

Queensland.



ANNO VICESIMO SEPTIMO

VICTORIÆ REGINÆ.

No. 14

A Bill further to Amend the Constitution of the Supreme Court of Queensland and further to provide for the better Administration of Justice.

WHEREAS it is expedient further to amend the Constitution and practice of the Supreme Court of Queensland and further to provide for the better administration of justice and to amend the "Supreme Court Constitution Amendment Act of 1861" and to facilitate the interpretation thereof as hereinafter provided Be it therefore enacted and declared by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

1. The Supreme Court of Queensland shall be held to be and to have always been the Supreme Court within the meaning of the laws statutes and ordinances which at the time when the Order of Her Most Excellent Majesty in Council dated the sixth day of June one thousand eight hundred and fifty-nine and empowering the Governor of Queensland to make laws and to provide for the administration of justice in the said Colony came into operation were in force within the Colony of Queensland and shall be held to have and to have always had within the limits of the said Colony all the authorities powers and jurisdiction of the Supreme Court of New South Wales as the same existed at the time aforesaid and a Judge or the Judges of the Supreme Court of Queensland shall be held to have and to have always had all the authorities powers and jurisdiction of a Judge or the Judges of the Supreme Court of New South Wales as the same existed at the time aforesaid and the Chief Justice of Queensland shall be held to be and to have always been the Chief Justice of the Supreme Court of Queensland and all laws statutes and ordinances wherein the New South Wales Government Gazette is mentioned shall be read as if instead thereof the Queensland Government Gazette were expressly mentioned therein and all proceedings whatsoever civil criminal or other heretofore had or taken or hereafter to be had or taken shall be as good valid and effectual in law to all intents and purposes whatsoever as if the Supreme Court of Queensland or the Chief Justice of Queensland or the Queensland Government Gazette had been expressly mentioned in such laws statutes

Declaring authority of Supreme Court and Judges to be same as was in Supreme Court of New South Wales.

Printed and bound in the Office of the Registrar General of Queensland
this twenty fifth day of September 1883
A. H. Small
By: General



Supreme Court Bill.

statutes and ordinances wherever the Supreme Court of New South Wales or the Chief Justice of the Supreme Court of New South Wales or the *New South Wales Government Gazette* is mentioned or referred to.

Authorities of
Supreme Court of
New South Wales
ceased upon creation
of Supreme Court of
Queensland.

2. All the authorities powers and jurisdiction of the Supreme Court of New South Wales and of any Judge thereof over or to be exercised within or in relation to the Colony of Queensland shall be held to have been transferred to and vested in the said Supreme Court of Queensland and the Judges thereof immediately upon the creation of the said Court and to have ceased and determined so far as related to the said Supreme Court of New South Wales and the Judges thereof.

Brisbane to be read
for Sydney in laws
and statutes and
offices of New South
Wales as if offices of
Queensland.

3. Wherever in any of the laws statutes or ordinances originally made or enacted in reference to the Colony of New South Wales and now in force in the Colony of Queensland New South Wales Sydney or the harbor of Port Jackson is mentioned or referred to the same shall unless the context indicate the contrary be read as if Queensland Brisbane or the Port of Moreton Bay had been expressly mentioned therein and wherever in any of such laws statutes or ordinances mention is made of any office or employment of or in New South Wales or of the officer or public servant holding or being employed in such office or employment the same shall be read as if such office or employment officer or public servant were expressly mentioned as an office or employment officer or public servant of or in Queensland and all proceedings whatsoever civil criminal or other heretofore had or taken or hereafter to be had or taken shall be as good valid and effectual in law to all intents and purposes whatsoever as if Queensland Brisbane or the Port of Moreton Bay had been expressly mentioned in such laws statutes and ordinances wherever New South Wales Sydney or the harbor of Port Jackson is mentioned and as if all offices employments officers and public servants had been expressly mentioned as offices employments officers and public servants of and in Queensland wherever mention is made of the corresponding offices employments officers and public servants of and in New South Wales.

Saving Acts passed
by the Legislature of
Queensland and the
powers of the
Supreme Court.

4. Nothing herein contained shall revive re-enact or give force or validity to any law statute or ordinance heretofore repealed by or repugnant to or inconsistent with any Act or statute heretofore enacted by the Legislature of Queensland or shall lessen diminish or restrain the authorities powers or jurisdiction of the Supreme Court of Queensland or the Judges thereof.

