



1855-6.

No. 31.

An Act to consolidate the several Ordinances relating to the Establishment of the Supreme Court of the Province of South Australia.

[Assented to, June 19, 1856.]

WHEREAS, by an Act or Ordinance, No. 5 of the seventh year of the reign of His late Majesty King William the Fourth, a Court of Judicature was established, called the Supreme Court of the Province of South Australia: And whereas two other Acts or Ordinances have since been passed, the one being No. 6 of the year of our Lord one thousand eight hundred and forty-four, and the other being No. 12 of the year of our Lord one thousand eight hundred and forty-nine, to amend the aforesaid Act or Ordinance: And whereas an Act or Ordinance, being No. 5 in the year one thousand eight hundred and forty-eight, was passed to make the validity of the General Rules and Orders of the Supreme Court of South Australia then already made, or thereafter to be made, dependant upon the ratification of them by some subsequent Ordinance of the Governor and Legislative Council of South Australia, and a certain other Act or Ordinance being No. 10 in the year one thousand eight hundred and forty-nine, was passed to extend the time for the confirmation of the General Rules and Orders of the Supreme Court, and a certain other Act or Ordinance, being No. 2 of the year one thousand eight hundred and fifty, was passed for the confirmation of the General Rules and Orders of the Supreme Court of South Australia, and to amend the laws relating to such General Rules and Orders; and it is deemed expedient to consolidate and amend the provisions of the aforesaid Acts or Ordinances—Be it therefore Enacted as is hereinafter set forth, that is to say—That the said Supreme Court, so established as aforesaid, shall continue, and shall be holden by or before one or more Judge or Judges appointed,

*Confidential & the  
altered by the  
House  
28. May 1857  
What else?*

*1st of the Council  
18 June*

Preamble.

Recital, 7 Wm. 4. No. 5.

1844, No. 6.

1849, No. 12.

1848, No. 5.

1849, No. 10.

1850, No. 2.

Supreme Court to be held before one or more Judge or Judges.

*By whom?!!*

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*as this does not in the face of it appear to mean simply in proper form  
that it is enacted "by the Governor with the advice and consent of the  
Legislative Council" how can it be said to be an Act of the  
House? It has no legal effect? By what authority is it passed?  
How can it be altered?*

or hereafter to be appointed, by the Governor, with the advice and consent of the Executive Council, one of whom shall have the title of Chief Justice, the present Judges being Charles Cooper, Esquire, and Benjamin Boothby, Esquire; and that the said Charles Cooper shall be the first Chief Justice; and that all the power, jurisdiction, and authority, which by this Act is given to the said Court, shall and may be exercised by the sole Judge if there be only one, or by the several Judges acting together if there shall be more than one, or by any one of such Judges, according to such rules of proceeding as may have been made, or may hereafter be made, by the Judges in pursuance of the powers given to them by this Act.

As to the appointment and number of officers.

2. That such Court shall have such ministerial and other officers as shall be necessary for the administration of Justice therein, and for the due execution of the judgments, decrees, orders, and processes thereof; and that all persons who shall and may be appointed to the several offices of Master, Registrar, Prothonotary, or Keeper of Records of the said Court, or to any offices therein whereof the duties shall correspond to those now performed by the Master, Registrar, Prothonotary, or Keeper of Records of any or either of Her Majesty's Courts of Record at Westminster, shall be so appointed by the Governor, with such advice and consent as aforesaid; and that all persons who shall or may be appointed to any other office within the said Supreme Court, shall be so appointed by the Chief or First Judge of the said Court for the time being if more than one, or by the Judge of the Court if there shall be only one Judge: and that the several officers so to be appointed by the Governor, with such advice and consent as aforesaid, shall hold their respective offices during the pleasure of the Governor, with such advice and consent as aforesaid; and that the several officers so to be appointed by the Chief or First Judge, or by the Judge, as the case may be, shall be subject to be removed by the said Court from their respective offices upon reasonable cause.

No new office to be created without the consent of the Governor in writing.

3. That no new office shall be created in the said Supreme Court, unless the Governor of the Province, shall first signify his approbation thereof, in writing, under his hand, to the Judge, if only one, or to the Chief or First Judge of the said Court for the time being, if there shall be more than one Judge.

