A BILL TO CONSOLIDATE, AMEND AND REFORM THE SUPREME COURT ACTS AND ANCILLARY ACTS REGULATING CIVIL PROCEEDINGS IN THE SUPREME COURT

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SPECIAL SUPPLEMENTARY PAPER

Queensland Law Reform Commission

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27 July 1990

The Hon. G.R. Milliner, MLA.
Minister for Justice,
8th Floor,
State Law Building,
George Street,
BRISBANE Q. 4000.

My dear Minister,

Re : Supreme Court Acts Report
QLRC No. 32

I refer to your letter dated 28 May 1990, which in turn referred to the contents of a letter dated 9 November 1989 from your predecessor in office, Mr I.T. Henderson, in respect of which you ask for a response from the Law Reform Commission.

The letter of 9 November raises a number of specific matters for consideration, and also requests any further or alternative views on the recommendations contained in the Report.

With respect to those specific matters, the Commission advises as follows:

1. Bill cl.19. Holding other office.

The Commission agrees with the observations on this topic contained in the letter of 9 November 1989. Our particular comments on this, and related matters appear on pp. 4-6 of the accompanying Supplementary Report.

2. Bill cll.96-98.

We have noted the comments in the letter of 9 November concerning prerogative remedies. The Commission agrees with the observation in your own letter that, pending receipt of the recommendations of the Electoral and Administrative Review Commission on the matter Judicial Review of Administrative Decisions and Actions, it is preferable that the provisions of the Supreme Court Bill relating to prerogative relief be left temporarily in abeyance, to be dealt with later as a separate issue.

3. Vexatious Litigants Act 1981.

Your predecessor remarks that the Bill does not deal with the matter of vexatious litigants covered in the Vexatious Litigants Act 1981, and that in a number of other jurisdictions the topic appears in the Supreme Court Act or its equivalent.

A possible reason why that Act or its provisions were not incorporated in this Bill is that the Supreme Court Bill is concerned primarily with matters that are exclusive to the Supreme Court, its jurisdiction and powers. Its inclusion could, however, be justified on the ground that the procedure under the Act envisages, in the first instance, a declaration by the Supreme Court that a person is a vexatious litigant (s.3). It is only after such a declaration has been made that leave to issue process may be granted by judges or magistrates in other courts.

We see no compelling reason why, if thought fit, the provisions of the Vexatious Litigants Act 1981 should not be included in the Supreme Court Bill as a separate Part thereof rather than retaining it in a separate statute.

4. Equity Act ss.151-155.

The letter of 9 November 1989 comments adversely on the proposed retention of the above sections of the Equity Act 1867. They will be the only provisions of that Act that will remain in force, thus preventing the repeal of that Act.

We have examined those provisions closely. The specific matters for which they provide plainly reflect social and economic conditions of a bygone era. Furthermore, in so far as the powers there conferred do continue to have any contemporary relevance, they are, we consider, adequately catered for by the provisions of ss.86 and 87 of the Trusts Act 1973.

In view of this, and in the light of the comments in the letter of 9 November 1989, the Commission recommends the repeal in toto of the Equity Act 1867 including the particular provisions referred to.

5. Generally.

Our comments and recommendations on other matters appear in the accompanying Supplementary Report. We note your intention to consult the Chief Justice as well as other Judges of the Supreme Court before the legislation is introduced.

We should be grateful of an opportunity to consider any further proposals or amendments before the Bill is finally enacted.

Yours faithfully,

Hon Mr Justice B.H. McPherson C.B.E.
Chairman, Law Reform Commission

(D)

Law Reform Commission : Supplementary Report

SUPREME COURT ACTS[1]

1. Tenure of Judges and Officers of Court

(a) Removal of Judges. The letter dated 9 November 1989 from the former Minister for Justice, on which the Commission is asked to comment, raises questions about s.19[2] of the Bill relating to avoidance of judicial office and its consequences. We consider this is also a suitable occasion on which to discuss some aspects of the general form of the provisions relating to tenure of judicial office and its avoidance.

