SOUTH AUSTRALIA

FIFTY-FIFTH REPORT

of the

LAW REFORM COMMITTEE

of

SOUTH AUSTRALIA

to

THE ATTORNEY-GENERAL

RELATING TO THE INHERITED IMPERIAL STATUTE LAW ON PRACTICE AND PROCEDURE IN THIS STATE

1980

The Law Reform Committee of South Australia was established by Proclamation which appeared in the *South Australian Government Gazette* of 19th September, 1968. The present members are:

THE HONOURABLE MR. JUSTICE ZELLING, C.B.E., Chairman.
THE HONOURABLE MR. JUSTICE WHITE, Deputy Chairman.
THE HONOURABLE MR. JUSTICE LEGOE, Deputy Chairman.
D. W. BOLLEN, Q.C.
M. R. GRAY, S.-G.
J. F. KEELER.
D. F. WICKS.

The secretary of the Committee is Miss J. L. Hill, C/- Supreme Court, Victoria Square, Adelaide 5000.

The Honourable Mr. Justice White was on long service leave and the Honourable Mr. Justice Legoe was on circuit and accordingly neither of them signed this report.

To:

The Honourable K. T. Griffin, M.L.C.,
Attorney-General for South Australia.

Sir,

We have already in the Fifty-Fourth Report of this Committee dealt with the rules governing the inheritance of imperial law, with questions of express and implied repeal, and with the general saving clauses which ought to be included in each statute of this kind and we shall not repeat them again in this report.

We turn therefore to the question of the various statutes which are or might be part of the inherited law in relation to the topic of practice and procedure.

Magna Carta (1225) 9 Hen. III cc. 1-37 (sometimes referred to as (1297) 25 Edw. I cc. 1-37).

Chapter 11: Common pleas shall not follow the King's court. This is the famous section which required that the court of common pleas be held in aliquo loco certo and caused the disjunction of the courts of King's Bench which continued to follow the King and Common Pleas which was required to sit at Westminster. The command was followed so carefully that a seventeenth century chief justice refused to move the court out of the draught of the door in Westminster Hall because of this statute. This statute was repealed in England by the Civil Procedure Acts Repeal Act 1879 (42 and 43 Vict. c. 59).

The Act of 1879 repeals most of the older English law on civil procedure and where we say in this report that a statute has been repealed in England, unless we state the name and date of the statute, it can be taken that the repealing statute is in fact this Act of 1879 and this will save a great deal of repetition in the report.

Chapter 12: Where and before whom assizes shall be taken. This dealt with assizes of real actions which have long been extinct and there is no need for this statute in South Australia. This statute has been repealed in England.

Chapter 17 dealing with pleas of the Crown provides that no sheriff, constable, estreator, coroner or bailiff shall hold pleas of the Crown. This statute was repealed in England by the Statute Law Revision Act 1892 (55 and 56 Vict. c. 19) and it should be repealed here.

Chapter 24: In what case a praecipe in capite shall not be granted. This was to stop an encroachment by the King on the courts of the great lords and has no relevance to present day conditions. It was repealed in England by the Statute Law Revision Act 1863 (26 and 27 Vict. c. 125).

Chapter 34: In what cases a woman shall have an appeal of death. At one time in addition to prosecutions for murder it was possible to raise the question by an appeal; an action in which the family of the deceased were enabled to assert their claims against

the accused. Appeals have long been abolished and this section should be repealed. It was repealed in England by the Statute Law Revision Act 1863 (26 and 27 Vict. c. 125).
They should all be repealed here.

The Statute of Merton (1235) 20 Hen. III cc. 1-11.

Chapter 8: Limitation of prescriptions in writs. This deals with the old real actions and they are completely obsolete. The statute was repealed in England by the Statute Law Revision Act 1863 (26 and 27 Vict. c. 125). It should be repealed here.

Chapter 10: Attorneys allowed to make suit in several courts. This provided for freemen being able to act by attorney and no doubt this assisted in the rise of the legal profession but it is obsolete now and merely of historical interest. It has been repealed in England and we recommend that it be repealed here.

Statute 40 Hen. III c. 1 (in the statutes at large 21 Hen. III c. 1).

The Leap Year Day Act 1256 (or 1236 as the case may be). This provided for the extra day in leap year and the preceding day to be reckoned as one day. That has long since ceased to be the position in this country, if we ever inherited it, which is doubtful. It has been repealed in England and we recommend that it be repealed here.

Statute 51 Hen. III Statute 2 (1266).

This statute concerns the return dates for real actions. Real actions as we have said are completely obsolete and we recommend that it be repealed. It was repealed in England by the Statute Law Repeal Act 1863 (26 and 27 Vict. c. 125).

Statute 51 Hen. III Statute 3 (1266).

This is a similar statute dealing with the return days to a writ of dower. This also is repealed by the Statute Law Repeal Act 1863 in England and it should be repealed here.

Statute of Marlborough 52 Hen. III cc. 1-30 (1267).

Chapter 7: Process for recovery of a ward who has been taken away. Guardianship of wards as a profit to the lord has gone completely from English law. It was repealed in England by the Statute Law Revision Act 1863. It should be repealed here.

Chapter 9: Who shall do suit in the Lord's court and in particular as between co-parceners: that is as between women jointly entitled to a piece of land. Lords' courts have long since ceased to exist. It was repealed in England by the Statute Law Revision Act 1881 (44 & 45 Vict. c. 59) and should be repealed here.

Chapter 10: Exemption of persons from appearing in the Sheriff's tourn. The Sheriff's tourn was a minor court which has long since ceased to exist. Like the previous chapter it was repealed in England by the Statute Law Revision Act 1881 and should be repealed here.

Chapters 11, 12 and 13 dealing with pleadings in real actions were repealed by the Statute Law Revision Act 1863 and they should be repealed here.

Chapter 18: Amercements for defaults related to the Justices in eyre, i.e. where they were in itinere. Eyres ceased to exist somewhere about the beginning of the reign of Edward III, so it is most unlikely that any such institution remained even as a

possibility in 1836. However it is just as well to remove it from the statute book. It has been repealed in England and should be repealed here.

Chapters 19 and 20 relating to pleas of false judgment and essoins are again completely archaic. They have been repealed in England and should be repealed here.

Chapter 26: Return days for persons vouched to warranty: that is persons who warranted title and whose successor in title might require them to make good their guarantee. It was repealed in England by the Statute Law Revision Act 1863 and should be repealed here.

Chapter 28 deals with corporations sole who had had wrongs done to predecessors. It is still possible to have a corporation sole in South Australia: Public Trustee is an example, but there is no need for this particular form of redress as the matter is covered by more modern notions of law. It has been repealed in England and should be repealed here.

Chapter 29: dealing with writs of entry sur disseisin in the post. This was one of the forms of real action. It has no relevance in South Australia today. It was repealed in England by the Statute Law Revision Act 1863 and should be repealed here.

Statute of Westminster I 3 Edw. I cc. 1-51 (1275).

Chapter 8: At one time in order to plead, it was necessary to pay a sum of money to the King. That is dealt with in Chapter 8. It is completely obsolete in South Australia and should be repealed here. It was repealed in England by the Statute Law Revision Act 1863.

Chapter 21: No waste shall be made in the lands of wards nor in those of Bishops during vacation. Whether there was at other times an open season for Bishops does not seem to be specified in the statute. The statute is completely obsolete here. It has been repealed in England and should be repealed here.

Chapter 24: Unlawful disseisin by estreators. This deals with where the disseisin was by persons acting for and on behalf of the Crown. They could not, prior to that statute, be sued in the courts because they were acting as King's agents. The only form of disseisin now practised by the Crown in South Australia is by compulsory acquisition which is regulated by statute in this State. The chapter has been repealed in England and should be repealed here.

Chapter 35: Penalties for arresting within a liberty. In England there were certain privileged places where process could not be served or criminals arrested because they were within the peace of the church. These were ultimately swept away in 1697. They were in all cases sanctuaries or former sanctuaries of the church. The whole concept is obsolete today. The statute has been repealed in England and should be repealed here.

Chapters 36-49: These deal with disseisin, attaints in real actions, limitations of prescriptions, vouchers to warranty, writs of right, essoins and various other matters relating to process in these actions. All of these are completely obsolete in South Australia. They were repealed in England by the Statute Law Revision Act, 1863, and should be repealed here. But in Section 46 there is contained the general law relating to adjournments —that adjournments are not to be granted except for valid reasons and this should be preserved on any repeal.