Salaries of Judges, &c., to be in lieu of fees.

4. That the salaries of the Judges, and of the ministerial and other officers of the Court, shall be in lieu of all fees or other emoluments whatsoever, it being the intent of this Act that the Judges of the Supreme Court, and the ministerial and other officers appointed by virtue of the same, shall derive no emolument from any fees which may be made payable under the authority of this Act; but that such fees shall, and they are hereby directed to be accounted for to the Treasurer of this Province, for the general purposes thereof.

As to removal of Judges, and appointments, *pro tempore*.

5. That,



other persons who shall die and leave personal effects within this Province or its dependencies, and to commit letters of administration under the seal of the said Court, of the goods, chattels, credits, and all other effects whatsoever of the persons aforesaid who shall die intestate or who shall not have named an executor resident within the said Province or its dependencies, or where the executor, being duly cited, shall not appear and sue forth such probate, annexing the will to the said letters of administration when such person shall have left a will without naming any executor, or any person for executor who shall then be alive and resident within the said Province and its dependencies, and who being duly cited thereunto will appear and sue forth a probate thereof and to sequester the goods and chattels, credits, and other effects whatsoever of such persons so dying in cases allowed by law, as the same is and may be now used in the Diocese of London, and to demand, require, take, hear, examine, and allow, and, if occasion require, to disallow and reject the accounts of them in such manner and form as is now used or may be used in the said Diocese of London, and to do all other things whatsoever needful or necessary in that behalf: Provided always, and the said Court is hereby authorized in such cases as aforesaid, where letters of administration shall be committed with the will annexed for want of an executor applying in due time to sue forth the probate, to reserve in such letters of administration full power and authority to revoke the same and to grant probate of the said will to such executor whenever he shall duly appear and sue forth the same.

Letters of administration to be granted to next of kin, or to officer of Court, or creditor in certain cases.

10. That such letters of administration shall be granted to any one or more of the lawful next of kin of such persons so dying as aforesaid, and being then resident within the jurisdiction of the said Court, and being of the age of twenty-one years, and in case no such person shall then be residing within the jurisdiction of the said Court, or being duly cited shall not appear and pray the same, then that the same shall be granted to the Registrar, or Clerk, or some other ministerial officer of the said Court, or to such other person or persons, whether creditor or creditors or not of the deceased person, as the Court shall see fit: Provided always, that probate of wills and letters of administration to be granted by the said Court shall be limited to such money, goods, chattels, and effects as the deceased person shall be entitled to within this Province and its dependencies.

Administrator to give security.

11. That every person to whom such letters of administration shall be committed shall, by himself with one or more sufficient and able sureties, before the granting thereof, give and enter into a sufficient security by bond to the Curator of Intestate Estates for the time being, for the payment of a competent sum of money, respect being had in the sum therein to be contained and in the ability of the sureties to the value of the estate, and that such bond shall be deposited in the said Court among the records thereof, and there  
safely

safely kept; and that a copy thereof shall also be recorded among the proceedings of the said Court; and that the condition of the said bond shall be for the making and exhibiting by the administrator to the Supreme Court of a just and true account of the goods, chattels, credits, and effects of the deceased, within six calendar months after the granting of such letters of administration, and for the making and exhibiting by the administrator to the Supreme Court of a just and true account of his administration of such goods, chattels, credits, and effects within twelve calendar months after the granting of such letters of administration; and for the due administration of such goods, chattels, credits, and effects, and in case it shall be necessary to put the said bond in suit for the sake of obtaining the effect thereof for the benefit of any person who shall appear to the Court to be interested therein, such person from time to time giving security to the satisfaction of a Judge of the Supreme Court for paying all such moneys and costs as shall arise from the said suit or any part thereof, such person or persons shall by order of the said Court be allowed to sue the same in the name of the Curator of Intestate Estates for the time being, and the said Court is hereby empowered to order that the said bond shall be put in suit in the name of the said Curator accordingly.

