary course of post.]

The definition of “burial” was inserted by s. 8 (1) of The Cremation
Act Amendment Act of 1935, title CREMATION, s. 8 (2) of which provides that
this amendment shall take effect as and from the passing of that Act. The
last two paragraphs were added by s. 4 of The Acts Shortening Act Amendment
Act of 1903, post.

The second, fourth, fifth and eighth paragraphs of this section follow the
provision mentioned in the first marginal note to this section, which has since been
replaced by ss. 1 and 3 of the Interpretation Act, 1889 (Imperial), Halsbury’s

Gender and number.—For a case in which the word “he” in a penal
statute was construed to include females, see R. v. Smith (1861), Legge
(N.S.W.) 1882.
s.11. Acts.

By virtue of the provision that the plural includes the singular a person who sells land on behalf of one other person only is a commission agent within s. 4 of The Auctioneers and Commission Agents Act of 1922, title AUCTIONEERS AND COMMISSION AGENTS (Daniell v. Coull (1931), 25 Q.J.P.R. 115). See also Barlow v. Hayes & W.W. and A.B. (M.) at p. 73; In re Mahood’s Settled Estate (1878), 4 V.L.R. (Eq.) 6; “newspapers” held to include “newspaper”); Ex parte Southsea (L.) 25; Ex parte S.R. A.K. (Eq. 1887), 6 N.S.W. L.C.R. 314; Re Williams, Ex parte Englefield, 1919 V.L.R. 306 (“creditor” who might issue debtor summons under Bankruptcy Act, included “creditors”); In the Trust Estate of Hooton (1881), 7 V.L.R. (Eq.) 1 (order capable of being made on the petition of the “person entitled”); all persons entitled must petition); In re Thomas and Cowse (1883), 9 V.L.R. (L. P. & M.) 2 (section providing for requisition petition against “creditor” allows a petition against several joint debtors); In re Harry Kider (1934), 5 A.R. 103 (intent to defeat “creditors” as element in act of insolvency; intent to defeat one creditor sufficient).

Express provision to the contrary may be shown by the context (Chorlton v. Linga (1888), L.R. 4 C.L.P. 774; In re England (1942), 13 N.S.W.L.R. (L.) 121.

“Person.”—This provision merely enacts a rule of the common law (per Madden C.J. in Ex Chaffey Bros. Ltd. (1926), 21 V.L.R. 727, at p. 736).

Quarre whether in order to bring the definition of “person” or “party” into operation, it must be shown affirmatively that the context requires its application. See R. v. Police Magistrate at Brisbane, Ex parte Hutton, 1924 St. R. Qld. 223; [1924] Q.W.N. 47.

The word “person” in s. 41 of the Supreme Court Act of 1867 (title Supreme Court), which makes it an offence for persons, with certain exceptions, to draw instrumens relating to real estate for a fee, includes corporations (ibid.).

As to when the word “person” in statutes includes bodies corporate or politic, see also Leake v. S. A. Real Estate Investment Co. Ltd. (1930), 46 C.L.R. 22 (“person” to whom money might be paid; company included); Commonwealth v. New South Wales (1933), 32 C.L.R. 200 (Commonwealth and States not included); Spiller v. The Dental Board (1918), 18 N.S.W.R. 132 (“person” not to practise dentistry); 9. “Molnar v. Coon & v. The Police, 1992 N.Z.L.R. 357 (no “person” to aid or encourage a seditious enterprise); R. v. Panton (1888), 14 V.L.R. 836 (“persons” who may be guilty of knowingly having in their possession unwholesome meat for purposes of sale include companies); Christophers v. Mutual Store Ltd. (1890), 16 V.L.R. 172 (“persons” prohibited from using term “veterinary” unless registered include companies); Moe Coal Mining Co. Ltd. v. Lithgow (1894), 20 V.L.R. 50 (“persons” to whom mineral leases may be granted include companies); In re Chaffey Bros. Ltd. (1896), 21 V.L.R. 727 (“persons”, bills of sale over whose property required to be registered, do not include companies); The Ruby Extended Tin Mining Co. Ltd. v. Woolcott (1886), 6 V.L.R. (L.) 301 (“person” who may register and obtain execution in judgment of another colony includes a corporation).


