



To apply to be printed
from and after
17. 1. 88.
See Gov Gazette
12. 1. 88 p. 55

ANNO QUINQUAGESIMO ET QUINQUAGESIMO
PRIMO

VICTORIÆ REGINÆ.

A.D. 1887.

No. 407.

An Act to facilitate the Recovery of Judgments against Debtors who have removed into other Colonies, and the Enforcement of Judgments obtained in other Colonies.

[Assented to, December 9th, 1887.]

BE it Enacted by the Governor 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. This Act may be cited for all purposes as the "Intercolonial Debts Act, 1887." Short title.

2. This Act shall come into operation on a day to be fixed by the Governor by Proclamation, to be published in the *Government Gazette*. Date of commencement of Act.

3. The "Local Courts Act, 1886," so far as the provisions thereof are applicable to and not inconsistent with the provisions of this Act, is incorporated, and shall be read with this Act. Incorporation of Local Courts Act, 1886.

4. Any summons lawfully issued in any Local Court in the Province of South Australia may be served out of the jurisdiction of such Local Court, and it shall not be necessary to obtain any order or permission for such service out of the jurisdiction of any Local Court in the said province: Provided that, where the defendant in any such summons is resident out of such jurisdiction, the plaintiff, or some person on his behalf, shall, at the time of issuing such summons, file an affidavit, stating that the defendant is resident out Summons may be served out of jurisdiction.

Intercolonial Debts Act.—1887.

out of the jurisdiction, and that the plaintiff has a good cause of action, which arose within the jurisdiction, and the amount and cause thereof, and stating the defendant's residence, and the number of miles (approximately) from the Court in which such summons is issued to where the defendant dwells at the time of action brought, and which affidavit may be in the form contained in Schedule A hereto, or as near thereto as circumstances will permit.

Service of summons
and proof.

5. Every such summons shall be served personally, but if it is made to appear to the Court in which such summons was issued that reasonable efforts were made to effect personal service thereof on the defendant, and that it came to his knowledge, and that the defendant wilfully neglects to appear, the summons of such Court may, on the application of the plaintiff, by order, direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such Court may seem fit, and thereupon, the plaintiff may proceed in the action against such defendant accordingly, but any such order may, nevertheless, be rescinded or set aside or amended on the application of the defendant: Provided that proof of service of any summons served under the provisions of this Act shall be made by affidavit before any Justice of the Peace of the colony in which such service was effected, or before a Commissioner, resident in such colony, for taking Affidavits in the Supreme Court of South Australia.

Time for appearance.

6. The period to be allowed to a defendant to appear to a summons shall be as follows:—Where the defendant resides within twenty miles of the office of the Court from which such summons is issued, a period of six days; and where he resides beyond twenty and within fifty miles of such office, a period of eight days; and where he resides beyond fifty miles from such office, the time to be allowed for such appearance shall be regulated by the Court, regard being had to the distance of the place of residence of the defendant from such office: Provided that a defendant may appear at any time before judgment is signed.

On affidavit of judgment certificate of judgment to be issued.

7. Any person who shall obtain a judgment in any action in any Local Court in the Province of South Australia may, upon filing with the Clerk of the Court in which such judgment was obtained an affidavit by himself, or some person on his behalf cognizant of the facts, and setting forth that there is a judgment in such Court with or without interest, and stating the amount thereof, and that the period for appealing has expired, and that no such appeal is pending, or that judgment signed in such Local Court was signed with the consent in writing of the defendant (which consent shall be filed with the Clerk of such Court), or was signed in default of appearance, and that such judgment is still in full force and remains unpaid and unsatisfied, or if partly paid or satisfied, then stating the amount so paid, and stating the balance then remaining due and unsatisfied, and that the party against whom such judgment was recovered is resident out of the jurisdiction, and

Intercolonial Debts Act.—1887.

