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SOUTH



AUSTRALIA

SIXTY-FIRST REPORT

of the

LAW REFORM COMMITTEE

of

SOUTH AUSTRALIA

to

THE ATTORNEY-GENERAL

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Relating to the Inherited Imperial Law and  
the Civil Jurisdiction and Procedure of the  
Supreme Court

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 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. F. GRAY, S.-G.  
J. F. KEELER  
D. F. WICKS

The Secretary of the Committee is Miss J. L. Hill, Supreme Court, Victoria Square Adelaide, 5000.

The Honourable Mr. Justice White was on long service leave when this report was considered and accordingly did not sign this report.

SIXTY-FIRST REPORT OF THE LAW REFORM COMMITTEE  
OF SOUTH AUSTRALIA RELATING TO THE INHERITED  
IMPERIAL LAW AND THE CIVIL JURISDICTION AND  
PROCEDURE OF THE SUPREME COURT

To:

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

Sir,

In this report we deal with the inherited Imperial law which bears upon the civil jurisdiction and procedure of the Supreme Court. We have already in previous reports to you dealt with the principles upon which the inherited law is to be dealt with in the reports of this Committee. We will not in this report repeat what we there said on that topic.

*Magna Carta: Statute 9 Hen. III c.1 (1225)* (otherwise referred to as 25 Edw. I (1297),

Chapter 29: This is the famous section of Magna Carta stating that:

“No free man shall be taken or imprisoned or be disseised of his freehold or liberties or free customs or be outlawed or exiled or otherwise destroyed, nor will we pass upon him nor condemn him but by the lawful judgment of his peers or by the law of the land. To no man will we sell, to no man will we deny or delay right or justice.”

This statute has been preserved in all the Imperial Laws Application Acts that we have seen and rightly so. It is the foundation of our whole system of justice. As Coke in his emphatic way puts it (*2 Co. Inst. 57*):

“As the gold finer will not out of the dust or threads of gold let pass the least crumb in respect of the excellency of the metal; so ought not the learned reader to let pass any syllable of this law, in respect of the excellency of the matter.”

We recommend that this chapter of Magna Carta remain as part of the law of the land.

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

In Chapter 1 occurs the famous words “that common right be done to all, as well poor as rich, without respect of persons”. The remainder of the chapter deals with matters of ecclesiastical law and can be repealed but those words should not, and they should remain in force of their own right in South Australia.

Chapter 4: This deals with what shall be adjudged wreck of the sea and what not. This is the source of the Admiralty jurisdiction as to wreck, of the Supreme Court. It was repealed in England by the Statute Law Revision Act 1863. If it is to be repealed here, then a section conferring the jurisdiction should be placed in the Supreme Court Act.

Chapter 29: This deals with a barrister doing any manner of deceit or collusion in the Court. This is sufficiently covered by the general powers of the Court in relation to contempt and by the provisions of the Legal Practitioners Act and can be repealed here. It was repealed in England by the Statute Law Revision Act 1948.

Chapter 30: This deals with extortion and other miscarriages of justice due to the defaults of officers of the court. It gives the Court jurisdiction to order the offender to pay treble damages to the party grieved. Any use of the statute has long since become obsolete and it may be repealed. It was repealed in England by the Statute Law Revision Act 1863.

*Statute of Westminster II: 13 Edw. I st.1 (1285).*

Chapter 15: This is the Chapter which gives an infant the right to sue by his next friend. That matter is sufficiently dealt with by Rules of Court in South Australia and the Chapter may be repealed. In case there is any question as to whether the rule of court in question: Order 16 Rule 15 depends for its validity on this statute, it might be as well in the repealing Act to state that the repeal does not take away the existing jurisdiction.

Chapters 42 and 44: These deal with fees to marshals of the courts and circuit officers. They are long since obsolete. They were repealed in England by the Statute Law Revision Act 1863 and the Statute Law (Repeals) Act 1969 and can be repealed here.

Chapter 50: This provides that where the law fails, suitors coming to the King's Court should not depart from thence without a remedy but should have writs provided in their cases. This was one of the statutes which provided in the inventive era of the common law for new forms of action. That is now past. It is for Parliament and not for the Courts to alter the law today in such cases as it needs alteration. The statute was repealed by the Civil Procedure Acts Repeal Act 1879 and can be repealed here.

*The Statute Circumspecte Agatis: 13 Edw. I st. 4 (1285).*

This statute was to resolve some of the conflicts which existed between lay and ecclesiastical jurisdiction. We do not think it was ever received in South Australia but for certainty the statute should be repealed. It was repealed in England by the Church Assembly Measure dealing with ecclesiastical jurisdiction in 1963.

*The Statute Modus Levandi Fines; 18 Edw. I st. 4 (1290)* (in the Statutes at Large placed among the statutes of uncertain date).

This dealt with the manner of levying fines in court to quiet titles. This is obsolete today. It was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

*Statutum de Consultatione; 18 Edw. I (1290)* (in Ruffhead 24 Edw. I (1296)).

This dealt with the case in which a writ of consultation was grantable between the common law courts and the ecclesiastical courts. We do not think it was ever received in South Australia. It was repealed in England by the Church Assembly Measure Ecclesiastical Jurisdiction 1963 Number 1. For purposes of certainty it should be repealed in South Australia.

*Statute de Defensione Juris (1292).*

This dealt with the case of a person who sought to claim by a collateral title who was not an original party to the action could be made a party. This dealt only with the real actions which are obsolete. It was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

*Statute Articuli Super Cartas; 28 Edw. III st. 3 cc. 1-20 (1300).*

Chapter 15 deals with time for pleading in real actions. Real actions, as we have said, are obsolete. The chapter was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

Chapter 16: This deals with persons making false returns to writs. That can be dealt with sufficiently in South Australia by the law of contempt of court. It was repealed in England by the Statute Law Revision Civil Procedure Act 1881 and can be repealed here.

Chapter 19: This gives jurisdiction to the Court where the Crown has seized lands into its hand but it is found ultimately that there was no cause for the seizure. In that case the statute provides that the profits of the land ought to go to the person out of whose hand it has been seized. This could conceivably still happen in South Australia but we think that any possible case which would arise would be covered by the Land Acquisition Act 1969-1972. It was repealed in England by the Statute Law Repeals Act 1969 and can we think be safely repealed here, with a saving of the amendment effected by the statute.

*Statute de Protectionibus: 33 Edw. I st.1 (1304)* (in the Statutes at Large placed among the statutes of uncertain date).

This gave power to litigants in certain cases to purchase the protection of the Crown against litigation, whilst they were doing the King's service abroad. This is long since obsolete and the statute may be repealed. It was repealed in England by the Statute Law Revision Act 1863.

*The Statute of Carlisle de Finibus: 15 Edw. II (1322)* (in the Statutes of the Realm placed among the statutes of uncertain date).

This dealt with the admission of attorneys to practice and with fines in relation to real actions. The first of these matters is dealt with by the Legal Practitioners Act. The second is now obsolete. It was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

*Statute de Prerogativa Regis: 17 Edw. II st.1 (1324)* (in the Statutes at Large placed among the statutes of uncertain date).

Chapter 11: This deals with the Crown's right to wreck of the sea, to whales and to sturgeon, which is part of the admiralty jurisdiction of the Court. The statute was partly repealed by the Merchant Shipping Act 1954 Chapter 60 (57 & 58 Vict. c. 60 s. 745). Insofar as it is not repealed it is part of the jurisdiction of the Court today. It would seem to us better that the statute should be repealed here and that the jurisdiction should be placed in the Marine Act 1936.

*Statute 14 Edw. III c.14 (1340).*

This deals with petitions for lands in the King's hand, and also establishes the important point that Judges are not to stay from doing justice because of any commandment from the King. The statute was repealed in England by the Civil Procedure Acts 1881 and the Statute Law Revision Act 1963 and can be repealed here.

*Statute 20 Edw. III c.3 (1346).*

This provides for an oath being taken by Judges before a Sessions of gaol delivery. If we ever received it in South Australia it is certainly obsolete. It was repealed in England partly by the

Statute Law and Civil Procedure Act 1881 and partly by the Statute Law Revision Act 1950. It can be repealed here.

*Statute 20 Edw. III c.6 (1346).*

This amongst other things requires the Justices to punish maintainers embracers and jurors for taking gifts and rewards from parties. There is no known case of this having happened in many years in South Australia. In any event the persons could be dealt with under the common law offence of perverting the course of justice. Like the previous statute it was repealed partly by the Statute Law and Civil Procedure Act 1881 and partly by the Statute Law Revision Act 1950 and it can be repealed here.