“Month.”—The definition of “month” was held to apply to the interpretation of a company’s articles of association which expressly excluded Table A scheduled to the Companies Act but nevertheless contained many articles similar in terms to those of Table A. (Broadwater Tin Mining Co. v. Oliver (1847), 4 S.C.R. 91.) Cf. Fell v. Derby Leather Co. Ltd., [1931] 2 Ch. 253. See further the English and Empire Digest, Vol. 42, pp. 830-833.


“Burial.”—For The Cremation Acts, 1913 to 1935, see title CREMATION.

“Oath,” “swear,” “affidavit.”—See generally title OATHS.

Writing.—The provision referred to in the marginal note is s. 20 of the Interpretation Act, 1889 (Imperial), Halsbury's Statutes of England, Vol. 18, p. 1001.

Service by post.—The provision referred to in the marginal note is s. 26 of the Interpretation Act, 1889 (Imperial), Halsbury's Statutes of England, Vol. 18, p. 1002.

See Walthamstow Urban D. C. v. Henwood, [1907] 1 Ch. 41 (necessity for proving prepayment of postage); and as to posting generally, see the English and Empire Digest, Vol. 22, pp. 369-370.

As to the legal effect of communications by post, see ibid., Vol. 37, p. 379.

12. Interpretation of other terms in Acts.—In the construction of any Act unless the contrary appear from the context

Indictment.—the word “indictment” shall be understood to include “information” “inquisition” and “presentment” as well as indictment and also any “plea” “replication” or other pleading and any nisi prius or like record and

the terms “finding of the indictment” shall be understood to include “the taking of an inquisition” “the exhibiting of an information” and “the making a presentment” and

Property.—the word “property” shall be understood to include goods chattels money valuable securities and every other matter or thing whether real or personal upon or with respect to which any offence may be committed and

Circuit Court.—the term “circuit court” shall mean any court holden by and before a judge of the Supreme Court under and by virtue of [section thirty] of the “Supreme Court Act of 1867” or otherwise in a like manner.

The definition of “Circuit Court” was verbally amended as indicated by

The Acts Shortening Act Amendment Act of 1903, s. 10, post.

With respect to indictments, see The Criminal Code (1899), ss. 560 et seq., title CRIMINAL LAW.

With the definition of property, cf. that in s. 1 of The Criminal Code (1899).

For the Supreme Court Act of 1867, see title SUPREME COURT.

[12A. Construction of statutory rules, &c. [52 and 53 Vic. c. 63, s. 31].—Where any Act whenever passed confers power to make, grant, or issue any instrument—that is to say, any proclamation, Order in Council, order, warrant, letters patent, commission, rules, regulations, or by-laws—expressions used in the instrument shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power.]

This section was inserted by s. 5 of The Acts Shortening Act Amendment Act of 1903, post.

The provision mentioned in the marginal note is s. 31 of the Interpretation Act, 1889 (Imperial), for which see Halsbury's Statutes of England, Vol. 18, p. 1005.

As to interpretation of by-laws under The Local Government Act of 1936, see ibid., s. 31 (26), title LOCAL AUTHORITIES.

This section was applied in McCawley v. R., [1950] A.C. 691, at p. 717.

An intention contrary to its application was held not to appear in the Act considered in England v. Penfold, [1934] St. R. Qd. 125; 28 Q.J.P.R. 90.

As to the application of the second paragraph of s. 13, post, to regulations, see notes thereto.

13. Reckoning of time.—The time prescribed or allowed in an Act for the doing of a particular thing shall in all cases be taken to exclude
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the day of the act or event from or after which the time is to be reckoned but shall include the day for the doing of that thing. Provided that where that day falls on a Sunday or on a Christmas Day or Good Friday the thing may be done on the day following and  

distance of space mentioned or indicated in an Act shall be computed according to the nearest road ordinarily used in travelling unless measurement in a direct line be expressed or that construction be rendered necessary by the context.

Time.—See also R.S.C., 1900, Ord. 90, rr. 1, 2, title PRACTICE; The Local Government Act of 1936, s. 32 (4), title LOCAL GOVERNMENT.

The Standard Time Act of 1894 (title TIME) makes provision with respect to references to times of the day or night.

The provision excluding the day of the act or event after which time is to be reckoned does not apply to the time for appearance after service limited by R.S.C., 1900, Ord. 5, r. 9, title PRACTICE (W. Lovelock v. Co. Pty. Ltd. v. Verral, [1985] Q.W.N. 32).