Statute 4 Edw. I Statute 3 (1276) cc. 1-6.

Chapters 1, 2, 3, 4 and 6 deal with real actions which as we have said are completely obsolete.

Chapter 5 deals with bigamy and will be dealt with in our report dealing with the inherited criminal law.

The chapters to which we have referred were repealed in England by the Statute Law Revision Act, 1863 (26 & 27 Vict. c. 125) and should be repealed here.

The Statute of Gloucester 6 Edw. I cc. 1-15 (1278).

With the exception of chapter 9, which deals with homicide, all the other sections deal with procedure. They have been repealed in England by the Statute Law Revision Acts 1863, 1879 and 1883. Coke however says that chapter 1 is the foundation of the whole of the law of costs—see note 1 to *Co. Litt. II: 356a (19th Edn. 1832)* and the body of law should be preserved on any repeal. Subject to that the whole statute except Chapter 9 may be repealed here.

9 Edw. I c. 1—The articles of the Statute of Gloucester (1281).

This deals with voucher to warranty in London and was probably a local Act in any case. It was repealed by the Statute Law Revision Act, 1863 (26 & 27 Vict. c. 125) and should be repealed here.

11 Edw. I c. 1 (1283)—The Statute of Merchants.

This deals with the recovery of debts by the old form of a statute merchant which was a form of obligation which is completely disused today. This likewise was repealed by the Statute Law Revision Act, 1863, and should be repealed here.

12 Edw. I c. 1—Statute of Rutland (in Ruffhead's edition referred to as 10 Edw. I c. 1).

This statute deals with provisions made in relation to the exchequer which have no relevance in South Australia. It was repealed partly by the Civil Procedure Acts Repeal Act, 1879, partly by the Sheriffs Act, 1887 (50 & 51 Vict. c. 9) and the remainder by the Statute Law Revision Act, 1950 (14 Geo. VI c. 6). It should be repealed here.

Statute of Westminster II 13 Edw. I cc. 1-50 (1285).

Chapters 3 and 4 deal with real actions and in particular those relating to wives and to reversioners. They were repealed in England by the Statute Law Revision Act, 1863, and should be repealed here.

Chapters 6-9: These again deal with real actions, warranty, dower, pasture and mesne lords. These likewise were repealed by the Statute Law Revision Act, 1863, and should be repealed here.

Chapter 10: This deals with suits before the Justices in eyre. We have already referred to the fact that Justices have not gone in itinere for centuries. It was repealed in England and should be repealed here.

Chapter 12: This deals with appeals of felony which, as we have said, became obsolete before South Australia was founded. It was repealed in England by the Statute Law Revision Act, 1863, and should be repealed here.

Chapter 13: This deals with the Sheriff's tourn which, as we have said, was a minor court held by a Sheriff. It was repealed in England by the Sheriffs Act 1887 (50 & 51 Vict. c. 9) and should be repealed here.

Chapter 14: This deals with writs of inquiry in waste. This again is an action which is obsolete and should be repealed, as it has been in England.

Chapter 17: This deals with essoins and in particular essoins for sickness. An essoin was a medieval form of grounds for adjournment. It was repealed in England by the Statute Law Revision Act 1863 and should be repealed here.

Chapter 18: This is of greater importance because it is the original statute which permits debts to be recovered by fieri facias or elegit. Elegits are almost obsolete in South Australia today although the Crown may still sue one out if it wishes. Writs of fieri facias are issued out of the Court every day. There is no need to keep this section alive in South Australia but there should be a saving of the right created by the Statute. It was repealed in England partly by the Bankruptcy Act 1883 (46 & 47 Vict. c. 52) and the remainder by the Statute Law Revision Act 1948 (11 & 12 Geo. VI c. 62) and the Statute 4 & 5 Eliz. II c. 46 s. 34 (1).

Chapters 20 and 21: These chapters deal with answers by tenants in real actions and actions by chief lords against tenants. They are completely obsolete. They were repealed in England by the Statute Law Revision Act 1863 and should be repealed here.

Chapters 24-28 deal with real actions and pleadings in them. They were repealed in England by the Statute Law Revision Act 1863 and should be repealed here.

Chapter 29 dealing with writs of trespass of oyer and terminer and writs de odio et atia which are completely obsolete here. It was repealed in England and should be repealed here.

Chapter 31: This deals with bills of exceptions to pleas. It is an obsolete form of pleading and has no relevance today. It was repealed in England partly by the Statute Law Revision and Civil Procedure Act 1881 (44 & 45 Vict. c. 59) and partly by the Statute Law Revision Act 1950 and should be repealed here.

Chapter 35: This deals with the procedure for punishing those who took a ward out of the hands of the lord. As we said earlier, wardship in those days was a profitable thing for the lord and was a completely different idea of guardianship from what we now have. It was partly repealed in 1879 and the remainder by the Statute Law Revision Act 1948. It should be repealed here.

Chapter 36: Dealing with procurement of suits is part of the everlasting medieval struggle against maintenance and procurement of suits without cause. All of that is completely obsolete today. It has been repealed in England and should be repealed here. Chapter 39 dealing with execution of process by a Sheriff is covered by substantive law in South Australia. It was repealed in England by the Sheriffs Act 1887 and should be repealed here.

Chapter 40: Deals with a woman's suit not being deferred by the minority of the heir. It refers to real actions. It was repealed in England in 1863 and should be repealed here.

The Statute of Merchants 13 Edw. I (1285).

This deals with the recovery of debts by statute merchant. It was repealed in England by the Statute Law Revision Act 1863 and it should be repealed here.

The Statute de Quo Warranto and the Statute de Quo Warranto Novo 18 Edw. I Statutes 2 and 3 (1290).

These statutes deal not with the modern form of Quo Warranto but with an attempt by Edward I to obtain money for the Crown by challenging all claims to Crown grants. They were only of importance at the time. The statutes were strongly resisted by the nobility. Earl Warrenne threw his sword on the table in front of the King and the justices, and said that was his warrant for holding his lands. They were repealed in England in 1879 and should be repealed here.

18 Edw. I Stat. 4—Statute of Fines (1290)—(in the Statutes at Large referred to as Stat. 27 Edw. I (1299)).

A fine was an old fashioned method of quieting title and was also used in breaking a fee tail. It is obsolete today. The statute was repealed in England partly by the Statute Law Revision and Civil Procedure Act 1881 and partly by the Statute Law Revision Act 1950 and should be repealed here.

20 Edw. I c. 1—The Statute of Vouchers (1292).

This dealt with a case where the title of a tenant of land was challenged and he vouched his lessor to warranty. It is obsolete now and should be repealed. It has been repealed in England. It is possible that it was never intended originally as a statute at all but simply as a form of direction to Courts.

Statute 21 Edw. I—The Statute of Assizes (1293).

This deals with the qualification of jurors and in particular the amount of freehold land they had to hold. Again it is possible that this was never intended to operate as a statute at all. It has been repealed in England and should be repealed here.

Ordinance of Purchase of Liberties Statute 27 Edw. I Stat. 2.

This deals with damages and with the right of a man to appear by his attorney. It was repealed in England by the Statute Law Revision Act 1887 (50 and 51 Vict. c. 59) and should be repealed here.

28 Edw. I Stat. 2—A Statute for persons appealed.

This again deals with the right of a person to take appeal proceedings against a murderer instead of having him indicted at the King's suit and gives instructions as to how process is to be awarded in such cases. It was repealed in England by the Statute Law Revision Act 1863 and should be repealed here.

28 Edw. I Stat. 3.

The articles on the charter deal with various matters arising out of the great charter; mostly in connection with common law writs and real actions. The articles have been repealed by a series of Acts from 1863 to 1969 and the whole statute should be repealed here.

Statute 29 Edw. I—the Statute of Escheats (1301).

This dealt generally with the procedures as to escheat. Escheat is still in force in South Australia. It applies in the case of living

persons where the ultimate right to the land is in the Crown when no better right can be shown. It was abolished in England by the Escheat Procedure Act 1887 (50 and 51 Vict. c. 53). We have no similar Escheat Procedure Act in South Australia. It is possible that the Crown might in exercising escheat proceedings in South Australia have to proceed in a similar manner to what is laid down in the Statute although the old proceeding by escheators has now become obsolete. Nevertheless it is continued by Order 1 Rule 2 of the Supreme Court Rules. It should be repealed here but with a saving of the law as set out, particularly in Section 4 of the Statute. Consideration should be given to enacting a general statute in South Australia governing the subject of escheat after this report from the Committee.

