

No. IX.

An Act for the further amendment of the Law ADVANCEMENT OF JUSTICE.
and for the better advancement of Justice. —
[28th September, 1841.]

WHEREAS by the Act passed in the last Session for the more Preamble.
effectual administration of justice in this Colony and its
Dependencies provision was made for (amongst other things) the 4 Victoria No. 22.
hearing of Equity cases pending in the Supreme Court at Sydney
before one Judge only and for the appointment of a Resident Judge
for the District of Port Phillip and it is expedient to make further
provision in the premises and whereas certain Acts have been passed Recites 3 and 4
William IV. cap. 42
and other Acts.
of late years in England for the general amendment of the Law of
which

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

which Acts portions have from time to time been introduced into this Colony and it is expedient now to adopt other portions of them and otherwise to provide for the better administration of justice in the manner hereinafter provided Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That after the passing of this Act the Resident Judge at Port Phillip 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 the Resident Judge shall exclusively have jurisdiction over persons residing and property situate within Port Phillip 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.

2. Provided always and be it enacted That nothing in the preceding section shall be construed to limit the jurisdiction of the Resident Judge at Port Phillip (although the party intended to be affected shall not be there resident) or the jurisdiction of the Judges at Sydney (although the party be resident at Port Phillip 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 in the absence of such party from New South Wales.

Limits of Port Phillip.

3. Provided also and be it declared and enacted That it shall be lawful for the Governor for the time being for the purposes of this Act by proclamation for that purpose issued from time to time to enlarge or alter the limits of the District of Port Phillip as to him shall seem meet and the words "Port Phillip" used in this Act shall be taken to intend and include the limits assigned to that district for the time being.

Provision for mutual jurisdiction within certain distance.

4. Provided further and be it enacted That along the borders of the line now dividing or which shall at any time hereafter 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 Resident Judge at Port Phillip shall respectively have a concurrent jurisdiction in all cases criminal as well as civil.

Appellate jurisdiction and power to issue subpoenas &c.

5. And be it declared and enacted That nothing hereinbefore contained shall extend or be taken to abridge or affect the appellate jurisdiction of the Judges of Sydney or the power of the Supreme Court and of the Resident Judge respectively to cause the writs mentioned in the said recited Act in that behalf to be executed in any part of the Colony but the same jurisdiction and power respectively shall continue as if this Act had not been passed.

Mode of reciprocally enforcing judgments.

6. Provided always and be it enacted That it shall be lawful for the plaintiff in any action after judgment recovered therein at Port Phillip to cause a memorial of the same containing the particulars hereinafter mentioned to be filed in the office of the Supreme Court at Sydney such memorial being duly certified by the proper officer at Port Phillip and authenticated by the seal of the Court there and such memorial being so filed shall be deemed and taken to be thenceforth a record of such judgment and process shall or lawfully may thereafter be from time to time sued out upon the same and be executed and returned or otherwise dealt with in the same manner as if such judgment had in fact been recovered at Sydney and the like course shall or lawfully may be taken and the like proceedings had at

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Port Phillip with respect to judgments recovered in the Supreme Court at Sydney.

7. And be it enacted That every such memorial shall be on parchment and be signed by the plaintiff or his attorney and shall contain the following particulars all of which shall be fairly written in words at length without interlineation or erasure that is to say the names and residence or supposed residences and additions of the parties plaintiff or defendant respectively the form or nature of the action and when commenced the date of the signing or entering up of the judgment and the amount thereof distinguishing debt from costs and specifying the total amount recovered and (if there was a trial) the date of such trial and the amount of the verdict given and in case such judgment shall have been entered up more than six months then no execution shall be sued out thereon without an affidavit by the plaintiff or some competent person on his behalf that the sum for which the writ is sought to be sued out is still due.

Memorial of such judgments.

