

## Minute Paper.

SUBJECT:

J U D I C I A R Y B I L L 1 9 0 5.  
(Senator Symon.)

MEMORANDUM.

Clause 1. Short title.

District Registries.

Clause 2. Omits the word "Principal" before "Seat"

"Registry" and "Registrar" (but leaves "principal seat" in sec. 12, "Principal Registrar" in sec. 52, and "Principal Registry" in sec. 3 of Procedure Act — and the Bill itself refers to "principal seat" in clauses 12 and 13); and omits all reference to District Registries.

The effect is to provide for one "Registry" only, at the "Seat" of the Court, and to abolish District Registrars and Registries.

Incidentally (see sec. 51) it appears to abolish the statutory power to appoint officers anywhere but at the seat of the Court — though the Court may sit at State capitals for exercise of original jurisdiction.

The amendment of sec. 54 has the effect of requiring a Deputy Marshal to be appointed in the State in which the seat of the Court is, *as well as in other States.*

Appellate Jurisdiction.

Clause 3. Repeals sec. 35 of Judiciary Act, and substitutes separate provisions in respect of appeals from

from courts (a) not exercising, and (b) exercising federal jurisdiction.

(a) From courts not exercising federal jurisdiction:-

(1) Allows appeals only from final judgments (not interlocutory) and only where the Court appealed from is the highest court of final resort in the State, or a court from which appeals lie as of right to the King in Council.

(2) Abolishes the appeal by special leave from any civil or criminal judgment.

(N.B. One effect would be that, in cases not of federal jurisdiction, and under the appealable amount (unless involving status) there would be an appeal by special leave to the Privy Council but none to the High Court. This would also be the case with respect to interlocutory judgments of the State court of final resort. And the effect would be that an appeal would continue to lie from the Judge in Equity in N.S.W. - though an alternative appeal lies to the State Full Court - but not from a Judge at common law.)

(b) From courts exercising federal jurisdiction:-

(1) Allows appeals only from final judgments (not interlocutory) and only when the Court appealed from is the highest Court of final resort in the State, or a Court from which appeals lie as of right to the Privy Council.

(2) Appeal by special leave from any civil or criminal judgment is retained.

Exclusive & Invested Jurisdiction.

Clause 4. Repeals sec. 39, and re-enacts it with the following important modifications:-

*Unconstitutional; sec. 73  
Constitution, par. 2 - "But  
no exception or regulation pre-  
sented to the High Court shall pre-  
vent the determination of any appeal from  
the Supreme Court of a State in  
any matter in which an appeal lies from  
the High Court to the Privy Council."  
v. James, 2 CLR 315.  
This includes cases in which  
an appeal by special leave lies  
to the Privy Council; Parkin*

- (1) The investment of State Courts with federal jurisdiction, instead of excepting all the matters in sec. 38, excepts only the matters mentioned in paras. (a) and (e) of sec. 38. The amendment thus appears, as to paras. (b), (c) and (d) of sec. 38, to create a direct conflict - sec. 38 making the jurisdiction of the High Court absolutely exclusive, and clause 39A giving the State courts concurrent jurisdiction.
- (2) The provision that the decision of the Supreme Court of a State is final and conclusive, except so far as an appeal may be brought to the High Court, is omitted. The result would apparently be that in matters of federal jurisdiction a party could appeal past the High Court to the Privy Council - as is now being attempted, in the face of this provision, by the Victorian Commissioner of Taxes in Outtrim's case.
- (3) The provision for an appeal as of right from an inferior court direct to the High Court, in lieu of to the State Supreme Court, is omitted.

Clause 5. Repeals the whole of Part VII. (Removal of causes) - except sec. 45, which provides for remitting a cause pending in the High Court for trial in any State Court having jurisdiction.

Suits by and against C'wealth & States.

Clause 6. Amends sec. 56. Enables claims against the Commonwealth to be brought in "any court of competent federal jurisdiction" - instead of "the High Court or the Supreme Court of the State in which the claim arose."

Clause 7. Similar amendment to sec. 58 with regard to claims against a State in matters in which the High Court has original jurisdiction.

(N.B. It would appear that this may enable one State to be sued in the courts of another State.)

Clause 8. Extends to all courts exercising federal jurisdiction the power now given to the High Court by sec. 60 to grant an injunction against a State in a suit against the State.

(N.B. Read with clause 7, this would appear to enable the Courts of one State to grant an injunction against another State - and enforce it against the officers of that State.)

Sittings of the Court.

Clause 9. Amends sec. 86 by taking away from the Justices the power of making Rules of Court for appointing sittings of the High Court and of the Justices.

(And see clauses 10, 12, 14, and 16.)

Clause 10. Continuous sittings "on such days as are necessary" - except vacation from 24th. December to last Monday in February - and except on specified holidays.

Clause 11. Provides for appointment of vacation Judge.

Clause 12. Fixes dates of three sittings in each year at the "Principal" seat - and requires those sittings to be continued "so far as reasonably practicable" so long as the business requires.

Clause 13. Provides that Full Court shall only sit at the Principal Seat.

Clause 14. Provides that the Court may sit at State capitals, at times fixed by proclamation, for the exercise by one Justice of original jurisdiction.

Clause 15. Requires Judges to assemble and report annually.

Clause 16. Annuls all Rules of Court inconsistent with this Act.

The Act not to be taken to abridge the power to regulate days and hours of sitting subject to this Act.