Statute 34 Edw. I Stat. 1—The Statute of Feoffments (1306).

This deals with problems arising out of joint tenancies and the assizes of land. The assizes of land are long since obsolete and the statute can be repealed. It was repealed in England partly by the Statute Law Revision Act 1863 and partly by the Statute Law Revision Act 1948.

9 Edw. II Stat. 2—The Statute of Sheriffs (1315).

This deals with the assignment of sheriffs and their bailiffs. The law relating to sheriffs and bailiffs diverged in South Australia from English law in 1842 and has remained different ever since and there is no reason to keep the Act in South Australia. It was abolished in England by the Sheriffs Act 1887.

12 Edw. II Stat. 1—The Statute of York (1318).

This deals with various questions of process, none of which are of any importance today. It was partly repealed by the Statute Law and Civil Procedure Act 1881 and partly by the Statute Law Revision Act 1950 and can be repealed here.

12 Edw. II Stat. 2—The Statute of Essoins (1318)—(In the Statutes at Large placed among the Statutes of Uncertain Date).

This statute dealt with the various excuses which might then be made to a return date for a writ. It is completely obsolete now. It was repealed in England by the Statute Law Revision Act 1863 and should be repealed here.

Statute 15 Edw. II—The Statute of Carlisle (1315)—(In the Statutes at Large placed among the Statutes of Uncertain Date).

This statute deals again with the question of fines, which as we have said, are obsolete here. It was repealed in England by the Statute Law Revision Act 1863 and should be repealed here.

Statutes of Uncertain Date—The Statute of Wards and Reliefs—deals with forms of wardship as a profitable asset of the lord which is a completely obsolete conception today. It was repealed in England and should be repealed here.

Statute 1 Edw. III Stat. 1 (1327).

This deals with various forms of obsolete pleading and procedure. It was partly repealed by the Civil Procedure Acts Repeal Act 1879 and partly by the Statute Law Revision and Civil Procedure Act 1881 and should be repealed here.

2 Edw. III cc. 1, 2, 7-11, 13, 16 and 17 (1328).

These deal with various matters concerning the procedures of courts. They have been repealed in England by a series of statutes from 1863 to 1969 and the whole group of statutes should be repealed here.

Statute 4 Edw. III cc. 1-15.

These are all joined together in the chronological table of the statutes as being statutes relating to various forms of civil procedure. However 4 Edw. III c. 7 deals with the executor's action for trespass and this was repealed by 63 of 1940 section 7.

The other chapters 1-6 and 8-15 have all been repealed in England. We presume that they all should be repealed here. However Chapter 12 which says that wine ought to be sold at reasonable prices might be thought deserving of a better fate.

Statute 5 Edw. III cc. 1-14.

These deal with various forms of procedure by sheriffs, with custody by marshals of the King's Bench, and with civil outlawry. All of this is obsolete today except for civil outlawry which still has a bare existence due to the schedule to the Equity Act 1866. However it seems to us that all of these chapters could properly be repealed. They have been repealed in England by a series of statutes from 1863 to 1969.

Statute 9 Edw. III Stat. 1 c. 3.

This deals with essoins being forbidden to executors. Essoins, as we have said, are completely obsolete and have been for centuries, and the statute can be repealed. It was repealed in England in 1879.

Statute 14 Edw. III Stat. 1 cc. 5-9.

These deal with various forms of obsolete procedure. They have been repealed by a series of statutes of England from 1863 to 1950 and should be repealed here.

Statute 14 Edw. III cc. 16, 17 and 18 (1340).

These deal with real actions and trials at nisi prius. They have been repealed by statutes from 1863 to 1950 and should be repealed here.

Statute 18 Edw. III Stat. 1 (1344).

This is a statute concerning exigents—an old form of process which was possibly still in existence in 1836 as it is referred to in legal literature of the 1840's and 1850's but is long since obsolete. It was repealed in England by the Administration of Justice (Miscellaneous Provisions) Act 1938 (1 & 2 Geo. VI c. 63) and should be repealed here.

Statute 18 Edw. III Stat. 2 (1344).

Chapter 5 of this statute deals once more with exigents. It was repealed by the same English Act of 1938 and should be repealed here.

Statute 20 Edw. III c.c. 1 and 2.

These deal with justices and Barons of the Exchequer doing right to all men without delay and not taking any fees. It is good and wholesome law but would appear to be covered in any event by the wider provisions in Magna Carta as far as doing justice is

concerned and the question of fees is dealt with in Section 13 of the Supreme Court Act 1935. They were repealed in England in 1879 and 1881 and should be repealed here.

Statute 25 Edw. III Stat. 5 (1351).

Chapter 3 deals with challenge of jurors, Chapter 16 with real actions, Chapter 17 with exigents and Chapter 19 with Crown debtors and their process. All of these have been repealed in England by a series of statutes from 1863 to 1948 and should be repealed here.

Statute 27 Edw. III c. 1

This punishes suing in a foreign court by the dread process of praemunire. It occurred to us to wonder how many Australian citizens were liable to the penalties of a praemunire for having sued in the courts of another State. It might provide some interesting statistics in outlawry. However the whole procedure is antiquated and obsolete. It was repealed in England in 1879 and should be repealed here.

Statute 28 Edw. III (1354).

Chapter 4 deals with tenure in capite, Chapter 7 with sheriffs, Chapter 8 with attaint, Chapter 9 with sheriffs again, and Chapter 10 with trials of actions. These are all repealed by a series of statutes in England dating from 1857 to 1887 and should be repealed here.

Statute 34 Edw. III (1361).

Chapter 7 deals with attaints, Chapter 12 with forfeitures, Chapters 13 and 14 with escheators, Chapter 16 with fines. All of these are obsolete here. They have been repealed in England by a series of statutes from 1863 to 1948 and should be repealed here.

Statute 36 Edw. III Stat. 1 c. 13.

This deals with escheators and have been repealed in England by the Escheat Procedure Act 1887 (50 & 51 Vict. c. 53).

Although, as we have said, escheat is still in force in South Australia, it does not appear that any part of this Statute could govern escheat in this State now and should be repealed.

Statute 37 Edw. III c. 2 (1363).

This deals with wrongful seizure of persons' lands and goods and incorrect names being used on process. These are covered by the general law of tort and by Rules of Court in South Australia respectively and the statute can be repealed. It was repealed in England in 1879.

Statute 1 Ric. II c. 12 (1377).

This deals with putting of people in prison because they are in debt. There is no doubt that this statute was impliedly repealed by the Debtors Act 1936. It was repealed in England in 1879. To put the matter beyond doubt, there should be an express repeal of the Statute now.

Statute 2 Ric. II Stat. 2 c. 3 (1378).

This deals with fraudulent deeds made by debtors to avoid creditors and process thereon. This would have been impliedly

repealed in South Australia by the Law of Property Act 1936. It was expressly repealed in England by the Statute Law Revision Act 1863 and there should be an express repeal here.

Statute 6 Ric. II Stat. 1 (1382).

Chapter 2 deals with process on writs of debt and account, Chapter 3 with writs of nuisance, and Chapter 5 with holding of sessions in assizes. They are all obsolete here. They were repealed in England in 1863 and 1879 and should be repealed here.

Statute 6 Ric. II Stat. 2 c. 4 (1383).

This requires actions of trespass to be brought within a limited time. It was repealed in England in 1863. It is covered in South Australia by the Limitation of Actions Act 1936 and should be repealed here.

Statute 8 Ric. II c. 4 (1385).

This deals with the making of false entries of pleas by officers of the court. In so far as the matter is criminal it is dealt with in South Australia by the Criminal Law Consolidation Act. In so far as it is civil it would be dealt with today as a contempt of court. It was repealed in England by the Statute Law Revision and Civil Procedure Act 1881 and the Statute Law Revision Act 1950 and should be repealed here.

Statute 13 Ric. II Stat. 1 (1389).

Chapters 17 and 18 deal with real actions and with attaint. They were repealed in England in 1881 and should be repealed here.

Statute 17 Ric. II c. 6 (1393).

This gave damages for untrue suggestions in Chancery proceedings. It was repealed in England in 1879. It is covered by Rules of Court and by the laws relating to contempt of court in South Australia and can be repealed here.

