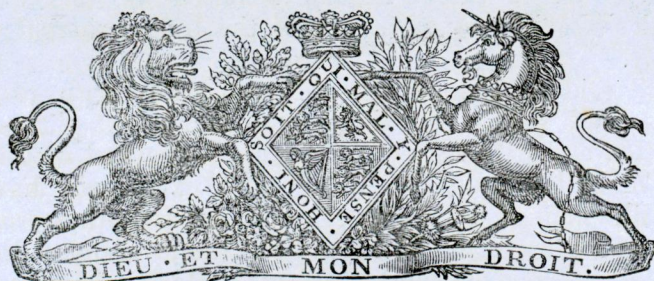


# New South Wales.



ANNO VICESIMO

## VICTORIÆ REGINÆ.

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### No. XXV.

An Act to provide for the better Administration of Justice in the District of Moreton Bay. [Assented to, 11th March, 1857.]

**W**HEREAS having regard to the population and great extent of the District of Moreton Bay and its distance from Sydney it is expedient to establish within that District a separate Court to be presided over by a Resident Judge so that justice may be therein administered in all causes both civil and criminal without the delays and inconveniences attendant on the holding of Circuit Courts only and the necessity of resorting to Sydney for the initiation of suits and proceedings as at present Be it therefore enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

1. On and from the first day of April next the Act of Council passed in the nineteenth year of Her Majesty's reign intituled "*An Act for the appointment of an additional Judge of the Supreme Court and to provide for the more effectual Administration of Justice in the District of Moreton Bay until the establishment of a separate Court therein*" except only the first section thereof and except as to the matter hereinafter specially excepted shall be and stand repealed.

19 Vict. No. 31 repealed, except Clause I.

2. On and after the said first day of April now next there shall be holden at Brisbane in and for the said District a Court of Civil and Criminal Jurisdiction which Court is hereby erected and established as a Court of Record to be called the "Supreme Court at Moreton Bay" and to be holden by the Judge appointed or hereafter to be appointed under the authority of the said first section of the Act hereinbefore mentioned who shall be called the Resident Judge of Moreton Bay.

Supreme Court to be established for Moreton Bay and Resident Judge to be appointed for that District.

*Moreton Bay District Court Act.—1857.*

Limits of District.

3. For the purposes of this Act the District of Moreton Bay shall be taken to comprise all such portions of the Colony of New South Wales as lie to the northward of the southern boundaries of the Police Districts of Brisbane Ipswich Warwick Drayton and Surat and of a line west in extension of the southern boundary of the said Police District of Surat to the eastern boundary line of the Colony of South Australia.

Resident Judge to have within such limits the powers of the Supreme Court.

4. Within the limits of the said District such Resident Judge shall have exercise and enjoy all such and the like powers jurisdiction and authority as now are or can be legally exercised by the Supreme Court of New South Wales or by all or any of the Judges thereof collectively or individually.

The respective jurisdiction of the two branches of the Supreme Court defined.

5. The said Resident Judge at Moreton Bay with respect to all offences committed within the limits of that District shall exclusively have jurisdiction and with respect to offences committed within any other part of the Colony the Judges at Sydney shall exclusively have jurisdiction and in like manner with respect to actions and other proceedings at law and suits and proceedings in Equity and the granting of Probates and Letters of Administration or orders to collect the Resident Judge shall exclusively have jurisdiction over persons residing and property situate within the District of Moreton Bay and the Judges of the Supreme Court at Sydney shall exclusively have jurisdiction over persons residing and property situate within all other parts of the Colony but so nevertheless that no venue shall be necessary to be laid in any case civil or criminal after the passing of this Act other than is now necessary to be laid in any such case.

Provision for certain cases of absentees.

6. Provided always that nothing in the preceding section shall be construed to limit the jurisdiction of such Resident Judge in respect of any party absent from the said District or the Jurisdiction of the Judges at Sydney in respect of any party resident in the said District or elsewhere in any case where an action suit or other proceeding might now by law be commenced or carried on in the Supreme Court at Sydney in the absence of such party from New South Wales.

In matters that belong to the full Court decisions may be reviewed by the Court in Banco sitting in Sydney.

7. Provided always that the decision of such Resident Judge in any matter only which would in Sydney properly belong to the full Court and every General Rule made by such Judge may be brought under the review of the Judges of the Supreme Court sitting in Sydney in Banco by way of appeal or otherwise in such manner and form and on such terms to be imposed on the litigating parties respectively and subject to such rules and regulations in all other respects as the said last-mentioned Judges shall from time to time in that behalf make and prescribe Provided always that no appeal shall be allowed from any order for the granting of a re-hearing only or of a new trial or of any writ of attachment or of any interlocutory order merely whereby the merits of the case shall not be concluded.