*Statute 25 Edw. III st. 2 (1350)* (in the Statutes of the Realm referred to as Statute 1.).

This conferred jurisdiction on the Court to determine whether children of British subjects born beyond the seas were legitimate or not. The ascertainment of nationality in Australia is now dealt with by Commonwealth legislation and this statute is not required. It was repealed in England by the Status of Aliens Act 1914 and can be repealed here.

*Statute 25 Edw. III st. 5 c. 4 (1350).*

This statute provides that nobody should be put out of his freehold nor any of his other property by action of the Crown but only by process of the Courts after he has been brought to answer. This is good law today. The statute is still in force in England. We think it should remain in force in South Australia.

*Statute 25 Edw. III st. 5 c. 14 (1350).*

This enabled the sheriff to seize into the King's hands the lands of persons indicted for felony. This has certainly not been so in South Australia for many years. It is not quite the position dealt with in Act No. 25 of 1874 because this statute envisages a seizure at the time of action taken, and not after conviction or sentence. It was repealed in England by the Administration of Justice (Miscellaneous Provisions) Act 1938. We think it should be repealed here.

*Statute 31 Edw. III st. 1 c. 11 (1357).*

This is the statute which gives jurisdiction to the Court in testamentary causes in intestacy. It has been repealed in England, but with a saving of the amendment in the law, by the Administration of Estates Act 1925 and the Supreme Court of Judicature (Consolidation) Act of the same year. We think that the statute can be repealed here but that a section giving the jurisdiction ought to be placed in the Administration and Probate Act 1919.

*Statute 36 Edw. III st. 1 c. 15 (1362).*

This requires pleas to be placed in the English tongue and enrolled in Latin. The requirement as to Latin was repealed by the Statutes 4 Geo. II c. 26 and 6 Geo. II c. 14. The statute was repealed in England by the Statute Law Revision Act 1863. We do not think it necessary to keep any such statute in force in South Australia although the repealing Act might well contain a saving clause of the reform made by this statute.

*Statute 42 Edw. III c. 3 (1368).*

This provides that no person shall suffer damage by action taken by the Crown but that due process of law must be observed

and any action contrary to the statute is void. This statute is still in force in England. It ought to remain in force in South Australia.

*Statute 50 Edw. III c. 6 (1376).*

This conferred jurisdiction on the Court to inquire into fraudulent assurances of land or goods or to deceive creditors. The field is now covered partly by our Law of Property Act 1936 and partly by the provisions of the Commonwealth Bankruptcy Act 1966. This statute does not need to remain in force here and can be repealed. It was repealed in England in 1963.

*Statute 11 Ric. II c. 10 (1387).*

This provides that no letters under the King's signet or privy seal shall disturb the course of the law. The statute was repealed in England by the Statute Law Revision and Civil Procedure Act 1881 and can, we think, be repealed here.

*Statute 13 Ric. II st. 1 c. 5 (1389).*

This is the first of the major statutes which confer admiralty jurisdiction on the court. There should be a general statute in South Australia dealing with admiralty jurisdiction, but this no doubt cannot be done until the vestiges of the colonial supremacy have been swept away and in particular the Colonial Courts of Admiralty Act 1890. A committee is working at present on recommendations for the enactment of federal law to cover this point, using the jurisdiction in Section 76 (iii) of the Commonwealth Constitution. We think that the statute should remain for the time being until the whole question of admiralty jurisdiction has been dealt with.

*Statute 15 Ric. II c. 3 (1391).*

This is another statute relating to the Admiral's jurisdiction. In so far as this statute deals with the Admiral's criminal jurisdiction, we have already dealt with it in the Fifty-ninth Report of this Committee. In so far as it deals with the Admiral's civil jurisdiction, we think it should stay in force for the present for the reasons which we gave when commenting on the Statute 13 Ric. II st. 1 c. 5.

*Statute 2 Hen. IV c. 1 (1400).*

This provides amongst other things that all the King's liege people and subjects may freely and peaceably in his sure and quiet protection go and come to his Courts to pursue the laws or to defend the same without disturbance or impediment of any and that full justice and right should be done as well to the poor as to the rich in his Courts. That is good law and should remain. The balance of the chapter may be repealed. It was repealed in England by the Statute Law Revision Act 1863.

*Statute 2 Hen. IV c. 11 (1400).*

This is a statute giving a remedy for a person who is wrongly pursued in the Court of Admiralty. The statute is probably not in force in South Australia in any event because it was repealed by 24 and 25 Vict. c. 10 s. 31 which is a general statute relating to admiralty and that repeal would have been carried forward by the Colonial Courts of Admiralty Act (53 and 54 Vict. c. 27). For certainty it might be as well to repeal it in South Australia because there is no separate Court of Admiralty in this State.



*Statute 4 Hen. VI c. 3 (1425).*

This gives power to the Court to amend the Court's records. There are ample powers of amendment in the Court today without this statute. It was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

*Statute 8 Hen. VI c. 10 (1429).*

This is an early statute dealing with service out of the jurisdiction. The types of procedure referred to are obsolete today and the question of service out of the jurisdiction is dealt with either by Order XI of our Rules of Court or under Sections 4 and 11 of the Service and Execution of Process Act of the Commonwealth Parliament. The statute was repealed in England by the Administration of Justice (Miscellaneous Provisions) Act 1938 and can be repealed here.

*Statute 10 Hen. VI c. 4 (1432).*

This deals with the making of false entries in the Court's records in favour of plaintiffs. False entries were apparently a real trouble in those days. There are ample powers for the Court to deal with such a matter if it ever happened today. It was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

*Statute 10 Hen. VI st. 2 (1432).*

This deals with payments of judges, serjeants at law and the attorney-general of the King. It is long since out of date. It was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

*Statute 33 Hen. VI c. 1 (1452).*

This statute gives a civil action to persons who sustain loss by servants embezzling an executor's goods. This goes back to mediaeval ideas of possession. Today the person aggrieved would pursue his remedy against the executor personally. The statute was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

*Statute 19 Hen. VII c. 7 (1503)*

This provides that incorporated bodies cannot prevent any person from taking proceedings in Court by any ordinary by-law or other act of the corporation. One part of the statute—a penalty section—was repealed by the Statute Law Revision Act 1887. The remainder of the statute is still in force in England. It would be a matter for argument, if the statute were ever pleaded, as to whether it applied only to those corporations which are set up by letters patent or charter. The matter does not seem to be dealt with in our Companies Act at all and yet the rule is a good rule. We think that consideration should be given to making some amendment to the Companies Act to cover the point, which would have the advantage of turning the statute into modern language and then after that the statute be repealed in South Australia.

*Statute 1 Hen. VIII c. 10 (1509).*

This statute deals with traverses of offices found. It is very uncommon for the Crown to proceed today to assert its title to land by an office found although it is still theoretically possible to do so. The value of it is that if the office is found it extinguishes all contrary title. We think the statute can be repealed in South

Australia today, although the Crown may want a saving of the amendment provided by the statute. It was repealed in England by the Escheat (Procedure) Act 1887.

*Statute 21 Hen. VIII c. 3 (1529).*

This provided that where a defence was pleaded to part of the land only which was comprised in a writ, the plaintiff could sever and abridge his writ so as to deal only with the part which was not in issue. The statute is no longer required in South Australia and indeed may only have applied to the real actions although this is doubtful. There are ample powers of amendment contained in the Supreme Court Act and Rules. The statute was repealed by the Statute Law Revision Act 1863 and can be repealed here.

*Statute 23 Hen. VIII c. 3 (1531).*

This deals with perjury in relation to civil juries, pleadings in bar, outlawry and excommunication, and nonsuit or release of one plaintiff so as not to prejudice the others. All of this is obsolete today except in relation to the last matter which is dealt with by the Rules of Court. The whole statute can be repealed in South Australia. It was repealed in England by the Statute Law Revision Act 1863.

