



ANNO TRICESIMO PRIMO

VICTORIÆ REGINÆ.

A.D. 1867.

No. 8.

An Act to confer additional Powers upon the Supreme Court of South Australia in all Branches of its Jurisdiction, and for other purposes.

[Assented to, 19th December, 1867.]

WHEREAS it is expedient to confer additional powers upon the Supreme Court, and that such powers may be exercised by the said Court in some or all of the branches of the jurisdiction at present vested in the said Court, or which may hereafter be conferred upon or vested in it, and to make further provisions for enforcing such powers—Be it therefore Enacted, by the Governor-in-Chief 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. This Act may be cited for all purposes as the "Supreme Court Act, 1867."

Short title.

2. In the construction of this Act, unless the same shall be inconsistent with the context or subject matter, the following words and expressions shall have the meanings hereafter assigned to them respectively, that is to say:

Interpretation.

"The Court" and "The said Court" shall mean the Supreme Court of the Province of South Australia, including all the branches of its jurisdiction, except criminal, as now established, and any jurisdiction which may hereafter be conferred upon it:

"Action" shall mean and include all actions, suits, petitions, inquiries,

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inquiries, or other proceedings, now pending in the said Court, or which may hereafter be commenced or instituted therein or presented thereto.

Court may order examination of witnesses within jurisdiction.

3. The Court or a Judge thereof in every action depending therein may, upon the application of any of the parties to such action, order the examination upon oath upon interrogatories or otherwise before the Master of the said Court or other person or persons to be named in such order of any witnesses within the jurisdiction of the Court, and by such order, or any subsequent order or orders may give all such directions touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examination as may appear reasonable and just.

Court may issue commission for examination of witnesses out of jurisdiction.

4. The Court or a Judge thereof, in every action depending therein, may, upon the application of any of the parties to such action, order a commission to issue for the examination upon oath, upon interrogatories, or otherwise, of any witnesses out of the jurisdiction of the said Court, and thereupon any of the parties to such action may cause such proceedings to be instituted and had for enforcing the attendance of witnesses and production of writings or other documents, and obtaining directions touching the time, place, and manner of such examination, and all other matters connected with such examination as are prescribed to be instituted, and had in such cases, by an Act of the Imperial Parliament made and passed in the Session of Parliament holden in the twenty-second year of the reign of Her Majesty Queen Victoria, intituled "An Act to provide for taking evidence in suits and proceedings pending before tribunals in Her Majesty's Dominions in places out of the jurisdiction of such tribunals:" Provided that nothing herein contained shall be construed to take away or abridge the powers conferred upon the Chief Justice of the said Court by the said Imperial Act for framing rules and orders as mentioned in the sixth section thereof.

Application for rule or commission to be by summons.

5. Application for an order for the examination of witnesses within the jurisdiction of the Court, or a commission for examination of witnesses without such jurisdiction, shall in the first instance be made to a Judge by summons, or, if on behalf of a plaintiff or petitioner proceeding in default of appearance, without summons.

Persons to take examination to be nominated by parties.

6. The person or persons to be named in any such order or commission to take such examination, shall be the person or persons to be nominated and agreed upon by the parties in the action, and approved of by the Judge, to whom the application is made, or for want of agreement to be nominated by such Judge.

Party applying to draw up rule.

7. The order or commission is to be drawn up and prepared by the party applying for the same, and a copy thereof shall be delivered to the parties entitled to cross-examine the witnesses to be examined thereunder two clear days before such order or commission shall issue, and

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and they or either of them may apply to a Judge by summons to alter or amend the order or commission, or to insert any special provision therein.

8. Any of the parties to the action, who on the hearing of the summons, have not elected to join in the order or commission, may apply to a Judge by summons for leave to join in such order or commission, and to examine witnesses thereunder; and the Judge, by whom the application is heard, may direct the necessary alterations to be made in the order or commission for that purpose, and settle the same, and may give such directions as to costs or otherwise, or may refuse such application, as he shall think fit.

Any party to action may apply for leave to join in commission.

9. After the issuing of a summons to show cause why a party to the action should not have leave to join in an order or commission, such order or commission shall not issue without the direction of a Judge.

After application to join commission not to issue without leave.

10. When any order shall be made for the examination of witnesses within the jurisdiction of the Court, the Court or any Judge thereof may, in and by the first, or some subsequent order, command the attendance of any person to be named in such order, for the purpose of being examined, or for the production of any writings or other documents to be mentioned in such order, and may direct the attendance of any such person, to be at his own place of abode, or elsewhere if necessary and convenient so to do; and the wilful disobedience of any such order shall be deemed a contempt of Court, and proceedings may be thereupon had by attachment (the Judge's order being made a rule of Court before or at the time of the application for an attachment) if, in addition to the service of the order, an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by any one or more of such persons, shall be also served upon the person whose attendance is so ordered, together with or after the service of such order: Provided that every person whose attendance shall be so ordered shall be entitled to the like conduct money and payment for expenses, and also for loss of time, as upon attendance at a trial: Provided also, that no person shall be compelled, under any such order, to answer questions tending to criminate himself, or questions which he might refuse to answer if called as a witness, nor to produce any writing or other document that he would not be compellable to produce at the trial of the action.

