



ANNO PRIMO

VICTORIÆ REGINÆ.

No. 2.

AN ACT to establish Courts of Resident Magistrates to appoint Resident Magistrates to confer on Justices of the Peace certain Powers until such Resident Magistrates be appointed to provide for the Recovery of small Debts and the Punishment of certain Offences within the Province of South Australia.

WHEREAS it is expedient to create and constitute within the Province of South Australia certain Courts having jurisdiction in all cases of crimes or offences not amounting to a felony and punishable as hereinafter mentioned and also in civil cases of small value and it is necessary to limit and define the extent and jurisdiction of such Courts:—Be it therefore enacted by His Excellency JOHN HINDMARSH Knight of the Royal Hanoverian Guelphic Order Captain in the Royal Navy Governor and Commander-in-Chief of Her Majesty's Province of South Australia by and with the advice of the Legislative Council thereof that it shall be lawful for His Excellency the Governor for the time being of the Province, and he is hereby empowered by proclamation from time to time as occasion may require to define name and mark out by proper metes and boundaries a certain part or portion or certain parts or portions of the Province and to create and constitute the same into a district or districts of the said Province.

II. That it shall be lawful for His Excellency the Governor for the time being and he is hereby required from time to time as and when any such district or districts is or are named defined marked out created and constituted to create constitute and establish in each and every such district a Court to be called the Court of the Resident Magistrate of the particular district so from time to time to be named defined marked out created constituted and established as aforesaid.

III. That it shall be lawful from time to time as and when any such Court of Resident Magistrate shall be created constituted and established in
any

any particular district for His Excellency the Governor for the time being to appoint under the public seal of the Colony a Magistrate to be called the Resident Magistrate of the district in which such Court shall be so created constituted and established: Provided always that until such districts be proclaimed or until such Resident Magistrate or Magistrates be appointed as aforesaid it shall be competent and power and authority is hereby given to any two or more of His Majesty's Justices of the Peace for the said Province to hold such Court or Courts and to exercise in any part of this Province such authority as a Resident Magistrate may hold and exercise under this Act in his particular Court and district.

IV. That each of the said Courts respectively shall have a Clerk of the Peace and such ministerial or other officers as shall be necessary for the administration of justice in the said Courts respectively and for the execution of the judgments orders and process thereof and the said Resident Magistrate and ministerial or other officers shall from time to time be appointed and removed from their respective offices in such manner as the Governor in Council shall direct.

V. That the said Courts respectively shall have full power and authority to hear and determine in a summary way all actions plaints and suits for the payment or recovery of any debt damages or matter not exceeding Twenty pounds sterling and to award costs therein.

VI. That if any person shall commence any action plaint or suit in any such Court where the cause of such action plaint or suit shall exceed in amount the sum of Twenty pounds the said Court may proceed therein but in such case the judgment of the said Court shall be a full and complete bar to the whole of such demand or cause of action for any sum above the said sum of Twenty pounds and be a bar to any action plaint or suit which may be brought thereon in the same or any other Court whatsoever: Provided that in no case shall the sum awarded exclusive of interest at the rate of Five per cent. and costs exceed the sum of Twenty pounds.

VII. That the said Courts shall not have power and authority to hear and determine any such action plaint or suit where the matter in question shall relate to the title to any lands tenements or hereditaments or to where rights in future may be bound or to any general right or duty anything hereinbefore contained to the contrary notwithstanding.

VIII. That the determination and award of said Courts in all cases within their respective jurisdictions shall be final and conclusive and may be pleaded in bar to any and every subsequent action or suit for the same cause and such determination or award shall and may at the discretion of any such Court be carried into effect by execution against goods and effects of the party or parties against whom such determination or award shall be made: Provided always that it shall be lawful and at the discretion of the said Resident Magistrate of any such Court to award and determine payment by instalments and to stay any such execution for any time and from time to time as he may think reasonable and just.

IX. That all sales made of goods and effects taken in execution under the authority of such Courts shall be by public auction only and after such notice as the Resident Magistrate may prescribe.

X. That if any action or suit for any debt or sum certain recoverable in any Court of Resident Magistrates instituted by this Act shall be commenced

commenced in the Supreme Court of this Province the plaintiff in such action or suit shall not have or be entitled to any costs whatsoever and if the Judge before whom the same action or actions shall have been brought tried or heard shall certify that such debt or sum ought to have been sued for in any one of the said Courts of Resident Magistrates then the defendant notwithstanding any verdict or judgment passed or given for the plaintiff shall have and be entitled to his costs and to execution for the same in like manner as if the verdict or judgment had been passed or given in favor of such defendant or if the verdict shall have been in favor of such defendant then he or she shall have and be entitled to double costs.

XI. That no order judgment or proceeding in any such Court of Resident Magistrates shall be quashed or vacated for want of form only nor shall any action plaint or suit or any proceeding therein be removed into the Supreme Court of this Province by any writ or process whatsoever.

XII. That all writs summons or process issued by such Courts of Resident Magistrates shall be executed by an officer or officers of such Court to be selected for that duty by the Resident Magistrates in any part or place of this Province in the same way and manner in all respects as writs or process of a similar nature issuing out of the Supreme Court of this Province are or may be executed by the Sheriff and every such officer shall for the purpose of enabling him to perform the duties of such his office have the same powers and authorities and also be subject to the same liabilities as a Sheriff in the exercise of the duties of his office: Provided that until the forms and regulations of the said Supreme Court be officially promulgated it shall be competent to the said Resident Magistrates to authorise such forms and mode of procedure as may seem expedient and just.