*Statute 25 Hen. VIII c. 16 (1533).*

This provides that each Judge of the King's Bench, Common Pleas and Exchequer and the Chancellor, Attorney-General and Solicitor-General is to have attendant on him one chaplain having a benefice with cure of souls. We have no doubt that it would be for the good of the souls of the Justices of the Supreme Court if such a provision were now in force. We express no opinion, as a mark of respect, in relation to the great officers of the Crown. However the practice has been obsolete for many years. Indeed the last relic of it was for the chaplain to say "Amen" after the Judge had pronounced the death sentence. The statute was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

*Statute 32 Hen. VIII c. 21 (1540).*

This is a statute altering the length of Trinity Term each year. As terms were abolished in relation to our Supreme Court by the Act 116 of 1878 Section 7, there is no reason for this statute to remain. It was repealed in England by the Statute Law Revision Act 1873 and can be repealed here.

*Statute 32 Hen. VIII c. 33 (1540).*

This provides that a wrongful disseisin does not cause a descent in law and therefore a defence to an action by the true owner. This could only apply to the real actions which are long since obsolete in South Australia. It was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

*Statute 33 Hen. VIII c. 24 (1541).*

This disables a Judge from going on assize or on circuit in his own area. We doubt if this statute was ever received into South Australia but for greater certainty it would be wise to repeal it. It was repealed in England by the Supreme Court of Judicature (Consolidation) Act 1925.

*Statute 37 Hen. VIII c.9 (1545).*

This is the first of the series of usury laws. On the face of it it might seem that it had no relation to South Australia today. On

the other hand, as Dr Bray has correctly pointed out, both in his comments which we set out in the Fifty-Fourth Report of this Committee and in discussion with the Chairman of this Committee, Sections I and VI of the statute are the foundation of the Court's jurisdiction to relieve against corrupt and catching bargains, and the mere repeal of the statute might affect a wellknown remedial jurisdiction of the Court. The statute was repealed in England by the Usury Laws Repeal Act 1854. We think it can be repealed here but with an express saving of the jurisdiction of the Court conferred by Sections I and VI of the statute.

*Statute 1 Edw. VI c.8 (1547).*

This statute deals with the construction of sundry Crown grants. It is an example of the rule of construction which, contrary to the general rule, provides that in the construction of Crown grants, the Crown grant is construed in favour of the Crown and not in favour of the subject. The statute itself can be repealed but with a saving of the rule of which it is an example to which we have just referred. The statute was repealed in England by the Statute Law Revision Act 1948.

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

This deals with the procedure in relation to an office found. This procedure is still possible in South Australia at the instance of the Crown. It has not been used within the memory of any of us on the Committee. It is however of value to the Crown in that if the Crown proceeds by this method, it extinguishes all competing interests as an order made on an inquisition of office found is in the nature of an order in rem. It was repealed in England in 1887. We have said in our previous reports that there ought to be a general statute in South Australia relating to escheats and accordingly this statute should remain in force until we report to you, as we suggested in our Fifty-Fifth Report, on the general subject of escheat.

*1 Mary Sess. 2c.7 (1553).*

This conferred jurisdiction upon the courts to deal with fines of land. Fines have long been obsolete in South Australia, if we ever inherited them, which is doubtful. The statute was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

*Statute 5 Eliz. I c.18 (1562).*

This deals with the authority of the Lord Keeper and of the Lord Chancellor in exercising the jurisdiction of the Chancery. It was enacted when Sir Nicholas Bacon became Lord Keeper because the Queen insisted, contrary to prior practice, as for example in the case of Sir Thomas More, that a Lord Chancellor must be peer: see *Nicholas Bacon: The Making of a Tudor Statesman* by Tittler (1976) pages 70-71. No doubt it was received in South Australia in relation to the authority of decided cases. We do not think however that it needs to remain on the statute book. It was repealed in England by the Statute Law (Repeals) Act 1969. It may be repealed here but with a saving of the amendment to the law made by the statute.

*Statute 13 Eliz. I c.6 (1571).*

This provides that an exemplification of letters patent is as useful as evidence as the letters patent themselves. The statute is

still partly in force in England. We think it may be repealed here but that a section in those terms should be inserted in the Evidence Act, which is where one would expect to find such a provision in this State.

*Statute 18 Eliz. I c.2 (1576).*

This is another in the series of statutes relating to the construction of grants made by the Crown. We have already discussed this problem under Statute 1 Edw. VI c.8. The statute can be repealed here with the same saving as we recommended in relation to 1 Edw. VI c.8. The statute was repealed in England by the Statute Law Revision Act 1948.

*Statute 27 Eliz. I c.8 (1585).*

This deals with writs of error from the King's Bench and sets up the first of the Courts of Exchequer Chamber. It probably never applied to South Australia, except in the construction of case law in this State. It was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

*Statute 29 Eliz. I C.4 (1587).*

This fixes sheriff's poundage fees. The statute is obsolete in South Australia. It was repealed in England in 1887 and can be repealed here.

*Statute 31 Eliz. I c.1 (1589).*

This deals with discontinuances in writs of error. Writs of error, if we ever inherited them, are obsolete. The statute was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

*Statute 31 Eliz. I c.2 (1589).*

This deals with time limits in relation to the proclamations necessary for fines of land to be levied in the Courts. Fines, as we have said, are obsolete in South Australia and this statute can be repealed. It was repealed in England in 1863.

*Statute 43 Eliz. I c.4 (1601).*

This is the statute of charitable uses. Part of it is still in force in South Australia. Most of it can be repealed but the preamble to the statute defines what is and what is not a charity for the purposes of the law in this country: see *Commissioners of Income Tax v. Pemsel* [1891] A.C. 531. The statute should be repealed in South Australia except for the preamble which should remain as part of the law of this State. The statute was repealed in England by the Mortmain and Charitable Uses Act 1888 (51 & 52 Vict. c.42) but we doubt whether the saving clause in Section 13(2) of that Act is wide enough for our purposes, and we recommend the retention of the preamble as part of our law, as the jurisdiction with regard to all charitable uses in the State depends upon it.

*Statute 3 Jac. I c.8 (1605).*

This statute prevents the use of writs of error and writs of supersedeas so as to delay execution on judgments. The question of stay of execution after judgment, while appeal proceedings are pending, is already dealt with by the Rules of Court. The statute may be repealed here. It was repealed in England in 1863.

*Statute 7 Jac. I c.12 (1609).*

This is the original statute making tradesmen's books evidence in the courts. It was repealed in England by statutes from 1863 to 1969. The statute should be repealed in South Australia and a

section to the same effect placed in the Evidence Act 1929, which is where one would normally expect to find such a section.

*Statute 21 Jac. I c.3 (1623).*

This is the statute of monopolies. It is the foundation of our law relating to patents. That subject is dealt with in Australia by Commonwealth law and it may be that it is not necessary to retain the statute in this State. It is still partly in force in England. The application of the statute is referred to in South Australian law: see our Acts 18 of 1859 section 1 and 78 of 1877 section 10. If you are satisfied that no patent granted by this State prior to the Commonwealth Patents Act 1903 is still in force, then the statute may be repealed in its application to this State.

*Statute 21 Jac. I c.4 (1623).*

This is a general statute relating to common informers. As we have said before in our reports on Imperial statutes, there are still a number of examples on the statute book in this State where common informer provisions still exist and where they do they would be dealt with under this statute. The statute was repealed in England by the Statute Law Revision Act 1959. We recommend that the statute remain in force here until we report to you generally on the subject of qui tam actions.

*Statute 21 Jac. I c.8 (1623).*

This deals with abuses in relation to writs of supersedeas and writs of certiorari. We do not think that these provisions need remain in the law in South Australia. They can be dealt with under the general rubric of abuse of process of the Court as to which we have already said that we should do a general report to you. The statute was repealed in England by the Administration of Justice (Miscellaneous Provisions) Act 1938 and can be repealed here.

*Statute 21 Jac. I c.14 (1623).*

This is a statute permitting a plea of the general issue against writs of intrusion and to enable a defendant to retain possession of land until trial. Writs of intrusion are still theoretically possible at the Crown's suit in South Australia, but none of us know of any such writ having been issued for many years. We think the statute may safely be repealed here, partly because of the rarity of the matter and partly because directions could be given in a proper case under Order 72 Rule 2 (2) of our Supreme Court Rules. It was repealed in England by the Statute Law Revision Act 1958.

*Statute 16 Car. I c.6 (1640).*

This statute deals with the length of Michaelmas Term. As we have said, terms were abolished in South Australia in relation to the Supreme Court by the Supreme Court Act 1878 Section 7. The statute can be repealed here. It was repealed in England by the Statute Law Revision Act 1863.