The current provisions are contained in s.9 of the SCA 1867 and ss.15 and 16 of the Constitution Act 1867. They derive from the Act of Settlement 1701, which occupies an important place in the constitutional history and safeguards of judicial independence of many English-speaking nations. In the course of time, however, a number of deficiencies in those provisions have become apparent. To protect judicial functions from Executive interference the Act of Settlement provisions prescribe life tenure for judges "during good behaviour", and they provide for removal only on address to Her Majesty from both Houses of Parliament.

In Australia generally references to "Her Majesty" in contexts like these are now to be read as referring to the State Governor : Australia Acts Request Act 1985, Sch.1 s.7(2)(Qld.); and this will consequently require alteration to s.16(1) of the Bill. Whether, in acting on such an address, the Governor exercises a personal discretion, or is bound to act on the advice

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1. Herein abbreviated to SCA followed by the relevant year.

2. Throughout this paper provisions of the Bill are referred to as sections and not by the strictly more correct appellation of "clauses".

of the Executive appears to be uncertain. In any event, the Act of Settlement provisions were adopted long before the present system of political parties had developed. Nowadays, the Executive through the party system almost always has an absolute majority in Parliament by means of which it is able to control voting on all matters. In Queensland, Executive or party control of Parliament is enhanced by the unicameral legislative system, as can be seen from the case of V.R. Creighton, who was removed by Parliament from Chairmanship of the Lands Administration Commission (which he held on Act of Settlement tenure) in 1956 in response to a party decision : see 214 Queensland Parliamentary Debates 33-59.

The present provisions of the SCA 1867 and Constitution Act contain no requirement or specification of grounds for removal, so that any ground, whether proved or unproved, may be advanced for removing a Judge, or there may be none at all. This is in contrast to provisions of more recent legislation on the subject of judicial tenure. For example, s.13 of the District Courts Act 1968 (Qld.) provides for removal of a Judge of that court for "incapacity or misbehaviour"; it thus defines the basis for removal, which, however, takes place by Executive action of the Governor in Council, and without Parliamentary intervention. Under s.13 a District Court judge is, however, entitled to notice of intention to remove him, and also to an opportunity of being heard in his defence. No such safeguard exists in the case of Supreme Court Judges. Likewise, in the case of Justices of the High Court of Australia and of other Federal Courts, s.72(ii) of the Commonwealth Constitution prevents their removal except on Parliamentary address "praying for such removal on the ground of proved misbehaviour or incapacity".

The Commission recommends that consideration be given to adding to the provisions in s.9 of the Supreme Court Act 1867 and ss.15 and 16 of the Constitution Act 1867 a provision like that in s.72(ii) of the Commonwealth Constitution. At present Supreme Court Judges are the only Judges of superior courts in Australia who may be removed without either incapacity or misbehaviour being proved.

Removal of Officers. The Supreme Court cannot function effectively without administrative and executive enforcement staff. The Registrar is the head of the former and the Sheriff of the latter. They and other court officers are members of the Public Service, which means that they are to some extent thus subject to Executive as well as Court control : see Public Service Management and Employment Act 1988 s.4(2)(b)(Qld.), and Byrnes v. James (1889) 3 Q.L.J. 165, at 168. In Queensland the last official published version of the Administrative Arrangements for Government vests responsibility for court officers in the Attorney-General, while adding expressly "but only for the purposes of the Public Service Acts" : see (1975) 249 Qld.Gov.Gaz. 615. Those Arrangements, however, are in the form of a Proclamation, which lacks the force of law : see Australian Alliance Assurance Ltd. v. Goodwyn [1916] St.R.Qd. 225, 256. It follows that a court officer may on occasion be confronted by conflicting directions from the Executive and the Judiciary, with possibly awkward consequences if he does not obey both. This happened in the case of a senior court officer in New South Wales in 1883 : see J.M. Bennett : History of the Supreme Court of New South Wales, at 93.