and which affidavit may be in the form contained in Schedule B hereto, or as near thereto as circumstances will permit, and by delivering to the said Clerk a notice in the form contained in Schedule C hereto, or to the like effect, require the Clerk of such Court to give a certificate of such judgment, and on the filing of such affidavit and the receipt of such notice, the Clerk of such Court shall give a certificate, under his hand and the seal of such Court, that there is such judgment as aforesaid, and stating the amount thereof, and that the same is still in force, which certificate may be in the form contained in Schedule D hereto, or as near thereto as circumstances will permit, and which certificate shall be addressed to the Clerk of such Local Court of such colony as the party so requiring the same may direct, and shall be forwarded by the Clerk of the Court giving the same through the post, in a registered letter addressed to the Clerk of such Local Court, to whom the same is addressed.

8. The Clerk of any Local Court in the said Province of South Australia in which a judgment has been obtained, and of which judgment a certificate thereof has been given, as set forth in the preceding clause of this Act, on receipt of a certificate in the form contained in the Schedule E hereto, or to the like effect, under the hand of the Clerk of any Local Court to which a certificate has been forwarded pursuant to the preceding section, and the seal of such Court, stating that such judgment has been satisfied, either wholly or in part, shall thereupon enter up satisfaction in the record-book of the Local Court in which such judgment was first obtained to the amount mentioned in such last-mentioned certificate. Entry of satisfaction.

9. The Clerk of any Local Court in the Province of South Australia, on receipt through the general post of a registered letter containing a certificate addressed to him as such Clerk as aforesaid, under the hand of the Clerk of any Local Court in any colony, and the seal of such Court, that there is a judgment of or in such Local Court against any person resident in the Province of South Australia, and stating the amount thereof, and that the same is still in full force, which certificate may be in the form contained in the Schedule F hereto, or to the like effect, shall thereupon enter up such judgment as a judgment in such Local Court to the Clerk whereof such certificate is addressed, in favor of the person named in such certificate as the party by whom such judgment was recovered, and against the person named in such certificate as the person against whom such judgment was recovered, for the amount set forth in such last-mentioned certificate, or if such amount shall be in excess of the amount for which such Court in South Australia shall have jurisdiction, then for the amount for which such Court in South Australia shall have jurisdiction; and the same shall thereupon be a judgment of the said last-mentioned Court, and shall have the same force and effect as if such judgment had been obtained in the said last-mentioned Court, and the like proceedings may be had and taken upon and under the same accordingly, except for the Judgment in County Court of other colony to be entered up in Local Courts.
purpose

Intercolonial Debts Act.—1887.

purpose of appeal: Provided that the Clerk of such Local Court shall, on the receipt of such last-mentioned certificate, forthwith send by post a notice addressed to the defendant at his address as specified in the certificate of judgment, and such notice shall be in the form in the Schedule G hereto: Provided also that the Supreme Court, or a Judge thereof, may, on the application of any person against whom judgment has been so entered up, either set aside such judgment or direct a stay of execution or of proceedings on such judgment: And such setting aside of such judgment or stay of execution or of proceedings may be ordered by such Court or Judge upon such terms as to giving security and payment of costs, or as to making application to the Local Court in which the judgment was originally made to set aside the same, or otherwise as to the said Supreme Court or Judge may seem fit.

Certificate of satisfaction.

10. On the satisfaction, either wholly or in part, of any judgment entered as mentioned in the last preceding section, the Clerk of the Court in which such judgment has been satisfied, either wholly or in part, shall forthwith give notice of such satisfaction, or part satisfaction, as the case may be, to the Clerk of the Court in which such judgment was originally obtained, and from whom he received the certificate thereof, as mentioned in the preceding section of this Act, which notice may be in the form in the Schedule H hereto, or to the like effect: And all moneys received or paid into Court in satisfaction of such judgment shall be remitted to the Clerk of the Local Court in which such judgment was originally obtained.

Penalty for debtor absconding or attempting to abscond.