*Statute 12 Car. II c.3 (1660).*

This deals in part with the continuation of process in judicial proceedings because of the interregnum under Cromwell, but it also by Section 4 extends the statutes relating to proceedings in the Courts being in English. We think the statute may be repealed in South Australia with the saving of the reform in the law made by Section 4. The statute was repealed in England in 1863.

*Statute 12 Car. II c.13 (1660).*

This is the second of the usury acts to which we have referred. It is arguably still in force in South Australia. As we said with regard to the previous usury acts the usury acts are the foundation of the Court's jurisdiction as to corrupt and catching bargains. The statute was repealed in England by the Usury Laws Repeal Act 1854. We think it may be repealed here but with an express saving of the Court's jurisdiction deriving from this and the other usury acts.

*Statute 17 Car. II c.6 (1665).*

This is the statute which abolished the percentage which the prothonotaries and clerks obtained from awards of damages which was known as *damna clericorum* or in law French *damage cleer*. The statute was repealed in England in 1863 and can be repealed here.

*Statute 19 & 20 Car. II c.9 (1667) (in Ruffhead c.4).*

This altered the procedure with regard to obtaining judgment on writs of error brought in the Exchequer. Writs of error as we have said are obsolete. The statute was repealed in England in 1863 and can be repealed here.

*Statute 22 & 23 Car. II c.20 (1670).*

This provided a procedure in relation to persons in prison for debt. Imprisonment for debt in South Australia is regulated by the Debtors Act 1936. It is not necessary to have this statute on the statute book. It was repealed in England in 1863 and can be repealed here.

*Statute 29 Car. II c.9 (1677).*

This was a statute for abolishing the writ *de haeretico comburendo*. This is of purely antiquarian importance in South Australia and it is only necessary that the statute be cleared off the statute book. It was repealed in England by the Church Assembly Measure—Ecclesiastical Jurisdiction in 1963, and it should be repealed here.

*Statute 30 Car. II c.6 (1680).*

This is an Act for reviving a former Act entitled an Act for avoiding unnecessary suits and delays and for continuing the Act for the better settling of intestate estates. All of this is now obsolete. It was repealed in England in 1863 and can be repealed here.

*Statute 1 Will. & Mary Sess. I c.21 (1689).*

This provides for Lords Commissioners of the great seal to execute the office of Lord Chancellor or Lord Keeper. This was no doubt in force in South Australia in that it dealt with the authority of decided in cases before Lords Commissioners, but is not otherwise of any importance. It is still in force, at least in part, in England. It may be repealed here, but with a saving of the amendment to the law made by the statute.

*Statute 2 Will. III & Mary Sess. I c.5 (1690).*

This is a statute giving a cause of action where there has been a pound breach following a distress, giving the person who has suffered loss by reason of the pound breach treble damages. There is a further cause of action giving double damages and costs against wrongful distrainer. The statute is still partly in

force in England. If distress is to remain as part of our law in South Australia, a matter which we think demands a separate report as we have said before, then these sections should remain until that report is presented to you. In any event the section should go into the Landlord and Tenant Act and not remain as at present in separate legislation.

*Statute 4 & 5 Will. & Mary c.21 (1692).*

This is an Act providing for services of writs and statements of claim upon persons in prison for debt. Imprisonment for debt as we have said is governed in South Australia by the Debtors Act 1936. The statute was repealed in England by the Statute Law Revision Act 1867 and may be repealed here.

*Statute 4 & 5 Will. & Mary c.22 (1692).*

This governs proceedings on the Crown side of the Court in relation to forfeiture of felons' goods and deodands. Forfeiture of felons' goods was repealed in South Australia by the Act 25 of 1874 and deodands have been obsolete for over a century. The statute was repealed in England by the Administration of Justice (Miscellaneous Provisions) Act 1938 and can be repealed here.

*Statute 5 Will. & Mary c. 6 (1693).*

This statute deals with the subject of what minerals belong to the Crown and as to jurisdiction over them. The statute was the subject of long and bitter litigation in this Court in 1849. However the whole topic is now covered by the Mining Act 1971-1976. The statute is still partly in force in England. It can be repealed here.

*Statute 5 & 6 Will. & Mary c.12 (1694).*

This statute deals with process in relation to fines of land in the courts. Fines as we have said have long been obsolete, if we ever inherited them. The statute was repealed in England by the Statute Law Revision Act 1867 and can be repealed here.

*Statute 7 & 8 Will. III c.24 (1695).*

This statute required all barristers and solicitors to take the oath of allegiance and the Test Act oath. The first may well be the origin of our requirement that practitioners should before admitted take an oath of allegiance, but the two oaths referred to therein are both obsolete and the second never did apply in South Australia. The statute was repealed in England by the Statute Law Revision Act 1867 and can be repealed here.

*Statute 7 and 8 Will. III c.34 (1695).*

This is the statute which permitted Quakers to make an affirmation instead of taking the oath. The matter is now dealt with in South Australia by the Evidence Act 1929. The statute was partly repealed in England in 1867 and partly in 1969. It can be repealed here.

*Statute 8 & 9 Will. III c.27 (1696).*

This statute dealt with the abolition of the ancient right of sanctuary in privileged places. It was repealed in England by a series of statutes from 1867 to 1948. It would not appear that we ever received the doctrine in South Australia, but for certainty it would be as well to repeal the statute here.

*Statute 8 & 9 Will. III c.33 (1696).*

This is a further statute relating to procedure in certiorari and amends the statute 5 and 6 Will. and Mary c.11 which we dealt with in a previous report. As with the previous statute, the procedure in certiorari is now governed by Rules of Court in South Australia. The statute was repealed in England by the Statute Law Revision Act 1888 and can be repealed here.

*Statute 11 Will. III c.6 (1698).*

This extended the jurisdiction in testamentary causes so as to enable natural born subjects to inherit the estate of their ancestors notwithstanding the alienage of their parents. Naturalization is dealt with by Acts of the Commonwealth Parliament but we doubt whether this jurisdiction, which is a jurisdiction inherited by this Court, is affected by the Commonwealth legislation. The statute was repealed in England in 1870. We think it can be repealed here but with a saving of the jurisdiction of the Court, and of the rights of natural born children of aliens to inherit.

*Statute 3 and 4 Anne c.8 (1704).*

This was the statute which gave jurisdiction to the Courts in cases of promissory notes as well as bills of exchange. The matter is now dealt with in the Commonwealth Bills of Exchange Act and the statute does not need to continue in force in South Australia. It was repealed in England by the Bills of Exchange Act 1882.

*Statute 7 Anne c.12 (1708).*

This is the first statute which established diplomatic privilege as a defence to proceedings within the realm. The matter is now covered in Australia by the Commonwealth Diplomatic Privileges and Immunities Act 1967 and other subsequent Commonwealth Acts. The statute was repealed in England in 1964 and it can be repealed here.

*Statute 1 Geo. I st.2 c.6 (1714).*

This is a further statute with regard to the making of affirmations by Quakers instead of taking an oath. This matter is dealt with the Evidence Act 1929 in South Australia. The statute was repealed in England by statutes of 1871, 1887 and 1969. It can be repealed here.

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

This statute gave jurisdiction to the Court to give treble damages if sheriffs took more than their just fees. Part of the statute was repealed by 3 & 4 Will. IV c.99 s.1. We doubt if it was ever in force in South Australia but for certainty the balance of the statute had better be repealed here. The balance of the statute was repealed in England by Statutes of 1867, 1887 and 1948.

*Statute 6 Geo. I c.22 (1719).*

This is one of the early Acts for relief of insolvent debtors and gave jurisdiction to the Court to relieve them in proper cases. Insolvency and bankruptcy are now dealt with in Australia by Commonwealth legislation. It is not necessary that the statute should remain in force in South Australia even if it was of indefinite duration, which seems doubtful on the face of it. It was repealed in England by the Statute Law Revision Act 1867 and can be repealed here.



*Statute 8 Geo. I c.6 (1721).*

This is a further statute in the series of statutes relieving Quakers from the necessity of taking an oath. This matter is dealt with as we have said before in South Australia by the Evidence Act 1929. The statute was repealed in England by the Promissory Oaths Act 1871 and can be repealed here.

*Statutes 12 Geo. I cc. 32 and 33 (1725).*

These two statutes deal with the sad story of five of the Masters in Chancery being unable to account fully for the funds which should have been in their hands, and making provision for the future, so that this should not happen again. In South Australia such matters are under the control of the Auditor-General through the Audit Act 1921. Accordingly these statutes are not required to remain in force in this State. They were repealed in England by the Court of Chancery (Funds) Act 1872 and can be repealed here.