Statute 2 Hen. IV c. 7 (1400).

This provides for no nonsuit after verdict. It was repealed in England by the Civil Procedure Acts Repeal Act 1879. It is governed in South Australia in the case of the Supreme Court by Rules of Court and in the case of local courts by the express provisions of the Local Courts Act. It can be repealed in this State.

Statute 4 Hen. IV (1402).

Chapter 5 deals with sheriffs, Chapter 7 with real actions, Chapters 18 and 19 with attorneys, and Chapter 23 with judgments. They were all repealed in England by statutes from 1843 to 1879 and should be repealed here.

Statute 5 Hen. IV c. 8 (1403).

This deals with a defendant being entitled to wage his law. Wager of law was still possible down to 1832. The statute was repealed in England in 1863. It should be repealed here.

Statute 7 Hen. IV c. 13 (1405).

This deals with attorneys in process of outlawry. Outlawry, as we have said, still occupies a precarious and almost non-existent position in South Australia. The Act should be repealed. It was repealed in England in 1879.

Statute 11 Hen. IV c. 3 (1409).

This deals with amendment of records after judgment enrolled. This is dealt with in South Australia by Rules of Court. The Statute was repealed in England in 1863 and should be repealed here.

Statute 1 Hen. V c. 5 (1413).

This deals with the adding of material to original writs of indictments. In so far as it deals with indictments it is dealt with under the indictment rules made under the Criminal Law Consolidation Act and its predecessor Acts. In so far as it deals with civil procedure, it is dealt with in South Australia by Rules of Court. It was repealed in England by the Statute Law Revision and Civil Procedure Act 1883 (46 & 47 Vict. c. 49) and the Statute Law Revision Act 1950. It should be repealed here.

Statute 2 Hen. V Stat. 1 c. 2 (1414).

This deals with an old form of certiorari in relation to execution of civil judgments. Execution was recently dealt with by Parliament following the Thirtieth Report of this Committee. It was repealed in England in 1879 and should be repealed here.

Statute 9 Hen. V c. 4 (1421).

This dealt with limited powers of amendment in records or process and is one of the statutes known generically as the Statutes of Jeofails. Wide powers of amendment are given by Rules of Court today and this statute is obsolete. It was repealed in England by the Statute Law Revision and Civil Procedure Act 1883 and the Statute Law Revision Act 1950. It should be repealed here.

Statute 4 Hen. VI c. 1 (1425).

This deals with return days for writs. It was repealed in England by a series of statutes from 1863 to 1950 and should be repealed here.

Statute 8 Hen. VI cc. 12 and 15 (1429).

This again is one of the Statutes of Jeofails, and deals with amendments. It was repealed in England by Statutes of 1883 and 1950 and can be repealed here.

Statute 8 Hen. VI c. 16 (1429).

This deals with escheats and the traverse of escheats. As we have said, escheats are still in force in South Australia. It may well be that the Crown will want a saving of the law contained in Sections 6 and 7 of this statute, notwithstanding that the statute should itself be repealed.

Statute 9 Hen. VI c. 4 (1430).

This extends the statute of Henry V relating to identity of names to suits maintainable by executors. It was repealed in England by 1879 and is covered by Rules of Court in South Australia and can be repealed here.

Statute 11 Hen. VI cc. 2, 3, 4 and 5 (1433).

These deal with real actions and attaints. They were repealed in England in 1863. They are obsolete here and should be repealed.

Statute 15 Hen. VI (1436).

Chapter 4 deals with damages for wrong use of subpoenas; Chapter 5 with attaints. Both of these are obsolete now. They were repealed in England in 1863 and can be repealed here.

Statute 18 Hen. VI c. 7 (1439).

This deals with returns by escheators. It is obsolete in South Australia and can be repealed. It was repealed in England in 1887.

Statute 18 Hen. VI c. 9 (1439).

This deals with warrants of plaintiffs by their attorney and is covered by the Legal Practitioners Act in South Australia. It was repealed in England by the Solicitors Act 1843.

Statute 23 Hen. VI c. 16 (1444).

This deals with escheators taking inquests of office. We think there is nothing in this statute which needs preservation. It was repealed in England in 1887 and it can be repealed here.

Statute 31 Hen. VI c. 9 (1452).

This is an early statute of women's liberation. The statute says that ladies, gentlewomen and other unmarried women, because of their great weakness and simplicity, are taken by force and compelled to enter into fictitious obligations of statutes merchant or recognizances which they have then to repay and the statute provides for the discharge of any such document. It was repealed in England in 1863 and can we think safely be repealed here. No women's liberationist would admit to "great weakness and simplicity".

Statute 12 Edw. IV c. 1 (1472).

This statute deals with the return days for sheriffs. As the old terms into which the judicial year was divided have been abolished, the return days, which were calculated according to the great feasts of the church, are now obsolete. The statute was repealed in England by statutes of 1863 and 1887 and can be repealed here.

Statute 17 Edw. IV c. 7 (1477).

This is an Act relating to sheriff's returns and amends the Act last referred to in this report. For the same reasons it is now obsolete. It was repealed in England in 1887 and can be repealed here.

Statute 1 Ric. III c. 7 (1483).

This deals with the subject of fines relating to property which were at one time of great importance but are not now. It was repealed in England in 1863 and can be repealed here.

Statute 1 Hen. VII c. 1 (1485).

This deals with formedons against a person whose land is held to uses. As we have said before, fees tail are practically unknown today in South Australia and this statute can be repealed. It was repealed in England by the Statute Law Revision Act 1863.

Statute 3 Hen. VII c. 10 (1486).

This deals with the costs that ought to be awarded to a plaintiff where a defendant sues out a writ of error. Writs of error have

long been obsolete in South Australia, if indeed we ever inherited them, which is arguable. The statute was repealed in England in 1879 and should be repealed here.

Statute 4 Hen. VII c. 24 (1488).

This deals once more with the subject of fines levied in the court of common pleas. They are obsolete. The statute was repealed in England in 1863 and should be repealed here.

Statute II Hen. VII c. 12 (1494).

This was the original Poor Persons Legal Assistance Act and deals with the subject of suing in forma pauperis. Legal aid to those who need it is controlled by the Legal Services Commission and by statutes of the Commonwealth and of South Australia. It was repealed in England by statutes of 1883, 1949 and 1973 and can be repealed here. There should however be a saving of the right to sue in forma pauperis enacted by this statute as it is still possible to sue or defend in forma pauperis in the High Court of Australia and, although it is not used today, in the Supreme Court by Order 16 Rule 21 of the Rules of Court.

Statute 19 Hen. VII c. 20 (1503).

This deals with writs of error which as we have said have long been obsolete in South Australia. The statute has been repealed in England and can be repealed here.

Statute 1 Hen. VIII c. 8 (1509).

This deals with escheators and commissioners of escheat. There is no record that we have been able to find that commissioners in escheat have ever operated in South Australia and the Act appears to be merely machinery and not to affect the Crown's right as to escheat. It was repealed in England in 1887 and can we think be properly repealed here. It was made perpetual in England by the Statute 3 Hen. VIII c. 2 and both statutes can be repealed at the same time.

6 Hen. VIII c. 4 (1514).

This deals with exigents which as we have said is an old method of procedure to execution, and also an essential step in outlawry. It is obsolete in South Australia. It was repealed in England in 1938 by the Administration of Justice (Miscellaneous Provisions) Act (1 and 2 Geo. VI c. 63) and can be repealed here.

Statute 7 Hen. VIII c. 4 (1515).

This is an Act dealing with avowries for rents and services and for forms of replevin. Both avowries and this form of replevin are obsolete today. The statute was repealed in England in 1863 and can be repealed here.

Statute 23 Hen. VIII c. 14 (1531).

This deals with how processes of outlawry issue in relation to various actions. As we have said, outlawry has still a shadowy existence in South Australia but this particular statute has no bearing on that and can be repealed. It was repealed in England by the Statute Law Revision Act of 1863.

Statute 23 Hen. VIII c. 15.

This is a statute dealing with costs. It gave jurisdiction to the court to order an impecunious plaintiff who sues in forma

pauperis, loses his case, and cannot pay the defendant's costs, to be whipped. We doubt if that jurisdiction ever came to this Court in 1836. Chief Justice Holt in 1701 refused a motion that a losing plaintiff in forma pauperis should be whipped, saying that he had no officer for the purpose. In any event the statute is now obsolete. The question of costs is dealt with by the Supreme Court Act and Rules and this statute can be repealed. It was repealed in England in 1883.