A provision corresponding to the first paragraph was held not to apply when a Bankruptcy Act directed the sheriff to retain the proceeds for seven days and if within the time notice of bankruptcy was served on him he was to pay the proceeds to the official assignee (Raif v. Gold (1889), 10 N.S.W.L.R. (L.) 175). Cf. also In re Chisholm (1889), 6 N.S.W.W.N. 19.

Distance.—The second paragraph applies to distances by sea as well as by land (Allen v. Grosbreuts, [1910] St. R. Qd. 26; [1910] Q.W.N. 17; 2 Q.J.R. 169). In that case, however, where the distances referred to were those from Townsville prescribed for the purposes of time for application for an order to quash the decision of justices, under The Justices Act of 1886, s. 211 (title JUSTICES), it was held that the miles referred to were land miles whether they were to be measured by land or sea.

Where the distances in question related to country in which there were no roads or routes, it was held that measurement in a horizontal plane was meant (Stevens v. McDauley (1979), 1 Q.L.J. Supp. 54).

The second paragraph applies to the interpretation of regulations made under a statute. (Ibid.)

A ‘‘road ordinarily used in travelling’’ may be one which runs over private land (Allen v. Grosbreuts, supra).

The application of the second paragraph is excluded by the context of s. 159 of The Justices Act of 1886 (title JUSTICES), which allows the hearing and determination in a court of petty sessions of simple offences committed within twenty miles beyond the boundary of the petty sessionsal district (Union Bank of Australia Ltd. v. Broom, [1904] St. R. Qd. 215; [1904] Q.W.N. 62).

14. Words ‘‘in or for of the Colony of Queensland’’ to be implied.

—When any officer or office is referred to in any enactment the same shall be taken to refer to the officer or office of the description designated within and for the Colony of Queensland and all references to localities jurisdictions and other matters and things shall be taken to relate to such localities jurisdictions and other matters and things within and of the said colony unless in any such case the contrary shall appear to have been intended by the Legislature.

With respect to similar references in Acts of the New South Wales Parliament, passed prior to the creation of this State, see The Supreme Court Act of 1867, s. 36, title SUPREME COURT. As to whether the word ‘‘enactment’’ in this section extends to such Acts, see s. 24, post, and Hazelwood v. Webber (1984), 32 Q.L.R. 268, at p. 276.

With respect to application of this section to ‘‘actions’’ within s. 4 of The Magistrates Courts Act of 1921 (title JUSTICES), see Mitch v. Dalley, [1923] St. R. Qd. 138, at p. 142.

This section does not apply where an Act provides that an examination de bene esse may be taken before a ‘‘practising barrister or attorney.’’ (Thorne v. Hood (1882), 4 N.S.W.L.R. (L.) 339.)

For a case in which a corresponding Commonwealth provision was held not to apply, or to be excluded by the appearance of a contrary intention, see Jackson v. Federal Commissioner of Taxation (1920), 27 C.L.R. 503. As to what are contractual obligations within and of this State, see Wanganui-Rangitikei Electric Power Board v. Australian Mutual Provident Society (1932), 50 C.L.R. 581.

15. Term "quarter sessions."—The term "quarter sessions" or "general quarter sessions" in any Act now or hereafter passed shall be taken equally to include a court of general sessions of the peace and every such court periodically sitting and ordinarily presided over by the chairman of quarter sessions or any judge of a district court acting as chairman shall be deemed to have had and shall have the same jurisdiction and authority both in civil and in criminal cases as a court of general quarter sessions.

In practice Courts of Quarter Sessions have become obsolete. With respect to statutory provisions giving rights of appeal to Quarter Sessions, see The Supreme Court Act of 1921, s. 3 (4), title SUPREME COURT; The Justices Act of 1886, s. 337, title JUSTICES.

District Courts were abolished by The Supreme Court Act of 1921, s. 3.

16. Term "Gazette" and "petty sessions."—The word "Gazette" used in this or any other Act shall be understood to mean the Queensland Government Gazette and the words "petty sessions" shall be understood to mean the justices of the peace assembled at any court of petty sessions or sitting in sessions not being any general or quarter sessions.

Powers to be implied.

17. Power to appoint implies power to remove, reappoint, &c.—Whenever power shall be given by any Act to Her Majesty or to the Governor of the colony or to any officer or person to make appointments to any office or place it shall unless there are words to show a contrary intention be intended that such power shall be capable of being exercised from time to time as occasion may require and that Her said Majesty and the said Governor or such officer or person shall have power to remove or suspend the person appointed and to appoint permanently or temporarily as the case may require another person in his stead or in the places of any deceased sick or absent holder of such appointment.