Special cases and points reserved.

8. It shall be lawful for the said Resident Judge from time to time, at his discretion, and on such terms as he shall think fit, to impose in any matter civil or criminal pending before him, to state, or cause to be stated, and to transmit to the Judges at Sydney, under his hand, for their opinion and decision thereon, any point or points of law, and the said Judges, after argument before them, (or without argument if they think fit,) shall, as soon as conveniently may be, certify and transmit to such Judge their opinions and decision thereon accordingly, which decision shall thereafter on the point or matter in question be binding and conclusive.

Provision of mutual jurisdiction within certain distance.

9. Along the borders of the line which shall divide the said District from the other parts of New South Wales and throughout a space or tract of country extending twenty-five miles on each side of such line the Judges of the Supreme Court at Sydney and the said Resident Judge shall respectively have a concurrent jurisdiction in all cases criminal as well as civil.

*Moreton Bay District Court Act.—1857.*

10. Every writ of execution and writ of subpoena issued out of the Supreme Court at Sydney or by the said Resident Judge and every Rule of Court or Order made and every Writ of Attachment granted by the said Court or such Resident Judge shall be of equal force and validity and shall or lawfully may be served and enforced or carried into effect respectively according to the tenor thereof in every part of New South Wales including Moreton Bay Provided that nothing in this section contained shall be construed to confer on the said Resident Judge any original jurisdiction over any person or matter other than and except as first aforesaid.

Writs of Execution and of Attachment and Subpœna to be in force throughout the Colony!

11. The said Resident Judge shall or lawfully may on all occasions where by law or custom the Seal of a Court is used, have and use a Seal similar to that of the Supreme Court of New South Wales, except that on the Seal used by such Resident Judge the words "Supreme Court at Moreton Bay" shall be engraven, instead of the words "Supreme Court of New South Wales."

Seal of the Court to be issued by Resident Judge.

12. The plaintiff in any action at law commenced at Moreton Bay may proceed by foreign attachment in the manner prescribed by the Act in that case made in respect of any defendant not residing within that District and in such case no publication of notice as to such attachment shall be necessary other than in two of the public newspapers published in the District and the plaintiff in any action commenced at Sydney may proceed by foreign attachment in respect of any defendant residing at Moreton Bay in the same manner respectively as if such defendant resided out of the Colony and no plea in abatement for the nonjoinder of any person as a defendant shall be sustained where the place of residence of such person (if the action be pending at Sydney) shall be within the District of Moreton Bay or where (if the action be pending in that District) such place of residence shall be in any other part of the Colony.

Plaintiff in any action may proceed by foreign attachment in respect of defendant not residing within the District.

13. The provisions of the Act of Council passed in the nineteenth year of Her Majesty's reign intituled "*An Act to give further remedies to Creditors against persons removing from one Australasian Colony to another*" shall be applied in reference to the District of Moreton Bay in the same manner as if the said District were a separate Australasian Colony.

Provisions of 19 Vict. to give remedies to Creditors against persons removing from one Australasian Colony to apply.

14. It shall be lawful for the Governor with the advice of the Executive Council to appoint a Sheriff at and for Moreton Bay for the discharge within the limits thereof of all the duties by law appertaining to the office of Sheriff or which are or lawfully may be assigned to that officer to be discharged and the Sheriff of the Colony shall not be in any manner responsible for the acts or defaults of the Sheriff so appointed.

Power to appoint a Sheriff.

15. Every Fee now by law payable to the Sheriff of New South Wales, or to his Bailiffs, or payable to the Master in Equity, Prothonotary, or Chief Commissioner of Insolvent Estates, at Sydney, or to the Officer for Registration of Deeds there, or to the Commissioners for taking Affidavits in New South Wales, or any of them, shall be equally payable in Moreton Bay, to the appropriate Officer, or Officer having the like duties, appointed under this Act; and shall be demanded, received, and accounted for, by every such Officer accordingly.

Fees payable to Officers.

16. The Governor with the advice of the Executive Council shall appoint for the said Court at Moreton Bay one principal officer to be called the "Registrar" of the Court who shall possess the powers and perform the duties of Prothonotary Master in Equity and Registrar of Deeds and also such other duties as shall from time to time be required of him by any General Rule of the said Court and there shall or may be appointed as aforesaid such other officers clerks and servants as may from time to time be deemed by the Governor and Executive Council to be necessary.

The Governor, with advice of Executive Council, to appoint principal officer to be called Registrar of the Court.

