

21^o VICTORIÆ, 1858.

A BILL

To amend and extend the Act passed for shortening Acts of the Legislature.

WHEREAS doubts have arisen whether the Act passed in the sixteenth Preamble.
year of Her Majesty's reign intituled "*An Act for shortening Acts* 16 Vict. No. 1.
"*of the Legislative Council*" extends to or will embrace Acts passed or
to be passed by the Legislature as at present constituted and whether
5 Acts commence by law (where no time is expressed) from the day of
their receiving the Royal Assent or at an earlier date 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
10 as follows:—

1. The several provisions of the said Act applicable to Acts of Provisions of the
said Act extended.
Council shall extend to every Act passed or to be passed by the Legisla-
ture of this Colony for the time being however constituted and the term
"Session of Council" shall be taken to mean any Legislative Session
15 And every Act passed in this Colony by whatsoever Legislature may be
cited or referred to by the words "Act passed in this Colony" or by the
term "Act of the Legislature of New South Wales" Provided that
the word "*Act*" alone when used to indicate an Enactment shall equally
be taken to mean an Act of the Legislature of this Colony unless that
20 construction be inconsistent with the context.

2. Every Act heretofore or hereafter passed by the Legislature for Time of commence-
ment of Acts.
the time being shall be deemed to have commenced and shall take
effect on the day on which such Act received or shall receive the Royal
Assent unless a contrary intention be expressed therein And the
25 date purporting to be that of such Assent which shall appear on the
copy of any such Act printed by the Government Printer or purporting so
to be or which shall be printed on the copy of any such Act in the
Gazette shall be received for all purposes as evidence of the date of such
Assent and be judicially taken notice of.

Proviso.
Reserved Acts.

3. Provided that every Act reserved for the signification of Her Majesty's pleasure thereon shall commence only on the day on which the fact of Her Majesty's assent shall be proclaimed by the Governor in the *Gazette* or on such day thereafter if any as the Act itself shall have prescribed.

Repealed or expired enactments.

4. The repeal of an Enactment by which a previous Enactment 5 was repealed shall not have the effect of reviving such last mentioned Enactment without express words And neither the repeal nor the expiration of an Enactment shall affect Proceedings previously commenced under the same but every such Proceeding may be continued and every thing in relation thereto be done in all respects as if the 10 Enactment continued in force And the disallowance of an Act by Her Majesty shall be deemed a repeal of the same within the meaning of this section.

Amending Acts.

5. Every Act amending an Act shall be construed with the amended Act and as part thereof unless the contrary be declared in the amending 15 Act.

Orders in Council &c.
Terms "Gazette"
and "Petty Sessions."

6. The word "*Gazette*" used in this or any other Act shall be understood to mean the New South Wales *Government Gazette* and the words "*Petty Sessions*" shall be understood to mean the Justices of the Peace assembled at any Court of Petty Sessions or sitting in Sessions 20 not being any General or Quarter Sessions and the words "*Governor in Council*" shall be taken to mean the Governor of this Colony for the time being acting with the advice of his Executive Council And every Proclamation or Order by the Governor in Council whether before or after the passing of this Act made in pursuance of any Act or Statute and published 25 in the *Gazette* shall be judicially taken notice of.

Term "Act" or
"Statute."

7. In all Indictments and Informations and all Pleadings and Proceedings Civil or Criminal the word "Statute" or the word "Act" used to indicate an Enactment shall equally be taken to mean and include an Act of the Imperial Parliament or an Act of the Legislature of this 30 Colony—as the context or the case may require.

When a power is discretionary and when not.