8. And be it enacted That after the passing of this Act the plaintiff in any action at law commenced at Port Phillip 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 the plaintiff in any action commenced at Sydney may proceed by foreign attachment in respect of any defendant residing at Port Phillip 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 Port Phillip or where (if the action be pending in that district) such place of residence shall be in any other part of the Colony.

Foreign attachment and pleas in abatement.

9. And be it enacted That after the passing of this Act where a foreign attachment shall be issued at Port Phillip no publication of notice as to such issue shall be necessary other than in two of the public newspapers there and where a foreign attachment shall issue at Sydney in respect of any defendant residing at Port Phillip no publication of notice shall be necessary other than in newspapers published in Sydney.

Publication of notice in foreign attachment cases.

10. And in order that no doubt may arise be it declared and enacted That no sitting of the Supreme Court holden before the Resident Judge at Port Phillip can be taken to be void nor any such sitting nor any judgment or proceeding thereat be in any manner prejudiced or affected by reason that a sitting of the Supreme Court has been or may hereafter be holden at Sydney or elsewhere at the same time nor shall any judgment or proceeding of the Supreme Court at Sydney be affected by reason of any simultaneous sitting of the Court at Port Phillip.

Simultaneous sittings of Supreme Court at Sydney and Port Phillip.

11. And be it enacted That it shall be lawful for the Resident Judge at Port Phillip from time to time in any cause or matter civil or criminal pending before him to state or cause or direct to be stated and to transmit to the Judges of the Supreme Court at Sydney under his hand and seal for their opinion and decision thereon any special case or to reserve for such opinion and decision any point or points of law at his discretion 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.

Special cases and points reserved.

12. And be it enacted That after the passing of this Act in case of the absence from Sydney or illness of the Chief Justice or other Judge appointed to sit in Equity it shall be lawful for either of the other Judges (during such absence or illness) to sit alone and hear and determine

Absence or illness of Judge in Equity provided for.

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determine all causes and matters in Equity in like manner as the Judge so being ill or absent might have done if not so incapacitated but subject nevertheless to the like appeal.

Appeals in Equity.

13. Provided always and be it enacted That every appeal from any decree or order made or to be made under this or the aforesaid Act shall hereafter be preferred to and shall be set down and come on to be heard and decided before and by the three Judges at Sydney in such manner and form and subject to such general rules as they shall from time to time prescribe and make or (in the absence of any such rule) as they shall in any case direct and the decree or decision of such Judges thereupon or of the majority of them in case of a difference of opinion (subject always to such further appeal as Her Majesty may in any such case think fit to grant) shall be conclusive and final.

Pending appeals.

14. And be it enacted That in every case where any cause or matter in Equity shall at the time of the passing of the aforesaid Act to provide for the more effectual administration of justice have stood for a re-hearing or been partially heard on appeal or petition for a re-hearing or where in any such cause or matter there shall at the time of the passing of this Act be an appeal pending the same shall respectively be proceeded in and be set down for hearing before the said three Judges and the same shall or lawfully may be by them or the majority of them thereupon determined in the same manner as nearly as may be as if the case had been one of appeal under the preceding section.

As to examination of witnesses on interrogatories &c. (Sec. 1 W. IV. cap. 22.)

15. And be it enacted That after the passing of this Act the same powers and jurisdiction with respect to the examination of witnesses by commission or otherwise shall in every action and suit in the Supreme Court of New South Wales be vested in and may be exercised by the Judges of the said Court at Sydney and each of them and by the Resident Judge at Port Phillip respectively (whether any such witness shall reside within the jurisdiction of any such Judge or not) as are vested in the several Courts at Westminster and the Judges thereof respectively in actions there pending by the Act passed in the first year of His late Majesty intituled "*An Act to enable Courts of Law to order the examination of Witnesses upon Interrogatories and otherwise.*"

Where such examinations to be read &c.