*Statute 2 Geo. II c.20 (1729).*

This is a further act in the series of the insolvent debtors relief acts giving jurisdiction to the Court to relieve them. Again like the previous Act it has probably expired. However it was repealed in England by the Statute Law Revision Act 1867 and for certainty should be repealed here.

*Statute 4 Geo. II c.21 (1730).*

This is a further statute in the line of statutes giving naturalisation to children of natural born British subjects, which children are born out of the allegiance of the Crown. This subject is now dealt with in Australia by Commonwealth legislation. The statute was repealed in England by the Statute of Aliens Act 1914 and can be repealed here.

*Statute 5 Geo. II c.19 (1731).*

This is a further statute with regard to writs of certiorari and the practice on such writs. These matters are now dealt with by Rules of Court in South Australia. The statute can be repealed here. It was repealed in England by statutes of 1938 and 1948.

*Statute 8 Geo. II c.13 (1734).*

This gave jurisdiction to the courts in relation to engraving copyright and to prevent pirating of etchings and plates subject to copyright. This jurisdiction is now governed by Commonwealth legislation in Australia and it is not necessary for the statute to remain in force. It was repealed in England by the Copyright Act 1911.

*Statute 9 Geo. II c.5 (1735).*

This took away the powers of the Courts to deal with witches, usually by burning them, and gave a minor jurisdiction to provide sureties for good behaviour. The subject is dealt with in the Police Offences Act in South Australia. In any event it is a relic of the superstitions of a bygone age and should be repealed. It was repealed in England partly in 1867 and partly in 1951.

*Statute 9 Geo. II c.36 (1735).*

This regulated the jurisdiction in charitable uses where the use tended to a mortmain. The statutes of mortmain as such were not received in Australia and it is possible that the whole of the

statute was not received here. It should however for certainty be repealed. It was repealed in England by statutes of 1888 and 1960.

*Statute 12 Geo. II c.24 (1738).*

This is a further statute dealing with the investment of the funds of the Court of Chancery. As we said with regard to the previous Act, these matters are now dealt with in South Australia by the Audit Act. The statute was repealed in England by the Courts of Justice (Salaries and Funds) Act 1869 and can be repealed here.

*Statute 12 Geo. II c.27 (1738).*

This gives power to Judges to act as Judges of gaol delivery in their own area. It does not need to be preserved. It was repealed in England by the Statute Law Revision Civil Procedure Act 1881. It can be repealed here but with a saving of the reform made by the law.

*Statute 13 Geo. II c.18 (1739).*

Section V of this Act which places a time limit of six months on an application for certiorari and requires six days notice to be given to the Justices against whose order the certiorari is sought was held to be in force in South Australia by the Full Court in *Freebairn v. Ryan* (1870) 4 S.A.L.R. 21. The statute differs from the present practice in force in South Australia and it would seem that the existence of this statute has been forgotten in recent years, both by the profession and by those who drew the 1947 Rules of Court. The statute was repealed in England by the Statute Law Revision Act 1888. It might be as well, for promoting certainty, if the statute were repealed here.

*Statute 15 Geo. II c.30 (1741).*

This statute deals with the pretended marriages of lunatics and declares all such marriages null and void unless he or she be declared of sane mind by the Lord Chancellor. Marriage is now dealt with in Australia by Commonwealth legislation and it is not necessary to keep this statute in force. It was repealed in England by the Statute Law Revision Act 1873.

*Statute 21 Geo. II c.31 (1747).*

This is a further statute empowering courts to release insolvent debtors in prison. This is now obsolete in South Australia and the statute can be repealed. It was repealed in England in 1867.

*Statute 24 Geo. II c.48 (1750).*

This is a statute for the abbreviation of Michaelmas Terms. Terms were abolished, as we have said, in South Australia by the Supreme Court Act 1878. The statute was repealed in England by the Supreme Court of Judicature (Consolidation) Act 1925 and can be repealed here.

*Statute 25 Geo. II c.39 (1751).*

This is an amending Act dealing with the rights of children to enable natural born children to inherit the estate of their ancestors notwithstanding that the parent was an alien and for giving jurisdiction to the Court as to land in such cases. The question of nationality and alienage is dealt with today by Commonwealth legislation. The statute was repealed in England by the Law of Property (Amendment) Act 1924 and can be repealed here.

*Statute 28 Geo. II c.13 (1755).*

This is a further statute in the long line of statutes giving jurisdiction to the Court to relieve insolvent debtors in prison. That is now obsolete in South Australia. The statute was repealed in England in 1867 and can be repealed here.

*Statute 1 Geo. III c.23 (1760).*

This statute provides that the Commissions of the Judges remain in full force notwithstanding the demise of the Crown. We have already in the Fifty-Fourth Report said to you that the subject of the law relating to the demise of the Crown needs special study in a report on the topic. The statute should remain in force in South Australia for the time being and we will report further to you in detail on the subject in a separate report.

*Statute 4 Geo. III c.10 (1763).*

This was a statute to give jurisdiction to the Court of Exchequer in relation to recognizances and their discharge. The jurisdiction as to recognizances is one which is not contained in any statute of South Australia and it is quite likely that this statute is one of the sources of jurisdiction of our Court. The statute was repealed in England by the Statute Law Revision Act 1948. We think it may be repealed here but with a saving of the jurisdiction given by the statute.

*Statute 5 Geo. III c.28 (1765).*

This is a further statute in following the defalcations in Chancery in the seventeen twenties, relating to the investment of the funds of the Court. Like the other statutes to which we have referred, the matter is dealt with by the Audit Act in South Australia today. It was repealed in England in 1869 and can be repealed here.

*Statute 8 Geo. III c.26 (1769).*

This is a further statute in the long line of statutes giving jurisdiction to the Court to relieve insolvent debtors. This, as we have said before, is obsolete in South Australia today. The statute was repealed in England in 1867 and can be repealed here.

*Statute 12 Geo. III c.21 (1772).*

This gave jurisdiction to the Court to issue writs of mandamus in relation to local governing bodies. The topic is now dealt with in South Australia by Sections 707-710 of the Local Government Act 1934 and the statute is not required in this State. It was repealed in England in 1887 and can be repealed here.

*Statute 12 Geo. III c.23 (1772).*

This is a further Act in relation to the relief of insolvent debtors. As we have said with the previous Acts, all of this learning is obsolete in South Australia. The statute was repealed in England in 1871 and can be repealed here.

*Statute 13 Geo. III c.21 (1772).*

This statute amends the previous law with regard to children of natural born subjects of the Crown and it extended to children of children. The subject is dealt with by Commonwealth legislation in Australia today. It was repealed in England by the Status of Aliens Act 1914. It can be repealed here.

*Statute 14 Geo. III c.43 (1774).*

This is a further statute in the line of statutes dealing with the investment of funds in the Court of Chancery. It was repealed in England by the Courts of Justice (Salaries and Funds) Act 1869 and can be repealed here.

*Statute 14 Geo. III c.77 (1774).*

This is a further statute in the line of statutes for the relief of insolvent debtors in prison. This, as we have said, is obsolete in South Australia. It was repealed in England in 1871 and can be repealed here.

*Statute 16 Geo. III c.38 (1776).*

This again is a statute in the series of statutes for the relief of insolvent debtors in prison. For the reasons already explained it is obsolete. It was repealed in England in 1871 and can be repealed here.

*Statute 17 Geo. III c.57 (1777).*

This statute gave jurisdiction to the Court with relation to copyright of prints. Copyright is now dealt with in Australia by Commonwealth legislation. The statute was repealed in England by the Copyright Act 1911 and can be repealed here.

*Statute 18 Geo. III c.52 (1778).*

This is the next in the series of relief for insolvent debtors in prison. For the reasons given with regard to previous statutes of the same kind it can be repealed in South Australia. It was repealed in England in 1867.

*Statute 19 Geo. III c.65.*

This deals with the subject of Judges' salaries. Apart from showing clearly how much better off eighteenth century Judges were than their twentieth century successors, the statute is now obsolete and can be repealed. It was repealed in England in 1861.