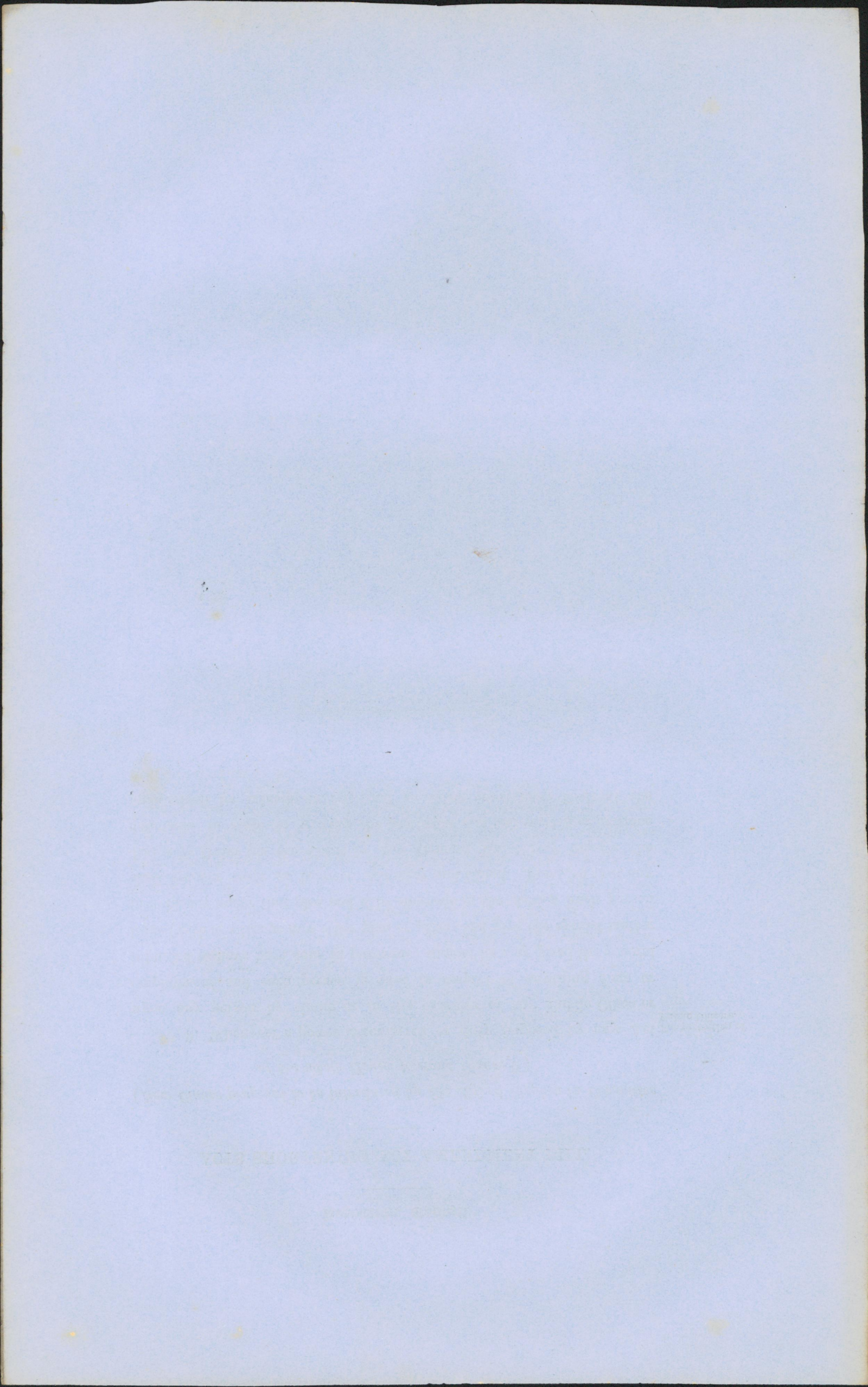
8. Where in any Enactment passed after the present Session a power is conferred on any Officer or person by the word "*may*" or by the words "*it shall be lawful*" applied to the exercise of that power such word or words shall be taken to import that the power may be exercised 35 or not at discretion but where the word "*shall*" is applied to the exercise of any such power the construction shall be that the power conferred must be exercised.