Statute 24 Hen. VIII c. 8 (1531).

This deals with defendants' costs where the King's debtors were involved. It was repealed in England in 1879 and can be repealed here. The Crown may however want a saving of the law declared by this statute as there appears to be no other statute on the point.

Statute 32 Hen. VIII c. 2 (1540).

This is the oldest of the general limitation of actions Acts. The materials in it are now covered by our Limitation of Actions Act, 1936. It was repealed in England in 1887 and can be repealed here.

Statute 32 Hen. VIII c. 5 (1540).

This deals with the seizure of land taken in execution. Execution, as we have pointed out earlier, is regulated in this State both by Rules of Court and by recent legislation. The Act was repealed in England in 1948 and can be repealed here.

Act 32 Hen. VIII c. 28 (1540).

This protects lessees as against tenants in tail. As we have said elsewhere, estates tail are very rare in South Australia and there is no reason why this Statute should be continued. It was repealed in England in 1924 and can be repealed here.

Statute 32 Hen. VIII c. 30 (1540).

This deals with mispleading and is one of the various Statutes of Jeofails. There are wide powers of amendment given today by the Rules of Court and these statutes are all now merely of historical curiosity. It was repealed in England in 1883 and can be repealed here.

Statute 32 Hen. VIII c. 36 (1540).

This deals in great detail with the previous statutes relating to fines and explains them. Fines are obsolete in South Australia, as we have said, and this statute can be repealed here. It was repealed in England in 1863.

Statute 34 & 35 Hen. VIII c. 16 (1543).

This statute relates to sheriff's accounts and how they are to receive discharges for the money in their hands. Sheriffs are now separately dealt with by legislation in South Australia and this statute no longer has any bearing on the present administration of the Sheriff's Office. It was repealed in England by the Statute Law Revision Act, 1863, and can be repealed here.

Statute 1 Edw. VI c. 7 (1547).

This deals with the continuation of actions in the Courts after the death of the Monarch. It is still in force in South Australia today, at least in relation to Section 1. Sections 2-6 deal with other matters and are not of any importance. We think that the

statute should be repealed but that a provision in the terms of Section 1 should be put in a general Demise of the Crown Act, a subject which is at present covered by a number of Imperial Acts and some State legislation. It is a topic of considerable importance and would be worthy of reference to this Committee.

Statute 2 & 3 Edw. VI c. 4 (1548).

This statute deals further with the subject of accounting by sheriffs and their discharge. As we have said, this subject is already dealt with in South Australia and does not need the continuance of this statute. It was repealed in England by the Statute Law Revision Act, 1863, and can be repealed here.

Statute 2 & 3 Edw. VI c. 8 (1548).

This deals with the necessity for an office found, i.e., the Queen's title found, before an escheat takes place. As far as we know, offices found have not been used this century, but they were used in this Court in the nineteenth century. The whole subject of escheat needs a thorough examination, but we doubt whether the Crown would be likely now to proceed by inquisition or office found before escheat. Theoretically however they could do so if they wished. It may be well therefore that while this statute should be repealed, as it has been in England in 1887, that a consideration be given to a saving clause preserving the right to proceed in this way. That, however, is a matter for the Crown to consider.

Act 1 Mary Session 2 c. 5 (1553).

This is an Act relating to limitation of actions and amends the Act of 32 Hen. VIII which we have referred to above. This subject is sufficiently dealt with today by the Limitation of Actions Act, 1936. It was repealed in England in 1863 and may be repealed here.

Statute 8 Eliz. I c. 2 (1565).

This deals with bills of latitat and other similar devices by which the Queen's Bench sought to take some of the civil jurisdiction of the Common Pleas. With the unity of the various Courts, this has become of antiquarian interest only. It was repealed in England in 1925 and can be repealed here.

Statute 14 Eliz. I c. 8 (1572).

This deals with collusive recoveries by tenants in tail. The problem is still with us in the rare cases where estates tail still exist. It can be repealed here with a saving of the reform effectuated by this Statute. It was repealed in England in 1863.

Statute 18 Eliz. I c. 14 (1576).

This is a Statute of Jeofails. As we have said, there is ample authority for the amendment of pleadings within the Rules of Court and the statute is not any longer required. It was repealed in England in 1883 and can be repealed here.

Statute 23 Eliz. I c. 3.

This gives power of amendment with regard to fines and recoveries. The difference between the two was that a fine merely barred the settlement in tail; a recovery barred the whole estate including that of the reversion in fee simple expectant

upon the falling in of the estate tail. This is of merely antiquarian interest now. It was repealed in England in 1881 and can be repealed here.

Statute 27 Eliz. I c. 5 (1585).

This deals with demurrers. Demurrers are now dealt with under our Rules of Court as objections in point of law and the statute is not needed now. It was repealed in England in 1883 and can be repealed here.

Statute 31 Eliz. I c. 3 (1589).

This deals with the forms of outlawry and exigents. Outlawry, as we have said, still exists in a shadowy fashion in South Australia but the statute is not needed. It was repealed in England in 1879 and can be repealed here.

Statute 43 Eliz. I c. 6 (1601).

This deals with frivolous actions and abuses of the processes of the court. This is already sufficiently dealt with in this State both by the common law and by statute. It was partly repealed in South Australia by Ordinance 5 of 1843. The Statute of Elizabeth was repealed in England by Acts of 1863, 1879 and 1887 and it should be repealed here.

Statute 1 Jac. I c. 10 (1604).

This deals with reports on causes referred by the court. It is now covered by Rules of Court in South Australia and can be repealed. It was repealed in England by the Statute Law Revision Act 1863.

Statute 1 Jac. I c. 13 (1604).

This Act deals with a case where a writ of execution is discharged because a member of Parliament has his privilege during the session of Parliament and the filing of a second execution later. This Act is still in force in England and we recommend that it remain in force here. It is part of the law and custom of Parliament and if it is to be dealt with at all, should be dealt with when the Constitution Act is next under consideration.

Statute 1 Jac. I c. 26 (1604).

This relates to process in the Court of Exchequer, the jurisdiction of which is vested in the Supreme Court under the Imperial Act 4 & 5 Will. IV c. 95 s. II and the Ordinance 5 of 1837. However this has now become merged in the general procedure of the Court and we see no reason why the statute should remain on the statute books. It was repealed in England by the Statute Law Revision Act 1863.

Statute 3 Jac. I c. 7 (1605).

This is an Act according to its title "to reform the multitudes and misdemeanours of attornies and solicitors at law and to avoid unnecessary suits and charges in law". There is already sufficient jurisdiction to deal with that in the Legal Practitioners Act. It was repealed in England by the Solicitors Act 1843 (6 & 7 Vict. c. 73) and should be repealed here.

Statute 4 Jac. I c. 3 (1606).

This is an Act giving costs to a defendant on the non-suit of a plaintiff or a verdict against him. Costs are sufficiently dealt with by the Rules of Court. The statute was repealed in England in 1883 and can be repealed here.

Statute 21 Jac. I c. 5 (1623).

This is an Act relating to sheriffs and their executors and administrators and how they should be discharged on accounting for the money in their hands. This is covered in South Australia both by public account statutes and by the legislation relating to the sheriff. It was repealed in England in 1863 and can be repealed here.

Statute 21 Jac. I c. 13 (1623).

This is another statute in the long series of Statutes of Jeofails. As we have said, there are wide powers of amendment in the Supreme Court Rules and the statute is no longer necessary. It was repealed in England in 1883 and can be repealed here.

Statute 21 Jac. I c. 16 (1623).

This was for centuries the general limitation of actions statute. It was declared to be in force in South Australia by Ordinance 9 of 1848. As that Ordinance was repealed by Act 13 of 1861, it is likely but not certain that this effected a repeal of the Statute of James I in this State. To put the matter beyond doubt, it should be repealed now. Parts of it are still in force in England.

Statute 21 Jac. I cc. 23 and 24 (1623).

These deal with the delays caused by removing actions into the higher court from inferior courts and for the relief of creditors against people dying in execution. The second of these is unnecessary as people are no longer imprisoned for debt and as to the first one, whilst it is true that removals of causes do still cause vexations delays sometimes even at the present day, there are sufficient powers to deal with that. Both statutes were repealed by the Statute Law Revision Act 1948 and can be repealed here.