11. Any debtor whosoever who shall quit the said province, or make preparations for quitting the said province, with intent—

(1) To defraud any creditor to whom, either alone or jointly with any other creditor or creditors, such debtor shall be indebted to the amount of Ten Pounds or upwards, whether on an unsatisfied judgment of a Local Court or otherwise; or,

(2) To defraud any creditor who, alone or jointly with any other creditor or creditors, shall have sustained damage to the extent of Twenty Pounds or upwards through breach of contract or through any tort on the part of such debtor;

shall be guilty of a misdemeanor punishable by imprisonment, with or without hard labor, for a term not exceeding two years.

Forms of affidavit, certificate, or judgment may be altered.

12. The form or contents of any affidavit, certificate, or judgment, provided for by this Act, may be altered in any manner to give effect to the provisions of any Act of any colony. And it shall be sufficient for all purposes if such form, certificate, or document, complies with the provisions of the Act of any colony affecting the same.

13. In

Intercolonial Debts Act.—1887.

13. In this Act, unless inconsistent with the subject-matter or context, the following words shall have the meanings hereinafter respectively assigned to them, that is to say— Interpretation.

“Clerk” shall mean Clerk, Registrar, or other proper officer of the Court in connection with which the term is used:

“Local Court” shall include County Court, and every Court having any limited jurisdiction for the recovery of debt:

“Colony” shall mean any colony on the mainland of Australia or islands of Tasmania and New Zealand, to which the Governor may, by Proclamation published in the *Government Gazette*, from time to time declare that the provisions of this Act shall apply.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WM. C. F. ROBINSON, Governor.

SCHEDULES.

A.

SOUTH AUSTRALIA.

In the Local Court of

Between A. B., of [address], in the Province of South Australia [occupation],
plaintiff, and C. D., of [address], in the colony of [occupation],
defendant.I, A. B., of [address], in the Province of South Australia [occupation], make
oath and say as follows:—That the said C. D. is resident out of the jurisdiction of this Court, being a resident
at _____, in the colony of _____:That I have a good cause of action which arose within this jurisdiction against
the said C. D., for the sum of £ _____, for [here state shortly cause of action], and
that _____, in the said colony of _____, where the said C. D. resides, is
distant about _____ miles from this Court.Sworn at _____, in the Province of _____ (Signed) A. B.
of _____, 18 _____, before me, _____ South Australia, this _____ day
C. D.,a Commissioner for taking Affidavits in the Supreme
Court of South Australia (or Justice of the Peace
for the Province of South Australia).

B.

SOUTH AUSTRALIA.

In the Local Court of _____, No. _____ of 18 _____.

Between A. B., plaintiff, and C. D., defendant.

I, A. B., of [address], in the Province of South Australia [occupation], make oath
and say as follows:—That on the _____ day of _____, 18 _____, judgment in the Local Court
of _____, in a certain cause (No. _____ of 18 _____) wherein I am plaintiff, and
C. D. is defendant, was recovered on my behalf, for the sum of £ _____, and
that the period for appealing against such judgment has expired, and that no such
appeal is pending (or that such judgment was signed with the written consent
of the defendant, which consent has been duly filed in the said Court, or that such
judgment was signed in default of appearance, and that such judgment is still in
force and unsatisfied, or that such judgment is still in force and unsatisfied to
the extent of the sum of £ _____), and that the said C. D. is resident at [address],
in the colony of _____.Sworn at _____, in the Province of South Australia, (Signed) A.B.
of _____, 18 _____, before me, _____ this _____ day
C. D.,a Commissioner for taking Affidavits in the Supreme
Court of South Australia (or Justice of the Peace
for the Province of South Australia).

C.

Intercolonial Debts Act.—1887.

C.

SOUTH AUSTRALIA.

In the Local Court of _____, No. _____ of 18 ____.

Between A. B., plaintiff, and C. D., defendant.

I, _____, of [address], the above-named plaintiff, do hereby require you to give a certificate of judgment in the above action, and to forward the same to the Registrar or Clerk of the County Court at _____, in the colony of _____.

(Signed) A. B.

To the Registrar or Clerk of the Local Court of _____ in the Province of South Australia.

D.

Certificate of Judgment.

