



ANNO VICESIMO SEXTO ET VICESIMO SEPTIMO

VICTORIÆ REGINÆ.

A.D. 1863.

No. 4.

An Act to amend the Local Courts Act, 1861.

[Assented to, 12th November, 1863.]

WHEREAS great difficulties and delays are often experienced Preamble.
in actions depending in the Local Courts of the Province of South Australia, by reason of a want of authority in such Courts to order and enforce the examination of witnesses when the same may be required before the trial of a cause, and to issue commissions for the examination of witnesses out of the said Province, or who may be resident at a distance from the Court wherein the cause is to be tried; and it is expedient that such authority should be conferred on the said Courts—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. This Act may be cited for all purposes as the “Local Courts Short title of Act.
Amendment Act, 1863.”

2. In the construction of this Act the words “Special Magistrate” Interpretation of terms.
shall, unless inconsistent with the context or subject matter, mean the Special or Stipendiary Magistrate or other proper officer appointed to preside over any of the Local Courts now established, or hereafter to be established in the said Province.

3. In every action depending in any Local Court, where the debt or damage claimed shall exceed Twenty Pounds, the Special Magistrate, upon the application of any of the parties to such action, and upon being satisfied that any material witness is about to quit the Special Magistrate may issue order for examination of witnesses about to leave the Colony or unable to attend from illness.
said

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said Province, or is unable to attend on the trial of such action from illness or other sufficient cause, may, by writing under his hand and the seal of the said Court, order the examination of such witness on oath, upon interrogatories or otherwise, before such Special Magistrate himself, or before the Clerk of such Court or other person or persons to be named in such order; and may by the same, or any subsequent order or orders, give all such directions touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examinations as may appear reasonable and just.

Special Magistrate may issue commission for examination of witnesses out of the Province, or who may reside more than one hundred miles from Court where cause to be tried.

4. If, in any action depending in any of such Courts, where the debt or damage claimed shall exceed Twenty Pounds, it shall be made to appear to the satisfaction of the Special Magistrate, upon the application of any of the parties to such action, that any material witness is resident out of the said Province, or more than one hundred miles from the place where the Court for the trial of such cause is situated, such Special Magistrate may order a commission to issue under the seal of the said Court for the examination of such witness on oath, by interrogatories or otherwise, and may, by the same or any subsequent order or orders, give all such directions touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examinations as may appear reasonable and just.

Order or commission may be issued at any time before or after appearance.

5. The order or commission mentioned in the two last preceding sections may be made or issued at any time either before or after appearance has been entered.

Compelling attendance of witnesses, or production of documents.

6. When any order shall be made for the examination of witnesses within the said Province, the Special Magistrate may, in and by the first order to be made in the matter, or any subsequent order, command the attendance of any person to be named in such order for the purpose of being examined, or of producing any writings or other documents to be mentioned in such order, and may direct the attendance of such person to be at his own place of abode, or elsewhere, if necessary or convenient so to do; which order shall be served personally upon the person so required to attend, together with 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 one or more of such persons; and if the person named in such order shall, after being so served as aforesaid, neglect or fail to attend at the time and place mentioned, or to produce the writings, or other documents therein mentioned, and shall not give a good and sufficient excuse for his non-attendance, or the non-production of such writings or other documents, to be allowed by the person or persons so appointed to take the examination as aforesaid, he shall forfeit and pay a sum not exceeding One Hundred Pounds, to be recovered by the party aggrieved by action in any Court of competent jurisdiction: Provided always, that every person whose attendance shall be so required, shall be entitled to the like conduct money

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money and payment for expenses and loss of time, as upon attendance at a trial: Provided also, that no person shall be compelled to produce, under any such order, any writing or other document that he could not be compellable to produce at a trial of the cause.

7. The powers and authorities contained in the 201st section of the "Local Courts Act, 1861" shall apply to any prisoner required to be examined under any order or commission issued under the authority of this Act, and any Special Magistrate is hereby authorized to issue an order as in such section mentioned in the same manner as if such prisoner were required as a witness on the trial of any cause before the Court; and any Sheriff, Gaoler, or other officer, having the custody of any prisoner, is hereby required to obey such order in the same manner as if the same were issued under the authority contained in the said 201st section.

Special Magistrate may issue order to bring up prisoner for examination.

8. Every person authorized to take the examination of witnesses by any order or commission made and issued in pursuance of this Act, may and he and they are hereby authorized and required to take all such examinations upon the oath or affirmation of the witnesses, to be administered by the person so authorized; 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.

Examination of witnesses to be taken upon oath.

9. The Special Magistrate, if he shall take the examination himself, or the Clerk of the Court, or any other person to be named in any such order or commission as aforesaid for taking any examination in pursuance thereof, may, and he and they are hereby required to make, if need be, a special report to the Court touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the Court may thereupon institute such proceedings and make such order and orders upon such report as justice may require, and as may be instituted in any case of contempt of Court.

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

10. In all cases in which such order or commission shall be issued as hereby authorized, the examinations or depositions certified under the hand of the Special Magistrate, Clerk of the Court, or other person taking the same, shall and may, without proof of the signature of such certificate, be received and read in evidence, saving all just exceptions.

Examinations to be received in evidence without proof of signature of Commissioner, &c.

11. The costs of every order to be made for the examination of witnesses under any commission or otherwise by virtue of this Act, and of the proceedings thereupon, shall, for all business transacted within the said Province, be allowed as between party and party, according to the lower scale of costs in the Superior Courts of Common Law at Westminster; and as to business transacted out of the said Province fair and reasonable costs shall be allowed, according to the amounts actually and *bonâ fide* paid and expended in and about

Costs.

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about transacting such business; and all such costs shall be costs in the cause, unless otherwise directed by the Special Magistrate making the order for the examination, or by the Court on the trial of the cause.

Practice to be same as in Supreme Court.

12. In all cases not otherwise herein provided for, the practice as to applying for an order for the examination of witnesses or for a commission, and the proceedings to be thereupon had, shall, as far as possible, be the same as the practice in the Supreme Court in like cases.

Costs of removing judgment into the Supreme Court.

13. When any judgment shall be removed into the Supreme Court by *certiorari* under the 54th section of the Local Courts Act of 1861, the costs of removing such judgment shall be recoverable by the party removing the said judgment from the opposite party in the same manner as the costs of a writ of execution from the Supreme Court are now recoverable.

Claims to goods taken in execution may be made by telegram.

14. All claims mentioned or referred to in the 144th section of the said Local Courts Act of 1861, to or in respect of any goods or chattels taken in execution may be made by telegram, and the delivery of the telegram to the bailiff shall be held equivalent to the delivery of the signed copy thereof lodged in the telegraph office.

Deposits to bailiffs of country Local Courts may be made to the Clerk of the Adelaide Local Court.

15. All deposits referred to in the 145th section of the said Local Courts Act of 1861 to the bailiff of any Local Court out of Adelaide, may be made to the Clerk of the Adelaide Local Court, and the Clerk of the Adelaide Local Court shall, if required, forthwith sign a telegram or certificate to the said bailiff, that such deposit has been made.

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

D. DALY, Governor.