*Statute 22 Geo. III c.75 (1782)—commonly known as Burke's Act.*

This is the statute which gives Judges removed pursuant to an address of both Houses of Parliament, or removed by the Governor, a right of appeal against the removal to Her Majesty in Council. The statute is in force in South Australia. As it applies on the face of it to "any colony or plantation", the Colonial Laws Validity Act no doubt applies to the statute, and we will deal with it in detail when we come to the report on those statutes of the Imperial Parliament which are affected by the Colonial Laws Validity Act. For the time being in any event it provides the security of the Judges for their proper tenure as assured to them by the Constitution, and it must remain in force.

*Statute 27 Geo. III c.2 (1787).*

This is the statute which provides for the setting-up of the original Court of Criminal Judicature in New South Wales. By 4 & 5 Will. IV c.95, the statute which set up the Province of South Australia, the laws of New South Wales were not to apply within the Province. Unfortunately the original Province of South Australia did not extend as far as the Western Australian border and part of what is now South Australia was still New South Wales territory down to 1861, when the border was extended west to be contiguous with the Western Australian border. By then the Imperial statute of 1834 had been repealed. Accordingly it is arguable, and has been argued by historians and

antiquarians, that various statutes referring specially to New South Wales down to 1836 at least and possibly down to 1861 were arguably in force in at least part of South Australia. To stop such arguments it is better that the statutes be repealed, whatever the correctness or otherwise of the arguments may be. The statute was repealed in England by the Statute Law Revision Act 1871 and can be repealed here.

*Statute 27 Geo. III c.37 (1787).*

This statute gave jurisdiction in respect to pawnbroking and altered the law of evidence with regard to it and also provided for appeals. The statute was repealed in England in 1871. In South Australia the law is contained in the Pawnbrokers Act 1888-1973. The statute may be repealed here.

*Statute 27 Geo. III c.44 (1787).*

This statute deals with the jurisdiction of the Ecclesiastical Courts in sexual matters and with assaults in churches and churchyards. In general we did not receive the jurisdiction of the Ecclesiastical Courts, because of the separation of Church and State in the colonies, but it is possible to argue and has been argued that jurisdiction in such matters as assault in churches and churchyards did vest in the Supreme Court in 1837. We think it is doubtful but it is better to put the matter beyond doubt by repealing the statute here. It was repealed in England by statutes dating from 1840 to 1948.

*Statute 32 Geo. III c.60 (1792)—Fox's Libel Act.*

This is one of the great Acts for the liberty of the subject. Erskine argued with Lord Mansfield for years that the jury were entitled to give a general deliverance in actions for libel. Lord Mansfield repeatedly ruled that the jury's function was to find the printing and publishing but the question of libel or no libel was for the Court. Fox's Act makes it clear that the question of libel or no libel as a whole is a matter for the tribunal of fact. The Act is still in force in England. It may be repealed in South Australia but with a saving of the amendment of the law made by the statute.

*Statute 33 Geo. III c.5 (1793).*

This is a statute which is in part an Act for the general further relief of debtors in prison. However by Section IV persons committed on attachments, in other words those who were in civil contempt of court, are allowed by the first time to take the benefit of the insolvency laws. The statute was repealed in England in 1861 and can be repealed here, as the matter is now dealt with by Commonwealth law in Australia.

*Statute 33 Geo. III c.54. (1794).*

This is the first Act for the legalising of friendly societies and giving jurisdiction in respect of them. The whole matter is dealt with in South Australia in the Friendly Societies Act 1919-1975. The statute was repealed in England by 18 & 19 Vict. c.63 and can be repealed here.

*Statute 39 Geo. III c.110. (1794).*

This is the first statute to make provision for Judges' pensions. The subject matter is dealt with in this State by the Judges' Pensions Act 1971-1974. The statute was repealed in England by the Supreme Court of Judicature (Consolidation) Act 1925 and can be repealed here.

*Statute 39 Geo. III c.113 (1799).*

This gave power to appoint Judges during vacation by first taking on themselves the degree of a Serjeant at law. The necessity for a Judge to be a serjeant at law has been abolished for many years and was probably never inherited in South Australia, but for certainty it would be wise to repeal the statute here. It was repealed in England in 1871.

*Statute 39 & 40 Geo. III c.42 (1800).*

This provides that where a bill of exchange is expressed to be payable on Good Friday, the bill becomes payable on Easter Thursday. The whole question of bills of exchange is dealt with by Commonwealth legislation in Australia and it is not necessary for this statute to remain in force here. It was repealed in England in 1882.

*Statute 41 Geo. III c.79 (1801).*

This is the original statute for the regulation of public notaries. The statute is still partly in force in England. The subject is now dealt with in Part VI of the Legal Practitioners Act and the statute is not required in South Australia and can be repealed here.

*Statute 41 Geo. III c.107 (1801).*

This is a further statute relating to copyright. Copyright in Australia is dealt with by Commonwealth legislation and the statute can be repealed here. It was repealed in England in 1842.

*Statute 44 Geo. III c.102 (1804).*

This gave power for the first time to issue writs of habeas corpus ad testificandum, to bring up a prisoner to give evidence. The statute is still partly in force in England and partly it has been repealed by Statutes from 1861 go to 1978. The statute is certainly in force in South Australia and is without doubt the basis of the jurisdiction of the Supreme Court to issue such a writ. The statute may be repealed in South Australia but a section to the same effect should be placed in our own Supreme Court Act.

*Statute 44 Geo. III c.108 (1804).*

This is another in the long series of statutes dealing with the relief of insolvent debtors in prison. For the reasons given with regard to previous statutes of this kind it can be repealed in South Australia. It was repealed in England in 1972.

*Statute 45 Geo. III c.3 (1805).*

This is a statute to amend part of 44 Geo. III c.108. For the reasons given with regard to the last preceding statute it can be repealed here. It was repealed in England in 1872.

*Statute 45 Geo. III c.92 (1805).*

This deals with the service of writs of subpoena in the other parts of the British Isles. This subject is dealt with in Australia by the Commonwealth Service and Execution of Process Act. The statute is still partly in force in South Australia. It is still partly in force in England. It has been amended by statutes from 1872 to 1978. It is not necessary to keep this statute in force in South Australia and it can be repealed.

*Statute 47 Geo. III Sess. 2 c.39 (1807)*

This deals with accounting in relation to public moneys and gives jurisdiction in relation to it. Such matters are dealt with in South Australia in the Audit Act. The statute was repealed in England in 1866 and can be repealed here.

*Statute 48 Geo. III c.123 (1808).*

This deals with the discharge of debtors from prison held in execution for small debts. All of this is obsolete in South Australia today. The statute was repealed in England in 1869 and can be repealed here.

*Statute 49 Geo. III c.6 (1809).*

This is a further statute in the series of relief Acts for prisoners for debt. It was repealed in England in 1872 and can be repealed here.

*Statute 49 Geo. III c.91 (1809).*

This is a statute which permitted Judges to try causes in their own areas. The statute was repealed in England in 1879 and can be repealed here but with a saving of the alteration in the law made by the statute.

*Statute 49 Geo. III c.125 (1809).*

This is an amendment of the statute 33 Geo. III c.54 relating to friendly societies. For the reasons we gave with regard to the previous statute, the statute can be repealed here. It was repealed in England by the Statute 18 & 19 Vict. c.63.

*Statute 51 Geo. III c.124 (1811).*

This deals with amongst other things process for non-appearance of a defendant. This matter is dealt with by Rules of Court in South Australia. The statute was repealed in England in 1873 and can be repealed here.

*Statute 52 Geo. III c.101 (1812).*

This was a statute to provide a remedy in cases of abuse of trusts created for charitable purposes. It is arguable whether it ever was received in South Australia. In South Australia such matters are dealt with today either under the charitable trusts procedure under the Trustee Act or as to abuses, under the Collection for Charitable Purposes Act or the Public Charities Funds Act. The provisions of the Act have been adopted and modified and now appear as Sections 60 and following of the Trustee Act. For this reason the statute is not required and may be repealed. It was repealed in England by the Charities Act 1960.

*Statute 53 Geo. III c.24 (1813).*

This was the statute which created the office of Vice-Chancellor of England and dealt with certain facets of the investment of suitors funds. The statute no doubt applied in South Australia to the extent that we had to recognize the Vice-Chancellor and his judgments in the hierarchy of precedent, but it was not otherwise applicable. It was repealed in England in 1879 and can be repealed here, but with a saving of the amendment to the law made by the statute.

*Statute 53 Geo. III c.153 (1813).*

This is a further statute with relation to Judges' pensions. If it ever applied in South Australia which is doubtful, it does not do so now. It was repealed in England in 1925 and can be repealed here.