Compelling attendance of witnesses or production of documents.

Disobedience contempt of Court.

11. All and every person appointed to take the examination of witnesses by any order or commission, may, and he and they are hereby authorized and required, to take all such examinations upon the oath of the witnesses, or affirmation in cases where affirmation is allowed by law instead of oath, to be administered by the person so appointed, and if, upon such oath or affirmation, any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall and may be prosecuted for such offence accordingly.

Examination of witnesses to be taken on oath.

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Persons appointed for taking examinations may report to the Court upon the conduct or absence of witnesses.

12. The person or persons appointed to take any examination of witnesses may, and he and they are hereby required to make, if need be, a special report touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto, and the Court, in the case of a person within its jurisdiction, is hereby authorized to institute such proceedings and make such order or orders upon such report as justice may require, and as may be instituted and made in any case of contempt of the Court.

Costs may be costs in the cause.

13. The costs of any order to be made for the examination of witnesses under any order or commission, by virtue of this Act, and of the proceedings thereupon, shall be costs in the cause, unless otherwise directed, either by the Judge making such order, or by the Judge before whom the action may be tried, or by the Court.

Reservation as to reading examination of depositions without consent of the opposite party.

14. No examination or deposition to be taken by virtue of this Act shall be read in evidence at any trial or any hearing without the consent of the party against whom the same is offered, unless it shall appear to the satisfaction of the Judge or the Court, as the case may be, that the examinant or deponent is beyond the jurisdiction of the Court, or dead, or unable from permanent sickness or other permanent infirmity to attend the trial; in all or any of which cases the examinations and depositions, certified under the hand of the Commissioners, Master, or other person or persons taking the same, shall and may, without proof of the signature to such certificate, be received and read in evidence, saving all just exceptions.

Prisoners may be brought up for examination on Judges' order.

15. Any Sheriff, gaoler, or other officer, having the custody of any prisoner, whose evidence may be required in any action, trial, or proceeding, civil or criminal, shall take such prisoner for examination before the Court, or any Judge thereof, or before any person or persons appointed to take any examination, upon receiving an order of a Judge for that purpose, which order may be obtained upon affidavit by the parties requiring the attendance of such prisoner, and such order shall set forth the time and place, when and where such prisoner is to be taken for the purpose of such examination: Provided that the officer so ordered as aforesaid shall be entitled to the like conduct money and payment of expenses, and for loss of time, as upon attendance at a trial.

Affidavits before whom to be sworn in foreign countries.

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16. In any action where it may be necessary to obtain affidavits, declarations, or affirmations, from persons residing in foreign parts, out of Her Majesty's dominions, the same may be sworn, declared, or affirmed before any British Ambassador, Envoy, Minister, Charge d'Affaires, or Secretary of Embassy or Legation, exercising his functions in any foreign country, or before any British Consul General, Consul, Vice Consul, Acting Consul, Pro Consul, or Consular Agent: Provided that in places where there are no such persons as are last mentioned, such affidavits, declarations, or affirmations, may be

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be made, declared, or affirmed, before any foreign local magistrate, or other person having authority to administer an oath there.

17. Affidavits, declarations, and affirmations, in any action, may be taken and sworn in England, Scotland, Ireland, the Isle of Man, the Channel Islands, or any Colony, Island, Plantation, or place out of England, under the dominion of Her Majesty, before any Court, Judge, Notary Public, or person lawfully authorized to administer oaths in such country, colony, island, plantation, or place, respectively; or so far as relates to the Isle of Man, and the Channel Islands, before any Commissary, Ecclesiastical Judge, or Surrogate, who at the time of the passing of the Act of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the Session of Parliament holden in the twentieth and twenty-first years of the present reign, chapter seventy-seven, was authorized to administer oaths in the Isle of Man, or in the Channel Islands respectively.

Affidavits before whom to be sworn in certain other cases.

18. All affidavits, declarations, or affirmations made or taken under this Act shall be as valid and effectual to all intents and purposes as if the same had been made or taken before the Court itself.

Affidavits to be valid as if taken before the Court.