17. The said Resident Judge lawfully may whilst so resident in virtue of such his office preside as Chairman of any such Courts of General or Quarter Sessions as the said Governor shall from time to time by Proclamation for that purpose appoint and the said Registrar shall

Resident Judge at Moreton Bay to preside at Quarter Sessions and the Registrar to act as Clerk of the Peace.

shall

*Moreton Bay District Court Act.—1857.*

shall act as Clerk of the Peace in relation to such court Provided that in case any Court of General or Quarter Sessions shall be holden elsewhere than at Brisbane, the said Registrar may appoint some other person to act as his deputy thereat.

Fifty pound cases.

18. The said Resident Judge shall try without a jury all civil actions in which the sum or matter in dispute shall not exceed twenty pounds and he shall also try without a jury all civil actions in which the sum or matter in dispute shall exceed twenty pounds and shall not exceed fifty pounds unless one of the parties shall require a jury and in every action for or in respect of a sum or matter not exceeding Fifty pounds the form of process and pleading shall be the same (or as near thereto as circumstances will permit) as are now in use in the Court of Requests in Sydney and in such action the charges shall not exceed (if the sum or matter in question be no more than twenty pounds) one half the amount allowed on taxation in ordinary cases in the Supreme Court or (where the sum or matter in question is above twenty pounds) two-thirds of the amount so allowed.

Certain defences and claims.

19. In every such action every defence which would be good in Equity shall be available although not ordinarily cognizable at Law and every demand properly cognizable in Equity only may be proceeded for in any such action, and it shall be lawful for any cestui que trust to sue in his own name, and for parties claiming as legatees or under the statute of distributions to sue the executor or administrator And the court may in every case grant a new trial for sufficient cause whether the trial was by a jury or not.

Insolvency Jurisdiction.

20. The Resident Judge shall in respect of all estates sequestered by the Court as insolvent and all persons whose estates have been so sequestered have all the powers and shall or may discharge all the duties incident to the office of Chief Commissioner of Insolvent Estates at Sydney Provided that whenever he shall in that capacity grant refuse or suspend the certificate of any insolvent his decision shall (if appealed from) be reviewed by him and confirmed reversed or varied in open Court as upon a re-hearing Provided also that the Resident Judge may direct all or any of the meetings of creditors in any case as occasion may require and all proof of debts thereat to take place before the Registrar or (in his absence) before the Official Assignee.

Public Prosecutor.

21. It shall be lawful for the Governor with the advice of the said Executive Council to appoint from time to time some fit and proper person for the said District of Moreton Bay (such person being a Barrister) by whom and in whose name all crimes misdemeanors and offences cognizable in the Supreme Court and in the several Courts of General and Quarter Sessions shall be prosecuted within the aforesaid limits of Moreton Bay Provided always that nothing herein contained shall be construed to limit or control any authority vested by law in Her Majesty's Attorney General for the Colony.

Officer for Intestacy and Insolvency cases.

22. It shall be lawful for the Governor to appoint some fit person at Brisbane to be the Official Assignee of and for Insolvent Estates and to be Curator of Intestate Estates as also of other property exposed or liable to waste left by persons who shall die leaving property within the District and which would or might by law if this Act had not been passed have been collected and administered by the Curator of Intestate Estates at Sydney.

Powers and emolument of such Officer.

23. The person so appointed shall as such Curator in respect of the estates and property belonging to persons so dying which he shall be directed or empowered to collect have all the powers of the Curator of Intestate Estates at Sydney and shall discharge the duties incident to that office and be entitled to the commission by law payable to an Official Assignee discharging those duties and the several Clerks of the Bench in the District of Moreton Bay shall be his Agents for the collection of all such estates and property in like manner as they now are by law Agents of the Curator at Sydney.

*Moreton Bay District Court Act.—1857.*

24. Such Official Assignee and Curator shall in each capacity in all matters connected with the duties of either office be deemed an officer of the Supreme Court at Moreton Bay and be subject to the Rules and Orders of the Court accordingly and shall before entering on such duties give such security by bond to Her Majesty for the due performance of those duties and that he will duly account for and pay into the Court or to the parties entitled thereto all property and moneys coming to his hands in either capacity as the Governor shall direct.

Responsibilities of  
Curator and Official  
Assignee.

25. Every provision contained in the several Acts passed and now in force relating to Juries shall be in force and be applicable with respect to and for the purposes of all prosecutions actions and proceedings in the said Court at Moreton Bay and for the purposes of the said Acts the said Court and the Resident Judge and Sheriff of Moreton Bay respectively shall have all the powers and duties and be subject to the same liabilities as by the same Acts are conferred or imposed on the Supreme Court and its Judges and on the Sheriff of New South Wales respectively.