Some of the constituting statutes of other Australian Supreme Courts avoid this problem by placing senior court staff

outside the ambit of Executive power, or, as in the case of Victoria, expressly leaving the matter unresolved : Supreme Court Act 1958, s.179 (Vic.). In Queensland the position of the Registrar in Brisbane has always been specially catered for. Section 39 of the Supreme Courts Act 1867 provides that the Registrar is to be appointed by commission in Her Majesty's name, and also that he holds office "during ability and good behaviour" and is removable for "inability and misbehaviour".

The draft Bill in s.62(1) provides for the appointment of a Principal Registrar of the Court at Brisbane, stating simply that he is to be appointed by the Governor in Council "under and subject to the Public Service Act 1922-1978". It omits the provisions of s.39 of the SCA 1867 for appointment "during ability and good behaviour", and for removal "for inability and misbehaviour". We consider that these provisions should be preserved in the case of the Court's most senior officer, and that Bill s.62 should contain an additional subsection as follows:-

> "(1A) The Principal Registrar holds office during ability and good behaviour, but may be removed by the Governor in Council for inability or misbehaviour."

Avoidance of office. Section 12 of the SCA 1867 precludes a Judge from accepting, taking or performing the duties of any other office of profit within Queensland. The draft Bill reproduces these provisions in s.19(1). The Bill in cl.19(3) also reproduces the provisions of s.12 of SCA 1867 that the acceptance, taking or performance of the duties of any such other office shall be deemed in law an avoidance of the office of judge, "and his office and commission shall be thereby in full superseded and his salary thereupon cease".

This part of cl.19(3) has the potential to inflict substantial hardship on quite unsuspecting and innocent persons, as well as to enable wrongdoers to escape. In particular, by avoiding the Judge's commission, and doing so automatically upon his accepting a prohibited office, the Judge is apparently deprived of any further jurisdiction to hear and determine all matters that come before him. Doubts are thus intruded upon the validity of judgments given, orders made, and convictions entered, perhaps many years before. Moreover, so far as the litigants themselves are concerned, they will (like everyone else except perhaps the Judge himself) at the time be ignorant of the fact that the Judge's commission has been superseded in this way. There does not seem to be any reason why they should suffer (or, on the other side, gain an unexpected advantage) in consequence of the Judge's infringement of the prohibition in s.12.

There is some authority in New Zealand that the invalidity of the Judge's commission does not necessarily invalidate juridical acts performed by him during the period of that invalidity : see Re Aldridge (1893) 15 N.Z.L.R. 361; but it must be conceded that the matter is by no means free from doubt : see the references to this subject by Sir Robin Cooke in an article in (1955) 71 L.Q.R. 100, at 106-107. In Queensland, however, on each occasion when the problem has arisen in the past, it has been resolved by enacting legislation to overcome these difficulties and to place the validity of all such judgments beyond question. A list of such legislation appears in the Minister's letter dated 9 November 1989, which shows that there have been several such instances in the past.

We do not see that any useful purpose continues to be served by automatically invalidating a Judge's office and commission upon his infringing the prohibition in s.12. Nor do we see that innocent individuals should suffer, or that wrongdoers should gain, from such a state of affairs. It is evident from the fact that validating legislation has hitherto always been passed that Parliaments in Queensland have also always adopted this view. As the letter of 10 November 1989 points out, it appears that only Queensland and Victoria continue to retain a provision in this form.

We therefore recommend that s.19(3) of the Bill be <u>not</u> adopted. Instead, it may be thought desirable to substitute a provision that an infringement of Bill s.19(1) constitutes a ground for removal. Alternatively, s.19(1) could remain as a simple prohibition, leaving it to Parliament to decide whether the extent and circumstances of the infringement constitute, together with any other matters, misconduct or grounds for removal of a particular Judge.

2. <u>Court of Appeal</u>

Since the establishment in 1968 of a permanent Court of Appeal in New South Wales, there has been discussion in Queensland and other Australian States about the advantages and disadvantages, including expense, of adopting that course elsewhere. It is, we believe, right to say that on this subject a division of opinion exists between the Judges of the Supreme Court and the legal profession in Queensland, principally the Bar Association, on the relative merits and demerits of such a system.

