



ANNO TRICESIMO

VICTORIÆ REGINÆ.

A.D. 1866.

No. 2.

An Act to protect certain persons from Actions by reason of their being elected to Parliament while Members of the Court of Appeals.

[Assented to, 8th November, 1866.]

WHEREAS the Constitution Act, No. 2 of 1855-6, provides that Preamble. no Judge of any Court shall be capable of being elected a member of the Legislative Council or House of Assembly of this Province, and also provides that certain officers, namely, the Chief Secretary, Attorney-General, Treasurer, Commissioner of Crown Lands and Immigration, and Commissioner of Public Works, shall not hold office for a longer period than three months, unless they shall be members of the Legislative Council or House of Assembly, and that such officers shall *ex officio* be members of the Executive Council: And whereas a certain Act of the Legislative Council of the said Province, No. 31, 1855-6 intituled "An Act to consolidate the several Ordinances relating to the Establishment of the Supreme Court of the Province of South Australia," provides that the Governor for the time being and the Executive Council of the said Province (with the exception of the Attorney or Advocate-General, or Crown Solicitor) shall constitute the Court of Appeals of the said Province: And whereas certain members of the said Executive Council of the said Province so required to be members of the said Legislative Council or House of Assembly have been elected to be members of the said Legislative Council and House of Assembly during the time they have held such offices as aforesaid, and been members of the Executive Council and the said Court of Appeals: And whereas one Charles Hyrdess has claimed from certain persons sums of money or penalties, alleging that the said persons were Judges of the said Court of Appeals, and alleging that during the time the said persons were such Judges they were

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Members of Court of Appeals Protection Act.—1866.

were elected and returned to serve as members of Parliament of the said Province, and took the oaths and their seats as such members, and did sit and vote in the said Parliament: And whereas it is desirable to protect the said persons and all such officers from any such action, and from all actions, suits, or other proceedings that may have heretofore been, or that may or might hereafter be commenced against them, or any of them, for or by reason of any such officer having been so elected as aforesaid—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:

If action commenced against member of Court of Appeals to be stayed by Judge on summons.

1. If any action, suit, or other proceeding has before the passing of this Act been commenced, or shall hereafter be commenced or prosecuted against any officer or person in respect or by reason of his having been elected to be a member of the Legislative Council or House of Assembly, and of his having sat or voted in such Legislative Council or House of Assembly during the period he was a member of the Executive Council or the Court of Appeals of the said Province, or in respect of his having been so elected, or having so sat or voted during such period, the same shall, on the application of the defendant, by an *ex parte* motion to the Supreme Court, or a Judge thereof in open Court, or by summons to a Judge of the said Court at Chambers, be ordered to be discontinued without costs.

General issue may be pleaded and Act given in evidence. Defendant to have his costs as between attorney and client.

2. In any such action which has been commenced, or which may hereafter be commenced upon a plea of the general issue, the defendant may give this Act and the special matter in evidence; and if on the trial no cause of action shall be proved other than such as is hereinbefore mentioned, the plaintiff shall be non-suited, or a verdict shall be entered for the defendant, in either of which events the defendant shall be entitled to his costs as between attorney and client.

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

D. DALY, Governor.