The power to remove and to suspend is "the statutory recognition of a common law principle" (McCawley v. R. (1913), 26 C.L.R. 9, at p. 46; reversed on appeal on another ground, [1920] A.C. 691). As to how far its enactment prevents appointments to public offices being made for a fixed term, see Geddes v. Magrath (1933), 50 C.L.R. 520, at p. 533; Mansfield v. Blenheim Borough Council, [1922] N.Z.L.R. 842.

See also Ex Commission of Pring J. (1880), B.C.R., July 13, 1880; Queensland Digest, 1861-1924, col. 1583.

18. From time to time.—Whenever power shall be given to do perform or submit to any act matter or thing such power shall be capable of being exercised from time to time as occasion may require unless the nature of the thing or the words used shall indicate a contrary intention.


For examples of the application of this section, see Battersea Borough Council v. County of London Electric Supply Co. Ltd. [1913] 2 Ch. 248, at p. 256; R. v. Council (1927), 6 N.S.W.S.C.R. 314; In re Cooper (1908), 15 A.L.R. (C.N.) 45 (trustee in bankruptcy bound to carry out duties).

For appearance of contrary intention, see Scarf v. The Federal Commissioner of Taxation (1920), 27 C.L.R. 271; Ex parte Ladio (1902), 19 N.S.W. W.N. 98.
19. Power to revoke and alter rules, [by-laws], and regulations to be inferred from power to make them.—In every enactment whereby power shall be given to any officers or persons to make any rules orders [by-laws] or regulations it shall be implied that such officers or persons may revoke alter or vary the same from time to time as occasion may require unless the terms used or the nature and objects of the power shall indicate that such power is intended to be exercised finally in the first instance.

The word “by-laws” was inserted in this section by s. 6 of The Acts Shortening Act Amendment Act of 1903, post, and in the marginal note under the powers conferred by s. 29A of this Act, post.

Cf. s. 32 (3) of the Interpretation Act, 1889 (Imperial), Halsbury’s Statutes of England, Vol. 18, p. 1063.

Powers when discretionary.

20. When a power is discretionary and when not.—Where in any enactment passed after the twenty-seventh day of November one thousand eight hundred and fifty-eight a power is conferred on any officer or person by the word “may” or by words “it shall be lawful” or the words “shall or may be lawful” applied to the exercise of that power such word or words shall be taken to import that the power may be exercised or not at discretion but where the word “shall” is applied to the exercise of any such power the construction shall be that the power conferred must be exercised.

The discretion of the Governor in Council to approve insurance companies under s. 7 of The Workers’ Compensation Act of 1916 (title LABOUR) is absolute there being nothing to exclude the ordinary meaning of the word “may” there used (Australian Alliance Assurance Co. Ltd. v. A-G. for Queensland, [1917] A.C. 537).

Notwithstanding the use of “may” and this section, the particular Act conferring the power may, from its general scope, show that the duty must be exercised, and that there is not an arbitrary discretion (Smith v. Watson (1906), 4 C.L.R. 505). Thus where exercise of the power becomes necessary for purposes of the public good or private justice, it is compulsory. See In re Municipal District of Lambton (No. 2), (1899), 20 N.S.W.L.R. (L.) 378.

A similar section was applied to the words “it shall be lawful” in Nixon v. Trustees of the Savings Bank of New South Wales (1863), 2 N.S.W.S.C.R. (L.) 258.

In the case of a statute providing that the “Governor with the advice of the Executive Council shall grant a lease,” it was held that the fact that the Governor was to act with advice implied a discretion, and notwithstanding this section the statute merely authorised the granting of a lease (Macdonald v. Tully (1869), 2 S.C.R. 99).

With regard to the distinction between directory and essential provisions, see R. v. Cooper (1890), 4 Q.L.J. 5, Chanter v. Blackwood (1904), 1 C.L.R. 39.

Oaths and their sanction.

21. Power to administer oath implied from power to hear and determine.—Whenever any court judge justice officer commissioner arbitrator or other person shall be authorised by law or by consent of parties to hear and determine any matter or thing such court judge justice officer commissioner arbitrator and other person shall have authority to receive and examine evidence and are hereby empowered to administer an oath to or take an affirmation from all such witnesses as are legally called before them respectively.

