



ANNO TRICESIMO QUINTO ET TRICESIMO SEXTO

VICTORIÆ REGINÆ.

A.D. 1872.

No. 9.

An Act for shortening and explaining the Language used in Acts of Parliament, and for other purposes.

[Assented to, 26th June, 1872.]

WHEREAS, for facilitating legislation, and in order to avoid repetition, to shorten the language to be used in Acts, and in certain respects to determine their construction, it is expedient to comprize in one Act various directions, provisions, and declarations—Be it therefore Enacted, by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

Preamble.

1. Ordinances No. 1 and No. 2 of the sixth and seventh years of the reign of Her present Majesty are hereby repealed.

Repeal of Ordinances Nos. 1, and 2, 6 and 7 Vic.

2. "Act" shall include all Acts or Ordinances duly made and passed by the Parliament of South Australia, or by any Assembly, Council, or Chamber heretofore having authority or power to make and pass laws in the said Province, the same having been assented to by, or on behalf of, Her Majesty.

Interpretation of word "Act."

3. In all questions as to the applicability of any laws or statutes of England to the Province of South Australia, the said Province shall be deemed to have been established on the twenty-eighth day of December, one thousand eight hundred and thirty-six.

Application of English Laws. Establishment of Province, 28th December, 1836.

4. This Act, and every other Act to be passed by the Legislature

of Acts may be altered or repealed in same Session.

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of South Australia, after the passing of this Act, may be altered, amended, or repealed in the same Session in which it shall have been made, any law or usage to the contrary notwithstanding.

Division of Acts.

5. All Acts shall be divided into sections or clauses, if there be more enactments than one, which sections or clauses shall be deemed to be substantive enactments without any introductory words.

References to Acts may be by number and year.

6. When in any Act a prior Act, or any section thereof, be referred to, it shall be sufficient to cite the short title of the Act, or the year and the number of such Act, and the number of such section, without the full title of such Act, or the provisions of such section, such reference applying to Acts printed in the said Province by the Government Printer.

Repeal of Acts not to revive previously repealed Acts.

7. Where any Act, repealing in the whole or in part any prior Act, be itself hereafter repealed, such last repeal shall not revive the Act or provisions before repealed, unless words be added reviving such Act or provisions.

Anything commenced may be continued under repealed Act.

8. Anything commenced under any Act wholly or in part repealed may be continued under such Act, unless the repealing Act be adapted to its completion.

Criminal and civil proceedings commenced, not affected by expiration or repeal.

9. Neither the repeal nor the expiration of an Act shall affect any criminal or civil proceedings previously commenced under the same; and every such proceeding may be continued, and everything in relation thereto be done, in all respects as if the Act continued in force.

Amending or reviving Act to be construed as part of the original Act.

10. Every Act, amending or reviving an Act, shall be construed with the amended or revived Act and as part thereof, unless the contrary be declared.

Government Gazette.

11. In all Acts where reference is intended to be made to the *South Australian Government Gazette*, printed by authority, it shall be sufficient to employ the term *Government Gazette*.

Every Act to be a public Act.

12. Every Act made and passed after the commencement of this Act, shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such, without being specially pleaded, unless the contrary be expressly provided and declared by such Act.

Time when Acts came and are to come into operation.

13. All Ordinances and Acts heretofore made and passed, or hereafter to be made and passed in the said Province, in which no time is or may be specified for the same coming into operation, and which were not and may not be reserved for the signification of Her Majesty's pleasure thereon, shall, for all purposes whatever, be deemed and taken to have come into operation, or to come into operation, on the day when the same were or may be assented to by the

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the Governor, or officer lawfully administering the Government of the said Province for the time being respectively.

14. Every Act reserved for the signification of Her Majesty's pleasure thereon, shall commence on the day on which the fact of the Royal assent shall be proclaimed by the Governor in the *South Australian Government Gazette*, or on such day thereafter (if any) as the Act itself may have prescribed.

Commencement of Acts reserved for signification of Queen's pleasure.

15. When the term "Governor-in-Chief," "Governor," or "Lieutenant-Governor" shall occur in any Act, it shall mean the Governor of the said Province, or the Officer Administering the Government thereof, unless there be anything in such Act showing a contrary intention.

As to term "Governor-in-Chief," &c.

16. Whenever in any Act, made and passed after the commencement of this Act, the Governor is authorized to do any act, matter, or thing, it shall mean that the same shall be done with the advice and consent of the Executive Council, unless there be anything in such Act showing a contrary intention. *See Challers' Opinion p. 70-9*

Acts authorized to be done by the Governor, to mean with advice of Executive Council.

17. Every Act of Parliament relating to the office of a public functionary shall alike apply to every person or number of persons for the time being executing the duties of that office, by whatsoever name such persons shall be styled, and whether or not they be specially mentioned.

Act as to office of a public functionary, applicable to persons filling same in succession.

18. Whenever, by Act of Parliament, power shall be given to Her Majesty, to the Governor, or to any officer or person to make appointments to any office or place, unless such Act shall otherwise direct, it shall imply that such power shall be capable of being exercised from time to time as occasion may require, and that the party appointing shall have authority to suspend or remove the person appointed, as circumstances may require, and to appoint, temporarily or permanently, another in his stead, and in like manner to appoint another in the place of any deceased, sick, or absent holder of such appointment.

Power of appointment to any office, implies any successive exercise.

Suspension.

Removal.

