

PAPUA.



No. 2 of 1927.

AN ORDINANCE

*To Amend and Declare the Law to be hereafter administered
in the Territory of Papua as to certain Matters.*

J. H. P. MURRAY.

[L.S.]

9th June, 1927.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the *Administration of Justice Ordinance, 1927.* Short title and citation.

2. In the construction of this Ordinance unless there Interpretation. is anything in the subject or context repugnant thereto the several words hereinafter mentioned shall have or include the meanings following (that is to say)—

“ Court ” shall mean the Central Court of the Territory ;

“Cause” shall include any suit action or other original proceeding between a plaintiff and a defendant;

“Order” shall include rule.

3. Whereas it is expedient to amend and declare the law to be hereafter administered in the Territory as to the following matters. Be it enacted as follows:—

Claims for breach of trust not barred by Statutes of Limitations. Q. 40 Vic. No. 6, s. 5 (2).

(1) No claim of a *cestui que* trust against his trustee for any property held on an express trust or in respect of any breach of such trust shall be held to be barred by *The Statute of Frauds and Limitations Act of 1867* (Queensland adopted) or any statute of limitations.

Tenant for life without impeachment of waste may not commit equitable waste. *Ib.* s. 5 (3).

(2) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste unless an intention to confer such right shall expressly appear by the instrument creating such estate.

No merger of legal estate unless merged in equity. *Ib.* s. 5 (4).

(3) There shall not after the commencement of this Ordinance be any merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Mortgagor in possession may sue. *Ib.* s. 5 (5).

(4) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee may sue for such possession or for the recovery of such rents or profits or to prevent or recover damages in respect of any trespass or other wrong relative thereto in his own name only unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Stipulations not of the essence of contracts to be construed as in equity. *Cf.* *Ib.* s. 5 (7).

(5) Stipulations in contracts as to time or otherwise which would not in Queensland before the commencement of *The Judicature Act* (Queensland

40 Victoria Number 6) have been deemed to be or to have become of the essence of such contracts in a Court of Equity shall receive in all courts the same construction and effect as they would have theretofore in Queensland received in equity.

- (6) A mandamus or injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just and if an injunction is asked either before or at or after the hearing of any cause or matter to prevent any threatened or apprehended waste or trespass such injunction may be granted if the Court shall think fit whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title and whether the estates claimed by both or by either of the parties are legal or equitable.
- (7) In any cause or proceeding for damages arising out of a collision between two ships if both ships shall be found to have been in fault the rules now in force in the High Court of Admiralty so far as they are at variance with the rules in force in the Courts of Common Law in Queensland before the commencement of *The Judicature Act* (Queensland 40 Vic. No. 6) shall prevail.
- (8) In questions relating to the custody and education of infants the rules of equity shall prevail.
- (9) Generally in all matters not hereinbefore particularly mentioned in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter the rules of equity shall prevail.

Writs of mandamus and injunction may be granted and receivers appointed in all cases when just or convenient. Q. 40 Vic. No. 6, s. 5 (8).

In cases of collision rules of Admiralty to prevail. *Ib.* s. 5 (9).

In questions relating to infants rules of equity to prevail. *Ib.* s. 5 (10).

Rules of equity to prevail where any conflict between them and rules of law. *Ib.* s. 5 (11).

4. The foregoing provisions of this Ordinance shall be in addition to and not in limitation of the provisions of Section Ten of *The Courts and Laws Adopting Ordinance of 1888*, or any of them.

Passed in Council this ninth day of June, in the year of Our Lord One thousand nine hundred and twenty-seven.
