



ANNO TERTIO

VICTORIÆ REGINÆ.

No. 10.

*AN ACT for declaring the Law in certain cases and for amending an Act of Council passed in the first year of Her present Majesty's reign intituled "An Act for regulating the constitution of Juries" and for preventing the failure of Justice in cases of summary proceedings before Justices of the Peace.*

**WHEREAS** doubts have been expressed as to what laws and statutes of England are legally in force within this Province: And whereas it is therefore expedient to declare when and how far the same shall be deemed to be the laws of this Province--

**I. BE IT THEREFORE ENACTED** by His Excellency Lieutenant-Colonel GEORGE GAWLER Knight of the Royal Hanoverian Guelphic Order Governor and Commander-in-Chief of Her Majesty's Province of South Australia by and with the advice and consent of the Legislative Council thereof as follows that is to say that all the laws and statutes which were in force in England on the twenty-eighth day of December one thousand eight hundred and thirty-six so far as the same are applicable to the circumstances of this Province and so far as they are not inconsistent with the Acts of the Imperial Parliament 4th and 5th William IV. c. 95 and 1st and 2nd Victoria c. 60 or with any order or orders in Council made in pursuance thereof or with any enactment made by the Legislative Council of this Province shall be and be deemed to be part of the laws of this Province.

What Laws and Statutes of England shall be in force in this Province.

**II. And** whereas no express provision has hitherto been made for administering an affirmation instead of an oath to persons belonging to the Society of Friends commonly called Quakers or to Moravians or as to the form of oath to be administered to persons of the Jewish religion or to persons natives of Scotland where any of such persons happen to be called upon any Grand or other Jury: Be it therefore enacted that in such cases it shall be lawful

How persons objecting to the common form of taking an oath shall make an affirmation or be sworn when called upon Juries.

lawful for persons belonging to the Society of Friends commonly called Quakers and for Moravians to make affirmation instead of taking an oath and for persons of the Jewish religion to be sworn upon the Old Testament and for persons natives of Scotland who shall object to be sworn according to the English form of oath to be sworn according to the form of oath usually adopted in the Courts of Scotland.

Who shall be exempted from serving on Juries.

III. And whereas it is expedient to amend the Act of Council of this Province passed in the first year of Her present Majesty's reign, intituled "An Act for regulating the constitution of Juries" in the particulars hereinafter set forth: Be it therefore enacted that all persons who are by law or custom exempted from liability to serve upon Juries in England shall be entitled to such exemption in this Province: And further that it shall and may be lawful for the Magistrates in Special Sessions assembled for the purpose of revising the jury lists in pursuance of the provisions of the said recited Act of Council and they are hereby required to write the word "exempted" in the margin of the said jury lists against the names of all persons who are entitled to such exemption and that no person having the word "exempted" written against his name shall be summoned to serve upon any Jury: And also that in all cases where the said Justices shall omit to write the word "exempted" against the name or names of any such person or persons he or they shall be entitled to claim his or their exemption when called upon any Jury and the Judge presiding in the Court where such exemption shall be so claimed is hereby authorised to allow the same.

Certain public officers and others shall also be exempted from serving upon Juries.

IV. And whereas it is expedient for facilitating the dispatch of public business that certain persons employed therein should be exempt from serving upon Juries: Be it therefore enacted that from and after the passing of this Act the Colonial Secretary the Advocate General the Assistant Commissioner the Surveyor General the Colonial Treasurer the Private Secretary the Collector of Customs the Harbour Master the Postmaster General the Protector of Aborigines the Immigration Agent Resident Magistrates of Districts the Storekeeper General and the Superintendent of Police shall be exempt from serving upon any Grand or Common Jury and that any person employed in the respective departments of the public officers above enumerated shall be entitled to claim exemption when called upon any Jury and also to a remission of any fine imposed upon him by reason of his not having answered to his name when called upon any such Jury provided that every such person claiming such exemption or remission of fine shall produce or cause to be produced a certificate from the head of the department in which he is employed stating that he is or was required for active duty at the time of his being or having been so called upon such Jury: Provided also that in all cases where the party summoned has had previous actual notice of the summons such certificate shall be produced at the time when he is called upon to serve.

It shall be lawful for parties to object to Jurors.