16. Provided always and be it enacted That where after the passing of this Act any examination taken under the order of any Judge for that purpose (whether in pursuance of the said last recited Act or not) shall be offered in evidence the same may be read without proof of the examinant being beyond the jurisdiction of the Court or unable to attend the trial and where such examination shall appear to be certified under the hand of the person appointed or authorized to take the same no proof shall be necessary of the signature of such person Provided nevertheless that where it shall be made to appear that in fact the examinant is within the jurisdiction and able to attend as aforesaid then such examination shall be rejected.

Misnomers not be pleaded and initial letters may be used. (Sec 3 & 4 W. 4 c. 42 ss. 11 & 12.)

17. And be it enacted That after the passing of this Act no plea in abatement for a misnomer shall be allowed in any action but the defendant shall be at liberty to cause the declaration to be amended at the cost of the plaintiff upon a Judge's summons founded on an affidavit of the right name And in all actions on any written instrument where any of the parties thereto are therein designated by any initial letter or letters or other contraction of the first or other name or names it shall be sufficient to designate such parties by such initial letter or letters or other contraction as aforesaid.

Power to refer causes to arbitration.

18. And be it enacted That in every action now or hereafter depending in the Supreme Court wherein on the application of either of the

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the parties plaintiff or defendant it shall be made to appear to the said Court or a Judge thereof that the plaintiff's claim arises out of or involves matters of account in dispute between the said parties or where a plea of set-off is pleaded that the defendant's claim under such set-off arises out of or involves any such matters of account it shall be lawful for the said Court or Judge to make a rule or order if such Court or Judge shall see fit to refer all or any of such matters of account to some Commissioner or Officer of the Court or (if both parties shall so require) to some Barrister at Law to be named in such rule or order and for the purposes of such reference to give all such directions from time to time and impose all such terms on the parties respectively as to the production of books and writings and for the examination of such parties and their witnesses and otherwise for proceeding in the matter of such reference as the said Court or any Judge thereof may think fit and upon the coming in of the report or award of such Commissioner Barrister or Officer the said Court or any Judge thereof shall or lawfully may make such further order or orders in the premises and finally give such judgment therein and for those purposes cause such entry or entries to be made on the record in such action as the case shall appear to such Court or Judge to require.

19. And be it enacted That every such Commissioner Barrister or Officer shall for the purposes of every such reference and report or award as aforesaid have the same powers and (unless in any case otherwise directed) shall proceed in the same manner as if he had been appointed an arbitrator between the parties in such action as aforesaid under a Rule of Court in the ordinary course and the costs of every such reference and report or award (unless the Court or a Judge shall have otherwise ordered) shall be in his discretion but where no such order shall have been made and the Commissioner Barrister or Officer shall also make no order in that behalf such costs shall form and be costs in the cause and after the passing of this Act it shall not be necessary in any case whatsoever of reference to arbitration by consent of parties to make the Order of a Judge a Rule of Court but the like proceedings may in every such case be had and taken upon any such Order as might be had and taken on a Rule of Court of the same tenor.

Proceedings before such referees.

In all cases a Judge's Order in cases of arbitration to be equivalent to a Rule of Court.

20. And be it enacted That on the return of every writ of inquiry or writ of trial issued or to be issued in any of the cases contemplated by the said recited Act for the more effectual administration of justice in that behalf the party succeeding may tax his costs and sign judgment and issue execution forthwith unless the Commissioner to whom such writ shall have been directed shall certify to the Court that in his opinion an opportunity should be afforded to the unsuccessful party to move for a new trial or assessment (as the case may be) or unless a Judge shall stay judgment or execution therein and every such inquiry or trial shall be by such Commissioner and two Assessors to be named and summoned by him and the verdict of such Commissioner and Assessors or of the majority of them shall be of the like force as the verdict of a jury at *Nisi Prius*.

Proceedings on trials in local district. (4 Vic. No. 22 sec. 26.)

