

Legislative Council.

53^o VICTORIÆ, 1890.

A BILL

To authorize the Service of Civil Process out of the jurisdiction of the Colony.

[MR. HEYDON ;—30 *April*, 1890.]

BE it 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 :—

5 1. This Act may be cited as the "Intercolonial Civil Process Short title.
Act, 1890."

2. In this Act—

10 "Action" means by action, suit, or other proceeding in which Interpretation.
relief is sought by one person against another, and in which
the Court may adjudge the possession or delivery of the
possession of property or the recovery of money or damages
or may declare the status of persons, not including proceed-
ings in matrimonial causes, but including proceedings for the
purpose of adjudication of bankruptcy or insolvency or in a
15 Vice-Admiralty Court.

20 "Writ of Summons" includes any writ or other mesne process by
which an action is commenced, or which has for its object
to require the appearance of any person against whom relief
is sought in an action, or who is interested in resisting such
relief.

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"Supreme"

“Supreme Court” means any Court having unlimited civil jurisdiction in the Colony in question and includes a Vice-Admiralty Court.

“Plaintiff” includes Her Majesty or any person suing on behalf of Her Majesty, and any person seeking relief in an action against any other person.

“Defendant” includes any person against whom relief is sought in an action.

Writ of summons may be served in any Colony.

3. A writ of summons issued out of the Supreme Court of New South Wales may be served upon the defendant in any other Colony on the mainland of Australia or in Tasmania or New Zealand.

Indorsements on writ for service beyond Colony.

4. Every writ of summons issued under the provisions of this Act for service out of the Colony in which it is issued shall, in addition to any other indorsement or notice required by law have indorsed thereon or annexed thereto a memorandum or notice in the form or to the effect following, that is to say:—

“This summons [*or petition, or as the case may be*] is to be served out of the Colony of New South Wales, and in the Colony of . . . Your appearance to this summons [*or petition, or as the case may be*] must give an address at some place in Sydney, at which address proceedings and notices for you can be left.”

and shall also have indorsed thereon a short statement of the nature of the claim made, or the relief sought by the plaintiff in the action, and, if the plaintiff sues in a representative character, shall also state the capacity in which he so sues.

Effect where writ of summons not properly indorsed.

5. If a writ of summons does not bear all the indorsements hereby required it shall not therefore be void, but it may be set aside as irregular, or may be amended on application to the Court out of which it was issued or to a Judge thereof. But no amendment shall be so made which would have the effect of taking the defendant by surprise.

Time limited for appearance.

6. The time to be limited by the writ of summons for the appearance of the defendant shall be such as is prescribed by the rules of the Supreme Court, but shall not be less than the following, that is to say:—

(I) When the writ is to be served in Victoria, Queensland, or South Australia—thirty days.

(II) When the writ is to be served in Tasmania or New Zealand—forty-five days.

(III) When the writ is to be served in Western Australia—sixty days.

Appearance to state address for service.

7. Every appearance by a defendant in person to a writ of summons served on him out of the Colony of New South Wales shall give an address in Sydney, at which address all proceedings and notices may be left for such defendant; and if such address is not given, or if a fictitious address is given, the appearance shall be treated as irregular and may be disregarded.

Consequences where no appearance entered.

8. When no appearance is entered by a defendant to a writ of summons served on him under the provisions of this Act according to the exigency thereof, then, if it is made to appear to the Supreme Court, or to a Judge thereof—

(I) That the subject matter of the action so far as it concerns such defendant is—

(a) Land or other property situate or lying within this Colony; or

(b) Shares or stock of a corporation or joint stock company having its principal place of business within this Colony; or

(c) Any deed, will, document, or thing affecting any such land, shares, stock, or property; or

(II)

- 5 (II) That any contract in respect of which relief is sought in the action against such defendant by way of enforcing, rescinding, dissolving, annulling, or otherwise affecting such contract, or by way of recovering damages or other remedy against such defendant for a breach thereof, was made or entered into within this Colony ; or
- (III) That the relief sought against the defendant is in respect of a breach which took place within this Colony of a contract wherever made ; or
- 10 (IV) That any act or thing sought to be restrained or removed or for which damages are sought to be recovered was done or is to be done or is situate within this Colony ; or
- (v) That at the time when the liability sought to be enforced against the defendant arose he was within this Colony.
- 15 And if it is also made to appear to such Court or Judge, that the writ of summons was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof upon the defendant, and it came to his knowledge, and that the defendant wilfully neglects to appear to the writ, or is living out of the Colony,
- 20 in order to defeat and delay his creditors, or deprive the plaintiff of the relief to which he is entitled, such Court or Judge may, on the application of the plaintiff, by order, direct from time to time, that the plaintiff shall be at liberty to proceed in the action, in such manner and subject to such conditions, as to such Court or Judge
- 25 may seem fit, and thereupon the plaintiff may proceed in the action against such defendant accordingly.

9. Any such order may nevertheless be rescinded, or set aside, or amended, on the application of the defendant. Order may be set aside, on application of defendant.

30 10. If at any time in the course of an action, it is made to appear to the Supreme Court, or to a Judge thereof, that the conditions prescribed by the last preceding section but one, do not exist with respect to any defendant who was served with the writ of summons, beyond the limits of the Colony, and who has not appeared to such writ, or do not exist with respect to the subject matter of the action

35 so far as it concerns any such defendant, no further proceedings shall be taken in the action against such defendant. Where it appears that conditions prescribed under section 8 do not exist, proceedings to be stayed.