We do not think it appropriate for the Commission to enter the controversy at the present stage. The matter is, we

believe, ultimately one for Executive and Parliamentary decision, to be reached after considering the views of the Judges, representatives of the profession, and other interested persons. It is a question on which opinions have tended to fluctuate over time, and on which the Hon. the Minister will no doubt wish to consult with those parties and with the Hon. The Attorney-General and other Cabinet colleagues before a decision is taken.

It is, however, necessary for the Commission to make some recommendations about the form of the proposed legislation in the event that the present Full Court system is retained.

Numbers : maximum. In strict legal theory the Full Court (and Court of Criminal Appeal) and the Supreme Court are identical, the former consisting of all the Judges sitting together. To constitute a Court of all the Judges would, however, be extremely inconvenient, and s.5 of the SCA 1921 provides that a Full Court or Court of Criminal Appeal shall not, except by direction of the Governor in Council, be constituted of more than three Judges sitting together. Cases requiring attention of more than three Judges are extremely rare, but conceivably are still capable of arising (cf. R. v. Kaporonowski [1972] Qd.R 465). It may therefore be prudent to retain a provision in the form of s.5 of SCA 1921.

Numbers : minimum. Since SCA 1874, when the number of Supreme Court Judges was increased from two to four, it has been lawful to constitute the Full Court from as few as two Judges for all purposes except that of hearing appeals from a Supreme Court Judge (see History,[3] at 200-203). Between 1903 and 1908

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3. B.H. McPherson : The Supreme Court of Queensland 1859-1960 : History Jurisdiction Procedure. Butterworths, Sydney 1989.

when there were only two Judges in Brisbane, it was for a time not uncommon for Full Courts consisting of only two Judges to hear appeals from District Courts, magistrates, etc. See History, at 250-251. Since then it has in practice become most uncommon for the Court to consist of fewer than three Judges for the purpose of hearing appeals or matters coming before it in original jurisdiction.

We suggest that the minimum of three Judges be made the statutory requirement. However, for the particular purpose of delivering reserved judgments already prepared by members of the Court, we recommend that a minimum of two Judges be sufficient to constitute the Court. This could take the form of the additional subs.(4) to s.41 suggested below.

Concurrent sittings. Because in theory the Full Court represents all of the Supreme Court Judges sitting together, doubts persist as to whether more than one Full Court can be constituted and sit concurrently or at the same time as another Full Court or Court of Criminal Appeal. The same doubt would probably arise in the case of concurrent sittings of differently constituted Courts of Appeal. In some jurisdictions express provision has been made authorising such sittings : see Victoria Supreme Court Act 1958, s.34(2); South Australia Supreme Court Act 1935-1973, s.47; Tasmania Supreme Court Act 1959, s.6(7).

We recommend the insertion of a provision modelled on those mentioned, to be located as a subsection (2) in s.40 of the Bill.

Amendments. If a Court of Appeal is not created, various consequential amendments to the draft Bill will be necessary. They concern principally ss.8-11 of the Bill, where there are provisions for and references to the Court of Appeal, Judges of

Appeal, and the President of the Court of Appeal, which would consequently be omitted; and also ss.38 to 48 (Division 2, Court of Appeal), where ss.38 and 39 would be omitted altogether, and ss.40-48 amended to substitute references to "Full Court" in place of "Court of Appeal", and "Judge" in place of "Judge of Appeal", etc. A further subsection (4) should be added to s.41 as follows:

> "(4) For the purpose of subsection (3) the Court may be constituted by any two Judges."

At present the Judges who are to sit on the Full Courts are selected by the Chief Justice, and are identified in the Law Calendar : see SCA 1921, s.5. It will be therefore necessary to retain s.41(1) of the Bill with appropriate amendments. The word "brought" has apparently been omitted in the first line of s.46(1).