12. That every person to whom letters of administration shall be granted, shall make and exhibit such accounts, as aforesaid, to the Supreme Court, or to a Judge, or the Master thereof, within the respective times mentioned in bond for that purpose, and shall verify such accounts by his declaration, in writing, made in the presence of the Court, or a Judge, or Master thereof, that the account exhibited by him is, to the best of his knowledge and belief, a true and just account of the chattels, credits, and effects of the deceased, or of his the administrator's administration thereof, as the case may be, which declaration the said Court, or a Judge, or a Master thereof is hereby empowered to administer. And in case any such administrator shall neglect to make and exhibit to the Supreme Court either of such accounts, verified as aforesaid, for the space of one calendar month after the time appointed by his bond for that purpose, it shall be the duty of the Curator of Intestate Estates to cause such administrator to be summoned by a Judge of the Court to show cause before him why he should not be ordered to exhibit such account to the Court forthwith; and in case such administrator, being duly served with such summons, shall not attend before the Judge at the time and place mentioned therein, or shall not show any reasonable cause to the contrary, it shall be lawful for the Judge to order the administrator to exhibit such account, verified as aforesaid, either forthwith or within such further time as the Judge shall think fit to allow; and if such administrator shall not within the prescribed time or within such further time as shall be allowed him by a Judge, make and exhibit such account in manner aforesaid, it shall be lawful for any Judge of the Court to impose such fine upon the administrator making such default, not exceeding One Hundred Pounds, as the Judge shall see fit, and so

Regulating accounts.

Proviso.

from time to time as often as default shall be made; and every such fine shall be levied by writ, directed to the Sheriff, in the same manner and applied to the same purposes as fines imposed by the Supreme Court for contempt are now levied and applied: Provided, that it shall not be the duty of the Court, or Judge, or of the Curator of Intestate Estates, to investigate the truth or correctness of any such accounts, nor further to interfere with the administration of the estate than the compelling such account to be rendered in any case where there shall be any lawful next of kin of the deceased of full age and capacity resident within the jurisdiction of the Supreme Court: Provided also, that nothing herein contained shall prevent the Curator from taking proceedings on such bond as aforesaid, at the request of any person interested, and on security being given in the manner provided by the said in part recited Act.

Proviso.

As to the accounts of executors and administrators.

13. That all persons to whom probate of wills and letters of administration shall be granted by the said Court shall from time to time, until the effects of the deceased person shall be fully administered, make and exhibit and pass their accounts relating thereto before the said Court, within such times after granting probate of administration as are before mentioned for making and exhibiting and passing accounts after the proof of administration; and in case the effects of the deceased shall not be fully administered within the respective times aforesaid, then, or at any earlier time, if the said Court shall see fit so to direct, the person or persons to whom such probate or administration shall be granted shall pay deposit, and dispose of the balance of money belonging to the estate of the deceased then in his, her, or their hands, and also all other bonds, bills, securities, chattels, and effects belonging to the estate of the deceased, in such manner and unto such persons as the said Court shall direct for safe custody; and the said Court shall from time to time make such order as shall be just for the due administration of such assets, and for the payment and remittance thereof, or any part thereof, as occasion shall require, to or for the use of any person or persons, whether resident or not resident in this Province and its dependencies, who may be entitled thereto, or any part thereof, as creditors, legatees, or next of kin, or by any other right or title whatsoever.

Commission may be allowed to executors or administrators.

14. That it shall be lawful for the said several Judges of the said Supreme Court to allow to any executor or administrator of the effects of any deceased person (except as herein mentioned) such commission or per centage out of their assets as shall be just and reasonable for their pains and trouble therein: Provided always, that no allowance whatever shall be made for the pains and trouble of any executor or administrator who shall neglect to pass his accounts at such time, or to dispose of any money, goods, chattels, or securities with which he shall be chargeable, in such manner as in pursuance of any general or special rule or order of the said Court shall be requisite; and, moreover, every such executor or administrator so neglecting to pass his accounts, or to dispose of any such



*Com. of Leg. mentioned in Sec. 46 of No. 21 of 1864  
 to be kept in mind see Sec. 6. under No. 21 of 1864  
 Demand of Jury 8*

such money, goods, chattels, or securities with which he shall be chargeable, shall be charged with interest at the rate then current within this Province and its dependencies for such sum and sums of money as from time to time shall have been in his hands, whether he shall or shall not make interest thereof.