The words “authority to receive evidence and examine witnesses” in a similar provision were held to include the receiving of evidence by the administration of interrogatories (Bond v. Mardoch (1921), 17 Tas. L.R. 84).
A constable, though not mentioned in the section, may, under the direction of the Court, administer an oath (R. v. Hayes (1909), 12 N.Z.O.L.R. 553).

Every court has power to administer an oath, and the customary procedure is to leave it to be administered in the presence of the court by an officer of the court, or by any peace officer on duty in the court or by any person whom the court may order to administer it. When any person thus openly puts the proper form of language to a witness who assents to it in the prescribed or customary manner, the witness is treated as having repeated that language.

That is what is meant by administering an oath (ibid., per Chapman J.).

Where actions in different jurisdictions are, by consent, heard together, it is very doubtful whether a witness is properly sworn who is merely once sworn without reference to the court or the case in which he is sworn (ibid.).

[22. Rep. by The Criminal Code Act, 1899, s. 3, title CRIMINAL LAW.]

[23. Rep. by The Statute Law Revision Act of 1908, s. 2, post.]

General Provision.

24. Provisions of the said Act extended to all enactments.—The several provisions of this Act applicable to Acts of the Legislature of this territory shall extend to every Act passed or to be passed by such Legislature for the time being however constituted.

And every Act passed in this territory by whatsoever Legislature may be referred to by the words “Act passed in this Colony” or by the term “Act of the Legislature of New South Wales”

Provided that the word “Act” alone when used to indicate an enactment shall equally be taken to mean an Act of the Legislature of this Colony unless that construction be inconsistent with the context.

The words “the said Act” in the marginal note appear to be incorrect.

With regard to the operation in this State, of New South Wales Acts in force prior to the creation of this State, see the Supreme Court Act of 1867, ss. 35-37, title SUPREME COURT.

As to the constitution of the Legislature, see title CONSTITUTION, particularly The Constitution Act Amendment Act of 1922.

Fines Penalties and Summary Proceedings.

25. Appropriation of penalties when Act silent.—Whenever any fine penalty or forfeiture shall be imposed or authorised to be imposed by any Act such Act shall be taken to provide that the same when recovered shall be paid one moiety to Her Majesty her Heirs and Successors for the public uses of this Colony and in support of the Government thereof and that the same shall be applied in such manner as may from time to time be directed by any Act or Acts of the Legislature of Queensland and that the other moiety thereof shall be paid to the informer or person prosecuting or suing for the same unless the Act imposing the said fine penalty or forfeiture shall otherwise direct.

As to when this section applies, see O’Brien v. Douglas, [1905] St. R. Qd. 142; [1905] Q.W.N. 54.

As to whether the informer or prosecutor is entitled to recover his moiety in proceedings against the government where the whole penalty has been paid into court, see R. v. Tupholme (1864), 3 N.S.W.S.C.R. (L.) 341.

Notwithstanding this section, justices hearing a case may deprive an informer, not being a party aggrieved, of the whole or any part of his moiety (The Justices Act of 1886, s. 178, title JUSTICES.)

The Governor is entitled to remit penalties under Ibid., s. 177.

Provision with regard to compounding penal actions is made by R.S.C. (1900), Ord. 56, title PRACTICE.
26. Who may in general sue for penalties.—Any fine penalty or forfeiture so imposed may be sued and proceeded for by any person whomsoever unless by the Act imposing the same such right to sue or proceed shall be expressly given to any officer or person by name or designation.

This section was applied in *Walker v. Gray*, [1907] Q.W.N. 29; 1 Q.J.P.R. 38, to meet the contention that the prosecutor had no authority to prosecute. In a case where this section is applicable an allegation in the complaint of authority to prosecute is surplusage and need not be proved (*Burns v. Evans*, [1907] St. R. Qd. 207; [1907] Q.W.N. 33; 21 Q.J.P.R. 62).

The State Children Act of 1911, s. 65 (3) (title "CHILDREN"), does not have the effect of limiting the taking of prosecutions under Part IV. of that Act to the persons referred to in that section (*McClintock v. Noffke*, [1936] St. R. Qd. 73; 30 Q.J.P.R. 45).