3. Law Calendar.

(a) Generally. The Law Calendar is a list published in the Gazette of the legal arrangements for sittings of the Court in its civil, criminal, chambers, circuit, and Full Court jurisdictions. (History, at 318-319). The Calendar is made and published as a Rule of Court under the power to regulate proceedings (Ibid, at 318). Until very recently, the Calendar fixed sittings dates for the whole of the year to come; latterly it has been the practice to fix sittings dates for only the ensuing half year. This has the merit of allowing greater flexibility in directing judicial resources to the work of the Court as urgent needs arise from time to time.

The Bill proposes a number of changes in this respect. Section 12(2) provides that the calendar shall appoint sittings for the ensuing year. We suggest this should be altered to

permit half-yearly calendars. Section 12(2) also provides for the Chief Justice to alter the date or duration of sittings already appointed, and apparently to do so unilaterally. We recommend that this power to publish and to alter the calendar should be (as we believe it is at present) exercisable "in consultation with" the Judges concerned : cf. Federal Court of Australia Act 1976, s.181. To permit any Chief Justice an absolute and exclusive power of determining which Judges shall sit would enable him at will to suspend the exercise of jurisdiction by any of his colleagues. This would represent a serious inroad on the integrity of judicial commissions and tenure. For that reason the assumption of such a power under Rules of Court was held by the Privy Council in Re Wells (1840) 3 Moo. P.C. 216; 13 E.R. 92, to be inconsistent with the office and the commissions of the other Judges of the Court, and for that reason invalid. Clause 12 in its present form might enable such a result to be achieved by force of legislation.

We recommend that the following be added to s.11 of the Bill.

> "(3) In exercising the powers conferred by subsections (2) and (3) the Chief Justice shall act in consultation with the Judges of the Court, or those directly affected by the calendar alteration."

(b) Circuit Courts. The present system is one under which the Governor in Council fixes by Order in Council the places at which circuit sittings are to be held : see SCA 1921, ss.6,7. Section 57(2) of the Bill specifies those places in the Act itself. That will have the effect of making them permanent and unalterable except by another Act of Parliament. We think it most undesirable to entrench circuit localities in that fashion. Shifts in population and changes in jurisdiction over periods of

time mean that flexibility is in such matters essential. Experience suggests that political and other local factors already make it difficult for Governments to effect such changes, even where a demonstrable need exists.

We recommend that the specification of towns or places for holding circuits continue to be made by Rule of Court or by Order in Council, as at present, and that 57(2) of the Bill be amended accordingly.

Section 59(2) of the Bill is contrary to the provisions of O.95, r.1, which, in their present form, have since October 1982 permitted any form of action to be heard in a circuit court. There is no reason to alter this procedure now, which appears to be working satisfactorily. Practically, this means that only the last sentence of s.59(2) of the Bill should be retained.

4. Rule-making powers.

All Courts possess extensive rule-making powers. Usually the form of such powers requires them to be exercised in conjunction with some other authority, such as the Governor in Council, or a Rule-making Committee that may include members of the practising profession. See Professor Enid Campbell : Rules of Court, at 34-37. This was the position in Queensland until 1921 (see History, at 317-318), when the SCA of that year transferred the Supreme Court's rule-making powers from the Court to the Governor in Council, to be exercised "with the concurrence of any two or more Judges".

For the Executive to be given the Court's rule-making power is exceptional. In Australia certainly it is unique to Queensland (see Campbell, op.cit., at 34). Even the District Court Judges, with the approval of Supreme Court Judges and the sanction of the Governor in Council, can and do make their own

Rules of Court. The present system has functioned in the case of the Supreme Court only because in practice the Governor in Council invariably adopt - apparently without inquiry - the Court's proposals for alterations in the Rules.

We consider that the doctrine of separation of powers requires that power to make Rules of Court should be restored to the Supreme Court Judges, to be exercised either with or without the sanction of the Governor in Council. The safeguard against misuse of the rule-making power lies in the requirement of s.100 of the Bill, by which such Rules of Court may be disallowed by the Legislative Assembly : see SCA 1921, s.11(4). The only instance of its exercise that we have been able to locate was in 1880.