Jury Act.

26. Every Commissioner of the Supreme Court for taking affidavits or examinations now or hereafter appointed at any place within the District of Moreton Bay shall have the same power as if this Act had not been passed and every such Commissioner appointed or to be appointed at any place out of that District shall have all the powers also of a Commissioner of the Supreme Court of Moreton Bay.

Commissioners for  
Affidavits, &c.

27. It shall be lawful for the Governor by Proclamation issued for that purpose to appoint from time to time places other than Brisbane within the said District at which sittings of the Court shall be holden and the Resident Judge shall hold sittings of the Court accordingly at such times as he shall by general rule or rules appoint.

Sittings hereafter at  
additional places.

28. For the purpose of carrying this Act and the objects thereof into effect and also for the regulation of the practice and proceedings of the Court and its Officers and touching the admission of Practitioners and the fees to be paid to them the said Resident Judge shall have power from time to time to make all such General Rules as he may think proper Provided that a copy of every General Rule so made shall be transmitted within sixty days next following to the Governor to be by him laid before the Legislative Council and Legislative Assembly respectively.

Power to make  
General Rules.

29. After the commencement of this Act, all Crown Grants, Wills, and other Instruments, affecting land within the District of Moreton Bay, not then already enrolled or registered, shall or may be enrolled or registered, as the case may require, in the office of the Registrar of the said Supreme Court at Moreton Bay, and not in the office for Registration of Deeds at Sydney:—and for all purposes of and connected with such enrolment and registration, the said Registrar shall have and be subject to all such and the same powers, liabilities, and duties, in every respect, as the Officer for the Registration of Deeds at Sydney has or would have, and is or would be subject to in respect of the like Grants, Wills, and Instruments enrolled or registered, or which of right ought to be enrolled or registered, in the said office for Registration of Deeds at Sydney.

Registration of  
Deeds, &c.

30. The proper Officer for the Registration of Deeds at Sydney shall, as soon as conveniently may be, after the commencement of this Act, make out and transmit to the said Registrar at Brisbane Extracts, certified under his hand, from all Memorials and Copies of Instruments affecting land within the said District, registered or deposited for registration in the said Office at Sydney, and all such Extracts shall be received by the said Registrar at Brisbane, and be by him entered and preserved, and shall be of the same force and effect to all intents and purposes as the original Memorials or Copies at Sydney.

Extracts from  
Memorials, &c.

*Moreton Bay District Court Act.—1857.*

Contents of each  
Extract.

31. Every Extract so made out and transmitted shall contain the particulars of one registered Memorial or Copy only, and shall state in columns for those purposes, the Date of the Instrument, the Names of the Parties thereto, the Description of the Lands affected or purporting so to be, the Estate or Term conveyed, or stated in the Habendum so to be, the consideration stated in the Instrument, the Names of the Witnesses, and the appropriate Number and Book on the Registry; and the Date when registered:—And all such Extracts shall be written, (or partly printed and partly written,) on paper or parchment of one uniform size.

Certificates of Regis-  
tration.

32. Upon the registration of any instrument in the office of the Registrar at Brisbane the receipt required by law to be endorsed upon such instrument shall be signed by the said Registrar or his clerk in his absence and every such receipt so endorsed and signed shall on proof of such signature be taken and allowed as evidence of the registration of such instrument and of the time when such registration was made.

Provision for cases  
pending in  
Supreme Court at  
Sydney, or in  
Brisbane Circuit  
Court, at time of  
commencement  
of this Act.

33. The jurisdiction conferred by this Act upon the Resident Judge and Supreme Court of and at Moreton Bay, respectively, shall not extend to or affect any case in which Probate or Administration shall have been granted, or any Order to collect been made, or any Suit or Action have been commenced or Prosecution instituted, or other Proceeding Civil or Criminal have been taken, by or in the Supreme Court at Sydney or the Circuit Court at Brisbane, before the commencement of this Act, but all such matters shall be dealt with and disposed of in all respects as if this Act had not been passed.

Sheriff may act as  
Police Magistrate.

34. It shall be lawful for the Governor, with the advice of the Executive Council, to appoint the Sheriff of Moreton Bay to be a Justice of the Peace, and also a Police Magistrate for the said District, or any part thereof; and the Sheriff, if so appointed, may lawfully act in those capacities, any enactment to the contrary notwithstanding.

Commencement of  
Act.

35. This Act shall take effect on and from the first day of April now next.