Legislative Council.

ACTS SHORTENING ACT AMENDMENT BILL.

(New Clause proposed to be introduced by Sir Alfred Stephen in Committee of the whole House, to stand Clause 9.)

9. Whenever a power is conferred or duty imposed by any Act For protection of Public Officers. upon any person by virtue or in the exercise of any Public Office or employment and such person is sued in respect of anything done or intended to have been done in pursuance thereof he may plead the general issue (with or without any other plea or pleas) and give the special matter in evidence under that plea and if he succeeds in the Action such person shall recover costs as between Attorney and Client Provided that any Judge by Order (or the Court by any General Rule) may require the defendant to state in writing the particular Act and section or sections upon which he intends to rely and no other enactments shall at the trial be relied on by him.



Legislative Council.

ACTS SHORTENING ACT AMENDMENT BILL.

(New Clauses proposed to be introduced by Sir Alfred Stephen in Committee of the whole House, to stand Clauses 10 and 11.)

10. The term "*Quarter Sessions*" or "*General Quarter Sessions*" Courts of General Sessions. in any Act now or hereafter passed shall be taken equally to include a Court of *General Sessions* of the Peace and every such Court periodically sitting and ordinarily presided over by the Chairman of Quarter Sessions or any Judge of a District Court acting as Chairman shall be deemed to have had and shall have the same jurisdiction and authority both in civil and in criminal cases as a Court of General Quarter Sessions.

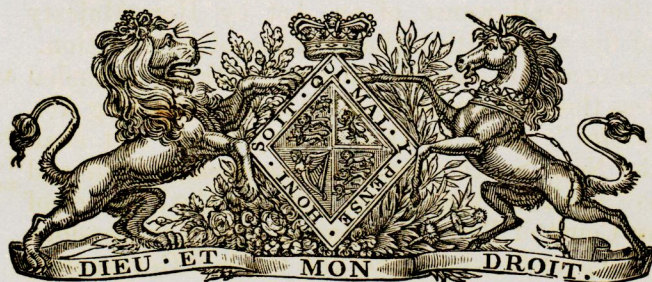
11. Where in an Act a certain time is prescribed or allowed for Reckoning of time. the doing of a particular thing such time shall in all cases be taken to exclude the day of the act or event from or after which the time for the doing of the thing is to be reckoned but shall include the day for the doing of that thing. Provided that where that day falls on a Sunday or on Christmas Day or Good Friday the thing may be done on the day following.

This PUBLIC BILL, having been this day passed by the LEGISLATIVE COUNCIL, is ready for presentation to the LEGISLATIVE ASSEMBLY, for its concurrence.

Legislative Council Chamber,
Sydney, 21st May, 1858. }

WM. MACPHERSON,
Clerk of the Legislative Council.

New South Wales.



ANNO VICESIMO PRIMO

VICTORIÆ REGINÆ.

No. .

An Act to amend and extend the Act passed for shortening Acts of the Legislature.

WHEREAS doubts have arisen whether the Act passed in the sixteenth year of Her Majesty's reign intituled "*An Act for shortening Acts of the Legislative Council*" extends to or will embrace Acts passed or to be passed by the Legislature as at present constituted and whether Acts commence by law (where no time is expressed) from the day of their receiving the Royal Assent or at an earlier date and it is expedient to remove those doubts and also to amend the said Act in some particulars 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. The several provisions of the said Act applicable to Acts of Council shall extend to every Act passed or to be passed by the Legislature of this Colony for the time being however constituted and the term "Session of Council" shall be taken to mean any Legislative Session And every Act passed in this Colony by whatsoever Legislature may be cited or referred to by the words "Act passed in this Colony" or by the term "Act of the Legislature of New South Wales" Provided that the word "Act" alone when used to indicate an Enactment shall equally be taken to mean an Act of the Legislature of this Colony unless that construction be inconsistent with the context.