21. And be it enacted That after the passing of this Act it shall be lawful for the parties in any action after issue joined by consent to state the facts as the same may be agreed upon between them in the form of a special case for the opinion of the Court and to agree that a judgment shall be entered thereupon for the plaintiff or defendant by confession or *nolle prosequi* or otherwise after the decision of such case as the Court shall think fit and judgment shall be entered accordingly and in all other cases where by any law now in force in this Colony the Court or any Judge thereof is empowered to direct or authorize the trial of a feigned issue for the determination of any

Power to state special cases. (3 & 4 W. IV. cap. 42 sec. 25.)

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any question of fact it shall be lawful for such Court or Judge to direct or allow the statement of a special case for the opinion of the Court on any matter of Law and it shall be lawful for the Court on the decision of any such case to make such order or orders in the matter and to give such adjudication or cause such judgment to be entered therein as the said Court shall think fit.

Payment of money into Court. (Same Act sec. 21.)

22. And be it enacted That after the passing of this Act it shall be lawful for the defendant in all personal actions (except actions for libel malicious prosecution or arrest criminal conversation or the debauching of the plaintiff's daughter or servant) by leave of a Judge to pay into Court a sum of money by way of compensation or amends in such manner and under such regulations as to costs and the form of pleading as the said Court shall by general rules or otherwise in any case prescribe.

Interest to be allowed on trials in certain cases. (Same Act sec. 28.)

23. And be it enacted That upon all debts or sums certain hereafter to be recovered in any action the jury or assessors (as the case may be) on the trial of any issue or assessment of any damages may if they think fit allow interest to the creditor at a rate not exceeding eight per cent. or (in respect of any bill of exchange or promissory note) at a rate not exceeding twelve per cent. per annum from the time when such debt or sum was payable (if payable by virtue of some written instrument and at a date or time certain) or if payable otherwise then from the time when demand of payment shall have been made in writing giving notice to the debtor that interest would be claimed from the date of such demand Provided that nothing herein contained shall extend to authorize the computation of interest on any bill of exchange or promissory note at a higher rate than eight per cent. per annum where there shall have been no plea pleaded.

Damages in the nature of interest in certain actions. (*Ibid* sec. 29.)

24. And be it enacted That the jury or assessors may on any trial or assessment of damages give damages in the nature of interest if they think fit over and above the value of the goods at the time of the conversion in all actions of trover or trespass concerning goods and over and above the money receivable in all actions on any policies of insurance made after the passing of this Act.

Witnesses interested solely on account of verdict. (*Ibid* 26.)

25. And be it enacted That if any witness shall after the passing of this Act be objected to as incompetent on the ground that the verdict or judgment in the action would be admissible in evidence for or against him such witness shall nevertheless be examined but in that case no verdict or judgment in that action (whether in favour of or against the party calling him) shall at any time be admissible in evidence for or against such witness or any one claiming under him Provided that the name of every witness so objected to shall at the trial at the request of either party be endorsed on the record or document on which such trial is had by some officer of the Court together with the name of the party calling him and be afterwards entered on the record of the judgment which judgment or entry shall in any subsequent proceeding be sufficient evidence that such witness was so examined.

Costs to one or more of several defendants obtaining verdicts. (*Ibid* 32.)

26. And be it enacted That where two or more persons shall be made defendants in any personal action any one or more of them who shall have a *nolle prosequi* entered or shall obtain a verdict shall have judgment for and recover his reasonable costs or suit and where any *nolle prosequi* shall have been entered on any count or as to part of a declaration the defendant shall have judgment for and recover costs in that behalf and also in all writs of *scire facias* the plaintiff shall recover his costs as well upon a judgment by default as on a judgment after plea or demurrer and where judgment shall be given on a demurrer in any action whatever the party in whose favour such judgment is given shall have judgment to recover his costs.

Costs in *sci. fa.* or on demurrer. (*Ibid* 34.)

