



ANNO TRICESIMO SEPTIMO

VICTORIÆ REGINÆ.

A.D. 1873.

No. 3.

An Act to facilitate the Proof of Telegraphic Messages in Courts of Justice, and for other purposes.

[Assented to, 17th September, 1873.]

WHEREAS it is desirable to facilitate the proof of Telegraphic Messages in Courts of Justice, and to extend the advantages of the Electric Telegraph—Be it therefore Enacted by the Governor 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 : Preamble.

1. It shall be lawful for any party to any action or suit in any Court of civil jurisdiction, at any time after the commencement thereof, to give notice to any other party that he proposes to adduce in evidence at the hearing of the trial of such action or suit any telegraphic messages that before the date of such notice shall have been sent by electric telegraph from any station in South Australia to any other station within the said Province: Provided that the time between the giving of such notice and the day on which such evidence shall be tendered shall not in any case be less than two days before the day of such hearing or trial: And every such notice shall specify the names of the sender and receiver of such messages, the subject matter thereof, and their dates, as nearly as may be: And any such notice may be served, and the service thereof proved, in the same manner as notices to admit and produce may now be served and proved respectively.

Special notices to admit telegraphic messages may be given in civil actions and suits, subject to certain provisions.

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After notice message received may be proved to have been sent by production of message, with evidence of due receipt from telegraph station.

2. In any case in which such notice shall have been given the production of any telegraphic message described in such notice, and purporting to have been sent by any person, together with evidence that the same was duly received from a telegraph station, shall be *prima facie* evidence that such message was signed and sent by the person so purporting to be the sender thereof to the person to whom the same shall be addressed without any further proof of the identity of the sender; but the party against whom any such message shall be given in evidence shall be at liberty, nevertheless, to prove that the same was not in fact sent by the person by whom it purports to have been sent.

After notice sending of message may be proved by production of message or a copy, and by evidence of payment of fees for transmission.

3. In any cause depending in a Court of civil jurisdiction, the production of any telegraphic message, or of a machine copy or press copy thereof, or a copy thereof verified on oath together with evidence that such message was duly taken to a telegraph station, and that the fees (if any) for the transmission thereof, were duly paid, shall be *prima facie* evidence that such message was duly delivered to the person named therein as the person to whom the same was to be transmitted; and the burden of proving that such message was not in fact received, shall be upon the person against whom such message shall be given in evidence: Provided that notice shall be first given by the party adducing the same in evidence to the other party of his intention so to do, and such notice may be given in such manner and at such times as by the practice of the Court in which the proceeding is taken, notices to produce are required to be given.

Certain documents may be transmitted by electric telegraph under restriction.

4. It shall be lawful for the Governor, any Responsible Minister of the Crown, the President of the Legislative Council, the Speaker of the House of Assembly, the Judges of the Supreme Court, the Commissioner of the Court of Insolvency, any Special Magistrate, and any principal officer of Government, or attorney, or solicitor, to cause to be transmitted by electric telegraph the contents of any writ, warrant, rule, order, authority, or other communication requiring signature or seal subject to the provisions following, that is to say:

- I. The original document shall be delivered at the telegraph station in the presence and under the inspection of some Justice of the Peace or notary public:
- II. The person to whom the contents of any such document shall be so sent shall, forthwith and in the presence and under the supervision of a Justice of the Peace or notary public, cause to be sent back by electric telegraph, a copy of the message received by him; and in the event of any error appearing therein, the process shall be repeated under the like supervision, until it shall appear that a true copy of such document has been received by the person to whom it shall have been sent:
- III. When it shall appear that such true copy has been so received, such first-mentioned Justice, or notary public, shall endorse upon

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upon the original document a certificate that a true copy thereof has been sent, under the provisions of this Act, to the person to whom the same shall have been so sent; and shall forthwith, by electric telegraph, inform such person that such certificate has been so endorsed :

- iv. The person so receiving such true copy shall, upon receiving information of such certificate, endorse upon the copy of the original document received by him a certificate that the same has been duly received, under the provisions of this Act, which certificate shall be signed by him and by the Justice or notary public, so supervising the receipt of such copy as hereinbefore provided.