15. That the said Supreme Court, or any Judge thereof, shall have power to appoint guardians and keepers of infants and their estates, according to the order and course observed in that part of the United Kingdom called England, and also guardians and keepers of the persons and estates of natural fools, and of such as are or shall be deprived of their understanding or reason by the act of God, so as to be unable to govern themselves and their estates, which the said Court is hereby authorized and empowered to inquire, hear, and determine by inspection of the person, or such other ways and means by which the truth may be best discovered and known.

Power of Court as to infants, idiots, and lunatics.

*Costed in fine  
 CR 220 B.D.  
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16. That it shall be lawful for the Judges of the said Supreme Court to make and practise such General Rules and Orders touching and concerning the time and practice of holding the said Courts, the forms and manner of proceedings, and the practice and pleading upon all indictments, informations, actions, suits, and other matters to be brought therein, the appointment of Commissioners to examine witnesses, the taking the examination of witnesses, *de bene esse*, and allowing the same as evidence, the granting of probates of wills and letters of administration, the proceedings of the Sheriff, and other ministerial officers, the process of the foreign attachment, and all other the process of the said Court, and the mode of executing the same, the admissions of attorneys, solicitors, and barristers, the fees, poundage, or perquisites to be taken by any officer, attorney, or solicitor in the said Court, and all other matters and things for the conduct of business in the said Court, as the circumstances of the Province may require: Provided that all such General Rules and Orders as shall hereafter be made by the said Supreme Court shall be reduced into writing, and shall have affixed thereto the seal of the said Court, and shall forthwith be transmitted under the hand of the Judge or Judges making the same to the Governor, to be by him laid before the Legislative Council as soon as practicable after the next assembling thereof; and all such General Rules and Orders shall be by order of the said Judge or Judges published in the *South Australian Government Gazette* for public information; and, unless the same shall be disallowed in manner after mentioned, shall commence and take effect from and after a day to be therein named, not being less than forty from and after such publication.

Power of Court to make General Rules, &c.

*of frame*  
*See Rules  
 22<sup>d</sup> Dec. 1856  
 to take effect from  
 16<sup>th</sup> Feb. 1857  
 See 27<sup>th</sup> Nov. a  
 Bill of Legislature  
 would refer to  
 That Council was  
 separate Legislature  
 and to have  
 on the coming in  
 operation of the  
 24<sup>th</sup> Oct. 1856*

17. Provided always and be it Enacted, That it shall be lawful for the Governor, with the advice and consent of the Legislative Council, by any Ordinance to be passed at any time either before or after any such General Rule or Order shall have come into operation, to disallow the same in whole or in part, and in case the same shall

Proviso for disallowance by Governor and Legislative Council.

*✓*

shall be in force at the time of such disallowance to specify the time at which the same shall cease to be in force; and no such General Rule or Order which shall be so disallowed shall have any force or effect whatsoever, or if it shall be in force at the time of such disallowance, it shall cease to have any force or effect at the time so specified as aforesaid, save in so far as regards anything theretofore lawfully done in pursuance thereof.

Governor and Executive Council, except Attorney or Advocate-General and Crown Solicitor, to be a Court of Appeal.

18. That the Governor for the time being, and the Executive Council of the said Province (with the exception of the Attorney or Advocate-General and Crown Solicitor), shall constitute a Court to be called the Court of Appeals of the Province of South Australia, which Court shall have power and authority to receive and hear appeals from the judgments, decrees, orders, and sentences of the said Supreme Court, in whole or in part, in all cases where the sum or matter in issue shall amount to One Hundred Pounds, and shall or may affirm, alter, or reverse the said judgments, decrees, orders, or sentences, in whole or in part, or dismiss the said appeal with costs, as may be just: Provided also, that upon every appeal to be brought before the said Court of Appeals, from any Judgment of the Supreme Court, founded upon the verdict of a jury of twelve men, the said Court of Appeals shall not reverse, alter, or inquire into the said judgments, except only for error of law apparent on the record.

*\* Suppose the sum is  
greater than 100  
amount to more  
than 100 - does this  
still apply - ?*

Power of appealing to Her Majesty in Her Privy Council.

