



ANNO DECIMO QUINTO

VICTORIÆ REGINÆ.

No. 7.

An Act to amend an Ordinance for the Recovery of Small Debts, and Trial and Punishment of Minor Offences in South Australia.

[Assented to 3rd November, 1851.]

WHEREAS by an Ordinance, No. 5 of 1850, for the recovery of small debts and trial of punishment of minor offences, certain Courts were constituted, and certain powers were conferred upon Special Magistrates, to be appointed as therein provided: And it is expedient to amend such Ordinance, and to give to the said Courts and to such Special Magistrates the further powers herein contained: Preamble

Be it therefore Enacted by His Excellency the Lieutenant-Governor of South Australia, by and with the advice and consent of the Legislative Council thereof, that whenever it shall be made to appear to the satisfaction of any Special Magistrate, by the affidavit of any plaintiff that such plaintiff hath a good cause of action against any defendant for any sum within the jurisdiction of any Court constituted by the said recited Ordinance, No. 5, of 1850, and that there is probable cause for believing that such defendant is about to leave the colony before the sitting of the next Court of competent jurisdiction, it shall be lawful for such Special Magistrate to issue a warrant under his hand, returnable immediately, and thereupon to cause such defendant to be brought before him, and, upon investigation of the case, either to discharge such defendant, or to hold Power to Special Magistrates to hold defendant to bail.
him

Proviso. him to bail for any sum not exceeding the amount sworn to in such affidavit: Provided that it shall be lawful for any defendant, so held to bail for any amount, to deposit, in lieu of bail, such amount with three pounds for costs; and the sum so deposited shall be paid, applied, and disposed of according to the judgment of the Court in the action in which the deposit shall have been made:

Proviso. Provided always, that it shall be lawful for any Special Magistrate, before whom any defendant is brought, under authority of any warrant to be issued as aforesaid, with the consent in writing of the defendant, to hear and finally adjudicate upon the claim of the plaintiff in such proceeding: And provided also, that when any person, about to depart from the said Province, shall have given public notice, by not less than two advertisements on consecutive days of publication in each of two or more newspapers published in Adelaide, of the time and manner of such intended departure, then no such warrant shall be issued after the expiration of seven days from the publication of such notice, unless in respect of a debt accrued due within seven days prior to the issue of such warrant; and every affidavit to ground a warrant under the provisions of this Act shall state whether any such notice has been given, and the date of the publication of such notice; but this proviso shall not apply to cases where it shall be made to appear, to the satisfaction of any such Magistrate, that any defendant is about to depart from the said Province at an earlier period than that of which he shall have so given notice.

Special Magistrate may commit to prison in default of satisfaction or judgment.

2. And be it Enacted, That in any case in which any Special Magistrate shall hear and finally adjudicate upon the claim of any plaintiff, under the powers hereinbefore in that behalf given, and shall give judgment for the plaintiff, it shall be lawful for such Special Magistrate to make an order for the immediate payment of the amount of such judgment, and in default of such immediate payment to order that the defendant be committed to the Common Gaol, or a House of Correction, nearest to the Court of such Special Magistrate, or to any prison which shall be provided as the prison of such Court, for any period not exceeding forty days.

3. And be it Enacted, That if in any such proceeding judgment shall be given for the defendant, it shall be lawful for the Magistrate or Court, giving such judgment, at the discretion of such Magistrate or Court, to award to such defendant, by way of compensation, any sum not exceeding Twenty Pounds, and in default of payment of such sum, forthwith to order that the plaintiff in such proceeding be committed to the Common Gaol, or a House of Correction, nearest to the Court of such Special Magistrate, or to any prison which shall be provided as the prison of such Court, for any period not exceeding forty days.

Special Magistrate to allow costs.

4. And be it Enacted, That it shall be lawful for any Special Magistrate, or any Court constituted under the recited Ordinance to allow to any plaintiff, and to include in any judgment costs in respect

respect of any warrant to be granted as aforesaid, such costs not exceeding in the whole the sum of Forty Shillings, exclusive of mileage, and other necessary expenses

5. And be it Enacted, That any party who has obtained any unsatisfied judgment or order as referred to in the forty-second section of the recited Ordinance, may, at his discretion, obtain a summons, as in such forty-second section provided, from the Court, by which such judgment or order was given, or made, or from the Court having jurisdiction to the amount claimed nearest to which the other party shall dwell or carry on his business.