V. And whereas it is expedient to provide for the fair and impartial trial of issues as well in civil actions as in cases of indictment or information for any felony or misdemeanor without the expence attending the summoning of Special Juries: Be it enacted that upon the trial of any such issue when and so often as either party whether plaintiff or prosecutor defendant or prisoner as the case may be shall object to any of the Jurors named in the panel returned by the Sheriff for the trial of such issues it shall be lawful for him to object to any number of such Jurors not exceeding six by giving to the Clerk of the Supreme Court a copy of such panel with the names of the Jurors objected to struck through and the said Clerk shall thereupon put aside all the pieces of paper or card having thereon the names

names of the Jurors so objected to by either party and shall put the residue only of the pieces of paper or card into the balloting box and shall draw therefrom the names of the Jurors to try such issue in the manner provided for by the said recited Act.

VI. And be it enacted that for the purpose of enabling parties to make their objections in manner aforesaid the Sheriff shall upon the demand of every person being either plaintiff or prosecutor defendant or prisoner or of his attorney or agent give to such person or his attorney or agent a copy of the panel of Jurors returned by him for the trial of any such issue on payment to him of a sum not exceeding two shillings.

Sheriff shall upon demand give a copy of the panel returned by him.

VII. And be it enacted that when in any cases appointed to be tried by Special Jurors a tales shall be prayed on account of the default in attendance of any of such Jurors the bystanders to be summoned to make up the Jury shall be persons qualified and liable according to the said recited Act to serve as common Jurors: Provided always that nothing herein contained shall be deemed to prevent parties from trying issues by Special Juries in the manner provided for by the said Act in cases where the Supreme Court or any Judge thereof shall see fit to allow such mode of trial to be had or to alter the law respecting Juries in any particular not herein expressly enacted.

When a tales is prayed bystanders summoned shall be persons qualified as common Jurors.

VIII. And be it enacted that upon every rule or order of the Supreme Court or of any Judge thereof for a Special Jury *thirty* instead of *twenty* Special Jurors shall be ballotted for in the manner provided for by the said recited Act and that from that number it shall be lawful for each party to strike off *six* Jurors and that the same proceeding shall be had with respect to the remaining *eighteen* special Jurors as is provided with respect to the *sixteen* Special Jurors therein mentioned except that whereas it is provided that *the Sheriff* shall on the day appointed for the trial deliver to the Chief Clerk or other proper officer of the Supreme Court the two reduced lists of Jurors therein mentioned it shall be the duty of *the party applying for such Special Jury* or in case of his default *for the opposite party* to deliver to the said Chief Clerk or other proper officer a copy of such reduced lists.

Number of Special Jurors to be balloted for.

IX. And be it enacted that at the end of every sitting of the Supreme Court for the trial of issues whether civil or criminal the Sheriff or his deputy shall write opposite the name of every Juror who shall have served at such sitting the time of his so serving and shall not again summon such Juror in a less time than a year from the time of his so serving unless all the Jurors named in the Jurors' Book shall have been previously summoned and that the Sheriff shall as far as is practicable summon such persons as Jurors who have been the longest time without serving and shall for that purpose preserve the yearly book of Jurors with the several times of service marked as aforesaid for at least three years after the same is made out.

Sheriff shall write opposite the names of Jurors the time of their serving.

X. And whereas it is provided that *the Chief Clerk of the Court or other officer* shall keep an account of the number of days each Juror shall be called and answer to such call and duly attend the said Court and that after the expiration of the time appointed by the Court for the attendance of such Jurors respectively the Clerk or other proper officer shall deliver to every such Juror a short account or memorandum in writing setting forth the number of cases upon which each Juror may have been called and the sum of money to which each Juror may be entitled: Be it enacted that such duty shall be discharged by *the Sheriff or his deputy*.

And deliver to them memorandums in writing of the number of times.

XI. And be it enacted that all fees received by the Clerk of the Supreme Court

All fees received

in the Supreme Court to be paid to the Colonial Treasurer quarterly.