19. That any person may appeal to Her Majesty, Her heirs and successors, in Her or their Privy Council, in such manner, within such time, and under and subject to such rules, regulations, and limitations as are hereinafter mentioned, that is to say—in case any such judgment, decree, order, or sentence, shall be given or pronounced for, or in respect of any sum or matter at issue above the amount or value of Five Hundred Pounds sterling; or in case such judgment, decree, order, or sentence, shall involve, directly or indirectly, any claim, demand, or question, to or respecting property, or any civil right amounting to or of the value of Five Hundred Pounds sterling; or in case the said Court of Appeals should, by any such judgment, decree, order, or sentence reverse, alter, or vary any judgment, decree, order, or sentence of the said Supreme Court, the person or persons feeling aggrieved by any such judgment, decree, order, or sentence of the said Court of Appeal may, within fourteen days next after the same shall have been pronounced, made, or given, apply to the said Court of Appeals, by petition, for leave to appeal therefrom to Her Majesty, Her heirs and successors, in Her or their Privy Council; and in case such leave to appeal shall be prayed by the party who is or are directed to pay any sum of money, or to perform any duty, the said Court of Appeals shall, and is hereby empowered, either to direct that the judgment, decree, order, or sentence appealed from shall be carried into execution, or that the execution thereof shall be suspended pending the said appeal, as to the said Court may appear to be most consistent with real and substantial justice; and in case the said Court of Appeals shall direct such judgment, decree, order, or sentence, to be carried into



into execution, the person or persons in whose favor the same shall be given shall, before the execution thereof, enter into good and sufficient security, to be approved by the said Court of Appeals, for the due performance of such judgment or order as Her Majesty, Her heirs and successors, shall think fit to make thereupon; or, in case the said Court of Appeals shall direct the execution of any such judgment, decree, order, or sentence, to be suspended pending the appeal, the person against whom the same shall have been given, shall, in like manner, and before any order for the suspension of any such execution is made, enter into good and sufficient security, to the satisfaction of the said Court of Appeals, for the due performance of such judgment or order as Her Majesty, Her heirs or successors, shall think fit to make thereupon; and in all cases security shall also be given by the party or parties appellant, to the satisfaction of the said Court of Appeals, for the prosecution of the appeals, and for the payment of all such costs as may be awarded by Her Majesty, Her heirs and successors, to the party or parties respondent; and if such last-mentioned security shall be entered into within three months from the date of such petition for leave to appeal, then, and not otherwise, the said Court of Appeals shall allow the appeal, and the party or parties appellant shall be at liberty to prefer and prosecute his appeal to Her Majesty, Her heirs and successors, in Her or their Privy Council, in such manner and under such rules as are observed in appeals made to Her Majesty from Her Majesty's other Plantations or Colonies; and in particular, that in all cases of appeal allowed by the said Court of Appeals, the said Court of Appeals shall certify and transmit to Her Majesty, Her heirs or successors, in Her or their Privy Council, a true and exact copy of all evidence, proceedings, judgments, decrees, and orders, had or made in such causes appealed from, so far as the same have relation to the matter of appeal, such copies to be certified under the seal of the said Court.

20. And be it Enacted, That from and after the coming of this Act into operation the hereinbefore-recited Acts or Ordinances shall be repealed: Provided that all things lawfully done by the said Supreme Court or the Judges thereof, or either of them, or by any of the ministers or officers of the said Court, before the passing of this Act, shall be and continue to be of the like force and effect as if this Act had not been passed; and that all actions and suits, and other proceedings which have been lawfully commenced before the passing hereof, may be hereafter continued, and carried on, and concluded, in like manner as if the same had been commenced after the passing hereof.

21. And be it Enacted, That this Act shall begin and take effect on the first day of July next.

( 1856 )

*\* 1 July 1856 -*  
 Repeal of former Acts, saving of all things lawfully done thereunder.

*colomb @ 1st April 1856.  
 first day of session  
 or 19 June 1856 day  
 in which Govt. assembly  
 was given 5 or 6th  
 July 1856 when the  
 act is to begin to take  
 effect. ?*

Time of commencement of Act.