2. Every Act heretofore or hereafter passed by the Legislature for the time being shall be deemed to have commenced and shall take effect on the day on which such Act received or shall receive the Royal Assent unless a contrary intention be expressed therein And the date purporting to be that of such Assent which shall appear on the copy of any such Act printed by the Government Printer or purporting so to be or which shall be printed on the copy of any such Act in the *Gazette* shall be received for all purposes as evidence of the date of such Assent and be judicially taken notice of.

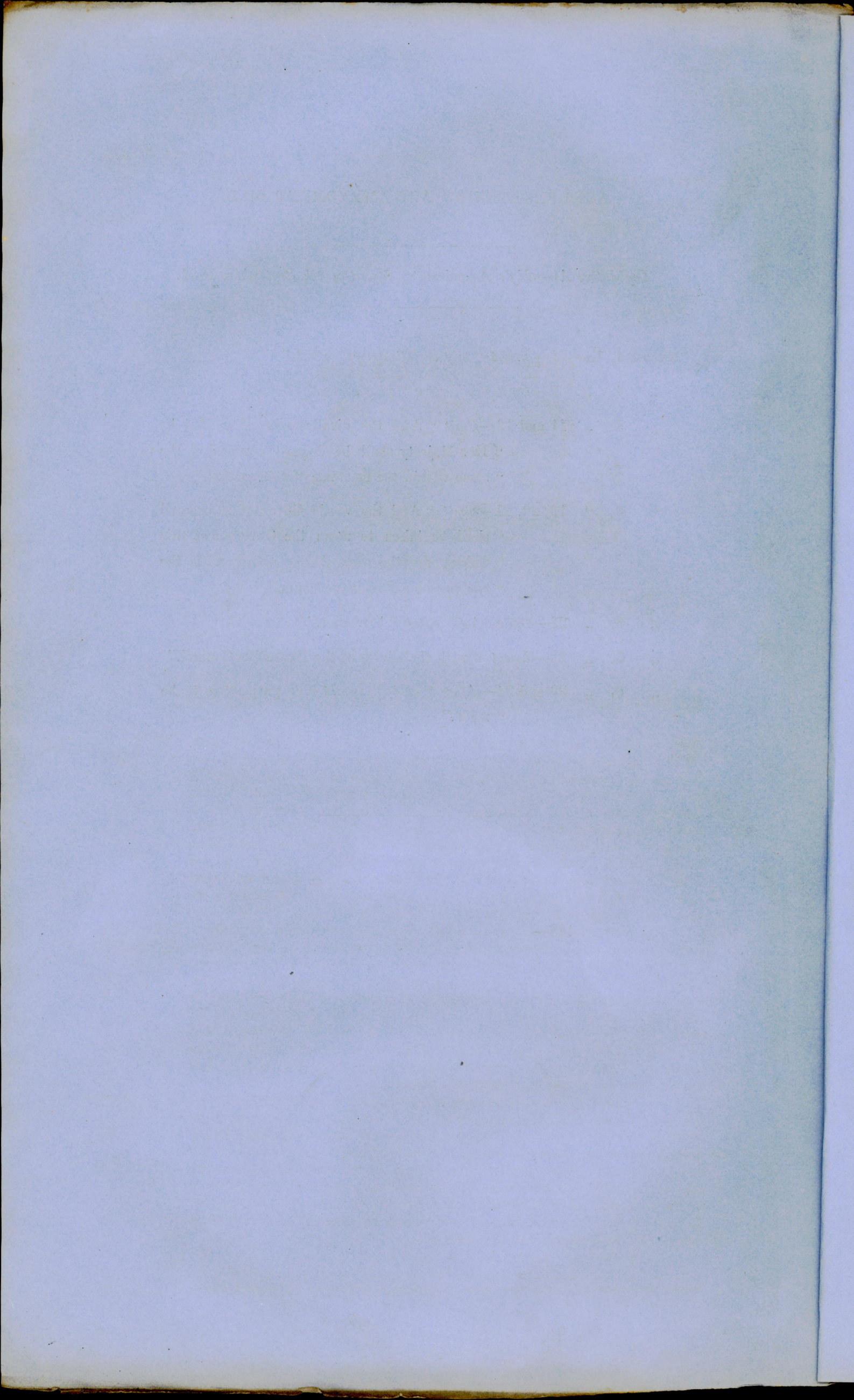
Acts Shortening Act Amendment Act.—1858.