Proceedings to be
dated and how tested.

5. Every writ process or other like proceeding and every commission issuing out of the Supreme Court shall in all cases civil criminal or other bear date the day on which the same shall be issued and shall be tested in the name of the Chief Justice or in case of a vacancy of such office then in the name of the senior Puisne Judge of the said Court.

Puisne Judges to be
also Justices.

6. All Puisne Judges of the Supreme Court of Queensland shall be held to be Justices thereof.

Chief Justice or a
Puisne Judge may sit
alone in Equity.

7. From and after the commencement of this Act the twenty-third section of the "*Supreme Court Constitution Amendment Act of 1861*" shall be and the same is hereby repealed and it shall be lawful for any one of the Judges of the Supreme Court to hear and determine all suits and matters at any time depending before the said Court in its equitable jurisdiction without the assistance of any other Judge of the said Court and every decree or order of the Judge exercising such sole jurisdiction shall unless appealed from be as valid and effectual to all intents and purposes whatever as if such decree or order had been pronounced and made by the full Court Provided always that the decrees and orders pronounced and made by such Judge shall in all cases be subject to appeal to the full Court in such manner and upon such terms as shall be ordered in that behalf by any general rules or orders of the Supreme Court.

8. It

Supreme Court Bill.

8. It shall be lawful for the Supreme Court or any Judge thereof in such way as they may think fit to obtain the assistance of conveyancing counsel accountants merchants engineers actuaries or other scientific persons the better to enable such court or judge to determine any matter at issue in any cause or proceeding depending in the equity jurisdiction of the court and to act upon the certificate of such persons.

Court in equity may obtain assistance of scientific persons.

9. The allowances in respect of fees to such conveyancing counsel accountants merchants engineers actuaries and other scientific persons shall be regulated by the taxing officer of the said Court subject to an appeal to any Judge whose decision shall be final.

Fees to such persons.

10. In all cases in which the Supreme Court in Equity has jurisdiction to entertain an application for an injunction against a breach of any covenant contract or agreement or against the commission or continuance of any wrongful act or for the specific performance of any covenant contract or agreement it shall be lawful for the same Court if it shall think fit to award damages to the party injured either in addition to or in substitution for such injunction or specific performance and such damages may be assessed in such manner as the Court shall direct.

Power to Court in equity to award damages in certain cases.

11. It shall be lawful for the Supreme Court in Equity if it shall think fit to cause the amount of such damages in any case to be assessed or any question of fact arising in any suit or proceeding to be tried by a special or common jury before the Court itself and the Court may make all such rules and orders upon the sheriff or any other person for procuring the attendance of a special or common jury for such assessment of damages or the trial of such question of fact as may be made by the said Court in its common law jurisdiction and may also make any other orders which to the said Court in equity may seem requisite and every such jury shall consist of persons possessing the qualifications and shall be struck summoned balloted for and called in like manner as if such jury were a jury for the trial of any cause in the said Court in its common law jurisdiction and every juryman so summoned shall be entitled to the same rights and subject to the same duties and liabilities as if he had been duly summoned for the trial of any such cause in the said Supreme Court in its common law jurisdiction and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause and generally for all purposes of or auxiliary to the assessment of damages or the trial of questions of fact by a jury before the court itself and in respect of new trials the said Court in equity shall have the same jurisdiction powers and authority in all respects as belong to the said Court in its common law jurisdiction or to any judge thereof for the like purposes Provided that from any order made by the Court on an application made for a new trial there shall be the same right of appeal as from any other order of the Court.

Damages may be assessed or question of fact arising in any suit may be tried by a jury before the Court itself.

12. Any question of fact and any question as to the amount of damages which shall be so ordered to be tried by a jury before the Court itself shall be reduced into writing in such form as the Court shall direct and at the trial the jury shall be sworn to try the said question and a true verdict to give thereon according to the evidence and upon every such trial the said Court in Equity shall have the same powers jurisdiction and authority as belong to any judge of the said Supreme Court sitting at *nisi prius*.

Questions ordered to be tried by jury to be reduced into writing.

