



ANNO VICESIMO QUARTO ET VICESIMO QUINTO

VICTORIÆ REGINÆ.

A.D. 1861.

No. 5.

An Act to amend the Laws regulating the Court of Appeals of the Province of South Australia, and to extend the powers thereof.

[Assented to, 30th August, 1861.]

WHEREAS it is expedient to amend the Laws regulating the Court of Appeals of the Province of South Australia, and to extend the powers thereof—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 :

1. The Governor and Executive Council, for the time being, of the said Province (with the exception of the Attorney or Advocate-General and Crown Solicitor) have, ever since the commencement and taking effect of the Act of the Governor and Legislative Council of the said Province, No. 31 of 1855-6, intituled "An Act to consolidate the several Ordinances relating to the establishment of the Supreme Court of the Province of South Australia," constituted, and still do constitute a Court of Appeals for the Province of South Australia; and all the powers and authorities conferred upon and vested in the said Court by the said Act, or any other Act, or in the Court of Appeal by the Act of the Governor and Legislative Council of the said Province, No. 24 of 1855-6, intituled, "An Act for the further amendment of the process, practice, and mode of pleading of the Supreme Court," have, since the date at which the same Acts respectively commenced and took effect, been vested in, and still are vested in the Governor and Executive Council for the time being, with the exception aforesaid, as such Court of Appeals.

Preamble.
Declaring that the Governor and Executive Council (except Attorney or Advocate-General and Crown Solicitor) are, and have been since the date of Act No. 31 of 1855-6, the Court of Appeals for the Province.

2. The

Court of Appeals to be a Court of Record. Governor to be President.

2. The said Court of Appeals shall be a Court of Record, and the Governor of the said Province shall be President thereof; and the President and two or more Members of the said Executive Council shall form a quorum.

Supreme Court shall transmit copies of proceedings to the Court of Appeal.

3. Whenever an appeal shall be pending in the Court of Appeals, the Supreme Court, or the proper officer, whenever he shall be thereto required, shall certify and transmit to the Court of Appeals a true and exact copy of all evidences, proceedings, judgments, decrees, and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said Court, and shall also certify and transmit to the said Court of Appeals a copy of the reasons given by the Judges of the Supreme Court, or by any of such Judges, for or against the judgment or determination appealed against, where such reasons shall have been given in writing; and where such reasons shall have been given orally, then a statement in writing of the reasons given by the Judges, or any of such Judges, for or against the judgment or determination appealed against.

Upon appeal under Act No. 24 of 1855-6, Judge to transmit to Court of Appeals copy of notes on trial of documents put in as evidence, and of the rule or notes on which rule was moved, and the same and the record may be treated as the case upon which the Court of Appeals shall decide.

4. Whenever an appeal shall be pending in the Court of Appeals under the provisions of the said Act, No. 24 of 1855-6, against any decision already made, or hereafter to be made by the Supreme Court in its common law jurisdiction, the Judge who presided on the trial of the cause, or some other Judge of the said Court shall, on being thereto required, by writing under the hand of the President, transmit to him a copy, certified by such Judge to be correct, of the notes taken by the Judge on the trial, and also of all documents put in as evidence upon the trial, and also of the rule appealed against, or the notes of the points upon which the rule was moved, for the refusal to grant which the appeal is made, and the same, together with the record, may be considered by the said Court of Appeals as the case upon which the appeal shall proceed and be decided.

Statement, in writing, by President of Court of Appeal conclusive evidence that appeal is pending.

5. A statement in writing, signed by the President, that an appeal is pending under the provisions of the said Act No. 24 of 1855-6, or otherwise, shall be conclusive evidence thereof.

Court of Appeals may do everything necessary to carry its decision into effect.

6. All writs, rules, orders, matters, and things which may be necessary to carry into effect any judgment of the Court of Appeals, may be issued, made, and done by the said Court of Appeals, and the Officers of the Supreme Court, the Sheriff of the said Province, and all others shall obey any writ, rule, or order made by the Court of Appeals as aforesaid: Provided that this clause shall not prevent the Court of Appeals from directing the Supreme Court to carry any decision into effect.

Court of Appeals may direct its decisions to be carried into effect by the Supreme Court.

Officers, &c., disobeying writ, &c., of Court, may be dismissed.

7. Any officer of the Supreme Court, and any Sheriff, or other person in the Government service, neglecting or refusing to carry into effect any writ, rule, or order of the Court of Appeals may, by order of the Court, under the hand of the President, be summarily dismissed from his office.

8. No

8. No Officer, Sheriff, or other person shall be liable to any action, suit, or other proceeding, by reason of his obeying any writ, rule, or order of the Court of Appeals, issued or made as aforesaid.

Officers, &c., obeying orders of Court of Appeals indemnified.

9. Whenever the necessary proceedings for lodging an appeal and perfecting bail, as required by the said Act No. 24 of 1855-6, or otherwise, have been, or shall be taken in respect of any appeal heretofore or hereafter to be commenced against any judgment, rule, or order of the Supreme Court, all proceedings on such judgment, rule, or order shall be stayed, any rule or order of the Supreme Court to the contrary notwithstanding; and the Supreme Court, or a Judge thereof shall take the recognizance of any person offering to put in bail on appeal, and the validity thereof, or of any notice of appeal shall not be inquired into, or determined, except by the Court of Appeals: Provided that this provision shall not apply to cases in which any notice of appeal, or the bail, shall not be given within the time limited by law.

Notice of Appeal and bail to be a stay of proceedings, and Court of Appeals to inquire into validity of notice or bail.

10. The rules for regulating appeals from the Supreme Court, published in the *South Australian Government Gazette*, shall be in force, and regulate proceedings in the Court of Appeals until the same shall be varied by the said Court by any further or other rules published in the *South Australian Government Gazette*: And the Court of Appeals may make and publish all such rules as they may think fit for regulating the proceedings of the Court, and the manner in which the judgments of the Court may be carried into effect.

Rules published in *South Australian Government Gazette*, shall be in force until varied by other rules.

And the Court may make rules.

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

RICHARD GRAVES MACDONNELL,
Governor.

Government House, Adelaide,
30th August, 1861.