3. Provided that every Act reserved for the signification of Her Majesty's pleasure thereon shall commence only on the day on which the fact of Her Majesty's assent shall be proclaimed by the Governor in the *Gazette* or on such day thereafter if any as the Act itself shall have prescribed. Proviso. Reserved Acts.
- 5 4. The repeal of an Enactment by which a previous Enactment was repealed shall not have the effect of reviving such last mentioned Enactment without express words. And neither the repeal nor the expiration of an Enactment shall affect Proceedings previously commenced under the same but every such Proceeding may be continued and every thing in relation thereto be done in all respects as if the Enactment continued in force. And the disallowance of an Act by Her Majesty shall be deemed a repeal of the same within the meaning of this section. Repealed or expired Enactments.
- 10 5. Every Act amending an Act shall be construed with the amended Act and as part thereof unless the contrary be declared in the amending Act. Amending Acts.
- 15 6. The word "*Gazette*" used in this or any other Act shall be understood to mean the New South Wales *Government Gazette* and the words "*Petty Sessions*" shall be understood to mean the Justices of the Peace assembled at any Court of Petty Sessions or sitting in Sessions not being any General or Quarter Sessions and the words "*Governor in Council*" shall be taken to mean the Governor of this Colony for the time being acting with the advice of his Executive Council. And every Proclamation or Order by the Governor in Council whether before or after the passing of this Act made in pursuance of any Act or Statute and published in the *Gazette* shall be judicially taken notice of. Orders in Council &c. Terms "Gazette" and "Petty Sessions."
- 20 7. In all Indictments and Informations and all Pleadings and Proceedings Civil or Criminal the word "*Statute*" or the word "*Act*" used to indicate an Enactment shall equally be taken to mean and include an Act of the Imperial Parliament or an Act of the Legislature of this Colony—as the context or the case may require. Term "Act" or "Statute."
- 25 8. Where in any Enactment passed after the present Session a power is conferred on any Officer or person by the word "*may*" or by the words "*it shall be lawful*" or the words "*shall and may be lawful*" applied to the exercise of that power such word or words shall be taken to import that the power may be exercised or not at discretion but where the word "*shall*" is applied to the exercise of any such power the construction shall be that the power conferred must be exercised. When a power is discretionary and when not.
- 30 9. Whenever a power is conferred or duty imposed by any Act upon any person by virtue or in the exercise of any Public Office or employment and such person is sued in respect of anything done by him which he shall allege to have been done in pursuance thereof he may plead the general issue (with or without any other plea or pleas) and give the special matter in evidence under that plea and if he succeeds in the Action such person shall recover costs as between Attorney and Client. Provided that he shall at the foot of his plea state the particular Act and section or sections upon which he intends to rely and no other enactments shall at the trial be relied on by him. For protection of Public Officers.
- 35 10. The term "*Quarter Sessions*" or "*General Quarter Sessions*" in any Act now or hereafter passed shall be taken equally to include a Court of General Sessions of the Peace and every such Court periodically sitting and ordinarily presided over by the Chairman of Quarter Sessions or any Judge of a District Court acting as Chairman shall be deemed to have had and shall have the same jurisdiction and authority both in civil and in criminal cases as a Court of General Quarter Sessions. Courts of General Sessions.
- 40 11. The time prescribed or allowed in an Act for the doing of a particular thing shall in all cases be taken to exclude the day of the act or event from or after which the time is to be reckoned but shall include the day for the doing of that thing. Provided that where that day falls on a Sunday or on Christmas Day or Good Friday the thing may be done on the day following and distance of space mentioned or indicated in an Act shall be computed according to the nearest road ordinarily used in travelling unless measurement in a direct line be expressed or that construction be rendered necessary by the context. Reckoning of time.
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ACTS SHORTENING ACT AMENDMENT BILL.