Statute 13 Car. II Stat. 2 c. 2 (1661).

This is a statute relating to delays in law suits. There is sufficient power in South Australia to deal with this under the Supreme Court Act and the inherent powers of the Court and the Statute is not required. It was repealed in England in 1879 and can be repealed here.

Statute 14 Car. II c. 21 (1662).

This deals with the everlasting trouble of passing sheriff's accounts in England, which seems to be dealt with about every second reign. We have given reasons why it is not necessary to keep such statutes alive today. It was repealed in England, partly in 1863 and the balance in 1887, and can be repealed here.

Statute 16 Car. II c. 2 (1664).

This is an Act for preventing abatement of writs of error. As we have pointed out, writs of error are obsolete in South Australia and this statute can be repealed. It was repealed in England in 1863.

Statute 16 Car. II c. 8 (1664).

This cures the previous law so that the writ does not abate by the death of either party between verdict and judgment. It was made perpetual by 1 Jac. II c. 17 s. 5. Both statutes can be repealed now, but as the point is still of importance in the administration of justice, there should be a saving provision in the repealing legislation.

Statute 16 & 17 Car. II c. 8 (1664).

An Act to prevent arrests in judgment. This Act was made perpetual by 22 & 23 Car. II c. 4. Both statutes were repealed in 1879 and they can be repealed here.

Statute 17 Car. II c. 7 (1665).

This deals with proceedings on distresses and avowries and was repealed in England in 1881. It can be repealed here.

Statute 22 & 23 Car. II c. 9 (1670).

This deals with vexations and harassing suits, particularly in relation to land. It was amended in South Australia by Ordinance No. 5 of 1843. It was repealed in England in 1863 and can be repealed here.

Statute 29 Car. II c. 5 (1676).

This statute deals with the taking of affidavits in country areas. This is now dealt with in the Oaths Act and in the Supreme Court Rules. It was repealed in England in 1879 and can be repealed here.

Statute 4 Will. & Mary c. 4 (1692).

This dealt with the taking of special bail in relation to actions in the courts. With the abolition of the arrest of a defendant as part of the proceedings in civil actions, special bail ceased to be of any importance. It was repealed in England in part by 11 Geo. IV and 1 Will. IV c. 66 and the balance in 1925 and can be repealed here.

Statute 4 & 5 Will. & Mary c. 18 (1692).

This deals with the taking of malicious proceedings in the Courts of King's and Queen's Bench. It can be dealt with under the general powers of the Supreme Court. It was repealed in England in 1938 and can be repealed here.

Statute 8 & 9 Will. III c. 11 (1697).

This is an Act against frivolous and vexatious suits. It is sufficiently covered by Rules of Court in South Australia. It was repealed in England by statutes of 1879, 1883 and 1948 and by rules of court made in 1957 under the Judicature (Consolidation) Act 1925, and can be repealed here. We think that the attention of the Judges should be drawn to the desirability of framing a rule in terms of the English Order 53G made in 1957 on the repeal of this statute.

Statute 10 Will. III c. 14 (1699).

This was a limitation of actions Act in relation to writs of error. Writs of error are obsolete and this statute can be repealed. It was repealed in England in 1879.

Statute 4 & 5 Anne c. 16 (1706)—(In the Statutes of the Realm referred to as Chapter 3).

This by its title is an Act for the amendment of the law and the better advancement of justice. It is in force in South Australia: see *Lane v. Hinks (1918) 35 W.N. N.S.W. 90,* and must therefore be dealt with section by section.

Section 1 extends the Statute 27 Eliz. c. 5 so that a court shall give judgment according to the right of the cause without regarding imperfections omissions and defects unless they are

taken by demurrer. This section would seem to be covered by the provisions of Section 27 of the present Supreme Court Act and can be repealed.

Section 2 is an extension of the Statute of Jeofails, which as we have said are obsolete, and this section can be repealed.

Section 3 requires the attorney for the plaintiff in any action or suit to file a warrant of attorney with a proper officer of the Court. This is still the practice in some places but is not the practice as governed by our present Supreme Court Rules and it can be repealed.

Section 4 allowed a defendant to plead more than one defence to an action. At the common law a defendant could only plead one defence so that there was only one issue to be tried by the jury. This section altered the law in that respect. The matter is however now covered by Rules of Court and Section 4 can be repealed.

Section 5 deals with costs in the case of a demurrer. Costs are in general now dealt with by Section 40 of the Supreme Court Act and this Section can be repealed.

Sections 6, 7 and 8 deal with trials, writs of appeal and views by jurors. These are now obsolete and can be repealed.

Section 9 deals with grants and conveyances by fine which as we have said are obsolete and Section 10 is a proviso to Section 9. Both these sections can be repealed.

Section 11 deals with dilatory pleas and requires them to be on affidavit. Dilatory pleas are not common in the Courts but they still do happen and Section 11 probably still governs them. We think that Section 11 should be repealed but with a saving of the amendment of the law made by the section.

Sections 12 and 13 provide that payments made by defendants, even though not exactly according to the nature of the contract, if they have in fact been received by the plaintiff, are an end of the action. Again these sections are probably still in force in South Australia today. These sections can be repealed but there should be a saving of the amendment of the law made by the sections.

Section 14 deals with nuncupative wills. This section was repealed in its operation in South Australia by the Wills Ordinance 16 of 1842.

Sections 15 and 16 deal with fines levied on real property, which as we have said are obsolete, and these sections can be repealed.

Sections 17 and 18 deal with seamen's wages. It may well be that some such provision ought to go in the Marine Act and the Minister of Marine should be asked whether such an amendment is necessary before these two sections are repealed.

Section 19 extends the time for action against persons gone beyond the seas, until their return. This point does not appear to have been dealt with in the Limitation of Actions Act 1936 which deals in Section 46 with time as far as plaintiffs are concerned, but not with time as far as defendants are concerned. As far as we can see, it is still in force in South Australia and whilst the section may be repealed, a section covering the point should be placed in our Limitation of Actions Act.

Section 20 allows bail bonds given to the sheriff to be assigned to the plaintiff. This deals with civil bail which is now obsolete and the section can be repealed.

Section 21 deals with the old warranties given in real actions and can be repealed.

Section 22 provides that no subpoena is to issue out of any Court of Equity until after the originating process is filed. This is probably still the law in this State and whilst the section can be repealed a section should be placed, presumably in the Supreme Court Act, to cover the point.

Section 23 deals with costs in equity. As we have said, costs are already dealt with by the Supreme Court Act and that section can be repealed.

Section 24 deals with jeofails and Section 25 with defective writs of error. Those are both obsolete and can be repealed. Section 26 deals with the jurisdiction of the ordinary of the diocese in relation to wills which is now obsolete and can be repealed.

Section 27 deals with actions of account. That section is certainly still in force in South Australia. It relates to accounting by executors and administrators of guardians, bailiffs and receivers, joint tenants and tenants in common, and without that section no action would lie in any of those cases. The section may be repealed, but a section giving a similar power should be placed in the Supreme Court Act.

Statute 9 Anne c. 25 (1710).

This deals with proceedings on writs of mandamus and informations in the nature of a quo warranto in relation to municipal corporations. The matter dealt with in that Act are now dealt with in Sections 706-714 of the Local Government Act 1934 and this Statute can be repealed.

Statute 9 Anne c. 28 (1710).

This deals with the pleading of deeds of bargain and sales enrolled. These are now obsolete. The statute also deals with fee farm rents which are likewise obsolete. The statute can be repealed. It was repealed in England in 1924.

Statute 3 Geo. I c. 15 (1716).

This is a general Act for the regulation of sheriffs and their fees. Only part of this Act was in force in South Australia in 1836 because part of it was repealed by the Fines Act 1833 (3 and 4 Will. IV c. 99). The remainder is still in force in South Australia but is obsolete and should be repealed.

Statute 5 Geo. I c. 13 (1718).

This Act deals with amending of writs of error and arresting or reversing of judgments after verdict. All of this is obsolete today and the statute can be repealed. It was repealed in England in 1883.

Statute 12 Geo. I c. 29 (1725).

This prevents frivolous and vexatious arrests in small causes. Arrest for civil debt is now abolished. It also provides that persons convicted of perjury or forgery shall not be able to practice as a solicitor. This is now governed by the general power of the Court to regulate the admission of legal practitioners. The Act has been repealed in England by a series of Acts from 1867 to 1948 and can be repealed here.