*Statute 54 Geo. III c.14 (1813).*

This dealt with the vesting of funds in the Court of Chancery on the death of the person holding the Court's accounts for the time being. It is doubtful whether we had any equivalent official in South Australia when common law and equity were separately administered, but in any case the statute need not be retained here. It was repealed in England in 1872 and can be repealed in South Australia.

*Statute 54 Geo. III c.15 (1813).*

This is an Act for the more easy recovery of debts in New South Wales. As we explained earlier in this report, it is arguable that in certain parts of South Australia, there was a receipt of New South Wales law even though that did not happen in that part which was originally delineated in the letters patent of 1836. The statute was repealed in England and in New South Wales by the Imperial Statute 22 & 23 Vict. c.12 and can be repealed here.

*Statute 54 Geo. III c.28 (1813).*

This is another in the long series of statutes for the relief of insolvent debtors in prison. It was repealed in England in 1873 and can be repealed here.

*Statute 54 Geo. III c.61 (1814).*

This is a statute to amend Burke's Act 22 Geo. III c.75 with which we dealt earlier in this report. For the reasons which we gave with regard to the earlier statute, the statute is in force in South Australia and cannot be repealed because of the Colonial Laws Validity Act. We will deal with it further in the report dealing specially with statutes which are or may be caught by any operation of that Act.

*Statute 54 Geo. III c.168 (1814).*

This altered the law of evidence relating to the proof of powers in deeds, wills and other instruments. The subject is now dealt with in the Law of Property Act 1936, but this particular point does not seem to be dealt with. It provides in effect that deeds which were executed without memorandum of attestation are deemed valid. We think that the statute should be repealed. It was repealed in England by the Statute Law Revision Act 1873 but a subsection covering this point should be put in the section in the Law of Property Act dealing with attestation of deeds.

*Statute 57 Geo. III c.11 (1817).*

This permitted special bail to be given by one Judge whilst Court was sitting in Banco. The niceties of special bail are discussed in various places including Dickens' Pickwick Papers. The whole concept is obsolete today. The statute was repealed in England in 1873 and can be repealed here.

*Statute 57 Geo. III c.18 (1817).*

This permitted barons other than the Chief Baron to hear suits in the Exchequer in Equity. The statute was no doubt in force in South Australia insofar as it related to the authority of decisions



handed down under the authority of the statute. It is however no longer needed in South Australia and it can be repealed. It was repealed in England in 1873.

*Statute 57 Geo. III c.117 (1817).*

This is an Act to regulate the issuing of extents in aid. Writs of extents in aid can still be prayed at the instance of the Crown. To the knowledge of the Committee no such writ has been issued in many years, but the Crown still may in a proper case seek to use the writ. The writ was repealed in England by the Crown Proceedings Act 1947. We think it may be repealed here but with a saving of the rights given by the statute.

*Statute 58 Geo. III c.29 (1818).*

This deals with fees for pardons under the great seal. It seems doubtful that it would relate to similar pardons under the seal of the State of South Australia and has not so far as we are aware ever been so applied. The statute was repealed in England by the Statute Law (Repeals) Act 1973 and can be repealed here.

*Statute 59 Geo. III c.129 (1819).*

This provided for a judge to be appointed as commissioner in insolvency. The statute was no doubt in force in South Australia to the extent that decisions in the reported Bankruptcy Cases made by such a Commissioner had their authority by virtue of the statute. It is however not necessary to keep it in force in South Australia. It was repealed in England in 1873 and can be repealed here.

*Statute 1 Geo. IV c.35 (1820).*

This dealt with the organisation of the cursitor side of the Court of Exchequer. It no doubt had effect here in the early days or was copied with similar organisation here. However the statute is of no importance since the merging of the old common law courts and the concentration of all the business of the court within the Master's Office. The statute was repealed in England in 1861 and can be repealed here.

*Statute 1 & 2 Geo. IV c.78 (1821).*

This was an Act to regulate the acceptances of bills of exchange. Bills of exchange are dealt with in Australia under Commonwealth legislation. The statute was repealed in England in 1882 and can be repealed here.

*Statute 3 Geo. IV c.10 (1822).*

This provides that the opening and reading of commissions may take place on a day after the day appointed for holding assizes. The statute may well be in force in South Australia in relation to circuit courts and it does deal with a problem which is not infrequent in occurrence. There does not seem to be any other statutory authority on the point. We think that the statute may be repealed here but a similar saving clause ought to appear in our own Supreme Court Act. The statute was repealed in England in 1925.

*Statute 3 Geo. IV c.39 (1822).*

This deals with frauds on creditors by collusive warrants to commit to a creditor to sign judgment. The statute is probably in force in South Australia. We are not aware of any such abuse at the present day and if it did happen it would probably happen in a Local Court where most debt collection takes place. Probably

the simplest matter is simply to repeal the statute in its application to South Australia but with a saving of the amendment in the law made by the statute. It was repealed in England by the Administration of Justice Act 1956.

*Statute 3 Geo. IV c.69 (1822).*

This deals with the fixing of fees in the common law courts. It probably was never received in South Australia. In any event it can be repealed here. It was repealed in England in 1874.

*Statute 4 Geo. IV c.83 (1823).*

This is the first of the series of Factors Acts altering the jurisdiction of the Courts in relation to mercantile law matters. The whole of the subject matter of the Act is now dealt with the Mercantile Law Act 1936 of South Australia. The statute was repealed in England in 1889 and can be repealed here.

*Statute 6 Geo. IV c.50 (1825).*

This deals with the law relating to the qualifications of jurors. The subject matter is now covered by the Juries Act 1927 of South Australia. The statute is still partly in force in England. It can be repealed here.

*Statute 6 Geo. IV c.53 (1825).*

This Act limits the time within which inquisitions of lunacy, idiocy and non compos mentis may be traversed and deals with traverses of inquisitions. The statute is almost certainly in force in South Australia. It was repealed in England in 1871. It is not usual to have to proceed by the common law method of having a lunatic so found by inquisition, but it is still necessary if the lunatic has property outside Australia. Within Australia under the full faith and credit clause of the Constitution and the Territorial Laws and Records Recognition Act of the Commonwealth, the provisions of the State Mental Health Act are sufficient, but they are insufficient outside Australia, and recourse has to be had to a finding upon an inquisition which is an order in rem. We think the statute should be repealed but only after the relevant provisions of the statute have been placed in our Mental Health Act.

*Statutes 6 Geo. IV cc. 82 and 83 (1825).*

These abolished the sale of offices in the Courts of King's Bench and Common Pleas. Prior to that time the main offices in the two Courts had been freehold offices which could be sold, devised and otherwise dealt with like any other right of property, and indeed many of their incidents were nearer to real property than personal property in the way in which estates were created out of the right of office. The statutes were repealed in England in 1925 and in 1888 respectively. They are of historical interest only in South Australia today and can be repealed here but with a saving of the change in the law effectuated by the statutes.

*Statute 6 Geo. IV c.93 (1825).*

This is a statute to render valid decrees and orders at the Court of the Master of the Rolls. The Act was no doubt in force in South Australia in the sense that any judgments delivered which were validated by the statute thereby became precedents in South Australia, but apart from that the statute was not received here. It was repealed in England in 1873 and can be repealed here.

*Statute 6 Geo. IV c.94 (1825).*

This is the second of the long series of Factors Acts. The materials in the Act are now covered by the Mercantile Law Act 1936. The statute was repealed in England in 1889 and can be repealed here.

*Statute 6 Geo. IV c.96 (1825).*

This is a statute to prevent frivolous appeals by way of writ of error. It is very doubtful whether the writ of error procedure survived the Supreme Court Act 1878. The statute was repealed in England by the Statute Law Revision Act 1861 and can be repealed here.

*Statute 7 & 8 Geo. IV c.15 (1827).*

This is a statute relating to bills of exchange and promissory notes becoming payable on Good Friday or Christmas Day. The subject is dealt with in South Australia by Commonwealth legislation. The statute was repealed in England by the Bills of Exchange Act 1882 and can be repealed here.

*Statute 7 & 8 Geo. IV c.71 (1827).*

This was a statute to prevent arrest where the debt or cause of action was under twenty pounds. The subject is dealt with in this State in the Debtors Act 1936. The statute was repealed in England in 1965 and can be repealed here.