SOUTH AUSTRALIA.

In the Local Court of _____ No. _____ of 18 ____.

Between A. B., plaintiff, and C. D., defendant.

I, W. J., the Clerk of the Local Court of _____, in the Province of South Australia, and the person having the lawful custody of all records, books, process, and other proceedings, and of the seal of the said Court, do hereby certify that A. B., of [address], did, in the said Local Court of _____, on the _____ day of _____, 18 ____, recover judgment against the said C. D., now of _____, in the colony of _____ out of the jurisdiction, for the sum of £ _____, including costs of suit, and that the said judgment is still unsatisfied, and in full force (*or* is still unsatisfied to the extent of £ _____).

Given under my hand and the seal of the Local Court of _____, this _____ day of _____, 18 ____.

(L.s.) W. J., Clerk of the said Local Court of _____.

To the Registrar or Clerk of the County Court of _____, in the colony of _____.

E.

I, E. F., the Registrar or Clerk of the County Court of _____, in the colony of _____, and the person having the lawful custody of all records, books, process, and other proceedings, and of the seal of the said Court, do hereby certify that the judgment mentioned in the certificate of judgment, dated the _____ day of _____, 18 ____, of W. J., the Clerk of the Local Court of _____, in the Province of South Australia, and the seal of the said Court, in a certain action in the said Local Court of _____, in the Province of South Australia, wherein A. B. is plaintiff and C. D. is defendant, has been wholly paid and satisfied (*or* has been satisfied to the extent of the sum of £ _____).

Given under my hand and the seal of the County Court of _____, in the colony of _____, this _____ day of _____, 18 ____.

(L.s.) E. F., Registrar or Clerk of the said County Court of _____.

To the Clerk of the Local Court of _____, in the Province of South Australia.

F.

Certificate of Judgment.

In the County Court of _____, No. _____ of 18 ____.

Between A. B., plaintiff, and C. D., defendant.

I, E. F., the Registrar or Clerk of the County Court of _____, in the colony of _____, and the person having the lawful custody of all records, books, process, and other proceedings

Intercolonial Debts Act.—1887.

proceedings, and the seal of the said Court, do hereby certify that A. B., of [address], did, in the said County Court of _____, on the _____ day of _____ 18____, in an action for [here state shortly cause of action] recover judgment against the said C.D., of _____, in the Province of South Australia, for the sum of £ _____, including costs of suit, and that the said judgment is still unsatisfied and in full force (or is still unsatisfied to the extent of £ _____).

Given under my hand and the seal of the County Court of _____, this _____ day of _____, 18____.
(L.S.) E. F., Registrar or Clerk of the County Court of _____.

To the Clerk of the Local Court of _____, in the Province of South Australia.

G.

To C. D., of _____, I, E. F., the Clerk of the Local Court of _____, in the Province of South Australia, do hereby give you notice that a judgment has been obtained against you by A. B., of _____ in the colony (or province) of _____ for the sum of £ _____, for [here state shortly cause of action], and that if you have a good defence to the said action you can apply to the Supreme Court, or a Judge thereof, either to set aside the said judgment or stay further proceedings thereon.

Dated this _____ day of _____ 18____.
E. F., Clerk of Local Court of _____.

H.

I, W. J., the clerk of the Local Court of _____, in the Province of South Australia, and the person having the lawful custody of all records, books, process, and other proceedings, and of the seal of the said Court, do hereby certify that the judgment mentioned in the certificate of judgment dated the _____ day of _____ 18____, under the hand of E. F., the Registrar or Clerk of the County Court of _____ in the colony of _____, and the seal of the said Court in a certain action in the said County Court of _____ wherein A. B. is plaintiff and C. D. is defendant, has been wholly paid and satisfied (or has been satisfied to the extent of the sum of £ _____).

Given under my hand and the seal of the Local Court of _____ in the Province of South Australia, this _____ day of _____ 18____.
(L.S.) W. J., Clerk of the Local Court of _____.

To the Clerk of the County Court of _____, in the colony of _____.