



ANNO SEXTO ET SEPTIMO

VICTORIÆ REGINÆ.

No. 11.—1843.

By His Excellency GEORGE GREY Esquire Governor and Commander-in-Chief of Her Majesty's Province of South Australia and its Dependencies and Vice-Admiral of the same by and with the advice and consent of the Legislative Council.

See 4 of '58

AN ORDINANCE to facilitate the Recovery of Debts in certain Cases.

WHEREAS it is expedient to provide for the more speedy recovery of Debts in cases where the Defendant fails to enter an appearance to the action and also in certain cases of ascertained amount wherein the party sued has no real defence to the claim against him on the merits of the case:

Recital of the expediency of providing for the more speedy recovery of Debts.

BE IT THEREFORE ENACTED BY HIS EXCELLENCY THE GOVERNOR of South Australia with the advice and consent of the Legislative Council thereof That in every action of *indebitatus assumpsit* and of Debt on simple contract or upon Bills of Exchange and Promissory Notes brought in the Supreme Court of this Province it shall be lawful after the expiration of the time allowed by the rules of the Court in force for the time being for the Defendant's appearance and in default of such appearance for the Plaintiff together with the usual affidavit of the service of the Writ upon the Defendant

In actions on simple contract and upon Bills of Exchange and Promissory Notes judgment may be entered against the Defendant in a summary way in default of the Defendant's appearance — The Plaintiff filing particulars of his demand verified by affidavit.

endant (in which affidavit it shall be made to appear that notice of the amount claimed by the Plaintiff was endorsed upon such Writ) to file in the said Court particulars of his demand setting forth the several items and dates thereof and if the demand be upon a Bill of Exchange or Promissory Note setting forth a copy of such bill or note together with the indorsements thereon and also an affidavit by the Plaintiff or some person cognizant of the facts of the case verifying such particulars of demand and stating the amount due to the Plaintiff in respect thereof and thereupon (and in case the claim or any part thereof shall be upon any Bill of Exchange or Promissory Note then upon exhibiting such bill or note to the Clerk or proper Officer of the Court who shall mark such bill or note as exhibited in the action to which it relates and return it to the person exhibiting the same) judgment for the Plaintiff may be forthwith signed and execution issued for the amount so sworn to with costs.

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If Plaintiff's demand arises upon a bill or note the Defendant in order to be allowed to defend the action must make an affidavit of his grounds of defence.

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II. And be it further enacted that if the demand of the Plaintiff in any such action shall arise upon an acceptance of a Bill of Exchange or the making of a Promissory Note by the Defendant or any Agent lawfully acting on his behalf shewing a certain amount to be due from the Defendant to the Plaintiff then in order to be permitted to defend the action it shall be necessary for the Defendant at the time of entering his appearance or for some person cognizant of the facts of the case to make an affidavit shewing that he has a good defence on the merits of the case and setting forth the particular grounds of such defence and in default of such affidavit being made and filed judgment may be entered and execution issued in manner aforesaid for the amount due to the Plaintiff as if no appearance had been entered and if an appearance shall be duly entered and such affidavit shall be duly made and filed by the Defendant then the auction shall proceed as in ordinary cases.

Not necessary to enter proceedings on record in the ordinary way but an entry of the judgment to be made in a book.

III. And be it further enacted that in order to the entering up of judgment as aforesaid it shall not be necessary to enter the proceedings or any part thereof on record in the manner heretofore used but it shall be sufficient that the several matters hereinbefore required to be done be done accordingly and that an entry of the signing the judgment and of the amount thereof be made by the Clerk or other proper Officer of the Court in a book to be provided for that purpose.

Power for Supreme Court or Judge to set aside proceedings and permit Defendant to try the action on the merits.

IV. Provided always that it shall be lawful for the Supreme Court and any Judge thereof to set aside any judgment obtained by virtue of or under color of this Ordinance and to permit the Defendant to try the action upon the merits in any case in which such Court or Judge shall deem it consistent with the purposes of justice so to do and

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and upon such terms as to costs or otherwise as to the Court or Judge shall seem fit.

V. And be it enacted that this Ordinance shall not commence or take effect until the same shall have received the Royal approbation and the notification of such approbation shall have been made by His Excellency the Governor in the "South Australian Government Gazette." Ordinance not to commence till Royal approbation notified.

GEORGE GREY,
Governor and Commander-in-Chief.

*Passed in the Legislative Council, this Second
day of November, 1843.*

W. L. O'HALLORAN,
Clerk of Council.

ADELAIDE:

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