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Court under or by virtue of the said recited Act or of this Act shall be paid together with the other fees received by him to the Colonial Treasurer quarterly: And that all fines imposed by the Supreme Court under the authority of the said recited Act or by virtue of any other authority and all forfeitures incurred in the said Court by reason of estreated recognizance or otherwise shall be levied by writ issuing out of the said Court directed to the Sheriff who at the time appointed by such writ shall duly make a return thereof to the said Court showing the manner in which he shall have executed the same and shall duly pay into the said Court all sums levied by him by virtue thereof and at the end of every quarter of a year a schedule of all fines imposed by or forfeitures incurred in the said Court and of the sums levied and paid into the said Court in respect thereof shall be sent to the Colonial Treasurer signed and attested by the said Clerk who shall at the same time pay over to the said Treasurer all sums so paid into Court as aforesaid.

Recognizances of persons surrendering those for whom they have become bail may be discharged.

XII. And whereas doubts have arisen as to the power of discharging the recognizances of persons who have become bail for the appearance of others to take their trial on any charge of felony or misdemeanor where the persons so becoming bail are desirous of surrendering the persons for whose appearance they may have so become bail: Be it enacted that in every case where the persons who may have become bail by recognizance for the appearance of any other person or persons as aforesaid or either of them shall prove upon oath to the satisfaction of the Justice or Justices before whom they entered into such recognizance that there is reasonable ground to believe that the person or persons for whose appearance the recognizance has been entered into will abscond and make default it shall be lawful for such Justice or Justices before the return of the recognizance to the Court in which the trial is to be had to receive from such bail or either of them the surrender of the person or persons for whose appearance bail has been so given and by warrant to commit the person or persons so surrendered to the common gaol there to await his or their trial in the same manner as if such bail had never been given and the said Justice or Justices shall return the said recognizance to the proper Court with a memorandum thereon that the same has been discharged by the surrender of the party for whose appearance it was entered into: Provided always that such recognizance may be discharged and the party accused committed as aforesaid by the Supreme Court or by any Judge thereof in all cases where such Court shall see fit.

Proceedings before Justices of the Peace.

XIII. And whereas it is expedient and necessary to make provision for regulating summary proceedings before Justices of the Peace in the cases and in the manner hereinafter mentioned: Be it therefore enacted that from and after the passing of this Act in all cases wherein by any Act or Acts heretofore made and passed or hereafter to be made and passed or by this Act any proceedings shall have been or shall be directed to be had or matter authorized to be heard and determined by or before one Justice or any two or more Justices in a summary way (and no particular mode of proceeding shall have been or shall be by any such Act directed in that behalf) it shall be lawful for any one Justice to receive the original information or complaint and to issue a summons or warrant requiring the parties and witnesses to appear before himself or before any one or more Justices as the case may require and upon the appearance of the defendant or his or her contempt by not appearing after having been duly summoned in manner hereinafter mentioned and after sufficient time for his or her appearance shall have been allowed it shall be lawful for any such Justice or Justices (as the case may require) upon due proof on oath of the matters aforesaid to proceed and examine into and hear and determine the matter in a summary

summary way and examine upon oath all necessary witnesses produced, and give his or their judgment thereon and in case such Justice or Justices shall convict the defendant and award against him or her any fine or pecuniary penalty and if he or she shall neglect to pay the same fine or penalty together with the costs and charges attending such conviction to be assessed and ascertained by the said Justice or Justices into the hands of the said convicting Justice or one of the said convicting Justices (in case there shall have been more than one such Justice) within one week next after such conviction without any previous demand of such penalty other than the order of such Justice or Justices then it shall be lawful for such Justice or Justices or either of them or for any other Justice of the Peace upon proof to him of such default in payment to cause such fine or penalty and costs and charges to be levied by distress and sale of the goods and chattels of the offender the overplus after deducting the charge of such distress and sale to be rendered to the said offender: Provided that if upon the return of the officer charged with the execution of the said distress it shall appear that no sufficient distress can be found or the party adjudged to pay any money shall at the time of the said adjudication or conviction declare that he or she has no goods or chattels on which the said distress can be levied then the convicting Justice or Justices or either of them or any other Justice of the Peace may by warrant commit such offender to one of Her Majesty's gaols there to remain for any time not exceeding the time hereinafter mentioned that is to say not exceeding seven clear days where the whole sum to be levied or remaining unpaid together with the costs shall not exceed ten shillings for a term not exceeding fourteen clear days where the said sum and costs shall not exceed one pound for a term not exceeding one calendar month where the said sum and costs shall not exceed five pounds and for a term not exceeding three calendar months where the said sum and costs shall be of any greater amount unless the said sum to be levied together with the costs shall be sooner paid.