19. Power given to do or submit to any matter or thing shall be capable of being exercised from time to time as occasion may require, unless the nature of the words used or the thing itself shall indicate a contrary intention.

Powers may be exercised from time to time.

20. Where power shall be given to the Governor, or to any Council, Board, Corporation, officer, or person to make any rules, orders, or regulations, it shall be implied that such Governor, Council, Board, Corporation, officers, or persons may revoke or vary the same from time to time, unless the terms used, or the nature and object of the power shall indicate that it is intended to be exercised, either finally in the first instance or only under certain restrictions.

Power to make rules, orders, or regulations, to imply revocation and alteration.

21. Any

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Evidence may be taken on oath by arbitrators.

See also No. 570 of 1891, S. 6

21. Any court, judge, officer, commissioner, arbitrator, or other person authorized by law to hear and determine any matter or thing, shall have authority to receive and examine evidence, and to administer an oath to, or take an affirmation from, any witness.

Meaning of words "oath," "swear," and "affidavit."

No. 104 of 1891-70, S. 4

22. In all Acts the words "oath," "swear," and "affidavit," shall include affirmation, declaration, affirming, and declaring, in the case of persons by law allowed to declare or affirm instead of swearing.

False evidence under oath or affirmation, perjury.

23. Every person who, upon examination upon oath or affirmation, under the provisions of any Act, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Penalties, how recoverable.

24. When in any Act a fine or penalty is imposed, and no means is thereby given for the recovery of the same, the same may be recovered before two or more Justices of the Peace in the manner provided by Ordinance No. 6 of 1850, or by any other Ordinance or Act for the time being in force for facilitating the performance of the duties of Justices of the Peace with respect to summary convictions and orders.

Summary jurisdiction before Justices.

No. 6 of 1850.

25. Whenever by any Act any penalty shall be made recoverable before or be authorized to be awarded by one or more Justices, or they or any of them shall be empowered to hear or determine, or to make an order, or to exercise any judicial function, such Act shall be taken to empower such Justices to adjudicate, order, and act therein accordingly, in a summary way, under the provisions of Ordinance No. 6 of 1850, or any other Ordinance or Act for the time being in force for facilitating the performance of the duties of Justices of the Peace with respect to summary convictions and orders; and to have enacted that no conviction, order, or judgment made by any Justices, under the authority of such Ordinance or Act, shall be void or quashed for want of form, or removable by certiorari or otherwise than as in the Ordinance or Act referred to is provided.

Certiorari.

Penalties to be paid into Treasury.

26. Whenever any penalty shall be imposed or authorized to be awarded by any Act, it shall be taken to provide that the same, when recovered or levied, shall be paid to the Treasurer for the public uses of the said Province, unless such Act shall otherwise direct.

Penalties, how recoverable.

27. Any fine, penalty, or forfeiture so imposed may be sued or proceeded for by any person, unless by the imposing Act the right to sue or proceed shall be given to any officer or person by designation or name.

Meaning of word "month."

See 2 Hut China Banking Co. v. 600: Hutton v. Brown

28. Whenever the word "month" shall occur in any Act, it shall mean a calendar month, unless words be added showing a lunar month to be intended.

29. The W.N. (1881) 116 Bureau v. Moore, 1 Ch. 104, 305.

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29. The time prescribed or allowed in any Act for the doing of a particular thing shall in all cases be taken to exclude the day of the act or event from or after which the time is to be reckoned, but shall include the day for doing of that thing: Provided that where that day falls on a Sunday, or on Christmas Day, or Good Friday, or a public holiday notified in the South Australian Government Gazette, the thing may be done on the day following; where no time be specified for doing a thing, it shall be done with all convenient speed, as often as the prescribed occasion shall arise.

Time for doing a thing.

See Act 13

Sunday, Christmas Day, Good Friday.

30. Distance mentioned or indicated in an Act shall be computed according to the nearest road ordinarily used in travelling, unless measurement in a direct line be expressed, or that construction be rendered necessary by the context.

Distance.

See No. 426 of '88, s. 8

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31. Every Proclamation or Order by the Governor in Council, and every act, matter, or thing whereof notification in the South Australian Government Gazette, Government Gazette, or Gazette, whether before or after the passing of this Act, shall have been or may be directed, if required, when so published, shall be judicially taken notice of without further evidence than the production of a copy of the South Australian Government Gazette.

Proclamations and Gazette notices proved by production of Gazette.

32. Where, in any Act passed after the present Session, a power is conferred on any officer or person by the word "may," such word shall be taken to import that the power may be exercised or not, at discretion; where the word "shall" is applied to the exercise of any such power, the construction shall be that the power conferred must be exercised.

The word "may" to import a discretion.

"Shall" to be imperative.

33. In any Ordinance or Act heretofore passed, or hereafter to be passed, unless there is something in the context repugnant to such construction, every word importing the masculine gender or singular number shall be construed to include the feminine and plural respectively, and vice versa, and bodies politic and corporate as well as individuals, and the word "person" shall include a corporation.

Words importing masculine gender and singular number to include feminine and plural.

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person = capon

See L5 QD 315

Scap Cos 861

L6 scap Cos 396

Commencement of Act.

34. This Act shall commence and take effect from and immediately after the first day of January, one thousand eight hundred and seventy-three.

In the name and on behalf of the Queen, I hereby assent to this Bill.

JAMES FERGUSSON, Governor.

Even if it does include things he is not affected by such general words: 2/13/81 Com 2ed 475

Does this include the Sovereign? See Grant's 626, 627