19. The Court, the Judges thereof, the Master, Registrar, and Chief Clerk thereof, and all persons appointed to be commissioners for taking affidavits under the provisions of an Act, No. 23 of 1859, or appointed by the Court to conduct any inquiry by virtue of any Act or Ordinance, shall have full power to administer oaths: Provided that any party required to be examined, or any person called as a witness, or required, or desiring to make an affidavit, or deposition in any action, shall be permitted to make his solemn affirmation or declaration, instead of being sworn, under similar circumstances and in the like manner as a person called as a witness, or desiring to make an affidavit or deposition, would be permitted to do under "The Supreme Court Procedure Act, 1855," in cases within the provisions of that Act.

Power to administer oaths.

20. Any person who shall wilfully give false evidence, or who shall wilfully swear, affirm, or declare falsely in any affidavit, deposition, affirmation, or declaration, under the provisions hereof, shall be deemed and taken to be guilty of perjury, and shall and may be indicted and prosecuted for such offence accordingly.

Perjury.

21. If any person shall forge the Seal of the Court or the signature of any Judge, Master, Registrar, Chief Clerk, or Commissioner for taking affidavits, or of any person appointed to take the examination of witnesses under any of the preceding provisions, or to conduct any inquiry directed by the said Court, or shall knowingly use, or concur in using any such counterfeit or forged seal or signature, or tender in evidence any document with a false or counterfeit signature of such Judge, Master, Registrar, Chief Clerk, or Commissioner for taking affidavits, or other person as aforesaid,

Persons forging seal or signature guilty of felony.

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or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall, upon conviction, be liable to be imprisoned with or without hard labor for any period not less than seven years; and whenever any such document has been admitted in evidence, the Court, or the person who has admitted the same, may at the request of any party against whom the same is so admitted in evidence, direct that the same shall be impounded and kept in the custody of some officer of the Court, or other proper person, for such period and subject to such conditions as to the said Court or person shall seem meet.

Judicial notice to be taken of signatures of Judges, Commissioners, &c.

22. The Court, the Judges, the Master, and other officers of the Court shall take judicial notice of the seal or signature of any Judge, Notary Public, Commissioner for taking affidavits, or other person before whom affidavits, declarations, and affirmations are hereby authorized to be made, which shall be attached, suspended, or subscribed to any such affidavit, declaration, or affirmation, or to any other document.

Appeal from order of Judge.

23. In every case where, by any Act or Ordinance now or hereinafter to be in force, or by the practice of the Court, jurisdiction is exercised by a Judge in Chambers, there shall be an appeal to the Court from any decision of such Judge.

Distinction between term and vacation abolished.

24. Every rule, decree, order, pleading, petition, matter, writ, execution, proceeding, act, business, or thing to be made, entered, instituted, filed, given, issued, taken, transacted, done, or performed, in or by the said Court, at any time after the commencement of this Act, shall or may be made, taken, transacted, done, or performed, on any day not being Sunday, Good Friday, or Christmas Day, whether such day shall be in term time or vacation, and every such rule, decree, order, pleading, petition, matter, writ, execution, proceeding, act, business, or thing, as aforesaid, which shall be so made, entered, intituled, filed, given, issued, taken, transacted, done, or performed in vacation, or in any day in term time or vacation, and which according to any present law, or any practice or usage of the said Court can or ought only to be made, entered, intituled, filed, given, issued, taken, transacted, done, or performed, in term time, or as in term time, or as on any or some particular day or days in term time, shall be of the like validity, force, and effect, as if the day upon which the same shall or may be so made, entered, intituled, filed, given, issued, taken, transacted, done, or performed, was actually a day in term time, and not in vacation, and the day or one of the days in term time required by any such law, practice, or usage as aforesaid.

Jury may be summoned.

25. Where in any action any question of fact or issue may be directed to be tried by a Jury, and no other course is or shall be prescribed for summoning a Jury, the Court may direct a writ of *venire facias* to be issued in the manner provided by the twenty-seventh section of the Jury Act, 1862; and all the provisions of the said

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Act shall be applied and be applicable to the summoning and constitution of juries for the purposes of the trial of such question of fact or issue as if such Jury had been summoned for the trial of issues at the Civil Sittings of the said Court, and all the parties entitled to appear on the trial of any such question of fact or issue shall be entitled to the same rights, as to challenge or otherwise, as if such question or issue so ordered to be tried were an issue on the common law side of the Court.

26. The Court may, notwithstanding the provisions of the last preceding section, order the trial of any such question of fact or issue to be had at some one of the Civil Sittings of the Court in its common law jurisdiction.

Question may be tried at Civil Sittings.

27. The Supreme Court on the Crown side shall have the like jurisdiction, power, and authority within the said Province as Her Majesty's Court of Queen's Bench in England hath on the Crown side thereof; and the Chief Justice and Judges of the said Supreme Court for the time being shall have the like jurisdiction, power, and authority, in the said Supreme Court, on the Crown side thereof, as the Chief Justice and the Judges of the Court of Queen's Bench have in England on the Crown side thereof; and any act which, in the said Court of Queen's Bench, on the Crown side thereof, may be done or performed by the Chief Justice thereof, may in the said Supreme Court, in the like cases, be done or performed by the Chief Justice thereof; and any act which may in the said Court of Queen's Bench, on the Crown side thereof, be done or performed by one of the Judges thereof, may, in the said Supreme Court, in the like case, be done or performed by any Judge thereof.