S. 8 of The Railways Act of 1914 (title "RAILWAYS AND TRAMWAYS"), which constitutes the Commissioner for Railways a corporation with power to sue and be sued and confers on him the rights of the Crown for purposes of that Act, does not take prosecutions under that Act out of this section (*Burns v. Evans*, [1927] St. R. Qd. 267; [1927] Q.W.N. 31; 21 Q.J.P.R. 62). As to when a right to sue is expressly given to some officer or person, see also *Gilmour v. Bastian* (1917), 24 C.L.R. 14; 34 N.S.W.W.N. 239; *Bedingfield v. Keogh* (1912), 15 C.L.R. 60; *Ex parte MacFarlane* (1920), 26 N.S.W.S.R. 473; *Metcalf v. Squire* (1920), 23 N.S.W.W.N. 17; *Longham v. Beamblane* (1882), 3 N.S.W.L.R. (L.) 566; *White v. Phipps* (1932), 32 N.S.W.S.R. 448; *Whitmore v. Bohrman* (1932), 49 N.S.W.W.N. 73.

For periods of limitation of proceedings for penalties, see *The Justices Act of 1886*, s. 32, title "JUSTICES"; *Statute of Frauds and Limitations of 1867*, s. 22, title "FRAUDS AND LIMITATIONS".

27. All judicial powers conferred on justices to be exercised summarily.—Whenever by any Act any penalty fine or forfeiture is made recoverable before or is authorised to be imposed by or before any justice or justices of the peace otherwise than in general or quarter sessions and whenever by any Act a justice or justices is or are empowered to hear and determine otherwise than in general or quarter sessions any matter or to make any order or to do any act of a judicial character such Act shall be taken to empower such justice or justices to adjudicate order and act therein accordingly in a summary way and such Act shall be taken to have enacted that no conviction or order made by any justice or justices of the peace under the authority of the said Act shall be quashed for want of form.

Proceedings before justices are regulated by *The Justices Act of 1886*, title "JUSTICES*. See also s. 19 of that Act.

As to what is a "forfeiture," see *R. v. O’Flaherty* (1883), 9 V.I.R. (L.) 14.

Interpretation in general.

28. Term "Act" or "Statute."—In all indictments and informations and all pleadings and proceedings civil or criminal or penal the
word "Statute" or the word "Act" used to indicate an enactment shall equally be taken to mean and include an Act of the Imperial Parliament or an Act of the Legislature of this colony or territory as the context or the case may require.

29. Mode of pleading affirmation in lieu of oath. 6 and 7 Vic. c. 85, s. 2.—Wherever in any legal proceeding whatsoever any other legal proceedings may be set out it shall not be necessary to specify that any particular persons who acted as jurors had made affirmation or declaration instead of oath but if it be stated in such first-mentioned proceedings or in any record whatsoever that the jurors served and acted as jurors (in the same manner as if no Act had passed for enabling persons to serve as jurors without oath) such proceedings or record shall not be held insufficient in respect thereof.

The section referred to in the marginal note is s. 2 of the Evidence Act, 1843 (Imperial), for which see Halsbury’s Statutes of England, Vol. 8, p. 207.

[Printing Amendments.]

[29A. (1.) Printing of amendments in Acts.—When by any Act whenever passed any section or schedule or any word or words is or are directed to be inserted in or omitted from any previous Act or any section or schedule thereof, or to be substituted for or inserted in lieu of any section or schedule, or any word or words forming part or the whole of any section or schedule of any previous Act, then in all copies of the Act so amended printed by the Government Printer the section or schedule or word or words shall be inserted or omitted or substituted in accordance with such direction, and all necessary consequential amendments of marginal notes, headings, and divisions shall be made. And references shall be made in the margin to the section or sections of the Act by which such amendments are made:

Provided that no amendment shall merely by force of such direction have any retrospective operation.

(2.) Abrogated provisions.—Whenever any enactment in any Act relating to the practice or procedure of the Supreme Court has been or shall hereafter be in pursuance of statutory authority in that behalf abrogated by Rules of the Supreme Court, then in all copies of such Act printed by the Government Printer the enactment so abrogated shall be omitted, and reference shall be made in the margin to the Rule of Court whereby such abrogation was made.]

This section was inserted by s. 7 of The Acts Shortening Act Amendment Act of 1903, post, and the cross heading above it was inserted in pursuance of the powers conferred by this section itself.

As to incorporation of amendments, see also s. 3 of The Statute Law Revision Act of 1908, this title, post.

Provision is made for appointment of a Government Printer by s. 77 of the Evidence and Discovery Act of 1867, title EVIDENCE.

For power to modify certain statutes by rules of court, see The Supreme Court Act of 1921, s. 11 (3), title SUPREME COURT.

Commencement and Short Title.

30. Commencement of Act. Short title.—This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "Acts Shortening Act of 1867."