13. It shall also be lawful for the said Court in Equity if it shall think fit to cause the amount of such damages in any case to be assessed or any question of fact arising in any suit or proceeding to be tried before the Court itself without a jury and to cause the evidence on the trial of that question to be taken by the oral examination of witnesses and other proofs in open Court and any question of fact and any question as to the amount

Damages may be assessed or questions of fact tried before the Court itself without a jury.

Supreme Court Bill.

amount of damages which shall be so ordered to be tried before the Court itself shall be reduced into writing in such form as the Court shall direct and the verdict of the judge shall be of the same effect as the verdict of a jury under this Act and the proceedings upon and after such trial as to the power of the Court the evidence and otherwise shall be the same as in the case of trial by jury under this Act. Provided that in the case of a trial under this section any person may apply for a new trial either to the judge before whom the trial was had or to the said Court sitting in Banco.

Damages may be assessed by jury before judge of Supreme Court at nisi prius or before a sheriff.

14. It shall also be lawful for the said Court in Equity in any case in which it shall think fit so to do to cause the amount of such damages to be assessed by a jury before any judge of the Supreme Court at *nisi prius* or at the assizes or before the sheriff or any deputy sheriff and for that purpose to issue a precept to the sheriff or such deputy sheriff as the said Court in Equity shall think fit or where the sheriff or deputy sheriff is interested then to the coroner of the district requiring him to return summon and impanel a common or special jury for the purpose aforesaid in like manner as is done in cases of writs of inquiry at common law which are to be executed before a judge or before the sheriff and the said Court in Equity shall have power to set aside the verdict or inquisition on such inquiry and to direct a new inquiry in such manner and on such terms as the Court shall think fit.

One party may call on another to admit documents.

15. In any case in which all parties to a suit are competent to make admissions any party may call on any other party by notice to admit any document saving all just exceptions and in case of refusal or neglect to admit the cost of proving the document shall be paid by the party so neglecting or refusing whatever the result of the cause may be unless the Court shall certify that the refusal to admit was reasonable and no costs of proving any document shall be allowed unless such notice be given except in cases where the omission to give the notice is in the opinion of the taxing officer a saving of expense.

Procedure by claim abolished.

16. The Act of the Legislature of New South Wales 16 Victoria number 13 is hereby repealed and no claim in Equity shall be filed after the passing of this Act.

Powers of one judge in the ecclesiastical jurisdiction.

17. It shall be lawful for any one of the Judges of the Supreme Court to hear and determine all questions relating to matters and causes testamentary depending in the said Court in its ecclesiastical jurisdiction without the assistance of any other Judge of the said Court and in every case in which letters of administration shall be granted the Judge or Court granting the same shall have power to sequester all the personal effects whatsoever within the said Colony of the person so dying as aforesaid in cases allowed by law as the same is and may be now used by the Probate Court of England and it shall be lawful for the said Judge or Court on granting letters of administration to require the administrator to enter into such bond and to find such surety or sureties in such sum or sums of money as the circumstances may seem to the said Judge or Court to require. Provided always that decrees or orders pronounced and made by any Judge sitting alone in the ecclesiastical jurisdiction of the said Court shall in all cases be subject to appeal to the full Court in such manner and upon such terms as shall be ordered in that behalf by any general rules or orders of the Supreme Court.

Probate or office copy to be evidence of the will in suits relating to real estate unless the validity of the will is disputed.

18. In any action at law or suit in equity where according to the existing law it would be necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate it shall be lawful for the party intending to establish in proof such devise or other testamentary disposition to give to the opposite party ten days at least before the trial or other proceeding in which the said proof shall be intended to be adduced notice that he intends at

Supreme Court Bill.

at the said trial or other proceeding to give in evidence as proof of the devise or other testamentary disposition the probate of the said will or the letters of administration with the will annexed or a copy thereof respectively stamped with the seal of the Supreme Court and in every such case such probate or letters of administration or copy thereof respectively stamped as aforesaid shall be sufficient evidence of such will and of its validity and contents notwithstanding the same may not have been proved in solemn form unless the party receiving such notice shall within four days after such receipt give notice that he disputes the validity of such devise or other testamentary disposition.