*Statute 9 Geo. IV c.15 (1828).*

This gives the Court power to amend the court's record of judgment where there is a variance between any matter in writing or in print given in evidence and the record of the judgment of the Court. The statute is no doubt still in force in South Australia. Powers of amendment given by the Supreme Court Rules are adequate to cover the matter but it may well be that the powers given by the Rules depend at least in part on the existence of this statute. The statute was repealed in England in 1890. It can be repealed here but with a saving of the amendment in the law made by the statute.

*Statute 9 Geo. IV c.83 (1828).*

This is what is usually referred to in New South Wales as the Third Charter of Justice and it is the one under which New South Wales Courts function to the present day. As we said earlier, it is possible that part of South Australia received New South Wales law because it did not become part of South Australia until 1861 by which time the Imperial Statute of 1834 had been repealed except as to matters already occurring prior to the repeal in 1842. The statute is still in force in England and in New South Wales. It should be repealed here to prevent barren controversies.

*Statute 11 Geo. IV & 1 Will. IV c.36 (1830).*

This altered the law relating to the service of process in equity, with civil contempt in equity, and the taking of bills pro confesso. It is no doubt in force in South Australia. It was repealed in England by a series of statutes from 1873 to 1965. The practice in equity is sufficiently provided by the Rules of Court but as in some other cases, it may well be that the statutory warrant for some of the Rules of Court is to be found in this statute. We think it can safely be repealed in South Australia but with a saving of the amendments in the law made by the statute.

*Statute 11 Geo. IV & 1 Will. IV c.38 (1830).*

This is another in the long series of insolvent debtors Acts. It was repealed in England in 1873 and can be repealed here.

*Statute 11 Geo. IV & 1 Will. IV c.47 (1830).*

This alters the testamentary causes jurisdiction of the Court in relation to the payment of debts out of real estate and deals with frauds committed on creditors by wills and with the order of payment of creditors. The statute was repealed, but with a saving clause, by the Administration of Acts Act 1925. We think it can be similarly repealed here but with a saving of the amendments of the law made by the statute.

*Statute 1 Will. IV c.21 (1831).*

This was a statute to alter the forms of proceedings in prohibition and mandamus. The statute is in force in South Australia. It was repealed in England in 1891. The statute may be repealed here but with a saving of the alterations in the law made by Sections I, III, IV, V and VI of the Statute. It may indeed be wise that express provision be placed in the Supreme Court Act in terms of Section V, as we do not know of any other place where the subject matter, namely that proceedings are not to abate by the removal of the officer concerned, may be found.

*Statute 1 Will. IV c.22 (1831).*

This enables the English Courts to order courts in Australia to take evidence on commission for use in English Courts. The statute expressly applies to "all colonies, islands, plantations and places under the Dominion of His Majesty". Accordingly the statute cannot be repealed in South Australia until the problem of the application of the Colonial Laws Validity Act is solved. The statute was repealed in England in 1963.

*Statute 2 & 3 Will. IV c.28 (1832).*

This deals with the proceedings of general courts martial but excepts, amongst other places, New South Wales from its operation. The question of courts martial is dealt with today by Commonwealth legislation and there is no reason why this statute should remain on the books. It was repealed in England in 1874 and can be repealed here.

*Statute 2 & 3 Will. IV c.39 (1832).*

This is an Act for uniformity of process in personal actions in the courts. All of the matters dealt with in it are either obsolete or are dealt with in Rules of Court. It is however possible that, as with previous statutes to which we have adverted, some of the sections in the statute could possibly be the statutory foundation for some of our Rules of Court. Accordingly the statute may be repealed here with a saving of the amendments in the law as to process made by the statute. The statute was repealed in England in 1879.

*Statute 2 & 3 Will. IV c.58 (1832).*

This statute amends the statute 11 Geo. IV & 1 Will. IV c.36 with which we have already dealt. The subject matter, as with the previous statute, is civil contempt in equity and the taking of bills pro confesso. The statute is in force in South Australia. We think that the statute may safely be repealed here but with a saving of the amendments of the law made by the statute. The statute was repealed in England by statutory instrument 1776 of 1965.

*Statute 2 & 3 Will. IV c.98 (1832).*

This statute deals with protesting of bills of exchange. The subject matter is dealt with in South Australia by Commonwealth legislation. The statute can be repealed here. It was repealed in England in 1882.

*Statute 2 & 3 Will. IV c.114 (1832).*

This amends the jurisdiction of the Court in bankruptcy. This again is now dealt with in Australia by Commonwealth legislation and the statute can be repealed here. It was repealed in England in 1869.

*Statute 2 & 3 Will. IV c.115 (1832).*

This is a statute relating to charitable donations and bequests for the furtherance of the Roman Catholic religion. The purpose of this statute was to mitigate the old statutes of superstitious uses and to assimilate the law relating to Roman Catholic charitable donations and bequests to those made by non-conformist Protestants in England. The statute is partly in force in England having been amended by a series of statutes from 1855 to 1960. We do not think it necessary to keep the statute in force in South Australia. We think it should be repealed but with a saving of the amendment in the law made by the statute.

*Statute 3 & 4 Will. IV c.36 (1833).*

Section I of this statute deals with commissions in the nature of writs de lunatico inquirendo. The remainder of the statute is purely English importance. As we said with regard to the previous statute of this kind, inquisitions to deal with a lunatic so found by inquisition are uncommon in South Australia but are very occasionally necessary. The statute was repealed in England in 1853. It can be repealed here but with a saving of the amendment in the law made by Section I of the Statute.

*Statute 3 & 4 Will. IV c.47 (1833).*

This provided for further jurisdiction in relation to the Court of Bankruptcy. The subject is dealt with in Australia by Commonwealth legislation. The statute was repealed in England in 1849 and can be repealed here.

*Statute 3 & 4 Will. IV c.70 (1833).*

This is the statute giving jurisdiction in relation to notaries public. The statute is still partly in force in England. The subject matter is dealt with in the Legal Practitioners Act of South Australia and the statute can be repealed here.

*Statute 3 & 4 Will. IV c.94 (1833).*

This was a statute dealing with the Masters and other officers of the Court of Chancery. Sections X to XV of the statute deal with the exercise of the jurisdiction of the Masters. That part of the statute was without doubt inherited in South Australia and deals with the general jurisdiction of the Masters and appeals from their jurisdiction. It may well be that, as with a number of other statutes, whilst the matters dealt with in the statute are covered by Rules of Court in South Australia, the statute is the root of the jurisdiction to provide the Rules of Court. Accordingly the statute may be repealed here but with a saving of the amendments of the law contained in Sections X to XV of the statute. The statute was repealed in England in 1888.

*Statute 4 & 5 Will. IV c.82 (1834).*

This deals with service out of the jurisdiction in Chancery process and with substituted service. These matters are dealt with by Rules of Court in South Australia but, as with a number of previous topics, it is almost certain that this statute is the authority for the making of the Rules of court in such matters. The statute was repealed in England in 1890. It can be repealed here but with a saving of the amendments in the law made by the statute.

*Statute 5 & 6 Will. IV c.54 (1835).*

This dealt with marriages within the prohibited degrees and declared them void. The subject of marriage within the prohibited degrees is now dealt with by the Marriage Act of the Commonwealth of Australia and it is not necessary to keep the statute in force in South Australia. It was repealed in England in 1949.

*Statute 5 & 6 Will. IV c.65 (1835).*

This dealt with the jurisdiction of the court with regard to copyright in lectures. Copyright is dealt with by Commonwealth legislation in South Australia. The statute was repealed in England by the Copyright Act 1911 and can be repealed here.

*Statute 6 & 7 Will. IV c.46 (1836).*

This extends the Administration of Justice Act 1828 which as we have said is normally known as the Third Charter of Justice in New South Wales. For the reasons given with regard to previous statutes it is just possible this statute was in force in parts of South Australia. The statute was repealed in England in 1974 and can be repealed here.

*Statute 6 & 7 Will. IV c.58 (1836).*

This is a statute dealing with acceptance and acceptance supra protest for honour, or to referees, in relation to bills of exchange. The subject matter is dealt with in Australia by Commonwealth legislation. The statute was repealed in England in 1882 and can be repealed here.

We have the honour to be

Howard Zelling  
Christopher J. Legoe  
D. W. Bollen  
M. F. Gray  
John Keeler  
D. F. Wicks

Law Reform Committee of South Australia.

2nd July, 1980.