How penalties are to be levied.

XIV. And be it enacted that in all cases in which no other mode of proceeding shall have been or shall be in that behalf provided the directing of any summons to any person whatsoever in the name or names by which he or she is or has been usually known whether the same be the real or the feigned or assumed name or names of such person shall be deemed to be a sufficient description of the person or persons to whom the same shall be directed and that every summons may direct the party to appear either before the Justice or Justices issuing the same or before any one or more Justice or Justices generally as the case may require (without naming any Justice): Provided that such summons shall direct the party so to appear at a time and place certain to be named in such summons.

Service of Summons.

XV. And be it enacted that if any person shall be personally served with a summons under the hand of any Justice or Justices of the Peace requiring him or her to appear as a witness to give evidence before any Justice or Justices touching any matter whereof such Justice or Justices shall have jurisdiction and shall neglect to appear or shall refuse to give evidence at the time and place for that purpose appointed without a reasonable excuse for such neglect or refusal every such person shall for every such offence forfeit and pay a penalty or sum of not less than two pounds nor more than twenty pounds which said penalty shall and may be recoverable by proceeding before any one Justice of the Peace who is hereby authorised to hear and determine such offence in a summary way and shall be levied and be distributed in the manner by this act directed with respect to all other cases by this act intended to be provided for.

Persons neglecting to appear.

Persons wilfully  
keeping out of  
the way to avoid  
giving evidence.

XVI. And be it further enacted that where the evidence of any person shall be required before any Justice or Justices in any case where such Justice or Justices shall have jurisdiction to hear and determine the matter in a summary way or when such Justice or Justices shall have power only to make enquiry preliminary to a subsequent trial and it shall be proved upon oath to the satisfaction of any Justice or Justices that the person whose evidence is required has been duly summoned either personally or by leaving a copy of the summons at his or her usual place of abode and wilfully neglects to appear or that such persons purposely keep out of the way to avoid being summoned it shall be lawful for such Justice or Justices to issue his or their warrant to any peace officer to apprehend and bring before him or them such person so wilfully neglecting to appear or so keeping out of the way as aforesaid and to detain him or her until he or she shall give his or her evidence and in case of a preliminary enquiry further to detain such person until he or she shall give security for his or her appearance as a witness in the court where the subsequent trial is to be heard.

Form of conviction.

XVII. And be it enacted that in all cases (except where a particular form of judgment or conviction shall have been or shall be by any act directed to be used in that behalf) a judgment or conviction in the form on to the effect of the form (as the case shall happen to be) prescribed by the schedule to this act annexed marked A shall be good valid and effectual to all intents and purposes whatsoever without setting forth or stating in any conviction the name of any witness or the particular place where the offence was committed and without setting forth any part of the evidence or stating the facts in any further or more particular manner than shall be necessary to show that the offence was one against the true intent and meaning of the act creating such offence. And no summary conviction whatsoever by any Justice or Justices of the Peace whether under this or any other act and whether a particular form shall have been or shall be in that behalf directed or not shall be quashed in any case for any mere technical error or mistake in any name or date or title or in any matter of description only but in all cases regard shall be had only to the substance and effect thereof.

Distribution of penalties.

XVIII. And be it enacted that in all cases where by any act a pecuniary penalty of uncertain amount shall have been or shall be or is by this act imposed (that is to say) a penalty or sum of not less nor more than an amount in that behalf specified the amount of every such penalty (within the limits so prescribed) shall be in the discretion of the convicting Justice or Justices and that every penalty awarded by such Justice or Justices shall in all cases (except where otherwise provided by any such act) and except where the informer or party prosecuting shall be examined as a witness go and be distributed one moiety thereof to the use of Her Majesty her heirs and successors for the public uses of this Province and the support of the Government thereof and the other moiety to the use of the informer or party prosecuting who shall also be in all cases entitled to his or her costs and charges over and above such penalty to be ascertained and assessed as aforesaid.

GEORGE GAWLER,

Governor of South Australia.

Passed in Council, this twenty-first  
day of February, 1840.

GEORGE HALL,

Clerk of Council.