40 11. When a judgment is recovered, or a decree is pronounced, or an order is made against a defendant, against whom an order for leave to proceed in an action has been made under the provisions of this Act, such judgment, decree, or order shall have the same force and effect as if the defendant had been personally served with the writ of summons within the Colony in which such judgment, decree, or order is recovered, pronounced or made, and had appeared to the writ and submitted to the jurisdiction of the Supreme Court of New South

45 Wales. Effect of judgment &c., recovered under this Act.

Introduction

The first part of the book is devoted to a general introduction to the subject. It discusses the importance of the subject and the scope of the book. It also discusses the methods used in the book and the organization of the book.

The second part of the book is devoted to a detailed discussion of the subject. It discusses the various aspects of the subject and the different methods used to study it. It also discusses the results of the studies and the implications of the results.

The third part of the book is devoted to a discussion of the applications of the subject. It discusses the various ways in which the subject can be applied and the benefits of these applications. It also discusses the challenges of these applications and the ways in which they can be overcome.

The fourth part of the book is devoted to a discussion of the future of the subject. It discusses the various ways in which the subject is likely to develop in the future and the challenges that it will face. It also discusses the ways in which the subject can be used to solve the problems of the future.

The fifth part of the book is devoted to a discussion of the conclusions of the book. It discusses the main findings of the book and the implications of these findings. It also discusses the ways in which the book can be used to further the study of the subject.

The sixth part of the book is devoted to a discussion of the bibliography. It lists the various sources used in the book and provides information about these sources. It also discusses the ways in which these sources can be used to further the study of the subject.

The seventh part of the book is devoted to a discussion of the index. It lists the various topics covered in the book and provides information about these topics. It also discusses the ways in which the index can be used to find information about the subject.

The eighth part of the book is devoted to a discussion of the appendix. It contains various tables and figures that are used in the book. It also discusses the ways in which these tables and figures can be used to further the study of the subject.

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(II) When the writ is to be served in Tasmania or New Zealand— 40 forty-five days.

(III) When the writ is to be served in Western Australia— 45 sixty days.

Appearance to state address for service.

7. Every appearance by a defendant in person to a writ of summons served on him out of the Colony of New South Wales shall give an address in Sydney, at which address all proceedings and 45 notices may be left for such defendant; and if such address is not given, or if a fictitious address is given, the appearance shall be treated as irregular and may be disregarded.

Consequences where no appearance entered.

8. When no appearance is entered by a defendant to a writ of summons served on him under the provisions of this Act according to 50 the exigency thereof, then, if it is made to appear to the Supreme Court, or to a Judge thereof—

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(a) Land or other property situate or lying within this Colony; or 55

(b) Shares or stock of a corporation or joint stock company having its principal place of business within this Colony; or

(c) Any deed, will, document, or thing affecting any such land, shares, stock, or property; or

(II)

- 5 (II) That any contract in respect of which relief is sought in the action against such defendant by way of enforcing, rescinding, dissolving, annulling, or otherwise affecting such contract, or by way of recovering damages or other remedy against such defendant for a breach thereof, was made or entered into within this Colony ; or
- 10 (III) That the relief sought against the defendant is in respect of a breach which took place within this Colony of a contract wherever made ; or
- 10 (IV) That any act or thing sought to be restrained or removed or for which damages are sought to be recovered was done or is to be done or is situate within this Colony ; or
- (v) That at the time when the liability sought to be enforced against the defendant arose he was within this Colony.
- 15 And if it is also made to appear to such Court or Judge, that the writ of summons was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof upon the defendant, and it came to his knowledge, and that the defendant wilfully neglects to appear to the writ, or is living out of the Colony,
- 20 in order to defeat and delay his creditors, or deprive the plaintiff of the relief to which he is entitled, such Court or Judge may, on the application of the plaintiff, by order, direct from time to time, that the plaintiff shall be at liberty to proceed in the action, in such manner and subject to such conditions, as to such Court or Judge
- 25 may seem fit, and thereupon the plaintiff may proceed in the action against such defendant accordingly.

9. Any such order may nevertheless be rescinded, or set aside, or amended, on the application of the defendant.

Order may be set aside, on application of defendant.

30 10. If at any time in the course of an action, it is made to appear to the Supreme Court, or to a Judge thereof, that the conditions prescribed by the last preceding section but one, do not exist with respect to any defendant who was served with the writ of summons, beyond the limits of the Colony, and who has not appeared to such writ, or do not exist with respect to the subject matter of the action

35 so far as it concerns any such defendant, no further proceedings shall be taken in the action against such defendant.

Where it appears that conditions prescribed under section 8 do not exist, proceedings to be stayed.

11. When a judgment is recovered, or a decree is pronounced, or an order is made against a defendant, against whom an order for leave to proceed in an action has been made under the provisions of this Act, such judgment, decree, or order shall have the same force and effect as if the defendant had been personally served with the writ of summons within the Colony in which such judgment, decree, or order is recovered, pronounced or made, and had appeared to the writ and submitted to the jurisdiction of the Supreme Court of New South

45 Wales.

Effect of judgment &c., recovered under this Act.

The first part of the report is devoted to a general survey of the situation in the country. It is followed by a detailed account of the work done during the year.

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