Amendment of section forty-two in recited Ordinance.

6. And be it Enacted, That when any cause shall be referred to arbitration by any Court constituted under the recited Ordinance any party to such cause may obtain summonses to witnesses to attend before the arbitrator or arbitrators to whom the same is referred, as in the recited Ordinance provided, with regard to a party to any proceeding thereunder, and any such witness may be sworn to give evidence before such arbitrator or arbitrators, in the matter of such reference, before any such Court, or before any Special Magistrate or Justice of the Peace; and all the provisions of the recited Ordinance with respect to the service of summonses, and the fines to be imposed upon witnesses served with a summons, shall apply to witnesses to be served with any summons hereby authorised to be issued.

Power to issue summonses to witnesses to attend before arbitrators.

7. And be it Enacted, That the several Courts constituted under the said Ordinance, No. 5 of 1850, shall have jurisdiction to hear and determine all assaults not being with intent to commit any felony.

Amendment of clause 62 of recited Ordinance.

8. And be it Enacted, That in any case where the Courts by the recited Ordinance constituted, have power to punish any misdemeanor by fine, it shall be lawful for such Court, in addition to such fine, to order the payment by the party convicted of the costs of and attending such conviction.

Court may order payment of costs of conviction.

9. And be it Enacted, That in any case of replevin, which by the recited Ordinance may be brought in any Court thereby established, the Clerk of any such Court nearest to the place where the distress shall have been made, shall have power to grant replevin of goods distrained, and shall, in every case of replevin granted before deliverance of the distress, take from the plaintiff, and two responsible sureties, a bond in double the value of the goods distrained, for prosecuting the suit with effect and without delay in such Court, and for duly returning the goods and chattels distrained in case a return shall be awarded; and such bond shall be in the form contained in Schedule A, hereto annexed, and may be assigned in such manner, and such remedy and relief had and given thereunder, as is directed by an Act of Parliament made and passed in the eleventh year of George the Second, intituled "An Act for the more effectual securing of Rents, and preventing fraud by Tenants."

Clerk of Court may grant replevin, and take bonds, &c.

10. And

10. And be it Enacted, That there shall be payable, in respect of any proceedings taken under the provisions of this Act, the fees set forth and specified in the Schedule B, hereunto annexed.

11. And be it Enacted, That this Act may be altered, amended, or repealed during the present Session of the Legislative Council.

JOHN MORPHETT, Speaker.

*Passed the Legislative Council this Thirty-
first day of October, One Thousand
Eight Hundred and Fifty-one.* }

F. C. SINGLETON,
Clerk of Council.

In the name and on the behalf of Her Majesty I assent to this Act.

H. E. F. YOUNG,
Lieutenant-Governor.

Government House, Adelaide,
3rd November, 1851.

SCHEDULES REFERRED TO.

A.

KNOW all men by these presents that we [*party and sureties*] are jointly and severally held to Clerk of the Local Court of _____ in the sum of £ of lawful money, to be paid to the said Clerk, or his lawful Attorney, Executors, Administrators, or Assigns; for which payment to be well and truly made, we bind ourselves, and each and every of us, and each and every of our Heirs, Executors, and Administrators.

The condition of this obligation is such, that if the above bounden [*party*] do, within one calendar month from the date hereof, cause to be entered a plaint in such Local Court for the taking and unjustly detaining of his goods and chattels, to wit [*set forth the goods, &c., distrained*]; and do prosecute the same with effect and without delay, and make a return of the said goods and chattels, if a return thereof shall be adjudged, then this present obligation shall be void and of none effect, or else shall be and remain in full force and virtue.

B.

	Less than £10.		Between £10 and £20.		Above £20.	
	<i>s.</i>	<i>d.</i>	<i>s.</i>	<i>d.</i>	<i>s.</i>	<i>d.</i>
For every Warrant of Arrest - - - -	1	0	2	0	3	0
For executing such Warrant in addition to mileage and actual expenses - - -	5	0	5	0	5	0
Bail-Bond or Replevin Bond - - - -	1	0	2	0	3	0
Warrant of Commitment - - - - -	1	0	2	0	3	0

Mileage on Commitment, 1s. per mile.