Section 99 of the Bill should be altered accordingly. Even if this proposal is not adopted, we consider the number of Judges whose concurrence is required for making Rules of Court is too small. It now requires only two Judges. In 1921 when that number was adopted there were only seven Supreme Court Judges, two of whom resided out of Brisbane, meaning in effect that the concurrence of two out of the five Brisbane Judges (or 40 per cent) was required. At present the total number of Judges is 19, so that in theory only about 10 per cent of the number is required to make what may be quite far-reaching changes in Supreme Court Rules governing procedure, practice and a wide range of other matters.

If s.99 of the Bill is to be retained in its present form, we recommend that the number of Judges whose concurrence is required for making Rules should be increased to at least five "of whom the Chief Justice is to be one". The latter requirement existed before 1921 (History, at 317-318), and is

now prescribed in s.51 of the Acts Interpretation Act 1954. It speaks of the Judges making rules by a majority, although there is very little to which that provision is capable of applying - except perhaps amendments of District Court Rules. Section 51 of that Act requires that the Chief Justice should be one of the Judges involved in the rule-making decision; and we consider that requirement appropriate.

5. Enforcement of Judgments

The Bill in ss.81 and 90 envisages the retention of the Court's power to arrest debtors on mesne process (s.81) and final process (s.90). These powers are now very seldom invoked, but, when they are, it is likely to be a source of hardship to the person arrested and the occasion of much adverse public comment. Despite what is said about the subject in the Commentary at p.78, such forms of procedure tend to be identified in the public consciousness with the nineteenth century system of imprisonment for debt, so graphically portrayed in the novels of Charles Dickens.

As the Commentary shows, these forms of procedure were abolished in New South Wales in 1970. Similar procedures that survive in attenuated form in other States have been criticised : see Australian Law Reform Commission Report No. 6, at 5, particularly n.15. Since the Commentary to the Bill was written in 1982, extensions of the circumstances in which Mareva injunctions (see Commentary, at 60) are available, and improvements in the efficacy of that form of relief, have made it even less necessary to resort to the old forms of process directed against the debtor's person : see Bank of New Zealand v. Jones [1982] Qd.R. 466. We do not believe that creditors

will suffer any perceptible disadvantage if they are now abolished altogether.

The Commission therefore recommends the omission of Bill ss.81 and 90. The proposed repeal by other provisions of the Bill, when enacted, of s.48 and ss.52 to 55 of the Common Law Process Act 1867 would no doubt have the practical effect of abolishing these two forms of process; but ca.sa. (Bill s.90) is mentioned in O.47, rr.3 and 18, and also in O.78, r.23, of the Rules of the Supreme Court and may therefore be capable of surviving the repeal of those sections of the Act.

For this reason we recommend the substitution in s.81 and 90 of the Bill of the following provisions (cf. New South Wales SCA 1970, at 75 of the Commentary):-

> "81. No person shall be arrested on mesne process in any civil action in any court in the State."
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> "90. [cf. NSW 1970 s.98]. (1) A judgment or order of the Court for payment of money shall not be enforceable -
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> (a) by process of the Court for attachment of the person or for committal; or
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> (b) by the issue of a writ of capias ad respondendum.
>
> (2) This section does not affect the power of the Court to punish for contempt."

There would, we think, be some slight advantage in symmetry to be gained from omitting "Division 2 - Mesne Process" (containing ss.81 and 82) and incorporating these sections in Part VII (Execution of Judgments and Orders), re-styling the latter as "Enforcement of Process and Judgments".

6. Additional Matters

There are a few other minor drafting matters that deserve attention.

Bill s.18. Salaries. Salaries of Judges are at present paid fortnightly, not monthly as provided in s.18(3) of the Bill.

Bill s.20. Jurisdiction of the Court.