5. Every copy so endorsed and certified shall be as valid to all intents and purposes as the original, whereof it purports to be a copy, would have been, and shall be admissible in evidence in any case in which the original would have been so admissible; and any person by whom such copy shall have been so received, or who shall be thereby authorized, instructed, or commanded, or who shall or may be lawfully charged with any duty in respect thereof, shall have and become liable to the same rights and duties in respect thereof as if he had received such original document duly signed and sealed, or signed or sealed, as the case may be. And in the case of documents intended to be served, or the efficacy or use whereof depends upon service, every such copy shall for the purpose of such service be deemed to be the original document whereof it purports to be a copy.

Copies so transmitted to be as valid and effectual as originals.

6. Every original document, a copy whereof shall have been transmitted under the fourth section of this Act, shall be kept at the telegraph station at which it was delivered for the purposes of such transmission; and shall, after the expiration of two days from the date of the certificate under sub-section three of that section being endorsed upon it, be open within reasonable hours to the inspection of any person upon payment of a fee of One Shilling.

Original documents, of which copies transmitted, to be open to inspection.

7. Any person who, being charged with the delivery of any telegraphic message, shall wilfully deliver the same to any person other than the person to whom the same shall be addressed, or his authorized agent in that behalf, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable at the discretion of the Court to be imprisoned for any term not exceeding two years, with or without hard labor.

Penalty for wilful delivery of message to wrong person.

8. Whosoever, without lawful authority or excuse (the proof whereof shall be on the person accused), shall sign the name of any other person to any telegraphic message with intent to procure such message to be sent as a message from such other person, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable at the discretion of the Court to be imprisoned for any term not exceeding two years, with or without hard labor.

Penalty for signing another's name without authority to message to be sent.

9. Any

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Penalty for false certificate of sending message under section 4.

9. Any Justice or notary public who shall wilfully and falsely endorse upon any original document, delivered at a telegraph station for the purpose of being transmitted under the provisions of this Act, a certificate that a true copy thereof has been sent under this Act, or who shall by telegraph wilfully and falsely inform any person to whom such document shall have been so sent that a certificate under the provisions of this Act has been endorsed thereon, shall forfeit a sum not exceeding One Hundred Pounds, which may be sued for and recovered by the first person who shall, for his own benefit and without collusion, sue for the same.

Signing false certificate upon copy under section 4 to be felony.

10. Any person by this Act required to sign a certificate upon any copy of a document that such copy has been duly received under the provisions of this Act, who shall wilfully sign such certificate, knowing the same to be false, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without solitary confinement.

Interpretation clause.

11. The following words within inverted commas shall, for the purposes of this Act, bear the meanings set against them respectively, unless where the context implies otherwise—

“Electric Telegraph”—Any telegraphic line the property and under the control of the Government, and worked by electricity within the said Province:

“Telegraphic Message”—Any message or other communication transmitted, or intended for transmission, or purporting to have been transmitted, by electric telegraph:

“Telegraph Station”—Any station appointed by Government for the receipt and transmission of telegraphic messages.

And the words “any principal officer of Government” shall include the Auditor-General, the Under Secretary, the Under Treasurer and the Secretaries to each Department presided over by a Minister of the Crown, the Clerk of the Legislative Council, the Clerk of the House of Assembly, the Government Resident at the Northern Territory, the Surveyor-General, the Collector of Customs, the President of the Marine Board, the Postmaster-General, the Superintendent of Telegraphs, the Registrar-General, the Sheriff, the Master of the Supreme Court, the Commissioner of Police, Inspectors of Police, the Returning Officer for the Province—and for the purposes of returns to writs of election, but not otherwise, shall also include Returning Officers of Districts, and Deputy Returning Officers of Electoral Divisions.

Short title.

12. This Act may be cited for all purposes as “The Telegraphic Messages Act, 1873.”

In the name and on behalf of Her Majesty the Queen I hereby assent to this Bill.

A. MUSGRAVE, Governor.