Legislative Assembly's Amendments, Message, 9th September, 1858.

- Clause 4, line 8—*Insert* “ any civil ” *after* “ affect.”
- „ 4, „ 8—*Omit* “ s ” *after* “ proceeding.”
- „ 4, „ 11 and 12—*Omit* “ And the [disallowance of an Act by
“ Her Majesty shall be deemed a repeal of the
“ same within the meaning of this section.”
- “ 6, “ 19, 20, 21—*Omit* “ And the words Governor in Council
“ shall be taken to mean the Governor of this
“ Colony for the time being acting with the
“ advice of his Executive Council.”
- „ 6, „ 22—*Omit* “ in ” *after* “ Governor.”
- „ 6, „ 22—*Insert* “ with the advice of the Executive Council.”
- „ 6, „ 23 and 24—*After* “ made ” *insert* “ or purporting to be
“ made.”
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This PUBLIC BILL, having been this day passed by the LEGISLATIVE COUNCIL, is ready for presentation to the LEGISLATIVE ASSEMBLY, for its concurrence.

Legislative Council Chamber,
Sydney, 21st May, 1858. }

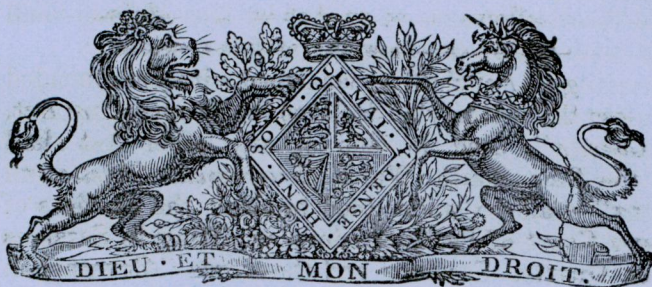
WM. MACPHERSON,
Clerk of the Legislative Council.

The LEGISLATIVE ASSEMBLY has agreed to this Bill with Amendments.

Legislative Assembly Chamber,
Sydney, September, A.D., 1858. }

Clerk of Legislative Assembly.

New South Wales.



ANNO VICESIMO PRIMO

VICTORIÆ REGINÆ.

No.

An Act to amend and extend the Act passed for shortening Acts of the Legislature.

WHEREAS doubts have arisen whether the Act passed in the sixteenth year of Her Majesty's reign intituled "*An Act for shortening Acts of the Legislative Council*" extends to or will embrace Acts passed or to be passed by the Legislature as at present constituted and whether Acts commence by law (where no time is expressed) from the day of their receiving the Royal Assent or at an earlier date and it is expedient to remove those doubts and also to amend the said Act in some particulars 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. The several provisions of the said Act applicable to Acts of Council shall extend to every Act passed or to be passed by the Legislature of this Colony for the time being however constituted and the term "Session of Council" shall be taken to mean any Legislative Session And every Act passed in this Colony by whatsoever Legislature may be cited or referred to by the words "Act passed in this Colony" or by the term "Act of the Legislature of New South Wales" Provided that the word "Act" alone when used to indicate an Enactment shall equally be taken to mean an Act of the Legislature of this Colony unless that construction be inconsistent with the context.

2. Every Act heretofore or hereafter passed by the Legislature for the time being shall be deemed to have commenced and shall take effect on the day on which such Act received or shall receive the Royal Assent unless a contrary intention be expressed therein And the date purporting to be that of such Assent which shall appear on the copy of any such Act printed by the Government Printer or purporting so to be or which shall be printed on the copy of any such Act in the *Gazette* shall be received for all purposes as evidence of the date of such Assent and be judicially taken notice of.