19. So much of the one hundred and second section of the *District Courts Act of 1858* as provides that the first set of rules made as in that section mentioned shall be subject to the approval of the Judges of the Supreme Court or any two of them is hereby repealed and all rules so made shall be subject to the approval of the Judges of the Supreme Court or of two of them.

Repeal of portion of the one hundred and second section of the *District Courts Act of 1858.*

20. The Chief Justice unless the office be vacant shall in all cases be one of the Judges or majority of Judges implied or mentioned respectively in the sixty-seventh and sixty-eighth sections of the *Supreme Court Constitution Amendment Act* and in the last preceding section of this Act.

Chief Justice to be one of the majority of judges.

21. Commissions under the provisions of the tenth section of the *Supreme Court Constitution Amendment Act* may be issued on the order of the Court or a Judge thereof and in and by any such commission the commissioner thereby appointed may be empowered to issue writs of summons as well as writs of *capias*.

Commissioners may issue writs of summons.

22. The proclamation of the Governor dated the eighth day of November in the year of our Lord one thousand eight hundred and sixty-two shall be read as if the word "with" had been inserted therein instead of "from" and whenever the limits of an existing Circuit Court shall have been altered under the thirtieth section of the *Supreme Court Constitution Amendment Act of 1861* and any prisoners shall before the date of the proclamation making such alteration have been committed to take their trial at such Court the Court to which they have been committed shall have jurisdiction to try such prisoners anything contained in the said proclamation notwithstanding.

Prisoners to be tried at Circuit Courts to which they are committed though limits of district altered.

23. In order to prevent persons committed to gaol upon charges of felony or misdemeanor and against whom Her Majesty's Attorney-General or other duly appointed prosecuting officer declines to file an information from suffering unnecessary imprisonment It shall be lawful for the Attorney-General in respect of any such persons to issue at any time a warrant under his signature in the form in the schedule to this Act annexed addressed to the sheriff or gaoler in whose custody any such prisoner shall be and in and by such warrant to order such sheriff or gaoler (who is hereby authorised so to do) immediately and without fee or reward to discharge the prisoner therein mentioned from imprisonment in respect of the offence mentioned in the said warrant and if any such sheriff or gaoler shall refuse or neglect so to do he shall for every such offence forfeit and pay to the use of Her Majesty a fine or penalty of fifty pounds to be recovered by action of debt in the name of the Attorney-General.

Attorney-General to issue warrant for discharge of prisoner against whom he does not file information.

24. The Act seventh Victoria number five is hereby repealed.

Repealing 7 Victoria, No. 5.

25. The proceedings upon any information for committing any offence after a previous conviction or convictions shall be as follows (that is to say) the offender shall in the first instance be arraigned upon so much only of the information as charges the subsequent offence and if he plead not guilty or if the Court order a plea of not guilty to be entered on his behalf the jury shall be charged in the first instance to inquire concerning such subsequent offence only and if they find him guilty or if on arraignment he

Procedure on information alleging a previous conviction.

Supreme Court Bill.

he plead guilty he shall then and not before be asked whether he had been previously convicted as alleged in the information and if he answer that he had been so previously convicted the Court may proceed to sentence him accordingly but if he deny that he had been so previously convicted or stand mute of malice or will not answer directly to such question the jury shall then be charged to inquire concerning such previous conviction or convictions and in such case it shall not be necessary to swear the jury again but the oath already taken by them shall for all purposes be deemed to extend to such last-mentioned inquiry Provided that if upon the trial of any person for any such subsequent offence such person shall give evidence of his good character it shall be lawful for the prosecutor in answer thereto to give evidence of the conviction of such person for the previous offence or offences before such verdict of guilty shall be returned and the jury shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence.

In criminal cases and in District Courts counsel for the defence may reserve his address.

26. In every criminal case that shall be tried before any Court of criminal jurisdiction and in all civil actions tried before any Judge of or presiding in any District Court the prisoner's or defendant's counsel or advocate may reserve his address to the Judge or jury if he thinks fit so to do until the close of the evidence for the defence and the right to reply shall be the same as at present.

Evidence in reply.

27. When such address on the part of the defence is reserved as aforesaid the evidence in reply if any on the part of the Crown or the plaintiff must be given before such address.

Right of counsel for the plaintiff to reserve his address.

