

Act to give relief to persons having claims 192.



1853.

No. 6.

An Act to give relief to Persons having Claims against the Local Government of South Australia, by authorizing them to try the validity of such Claims in a Court of Law or Equity.

[Assented to, 23rd November, 1853.]

WHEREAS disputes and differences have arisen, and may here-
after arise, between the subjects of Her Majesty the Queen Preamble.
and Her Majesty's Local Government in the Province of South
Australia, the subject matter of which disputes and differences has
arisen, or may arise, within the said Province: And whereas the
ordinary remedy, by Petition of right, is of limited operation, is in-
sufficient to meet all such cases, can only be obtained in England,
and is attended with great expense, inconvenience, and delay—
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, and by the authority of the same, as
follows:

1. In all cases of dispute or difference, touching any pecuniary
claim, between any subject of Her Majesty and the Colonial
Government of the Province of South Australia, which may have
arisen, or may hereafter arise, within the said Province, it shall
and may be lawful for any person or persons having such disputes
or differences, to present a Petition to the Lieutenant-Governor
for the time being of the said Province, setting forth the particulars
of the claim of such Petitioner or Petitioners, to which Petition
there shall be attached a certificate from some practising Barrister

Persons having claims
against Local Govern-
ment may petition
Governor for redress.

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of the Supreme Court of the said Province, to the effect, that such Petitioner or Petitioners has or have, in the opinion of such Barrister, a proper case for redress, or cause of complaint against such Local Government, which Petition shall, within fourteen days from the presentation thereof, be referred by the Governor to the Supreme Court of the said Province, for trial by a jury or otherwise as such Court shall after such reference direct: Provided always, that in case the Governor, with the advice of his Executive Council, shall certify, in writing, endorsed on any such Petition so to be presented as aforesaid, that in his opinion the subject-matter of such Petition affects the Royal prerogative, it shall and may be lawful for the Governor to transmit the same to Her Majesty's Principal Secretary of State for the Colonies for the signification of Her Majesty's approval or disapproval; and if such Petition be returned with Her Majesty's approval, the same proceedings as are hereinbefore directed shall be taken for the trial of the matter thereof; but in case of such Petition being returned without such approval, the same, together with the endorsation thereon and the reasons assigned for withholding such approval, shall be forthwith published in the *South Australian Government Gazette*, in which case the remedy hereby provided shall not be had.

Claim to be referred for trial.

Claim affecting prerogative to be reserved.

Governor to name nominal defendant.

Nominal defendant not personally responsible.

Claimant not excluded by reason of lapse of time.

Supreme Court to make rules.

Costs.

2. At the time of such reference for trial as aforesaid, the Governor shall name some person or persons to be a Nominal Defendant or Defendants in the matter of such Petition, the Petitioner or Petitioners being the Plaintiff or Plaintiffs therein: Provided that nothing in this Act shall be construed to extend so as to subject any such Nominal Defendant to any individual responsibility in person, goods, chattels, estate, or otherwise, by reason of his being such Nominal Defendant.

3. No person or persons having any such claim, difference, or dispute, as hereinbefore mentioned, which shall or may have arisen before the passing of this Act, shall be excluded from remedy under the provisions thereof by reason of lapse of time, nor shall any Nominal Defendant be permitted to plead, or in any way avail himself of any Statute of Limitation in respect of any such last mentioned claim, difference, or dispute: Provided that such petition as herein authorized be duly presented in respect of any such last mentioned claim, difference, or dispute, within the period of two years from the passing of this Act.

4. The said Supreme Court shall and may make such rules or orders for the regulation of the proceedings on any such Petition as to such Court shall seem necessary; and the parties thereto shall have the same rights, either by way of appeal, rehearing, motion for reversal of verdicts, or otherwise, as in ordinary cases of law or equity.

5. Costs of suit shall follow on either side as in ordinary cases between suitors, any law or practice to the contrary notwithstanding.

6. It

6. It shall be lawful for the Governor to satisfy and pay any judgment recovered by any such Petitioner or Petitioners, out of any available balance of the Ordinary Revenue of the said Province, and to perform the decree or decrees of the said Court or Judge, in terms of such decree or decrees. Claims to be paid out of General Revenue.

7. This Act shall take effect and be in force immediately after the passing thereof. Commencement.
23rd November