Statute 2 Geo. II c. 22 (1729).

This again is a statute relating mainly to debtors in prison. Imprisonment for debt having been abolished, those sections of the statute can be repealed. It was repealed in England in 1883. One section of 2 Geo. II c. 22, namely Section 13, allowing set-off, must however be kept. If the section is not to be kept as part of the law of South Australia then a section to that effect must go in the Supreme Court Act as this and a later statute of George II are the only warrant for legal set-off known to the law in South Australia. The question of set-off is a difficult one on which there is much modern case law and the question should be referred to this Committee for report.

Statute 3 Geo. II c. 27 (1730).

This Act deals principally with debtors imprisoned for debt, but it also extends the Act 2 Geo. II c. 22 which includes the first of the statutes of set-off. It does not alter the law in 2 Geo. II c.22 but should be taken into account if, rather than amending the Supreme Court Act, the statute of 2 Geo. II c. 22 is to be left as part of the inherited statute law of South Australia. If it is not then the necessary amendment can be made to the Supreme Court Act and this statute can be repealed.

Statute 3 Geo. II c. 30 (1730).

This deals with the necessity for signature of orders and decrees made in Chancery. It is still in force in South Australia. It should be repealed but with a saving of the change in the law made by the statute. It was repealed in England in 1879.

Statute 4 Geo. II c. 26 (1731).

This statute requires that all proceedings in the Courts be in the English language. It is still in force in South Australia today. If the statute is repealed, as it was in England in 1879, then there should be a saving of the reform made by this law.

Statute 5 Geo. II c. 27 (1732).

This deals with arrest for civil debt. That, as we have said, is abolished in South Australia. The statute can be repealed here. It was repealed in England in 1881.

Statute 6 Geo. II c. 27 (1733).

This amends the statute 2 Geo. II c. 23, with relation to the admission of solicitors. It was repealed in England in 1843 and can be repealed here.

Statute 7 Geo. II c. 20 (1734).

This deals with the procedure for redemption and foreclosure of mortgages. It is still in force in South Australia in relation to mortgages of land held under the general law and the procedure laid down would have to be followed in the case of any such mortgage. We think that the statute can be repealed here as it was in England in 1948, but, as long as there is land held under the general law in this State the procedure will be required, and we suggest that the relevant sections be included in the Law of Property Act 1936.

Statute 8 Geo. II c. 24 (1735).

This is the second of the statutes of set-off which is still in force in South Australia and this together with the previous Act of 2 Geo. II c. 22 which was extended by 3 Geo. II c. 27, provides the

whole of the law of set-off at law in South Australia. We think that the whole Act can be repealed as it was in England in 1883, but that sections covering this, as in the case of the previous statute of set-offs, should be included in the Supreme Court Act. This would necessitate only the reenactment of Sections IV and V of 8 Geo. II c. 24.

Statute 14 Geo. II c. 17 (1741).

This statute deals with the age-old problem of delay in bringing cases to trial. This however is a matter sufficiently covered by Rules of Court and by the action of the Judges in this State. The statute was repealed in England in 1879 and it can be repealed here.

Statute 14 Geo. II c. 20 (1741).

Sections I-VIII of this Statute deal with common recoveries which are obsolete. Section IX however deals with estates per autre vie descending to executors. We suggest that Sections I-VIII be repealed forthwith as they were in England in 1879 and that Section IX be left until we report further to you upon the general law of intestate estates.

Statute 14 Geo. II c. 34 (1741).

This statute deals further with the problem of debtors imprisoned for debt. For the reasons given before, it can be repealed in South Australia. It was repealed in England in 1867.

Statute 20 Geo. II c. 37 (1747).

This is a statute with regard to return of process by sheriffs. This is dealt with by other legislation in South Australia today. It was repealed in England in 1887 and can be repealed here.

Statute 21 Geo. II c. 3 (1748).

This makes perpetual the previous statutes relating to frivolous and vexatious arrests. It was repealed in England in 1867 and can be repealed here.

Statute 22 Geo. II c. 46 (1749).

This continues various laws including new laws relating to attorneys and solicitors, the return of writs and the making of affirmations by Quakers in lieu of oaths. The statute was repealed in England in 1871 and can be repealed here.

Statute 23 Geo. II c. 26 (1750).

This again is an Acts Continuation Act which continues amongst other things trials at assizes, warrants granted by justices and better regulation of attorneys and solicitors. It was repealed in England in 1867 and can be repealed here.

Statute 32 Geo. II c. 28 (1758).

This is another statute dealing with imprisonment for debt. It was partly repealed in England by 4 Geo. IV c. 64 and the balance in 1948 and can be repealed here.

Statute 10 Geo. III c. 50 (1770).

This is an Act for preventing delays in legal proceedings by reason of the privilege of Parliament. The statute is still in force in England today although parts of it have been repealed. As with other statutes relating to process as affected by the privileges of Parliament, we think that such statutes should not

be dealt with in a report by us but should be dealt with by Parliament itself on the next occasion that amendments to the Constitution Act are being considered.

Statute 10 Geo. III c. 51 (1770).

This provides for improvements in the process relating to entails. As we have said before, fees tail are very rare in South Australia today but they still do exist. The statute is still in force in England, at least in part, and we recommend that it remain in force here until this Committee has done a general review of the law of property including therein fees tail.

Statute 25 Geo. III c. 35 (1785).

This statute relates to the sale by the Crown of the property of debtors of the Crown. It is still in force in South Australia today. It was repealed in England by the Crown Proceedings Act, 1947, but we have no similar section in South Australia. The statute can be repealed but the operative parts of it should be included in an amendment to our Crown Proceedings Act, 1972, a matter on which this Committee is preparing a report to you.

Statute 43 Geo. III c. 46 (1803).

This is a statute to prevent frivolous and vexatious arrests in suits and in so far as it deals with that, it is obsolete, but Section V provides that plaintiffs issuing execution against the goods of a defendant may also levy the poundage fees and expenses of the execution over and above the sum recovered by the judgment. That section is still in force in South Australia today. The whole Act can be repealed but a section should be put into the Supreme Court Act in terms of Section V. The Act was repealed in England in 1890.

Statute 46 Geo. III c. 37 (1806).

This deals with witnesses refusing to answer. It does not deal with the common case where the answer has a tendency to self-accusation or to expose the accused to penalty or forfeiture, but deals with answers which might establish, or tend to establish, that the witness owed a debt or was otherwise subject to a civil suit. Until the passing of this Act this was a good objection. The objection was taken away by the statute. In fact our Evidence Act assumes the existence of this statute, which is certainly still in force in South Australia, in that the Evidence Act deals only with refusal to answer on the ground of self-incrimination. The statute should be repealed in South Australia but a section in those terms should be placed in the Evidence Act. The statute is still in force in England today.

Statute 57 Geo. III c. 93 (1817).

This is a statute regulating costs in relation to distress. It is partly still in force in England. It is probably still in force in South Australia. Most of it can be repealed as obsolete. However the section which requires person making distresses to give copies of all costs and charges of any distress, signed by him, to the person on whom the distress is levied is a necessary procedure and is still used today. Although the statute can be repealed here, there should be a saving of the amendment to the law made by Section VI. The point does not appear to be covered in Part II of the Landlord and Tenant Act 1936 which no doubt is because the draftsman regarded the Imperial Statute as still being in force in South Australia.

Statute 58 Geo. III c. 30 (1818).

This is a statute for preventing frivolous and vexatious actions of assault and battery and slander and provides that if the damages do not exceed forty shillings, the plaintiff recovers no more costs than damages. This Act is in force in South Australia. It has in fact been used in our Courts to the knowledge of at least one member of the Committee. It is a salutary check on bringing neighbourly squabbles to Court. The only difference is that the figure should now be say one hundred dollars instead of forty shillings. The Act should be repealed but a provision to that effect should be put in the Local Courts Act 1926. The statute was repealed in England by the Administration of Justice Act 1965 (1965 Chapter 2).

Statute 59 Geo. III c. 46 (1819).

This is a statute which following the decision in *Ashford v. Thornton (1818) 1 B. & Ald. 405* abolished appeals of murder, treason, felony and wager of battle and trial by battle for all time. It is in force in South Australia. Appeals as we have said were civil prosecutions by the relatives seeking damages as well as imprisonment. The statute was repealed in England in 1873. It can be repealed here but there should be a proviso that the pre-existing law is not thereby revived.