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3.

Acts Shortening Act Amendment Act.—1858.

3. Provided that every Act reserved for the signification of Her Majesty's pleasure thereon shall commence only on the day on which the fact of Her Majesty's assent shall be proclaimed by the Governor in the *Gazette* or on such day thereafter if any as the Act itself shall have prescribed.
- 5 4. The repeal of an Enactment by which a previous Enactment was repealed shall not have the effect of reviving such last mentioned Enactment without express words. And neither the repeal nor the expiration of an Enactment shall affect **any civil** Proceedings previously commenced under the same but every such Proceeding may be continued and every thing in relation thereto be done in all respects as if the Enactment continued in force. ~~And the disallowance of an Act by Her Majesty shall be deemed a repeal of the same within the meaning of this section.~~
- 10 5. Every Act amending an Act shall be construed with the amended Act and as part thereof unless the contrary be declared in the amending Act.
- 15 6. The word "*Gazette*" used in this or any other Act shall be understood to mean the New South Wales *Government Gazette* and the words "Petty Sessions" shall be understood to mean the Justices of the Peace assembled at any Court of Petty Sessions or sitting in Sessions not being any General or Quarter Sessions ~~and the words "Governor in Council" shall be taken to mean the Governor of this Colony for the time being acting with the advice of his Executive Council~~. And every Proclamation or Order by the Governor ~~in~~ **with the advice of the Executive Council** whether before or after the passing of this Act made **or purporting to be made** in pursuance of any Act or Statute and published in the *Gazette* shall be judicially taken notice of.
- 20 7. In all Indictments and Informations and all Pleadings and Proceedings Civil or Criminal the word "Statute" or the word "Act" used to indicate an Enactment shall equally be taken to mean and include an Act of the Imperial Parliament or an Act of the Legislature of this Colony—as the context or the case may require.
- 25 8. Where in any Enactment passed after the present Session a power is conferred on any Officer or person by the word "may" or by the words "it shall be lawful" or the words "shall and may be lawful" applied to the exercise of that power such word or words shall be taken to import that the power may be exercised or not at discretion but where the word "shall" is applied to the exercise of any such power the construction shall be that the power conferred must be exercised.
- 30 9. Whenever a power is conferred or duty imposed by any Act upon any person by virtue or in the exercise of any Public Office or employment and such person is sued in respect of anything done by him which he shall allege to have been done in pursuance thereof he may plead the general issue (with or without any other plea or pleas) and give the special matter in evidence under that plea and if he succeeds in the Action such person shall recover costs as between Attorney and Client.
- 35 10. Provided that he shall at the foot of his plea state the particular Act and section or sections upon which he intends to rely and no other enactments shall at the trial be relied on by him.
- 40 11. The term "Quarter Sessions" or "General Quarter Sessions" in any Act now or hereafter passed shall be taken equally to include a Court of General Sessions of the Peace and every such Court periodically sitting and ordinarily presided over by the Chairman of Quarter Sessions or any Judge of a District Court acting as Chairman shall be deemed to have had and shall have the same jurisdiction and authority both in civil and in criminal cases as a Court of General Quarter Sessions.
- 45 12. The time prescribed or allowed in an Act for the doing of a particular thing shall in all cases be taken to exclude the day of the act or event from or after which the time is to be reckoned but shall include the day for the doing of that thing. Provided that where that day falls on a Sunday or on Christmas Day or Good Friday the thing may be done on the day following and distance of space mentioned or indicated in an Act shall be computed according to the nearest road ordinarily used in travelling unless measurement in a direct line be expressed or that construction be rendered necessary by the context.
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Proviso.
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Repealed or expired
Enactments.

Amending Acts.

Orders in Council &c.
Terms "*Gazette*"
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Term "Act" or
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Courts of General
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Reckoning of time.