



ANNO VICESIMO NONO

# VICTORIÆ REGINÆ.

A.D. 1865-6.

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## No. 12.

*An Act to provide for the more speedy administration of Justice, by means of the Supreme Court.*

[Assented to, 16th March, 1866.]

**W**HEREAS it is desirable to make further provision for the more speedy Administration of Justice by means of the Supreme Court—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. In any action in the Supreme Court, where the writ of summons is specially indorsed, as provided by the twenty-second section of the "Supreme Court Procedure Amendment Act," if at the foot of such indorsement, the following additional notice shall be inserted, that is to say—"And further take notice that you will not be allowed to appear unless you shall have filed an affidavit of merits," it shall not be lawful for the defendant to enter an appearance to any such action, unless such defendant shall have caused to be filed in the said Court an affidavit by himself, or by some person cognizant of the facts of the case, stating that he has a good defence to such action on the merits, and the grounds of such defence: Provided that the Supreme Court, or a Judge thereof, may set aside any such appearance, or any judgment for default thereof, upon such terms as to such Court or Judge shall seem fit.

In actions for liquidated demand, defendant not to appear without an affidavit of merits.

2. The Master of the Supreme Court may exercise the powers and authorities of a Judge in ordering the issue of a writ of *capias ad respondendum*.

Master may issue *capias* if Judge absent.

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Judge may give leave to appear to writs under Act No. 4 of 1858, although time for appearing expired.

3. A Judge of the said Court may give leave to any defendant served with a writ issued under the provisions of "The Summary Procedure on Bills of Exchange Act, 1858," to appear to such writ at any time before judgment has been signed, although a period of more than twelve days has elapsed since the service thereof.

Incorporation of Acts.

4. Except in so far as inconsistent herewith the "Supreme Court Procedure Amendment Act," and "The Summary Procedure on Bills of Exchange Act, 1858," shall be incorporated and construed herewith, and as forming one Act.

Remedies by and against the Crown to be as in England.

5. All actions, suits, and proceedings at Law or in Equity by or against the Colonial Government of the said Province, or by the subject in the name of Her Majesty, may be instituted in and shall be cognizable by the Supreme Court as fully and effectually as such suits, actions, and proceedings in England may be instituted in and are cognizable by Her Majesty's superior Courts of Common Law and Equity at Westminster, and, so far as the same may be applicable, the Laws and Statutes in force for the time being as to practice and procedure in actions, suits, and proceedings between subject and subject shall be applicable and extend and apply to actions, suits, and proceedings by or against the Colonial Government, or by the subject in the name of Her Majesty: Provided that nothing herein shall extend to any criminal prosecution.

General rules may be made by Judges.

6. It shall be lawful for the Judges of the said Court from time to time to make all such general rules and orders for the effectual execution of this Act, and of the intention and object thereof, and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof as in their judgment shall be necessary and proper; and all such rules and orders shall be published in the *South Australian Government Gazette* for public information, and unless the same shall be disallowed in manner provided by Act No. 31 of 1855-6, Section 17, shall commence and take effect from and after a day to be therein named, not being less than forty days from and after such publication.

Writ of *certiorari* to remove judgment of Local Court may issue *ex parte* on affidavit.

7. In all cases where a writ of *certiorari* may issue by virtue of the 54th section of the Local Court Act, 1861, such writ shall be issued *ex parte* and of course by the proper officer of the Supreme Court, without the necessity of the leave of such Court or any Judge, upon an affidavit being filed in the Supreme Court, setting forth that there is a judgment of Twenty Pounds and upwards in the Local Court, and that the period for appealing from such judgment of the Local Court has expired, and that no such appeal is pending, or that the judgment signed in the Local Court was signed in default of appearance, and such writ shall be directed to the Clerk of a Local Court.

True copy of record book to be returned by Clerk.

8. The return to any such writ shall be made by the Clerk of the Local Court by transmitting a true copy of so much of the Record Book

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Book of the Local Court as relates to such judgment, certified under the seal of such Local Court and the hand of the Clerk; and such return may be in the form contained in Schedule A, hereto.

Judgment in Supreme Court to be entered.

9. Upon the return of such writ, the party desirous of suing out execution shall cause to be entered up a judgment, as of the Supreme Court, in the form contained in Schedule B, and such judgment shall be signed and have the same effect as an ordinary judgment of the Supreme Court, and all proceedings may be had thereupon accordingly.

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

D. DALY, Governor.

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## SCHEDULES REFERRED TO.

## A

[Endorse on writ of *certiorari*.]

The answer to the within writ appears in the annexure hereto marked A.

Clerk of the Local Court holden at

A—SOUTH AUSTRALIA TO WIT.

In the Local Court holden at

I of in the Province of South Australia,  
 Clerk of the Local Court holden at in the said Province, and the  
 person having the lawful custody of all books, records, process and other proceed-  
 ings, and of the seal of the said Court, by virtue of and in obedience to the writ  
 of Our Sovereign Lady the Queen, to me delivered, and to which this is annexed,  
 do, under the seal of the said Local Court, return unto the Supreme Court of this  
 Province a true copy of the record of the judgment whereof mention is made in  
 the said writ. In witness whereof I the said as such Clerk as  
 aforesaid have hereunto set my name and the seal of the said Local Court this  
 day of A.D. 186 .

Clerk of the Local Court holden at

*Copy Record of Judgment.*

[Here copy Record Book.]

I certify the above to be a true extract from the Record Book of the above-  
named Local Court.

Clerk of the Court.

## B

SOUTH AUSTRALIA TO WIT.

In the Supreme Court.

On the day of A.D. 186 [day of issuing writ of *certiorari*.]  
 Be it remembered that on the day and year aforesaid a writ of Our Lady the  
 Queen issued forth of this Court, directed to the Clerk of the Local Court holden  
 at in the said Province, whereby the said clerk was commanded to  
 send to this Court a judgment numbered and signed in the said Local Court,  
 wherein [*describe the parties as in the writ*] with all things touching the same as  
 fully and entirely as it remained in the said Local Court; and whereas the Clerk  
 of the said Local Court, in obedience to the said writ, and by virtue of the Act in  
 such case made and provided, has returned unto this Court a true copy of the  
 record of the said judgment, whereby it appears to the Court here that the said  
 [*the party in whose favor judgment was given*] did, in the said Local Court, on  
 the day of A.D. 186 recover judgment against the said  
 [*the party against whom the judgment was obtained*] for the sum of  
 including costs of suit, and that the said judgment is still unsatisfied and in full  
 force; therefore it is considered that the said judgment of the said Local Court be  
 entered as a judgment of this Court as of this day of [*day of signing*  
*judgment*] and that the said do recover against the said  
 the sum of together with the sum of for his costs of  
 removing the said judgment.

Judgment signed  
 the day  
 of 186 .

Judgment debt £  
 Costs of removal £