Statute 9 Geo. IV c. 14 (1828).

This is the Statute of Frauds Amendment Act commonly known as Lord Tenterden's Act. It is in force in South Australia. It is the first Act dealing in detail with the law of contract and with procedure since the Act of 4 Anne and it therefore needs to be dealt with section by section.

Section I deals with oral acknowledgments of debts sufficient to take them out of the Statute of Limitations. The section has been copied with some modernization into our Limitation of Actions Act Section 42 and can be repealed.

Section II deals with pleas in abatement which is now dealt with by Rules of Court and can be repealed.

Section III which deals with endorsements on bills of exchange is copied into our Limitation of Actions Act 1936 Section 43 in identical terms and can be repealed.

Section IV which deals with set-off is also copied into our Limitation of Actions Act Section 44 in the same terms and can be repealed.

Section V which deals with confirmation of promises made by infants is of importance in the daily administration of the law. It should be repealed. Provision has been made in the terms of Section V in the statute drawn following the Forty-First Report of this Committee relating to minors' contracts—Section 4 of the Minors Contracts Act 1979.

Section VI which relates to character references and guarantees is of importance in the law. It should not be repealed until a statute is passed in terms of the Thirty-Ninth Report of this Committee relating to suretyship.

Section VII was repealed by the Sale of Goods Act 1895.

Sections VIII, IX and X are not of any importance in South Australia and can be repealed.

Accordingly with the exception of the section relating to guarantees which requires separate legislation, the statute can be

repealed in South Australia. It is partly still in force in England and partly repealed by a series of Acts from 1873 to 1939.

Statute 11 Geo. IV & 1 Will. IV c. 70 (1830).

This deals with law terms and with writs of possession. Law terms have become obsolete in South Australia as they were abolished many years ago. Writs of possession are dealt with either by the Rules of Court or under Part XVII of the Real Property Act. The Act is partly still in force in England and partly repealed. There is no need to preserve it in South Australia and it can be repealed here.

Statute 1 Will. IV c. 3 (1830).

This is an Act to amend the last preceding Act with regard to law terms. As we no longer have law terms in South Australia, the Act can be repealed in South Australia. It was repealed in England in 1925.

Statute 1 Will. IV c. 7 (1831).

This deals with judgments and execution of judgments and is obsolete today. It was repealed in England in 1891 and can be repealed here.

Statute 3 & 4 Will. IV c. 42 (1833).

This is the Civil Procedure Act 1833. It is in general in force in South Australia except where other provisions have been made and accordingly it will be necessary to deal with it section by section. It is dealt with in part by Ordinance No. 9 of 1848.

Section I deals with powers in English Judges to make Rules of Court which do not apply here and can be repealed.

Section II relating to survival of causes of action was repealed in South Australia by the Survival of Causes of Action Act 1940. Section III dealing with limitation of actions on speciality debts is now dealt with by Section 3 of the Limitation of Actions Act 1936 and can be repealed.

Section IV dealing with infants, persons of unsound mind, is dealt with by Section 45 of the Limitation of Actions Act and can be repealed.

Section V dealing with acknowledgments and part payments is dealt with in Section 34 of the Limitation of Actions Act and can be repealed.

Section VI deals with outlawry which as we have said is practically obsolete in this State and can be repealed.

Section VII is of purely United Kingdom interest and Sections VIII, IX and X deal with pleas of abatement which are dealt with in our Rules of Court. Section XI deals with misnomer which again is dealt with in the Rules of Court. Section XII permits initials to be used in some pleadings, again a matter dealt with by Rules of Court. All these Sections can be repealed.

Section XIII abolishes wager of law. That section is in force in South Australia and there should be a saving of the amendment made by the section under any repeal of the statute.

Section XIV deals with actions of debt being maintainable against executors or administrators. This again was a necessary amendment of the law and the effect of the amendment should be preserved on the repeal of this statute.

Section XV deals with Judges' rules and does not apply to South Australia. It can be repealed.

Sections XVI, XVII and XVIII have no further application here and can be repealed.

Statute 11 Geo. IV & 1 Will. IV c. 70 (1830).

This deals with law terms and with writs of possession. Law terms have become obsolete in South Australia as they were abolished many years ago. Writs of possession are dealt with either by the Rules of Court or under Part XVII of the Real Property Act. The Act is partly still in force in England and partly repealed. There is no need to preserve it in South Australia and it can be repealed here.

Sections XIX and XX deal with issues joined in small actions tried before a sheriff and can be repealed.

Section XXI is the statute giving a defendant leave to pay into Court. Our Rules of Court in part depend upon this section and accordingly whilst the section may be repealed there should be a saving of the power given to the court to allow payments into court under Order 22.

Section XXII deals with matters only applicable in England, and Section XXIII deals with amendments to actions which are covered by our Rules of Court. Both can be repealed.

Section XXIV gives power to a Court to direct the facts to be found specially by a jury. Jury actions in South Australia are rare today, indeed there have been none for many years, although the power is still there and orders for a jury have occasionally been made in matters which ultimately did not come to trial. It is a valuable power and as long as the power to obtain civil juries in certain cases continues in South Australia, so should Section XXIV but the provisions of it should be transferred to our Juries Act.

Section XXV gives Judges the power to state special cases. These are covered in South Australia by Section 49 of the Supreme Court Act and the section can be repealed.

Section XXVI and XXVII are important matters in the law of evidence. Witnesses who were previously disqualified on the ground of interest because the judgment could affect their interest in some way or another were permitted to give evidence by virtue of Sections XXVI and XXVII. Our Evidence Act assumes the existence of such a power and we think that while Sections XXVI and XXVII may safely be repealed it would be wise to put a section into the Evidence Act to put the matter beyond doubt.

Sections XXVIII and XXIX are very much still in force in South Australia and have been used on a number of occasions in recent years. These give power to grant interest on contract debts in cases to which Section 30c of the Supreme Court Act does not apply. Indeed Section 30c expressly by its terms preserves the effect of Sections XXVIII and XXIX of the Civil Law Procedure Act and is in its terms cumulative upon those sections. We think that the sections should be repealed and their provisions placed in the Supreme Court Act to follow Section 30c.

Section XXX deals with writs of error and is obsolete and can be repealed.

Sections XXXI, XXXII, XXXIII, XXXIV, XXXV and XXXVI deal with costs which are dealt with sufficiently by our own Rules and can be repealed.

Sections XXXVII and XXXVIII give power for executors or administrators to distrain for rent in arrears in the lifetime of the testator. This did not exist at the common law. The sections should be repealed but a provision in those terms should be put in the Landlord and Tenant Act.

Sections XXXIX-XLI dealing with arbitration are expressly repealed by the Second Schedule to the Arbitration Act 1891.

Section XL had already been repealed once by our Act 13 of 1861.

Sections XLII-XLV are of purely English importance. Section XLII was repealed by 13 of 1861.

The Act was repealed in England in 1965 and with the savings and insertions of sections that we have referred to can be repealed here.

Statute 3 & 4 Will. IV c. 67 (1833).

This is an Act for uniformity of process. Its provisions are entirely covered by the Supreme Court Acts and Rules in South Australia and it can be repealed here. It was repealed in England in 1879.

Statute 3 & 4 Will. IV c. 99 (1833).

The Fines and Recoveries Act 1833 is expressly declared to be in force in South Australia by Section 2 of the Estates Tail Act 1881. As we have said elsewhere, we think that the statutes relating to estates tail should be the subject of a separate report by this Committee along with a review of the general law of property and until that review takes place this Statute must continue in force as it is declared so to be by our Estates Tail Act. It has been amended in England by a series of statutes from 1874 to 1976.

Statute 5 & 6 Will. IV c. 62 (1835).

This is the Statutory Declarations Act 1835. It is expressly continued in operation in South Australia by Section 23 of the Oaths Act 1936 except in so far as the Oaths Act itself repeals or amends the Imperial Statute of 1835. This being so we think that the Act should remain in force until there is a general review of the Oaths Act 1936.

Statute 6 & 7 Will. IV c. 112 (1836).

This deals with the Court of Exchequer and its sittings. It is obsolete now and was only of importance whilst the Exchequer was a separate Court. It was repealed in England in 1861 and can be repealed here.

We have the honour to be

Howard Zelling

D. W. Bollen

M. F. Gray

John Keeler

D. F. Wicks

Law Reform Committee of South Australia.

22nd May, 1980.