XIII. That defendants shall in general be summoned only to the Courts which shall be held for the districts where they or some of them reside excepting in cases where the cause of action has accrued in another district wherein the plaintiff resides in which last-mentioned cases it shall be lawful for the plaintiff if he think proper so to do to commence and prosecute his suit in the Court which shall be held for the district where he himself resides.

XIV. That until the said several districts shall be proclaimed marked out and defined as aforesaid a Court or Courts which shall be holden at Adelaide shall have authority to decide and determine all suits plaints actions offences and misdemeanors that may arise within the said Province and cognizable under this Act in the said district Courts of the Resident Magistrates.

XV. That each of the said Courts shall have such like and the same powers of compelling the attendance of witnesses before such Courts and of requiring and compelling the production of books and writings as are now or shall be possessed by the Supreme Court of this Province and also that it shall be lawful for any of the said Courts to punish in a summary way by fine or imprisonment any person or persons guilty of any contempt before any such Court such fine in no one case to exceed Ten pounds and such imprisonment in no one case to exceed the period of one calendar month.

XVI. That the said Resident Magistrates shall have jurisdiction without appeal in all cases wherein any person may be accused of any crime or offence not amounting to a felony and which may have been committed or have occurred within the district of the Resident Magistrates before whom a complaint or accusation on account of such crime or offence shall have been made or as to which the place of the committal or occurrence of such crime or offence

offence shall be immaterial and shall not affect the right hearing determination and adjudication of such crime or offence: Provided always that it shall not be lawful for any such Resident Magistrate to punish any offender in any higher or more severe manner than by fine not exceeding the amount of Ten pounds sterling and imprisonment with or without hard labor for a period not exceeding three calendar months except as to such crimes or offences for the commission of which any higher or more severe punishment whether by fine or imprisonment is or shall be provided and in which jurisdiction is or shall be expressly given to the said Resident Magistrates by any special law or act of the Legislative Council of the Province: Provided also that in all cases of such crime or offence as aforesaid when it shall appear that the crime or offence complained of is from its nature or magnitude one which ought to be tried before a jury it shall be lawful on the application of the prosecutor or the party accused to remand the accused until the case shall have been laid before the Public Prosecutor and until the Public Prosecutor shall have elected either to remit such case for the decision of the Resident Magistrate or to proceed in some other Court of competent jurisdiction.

XVII. That it shall be competent for any private person to prosecute for any crime or offence within the jurisdiction of any of the Courts of Resident Magistrates.

XVIII. That in every case in which an offence or crime shall be prosecuted before the Resident Magistrate of any district it shall be lawful and competent for the Public Prosecutor to appear in Court and to take up the prosecution of such complaint at the public instance and thereafter to conduct such proceeding as if it had been originally commenced at the public instance or to apply by motion to the Resident Magistrate of the district in which such crime or offence shall have been committed to stop all further proceedings in such case in order that a prosecution for the same crime or offence may be instituted at the public instance in some other form or Court and to which application the said Resident Magistrate is hereby required to accede and thereupon to stay all further proceedings in such Court accordingly.

XIX. That the Clerks of the Peace of any district if appointed and in default of any such appointment then such other person or ministerial officer as may be appointed for that purpose by the Governor for the time being shall conduct all public prosecutions in all cases of crimes and offences cognizable and to be tried by the Courts of the said Resident Magistrates in their respective districts and that in all cases whether civil or criminal the witnesses on both sides shall deliver their evidence *viva voce* in open Court and such evidence shall be taken down in writing by the Resident Magistrate or Magistrates in such manner as to them may seem expedient or necessary for the ends of public justice.

XX. That every Resident Magistrate shall hold a Court and enquire of all causes of actions crime or offence which shall be brought before him and of which jurisdiction is hereby given to him in the Court Room of his district or place on one day of the week at least or oftener as occasion may require.

XXI. That it shall be lawful for the Judge of the Supreme Court of this Province for the time being and from time to time to make and prescribe such other forms rules orders and regulations touching and concerning the manner and form of proceeding in such Courts not herein provided for as shall be necessary for giving full effect to the jurisdiction of the said Courts and that in the absence of the Judge of the said Supreme Court such Resident Magistrate or the Bench of Magistrates for this purpose three to be a quorum shall have power

power to make such other necessary forms rules orders and regulations as may be necessary for giving due complete and immediate effect to this Act but with this restriction nevertheless that such forms rules orders and regulations shall only obtain during the absence of the Judge of the Supreme Court and shall be laid before him for his approval immediately upon his return to the Province and unless disallowed by him shall continue in full force and effect.

XXII. That for the purpose of giving effect to the judgments decrees orders and sentences of the Court or Courts of Resident Magistrates from time to time to be created constituted and established as aforesaid such Court and Courts shall be and are hereby declared to be Courts of Record.

XXIII. That the Court and Courts of Resident Magistrates to be hereafter from time to time created constituted and established by virtue of the powers and authorities hereinbefore contained shall have cognizance of and the said Resident Magistrate or Resident Magistrates to be from time to time hereafter appointed to sit therein shall have jurisdiction and are hereby empowered to hear determine adjudicate and convict in all cases whereby any Act or Acts of the Province or by the statute law of the realm any one or more Magistrate or Magistrates Justice or Justices of the Peace are enabled and empowered to hear determine adjudicate and convict in a summary way and so and in such manner and with a like extent of powers as such Magistrate or Magistrates Justice or Justices of the Peace is or are thereby enabled and empowered to hear determine adjudicate and convict.

(Signed) J. HINDMARSH,
Governor.

November 17th, 1837.

Passed in Council,
(Signed) GEO. STEVENSON,
Clerk of Council.