



ANNO SEPTIMO

GULIELMI IV. REGIS.

No. 5.

AN ACT for the Establishment of a Court to be called the Supreme Court of the Province of South Australia.

BE IT ENACTED by His Excellency JOHN HINDMARSH Knight of the Royal Hanoverian Guelphic Order Captain in the Royal Navy Governor and Commander-in-Chief of His Majesty's Province of South Australia and its Dependencies by and with the advice and consent of the Legislative Council thereof that there shall be and His Excellency the Governor by and with the like advice doth erect create constitute and establish a Court of Judicature to be called the Supreme Court of the Province of South Australia.

II. That such Court shall be holden before a Judge of the said Court to be called the Judge of the Supreme Court of the Province of South Australia (Sir John William Jeffcott Knight being appointed by His Majesty the Judge of the said Province for the purpose of holding and presiding in the said Court) and that from time to time hereafter upon death vacancy or resignation the Judge of the said Supreme Court shall be appointed by His Majesty His Heirs and Successors save as hereinafter mentioned and that such Court shall also have all such ministerial and other officers as shall be necessary for the administration of Justice in the said Court and for the due execution of the judgments decrees orders and processes thereof.

III. That the numbers names and duties of such ministerial and other officers shall from time to time be fixed and defined by the Judge of the Supreme Court with the consent of His Excellency the Governor of the Province for the time being by and with the advice of

of the Council thereof and that the appointment and removal of such officers in case of misconduct shall be vested in the Judge for the time being of the Supreme Court.

IV. That the Judge of the Supreme Court shall receive such reasonable salary as the Lords of His Majesty's Treasury for the time being shall from time to time order and direct and that the salaries of the ministerial and other officers aforesaid shall from time to time be fixed by the Judge of the Supreme Court with the consent of the Governor for the time being and the Council of the Province and that such salaries shall be in lieu of all fees or other emoluments whatsoever it being the intent of this Act that the Judge 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 and paid by the person receiving the same to the Treasurer of this Province for the general purposes thereof on or before the 31st day of March the 30th day of June the 30th day of September and the 31st day of December in every year.

V. That the Judge of the Supreme Court shall from time to time as occasion may require be removed by His Majesty His Heirs and Successors and by no other authority and that His Majesty His Heirs and Successors shall in that case appoint another fit and proper person in the place and stead of the Judge so removed: Provided that in case of the absence resignation or death of such Judge or of such disease or infirmity as shall render any such Judge incapable of discharging the duties of his office it shall be lawful for the Governor for the time being of the said Province by and with the advice of the Council of the said Province to appoint some fit and proper person to act in the stead of such Judge so being absent resigning dying or becoming incapable until such Judge shall return to the execution of his office or until a Successor shall be appointed by His Majesty as the case may require and in the meantime the person so appointed as last aforesaid shall be deemed and taken to be and shall be acting Judge of the said Supreme Court.

VI. That the said Supreme Court shall have and use a seal bearing a device or impression of the Royal Arms within an exergue or label surrounding the same with the following inscription: "Supreme Court South Australia" and that the said seal shall be kept in the custody of the Judge of the Supreme Court for the time being.

VII. That the said Court shall be a Court of Record and shall have cognizance of all pleas civil criminal and mixed and jurisdiction in all cases whatsoever as fully and amply in this Province and its Dependencies as His Majesty's Courts of King's Bench Common Pleas and Exchequer at Westminster or either of them lawfully have or hath in England: And the said Court shall also be at all times a Court of Oyer and Terminer and Gaol Delivery in and for the

the said Province and its Dependencies and the said Judge so appointed or hereafter to be appointed as aforesaid shall have and exercise such and the like jurisdiction and authority in this Province and its Dependencies as the Judges of the said Courts of King's Bench Common Pleas and Exchequer or any of them lawfully have and exercise and as shall be necessary for carrying into effect the several jurisdictions powers and authorities committed to the said Supreme Court.

VIII. That the said Supreme Court shall be a Court of Equity in this Province and its Dependencies and shall have power and authority to administer justice and to do exercise and perform all such acts matters and things necessary for the due execution of such equitable jurisdiction as the Lord High Chancellor of Great Britain can or lawfully may within the Realm of England and all such acts matters and things as lawfully can or may be done by the said Lord High Chancellor within the Realm of England in the exercise of the jurisdiction to him belonging.

IX. That the said Supreme Court shall be a Court of Ecclesiastical Jurisdiction with full power to grant probates under the seal of the said Court of the last wills and testaments of all or any of the inhabitants of this Province and its Dependencies and of all 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.

X. 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

said 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 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.

XI. 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 sufficient security by bond to such ministerial officer of the Supreme Court as the Judge of the said Court shall for that purpose appoint 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 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 a true and just account and administration of the chattels and credits of the deceased to the satisfaction of the said Court and according to the directions thereof and that the form of the condition of the said bond shall be fixed by the Master or Registrar of the said Court or such other ministerial officer of the said Court as the Judge of the Supreme Court shall for that purpose appoint and that 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 such person or persons as shall appear to the said Court to be interested therein such person or persons from time to time giving security to the satisfaction of the said 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 party to whom the said bond shall have been entered into and the said Court is hereby empowered to order that the said bond shall be put in suit in the name of the said party accordingly.

XII. That the said Court shall affix certain periods when 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 pass the accounts relating thereto before the said Court and in case the effects of the deceased shall not be fully administered within the time for that purpose to be fixed by the said Court 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

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 or 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.

XIII. That it shall be lawful for the said Judge 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 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.

XIV. That the said Supreme Court 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.

XV. That it shall be lawful for the Judge of the said Supreme Court to make and prescribe such 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 examinations of witnesses *de bene esse* and altering 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 foreign attachment and all other the process of the said Court and the mode of executing the same
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the admission 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 such rules and orders shall be subject to be disallowed by His Majesty and upon such disallowance being signified through the Governor such rules and orders shall become void and of no effect.

XVI. That the Governor for the time being and the Council of the said Province (with the exception of the 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 judgment 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 upon the record.

XVII. That any person may appeal to His Majesty His Heirs and Successors in his 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 His Majesty His Heirs and Successors in his 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

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carried 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 His Majesty His 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 His Majesty His 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 His Majesty His 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 His Majesty His Heirs and Successors in his or their Privy Council in such manner and under such rules as are observed in appeals made to His Majesty from His 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 His Majesty His Heirs or Successors in his 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.

31st May, 1837,
Passed in Council,

GEO. STEVENSON,
Clerk of the Council.

By His Excellency's command,
ROBERT GOUGER,
Colonial Secretary.