General jurisdiction. The critical characteristic of the Supreme Court of Queensland is that, like other Australian Supreme Courts (but not any other Courts in Australia), it is a court of general jurisdiction : cf. Parkin v. James (1905) 2 C.L.R. 315, 329; Cameron v. Cole (1944) 68 C.L.R. 571, 598; Harris v. Harris [1947] V.L.R. 44, 46. The phrase "general jurisdiction" appears in the marginal heading to s.21 of the SCA 1867. We think it should be inserted in s.20(1) of the Bill itself, which should be altered to read:-

> "and shall be the superior Court of Queensland with general and unlimited jurisdiction."

Date. In gathering up the jurisdiction of the Supreme Court of New South Wales and vesting it in the Supreme Court of Queensland, s.20(2)(b) of the Bill refers to the jurisdiction of the Supreme Court of New South Wales "as at the sixth day of June 1859". This was the date of Letters Patent effecting the Separation of Queensland from New South Wales. However, the Letters Patent did not take effect until the date of the publication in Queensland (see art.10 : Qld. Statutes 1828-1962 vol. 2, at 804) which was 10 December 1859. The date of Separation is the date intended to be referred to in s.20(2)(b), and 10 December should therefore be substituted for 6 June in this provision.

Jurisdiction of Judge. Section s.20(2)(c) of the Bill invests in the Court the jurisdiction "of the Supreme Court of Queensland" immediately before the commencement of this Act.

However, there is an extensive array of jurisdiction that is invested by particular statutes not in the Court as such but in a Judge of the Supreme Court. Section 20(2)(c) would not necessarily carry forward a jurisdiction invested in that form. We consider that s.20(2)(c) of the Bill should be altered by the insertion after "the Supreme Court of Queensland" of the words "and of a Judge of the Court".

Bill s.21-29. These provisions reproduce subsections 4(1) to 4(8) of The Judicature Act 1876. Similar provisions in England were more concisely re-enacted in s.49 of the Supreme Court of Judicature Act 1925. We recommend the adoption as cl.21 of this Bill of the later English provision (with consequent omission of sections 22 to 29 of the Bill), excluding the words "or by any custom" that appear in the English section but are inapposite in Queensland. The form of s.21 will then be as follows:

> "21. Concurrent administration of law and equity [Eng. S.C.A., s.49]
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> (1) Subject to the provisions of this or any other Act, every court exercising jurisdiction in any civil cause or matter shall continue to administer law and equity on the basis that, wherever there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.
>
> (2) Every such court shall give the same effect as hitherto -
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> (a) to all equitable estates, titles, rights, reliefs, defences and counterclaims, and to all equitable duties and liabilities; and
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> (b) subject thereto, to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by the common law or created by any statute,
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> and, subject to the provisions of this or any other Act, shall so exercise its jurisdiction in every cause

> or matter before it as to secure that, as far as possible, all matters in dispute between the parties are completely and finally determined, and all multiplicity of legal proceedings with respect to any of those matters is avoided.
>
> (3) Nothing in this Act shall affect the power of the Court to stay any proceedings before it, where it thinks fit to do so, either of its own motion or on the application of any person, whether or not a party to the proceedings."

Bill s.34. Damages in lieu of Injunction, etc.

Mr P. McDermott, Principal Legal Officer to the Law Reform Commission, has called our attention to the form in which provisions similar to s.34 of the Bill have been re-cast in s.92 of the Judicature (Northern Ireland) Act 1978. It is superior in clarity and brevity to s.34 of the Bill, and we recommend adoption of a provision based upon it in place of that in the Bill. It is as follows:-

> "34. Equitable damages [J.(N.I.)A. s.92; cf. S.C.A. (U.K.), s.50].
>
> Where a court has jurisdiction to entertain an application for an injunction or specific performance it may award damages in addition to or in substitution for an injunction or specific performance."

If this provision is adopted, it will be necessary to add the following to the list of abbreviations at the end of s.3 of the Bill:

> "J.(N.I.)A. - Judicature (Northern Ireland Act; 1978.