



ANNO VICESIMO SECUNDO

VICTORIÆ REGINÆ.

A.D. 1858.

No. 4.

An Act to facilitate the remedies on Bills of Exchange and Promissory Notes by the prevention of frivolous or fictitious defences to actions thereon.

[Assented to, 24th December, 1858.]

WHEREAS *bona fide* holders of dishonored bills of exchange and promissory notes are often unjustly delayed and put to unnecessary expense in recovering the amount thereof by reason of frivolous or fictitious defences to actions thereon, and it is expedient that greater facilities than now exist should be given for the recovery of money due on such bills and notes—Be it therefore enacted, by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province in this present Parliament assembled, as follows :

1. From and after the first day of January, one thousand eight hundred and fifty-nine, all actions upon bills of exchange or promissory notes commenced within six months after the same shall have become due and payable, may be by writ of summons in the special form contained in Schedule A to this Act annexed, and endorsed as therein mentioned ; and it shall be lawful for the plaintiff on filing an affidavit of personal service of such writ within the jurisdiction of the Supreme Court of the said Province, or an order for leave to proceed as provided by the “ Supreme Court Procedure Amendment Act,” and a copy of the writ of summons and the endorsements thereon, in case the defendant shall not have obtained leave to appear and have appeared to such writ according to the exigency thereof, at once to sign final judgment in the form contained in

E

Schedule

Preamble.

Left to its operation
14. July 1859

From 1st January, 1859, all actions upon bills of exchange, &c., may be by writ of summons as form in schedule A.

Plaintiff on filing affidavit of personal service, may at once sign final judgment as form in Schedule B.

Schedule B to this Act annexed (on which judgment no proceeding in error shall lie) for any sum not exceeding the sum endorsed on the writ, together with interest to the date of the judgment, and a sum for costs to be fixed by the Judges of the said Court, unless the plaintiff claim more than such fixed sum, in which case the costs shall be taxed in the ordinary way, and the plaintiff may upon such judgment issue execution forthwith.

Defendant showing a defence upon the merits to have leave to appear.

2. A Judge of the said Court shall, upon application within a period of twelve days from such service, give leave to appear to such writ and to defend the action, on the defendant paying into Court the sum endorsed on the writ, or upon affidavits satisfactory to the Judge, which disclose a legal or equitable defence, or such facts as would make it incumbent on the holder to prove consideration or such other facts as the Judge may deem sufficient to support the application, and on such terms as to security or otherwise as to the Judge may seem fit.

Judge may, under special circumstances, set aside judgment.

3. After judgment, the Court or a Judge may, under special circumstances, set aside the judgment, and if necessary stay or set aside execution, and may give leave to appear to the writ, and to defend the action if it shall appear to be reasonable to the Court or Judge so to do, and on such terms as to the Court or Judge may seem just.

Judge may order bill, &c., to be deposited with officer of Court in certain cases.

4. In any proceedings under this Act it shall be competent to the Court or a Judge, to order the bill or note sought to be proceeded upon to be forthwith deposited with an officer of the Court, and further to order that all proceedings shall be stayed until the plaintiff shall have given security for the costs thereof.

Holders of bills of exchange, &c., may issue one summons against all or any of the parties to the bill.

5. The holder of any bill of exchange or promissory note may, if he think fit, issue one writ of summons, according to this Act, against all or any number of the parties to such bill or note, and such writ of summons shall be the commencement of an action or actions against the parties therein named respectively, and all subsequent proceedings against such respective parties shall be in like manner, so far as may be, as if separate writs of summons had been issued.

Supreme Court Procedure Amendment Act and Rules incorporated with this Act.

6. The provisions of the "Supreme Court Procedure Amendment Act" and all rules made under or by virtue of the said Act, shall, so far as the same are or may be made applicable, extend and apply to all proceedings to be had or taken under this Act.

Short title of Act.

7. In citing this Act in any instrument, document, or proceeding, it shall be sufficient to use the expression "The Summary Procedure on Bills of Exchange Act, 1858."

SCHEDULES REFERRED TO.

A

VICTORIA, by the Grace of God, &c., &c., to C.D. of
in the Province of South Australia.

We warn you, that, unless within twelve days after the service of this writ on you, inclusive of the day of such service, you obtain leave from one of the Judges of the Supreme Court of our said Province to appear, and do within that time appear in our said Supreme Court in an action at the suit of A.B., the said A.B. may proceed to judgment and execution.

Witness, &c.

Memorandum to be subscribed on the Writ.

N.B.—This writ is to be served within six calendar months from the date hereof, or if renewed from the date of such renewal, including the day of such date, and not afterwards.

Endorsement to be made on the Writ before service thereof.

This writ was issued by E.F., of _____ Attorney for the plaintiff or, this writ was issued in person by A.B., who resides at (name city, town, or place, also, name of street, and number of house (if any) of plaintiff's residence.)

Endorsement.

The plaintiff claims (_____ pounds principal and interest) or _____ pounds balance of principal and interest due to him as the payee (or endorsee) of a bill of exchange (or promissory note) of which the following is a copy (here copy bill of exchange or promissory note, and all endorsements upon it) and if the amount thereof with _____ for costs be paid to the plaintiff or his Attorney within eight days from the service hereof further proceedings will be stayed.

Notice.

Take notice, that if the defendant do not obtain leave from one of the Judges of the said Supreme Court within twelve days after having been served with this writ, inclusive of the day of such service to appear thereto, and do not within such time cause an appearance to be entered for him in the said Court, the plaintiff will be at liberty at any time after the expiration of such twelve days to sign final judgment for any sum not exceeding the sum above claimed, and the sum of _____ pounds for costs, and issue execution for the same.

Leave to appear may be obtained on an application at the Judges Chambers, Supreme Court House, Victoria-square, Adelaide, supported by affidavit, showing that there is a defence to the action on the merits, or that it is reasonable that the defendant should be allowed to appear in the action.

Endorsement to be made on the Writ after service thereof.

This writ was served by X.Y., on L.M. (the defendant, the defendants) on Monday, the _____ day of _____ 18 ____ . X.Y.

B

IN THE SUPREME COURT,

On the _____ day of _____ 18 ____ (*day of signing judgment*)

South Australia } A.B. in his own person, (or by _____ his Attorney) sued out a
to wit. } writ against C.D. endorsed as follows (*here copy endorsement of plaintiff's claim*) and the said C.D. has not appeared: Therefore it is considered that the said A.B., recover against the said C.D. _____ pounds, together with _____ pounds for costs of suit.