Supreme Court to have similar jurisdiction to Court of Queen's Bench on Crown side thereof.

28. The practice and procedure of the said Supreme Court, on the Crown side thereof, shall be according to the practice and procedure of Her Majesty's Court of Queen's Bench in England, on the Crown side thereof, as existing immediately after the making of the rules, orders, and regulations made by the Chief Justice and Judges of the Court of Queen's Bench, in Hilary Term, 1844, "For the issuing, returning, and filing of writs, and other matters and things relating to the practice and general business to be transacted on the Crown side of the said Court, pursuant to the Statute 6 Vict., c. 20," so far as the same may be applicable, and when the course and procedure of the said Court of Queen's Bench, on the Crown side thereof, is not strictly applicable in consequence of the different circumstances existing in the said Province, the said Supreme Court may make any special rule applying such practice to the particular case; and may by any special rule prescribe the form of any commission, writ, or other process or proceeding in any particular case where the said Court may consider it necessary to do so for the purpose of exercising the jurisdiction, power, and authority of the said Court, in the like manner as the jurisdiction, power, and authority of the Court of Queen's Bench, on the Crown side thereof, is exercised in like cases.

Practice and procedure to be similar to that of Queen's Bench.

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29. The Master of the said Court shall do, perform, and render all the like acts, duties, and services as are done, performed, and rendered by the Queen's Coroner and Attorney, and the Master and Assistant Master in the said Court of Queen's Bench on the Crown side thereof; and the practitioners of the said Court shall do, perform, and render, on the Crown side thereof, business of the like description as is now transacted by such practitioners on the civil side of the said Court.

Rules may be made.

30. The Judges of the Supreme Court, or any two of them, may from time to time make, alter, or vary all such rules and orders as to the process, practice, and procedure in the said Court, on the Crown side thereof, and as to the payment of fees and allowance of costs, and for the effectual execution of this Act and the intention and objects thereof, as may seem to them necessary and proper: All rules, orders, and regulations which may be now made by the said Court, or the Judges thereof, in any of the branches of its jurisdiction, may be made by any two of the Judges thereof, and all such rules, orders, and regulations shall be published in the *Government Gazette*, and shall take effect from a date to be therein specified, and shall be laid before both Houses of Parliament within one calendar month after the making thereof, if Parliament be then sitting, or, if Parliament be not then sitting, within one calendar month after the commencement of the then next Session of Parliament; and if either House of Parliament shall, by resolution passed within thirty-six days next after any such rules, orders, and regulations as aforesaid shall be laid before it, resolve that the whole or any part thereof ought not to continue in force, in that case the whole of such rules, orders, and regulations, or such part or parts thereof as may be specified in the resolution (as the case may be) shall from and after the passing of such resolution cease to be binding.

Judges may sit in several jurisdictions at one time.

31. It shall be lawful for the Judges of the Supreme Court, or any one of them, or any two of them, to sit and administer justice in any of the jurisdictions to the said Court belonging at one and the same time, and particularly the said Court may sit for the trial of civil causes and issues, at the same time that the said Court is sitting as a Court of Oyer and Terminer and General Gaol Delivery: Provided that all matters and questions of law, except such as are heard at the Civil Sittings and at the Criminal Sittings of the said Supreme Court, and except proceedings in Chambers, or before the Primary Judge in Equity, shall be heard and determined by at least three of the Judges of the said Court: Provided, also, that in case any one or more of the Judges of the said Court shall be absent on circuit, or shall be, or declare himself or themselves to be, interested in any matter or question of law, or shall declare that he or they cannot give a judicial decision thereon, from having acted as counsel in the suit or proceeding, or otherwise, in connection with the subject matter of such suit or proceeding, the other Judges or Judge may hear and determine such matter or question.

Proviso.**Proviso.**

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32. The Supreme Court in all or any of its jurisdictions may hold its sittings in any building which may be appointed for that purpose by the Governor in Executive Council, and of the appointment of which notice shall have been published in at least three consecutive *Government Gazettes*.

Supreme Court may sit in any building by *Gazette* notice.

33. Every judgment debt shall carry interest at the rate of Ten Pounds per centum per annum, from the time of entering up the judgment until the same shall be satisfied, in lieu and instead of Five Pounds per centum per annum, as provided by the Ordinance No. 9 of 1845.

Ten per cent. interest on judgment debts.

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

D. DALY, Governor.