28. In civil actions tried in any District Court when the counsel or advocate for the defendant begins the counsel or advocate for the plaintiff shall be entitled to reserve his address to the Judge or jury in like manner and subject to the same conditions as hereinbefore provided with respect to the counsel or advocate for the defendant and to the evidence (if any) to be given in reply.

In felonies peremptory challenges not to exceed twelve.

29. In cases of felony it shall not henceforth be lawful for the prisoner to challenge peremptorily more than twelve jurors Provided that nothing herein contained shall affect the right of the prisoner to challenge for cause which shall be the same as at present.

Right of challenge extended to misdemeanors.

30. The defendant in cases of misdemeanor shall henceforth have the same right of challenge whether peremptory or for cause as a prisoner in cases of felony.

Specific delivery of chattels.

31. The Court or a Judge shall have power if they or he see fit to do so upon the application of the plaintiff in any action for the detention of any chattel to order that execution shall issue for the return of the chattel detained without giving the defendant the option of retaining such chattel upon paying the value assessed and that if the said chattel cannot be found and unless the Court or a Judge shall otherwise order the sheriff shall distrain the defendant by all his lands and chattels in the said sheriff's balliwick till the defendant render such chattel or at the option of the plaintiff that he cause to be made of the defendant's goods the assessed value of such chattel Provided that the plaintiff shall either by the same or a separate writ of execution be entitled to have made of the defendant's goods the damages costs and interest in such action Provided that the plaintiff may proceed under section ninety-seven of the "*Common Law Procedure Act of 1863*" anything herein contained notwithstanding.

11 Geo. IV. and Wm. IV. c. 70 s. 21 extended to the Colony of Queensland.

32. The provisions of the twenty-first section of the Imperial Act passed in the eleventh year of His Majesty King George the Fourth and the first year of His Majesty King William the Fourth chapter seventy shall apply to the Colony of Queensland and in the construction of such provisions the nearest prison to the place in which a defendant shall be arrested shall be taken to be a county gaol within the meaning of the said section.

33. The

Supreme Court Bill.

33. The first second and third sections of the Act of the Imperial Parliament passed in the fifty-fourth year of His Majesty King George the Third chapter fifteen and the fifteenth and sixteenth sections of the Act of the Imperial Parliament passed in the fifth and sixth years of His late Majesty King William the Fourth chapter sixty-two so far as they relate to the Colony of Queensland and the first section of the "Common Law Procedure Act of 1857" absolutely shall be and the same are hereby repealed.

Evidence.

Repealing
54 Geo. III. c. 15 ss. 1 2 3
5 and 6 Wm. IV. c. 62 ss. 15 16
20 Vic. No. 31 s. 1.

34. Nothing in the preceding sections shall be taken to affect the validity of any affidavit or declaration made before the passing of this Act under the provisions of the said repealed sections or the validity of any proceeding lawfully taken or any act lawfully done under or by virtue or in consequence of any such affidavit or declaration.

Saving things already done.

35. Nothing in this Act or in the "Supreme Court Constitution Amendment Act of 1861" shall be construed to restrain the jurisdiction of the said Court or of the Judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein Provided always that such rules shall be sent to the Colonial Secretary of the Colony who shall cause the same to be laid before both Houses of Parliament.

Saving authority of Court and Judges to make rules.

36. This Act shall take effect from the passing thereof and shall be styled and may be cited as the "Supreme Court Act of 1863."

Commencement and short title.

SCHEDULE.

To A. B. Esquire sheriff [or to C. D. keeper of H.M. Gaol] at in the Colony of Queensland.

Whereas E. F. is detained in your custody under the warrant of I. J. Esquire J.P. upon a charge of _____ and whereas I decline to file any information against the said E. F. for the said offence Now therefore in pursuance of the "Supreme Court Act of 1863" I order you forthwith to discharge the said E. F. from your custody upon the said warrant.

Given under my hand this _____ day of _____ A.D. _____
A. B. Attorney-General.

I Certify that this Public Bill has finally passed the Legislative Council and Legislative Assembly of Queensland
Regulative Council Chamber
Perthmore 15 Sept 1863
Henry Johnstone
Clerk of the Parliament

In the Name and on behalf of the Queen
I assent to this Act

Government House
Brisbane 21st Sept. 1863.

J. P. Bowen