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27. And be it enacted That it shall be lawful for the executors or administrators of any lessor or landlord to distrain upon the lands demised for any term or at will for arrears of rent due to such lessor or landlord in his life time in like manner as such lessor or landlord might have done and such arrears may be distrained for after the end or determination of such term or lease in the same manner as if it had not been determined Provided that such distress be made within six calendar months after the determination of such term or lease and during the continuance of the possession of the tenant from whom such arrears became due and that all provisions in force by law relating to distresses for rent shall be applicable to every distress so made.

Executors of lessor
may distrain.
(*Ibid* 37.)

28. And be it enacted That in all actions hereafter brought by executors or administrators in right of their testator or intestate such executors or administrators (unless the Court or a Judge shall otherwise order) shall be liable to pay costs to the defendant in case of being nonsuited or a verdict passing against them and in all other cases in which they would be liable to costs if suing upon a cause of action accruing to themselves in their own right and the defendant shall have judgment for such costs accordingly.

Executors to pay
costs. (*Ibid* 31.)

29. And be it enacted That no wager of law shall be hereafter allowed and that actions of debt shall be maintainable on simple contract against executors or administrators.

Debt on simple con-
tract. (*Ibid* 13.)

30. And be it enacted That actions of trespass or on the case may be maintained by executors or administrators for any injury to the real estate of their testator or intestate committed in his life time for which the like actions might have been maintained by him Provided that every such action shall be brought within one year after the death of such testator or intestate and that the injury shall have been committed within six calendar months before his death and the damages when recovered shall form part of the deceased's personal estate and the like actions may be maintained against executors or administrators for any wrong committed by their testator or intestate to another in respect of his property real or personal Provided that every such action shall be brought within six months after such executors or administrators shall have taken on themselves the administration of the estate of the deceased and that the injury shall have been committed within the like period preceding his death and the damages recovered in such action shall be payable in like order of administration as the deceased's simple contract debts.

Actions by and
against executors for
injuries in testator's
life time. (*Ibid* 2.)

31. And be it enacted That after the passing of this Act it shall be lawful for the Sheriff to whom any writ of *feri facias* issued out of the Supreme Court shall be directed (and for the Deputy Sheriff within the District of Port Phillip) to take in execution and cause to be put up for sale and sold under such writ any equity of redemption or other equitable interest or any chose in action of or belonging to the defendant therein named and every such sale (the same being by public auction only and in cases of equity of redemption being previously advertised in the *New South Wales Government Gazette* and in one or more newspaper or newspapers at least one calendar month before the same shall take place) shall be as valid and effectual to pass all such defendant's right and title to and interest in such equity or equitable interest or chose in action as if the same had been conveyed or assigned to the purchaser by such defendant himself Provided that where any such equity or equitable interest or chose in action shall relate to real estate a deed of "bargain and sale" thereof or of such defendant's right and title to and interest therein shall be executed by such Sheriff or Deputy Sheriff to such purchaser and be by him duly registered within one calendar month next after such sale.

Sheriff may sell
equities of re-
demption.

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Costs on verdicts
under 40s.

32. And be it enacted That after the passing of this Act in every action at law now depending or hereafter to be brought if the plaintiff therein shall by verdict or otherwise recover less than the sum of forty shillings he shall not have or be entitled to any costs whatever (whether the defendant shall have pleaded or not and whether the title to land shall have come in question or not) unless the Judge before whom the case shall have been tried shall under his hand certify that the action was in his opinion not vexatious and that the same was a fit and proper case for inquiry in the Supreme Court Provided that in all other cases the plaintiff shall have judgment for and shall recover his costs notwithstanding that the sum recovered (if above forty shillings) shall not exceed ten pounds unless it shall appear that the same could have been recovered in one of the Courts of Requests and the Judge shall certify that in his opinion the same ought to have been there sued for.

The like in cases
above 40s. but under
£10.

Assignments in
trust for creditors
provision as to out-
standing bills.

33. And be it enacted That in every case where after the passing of this Act any debtor resident in this Colony shall execute any conveyance or assignment by deed to a trustee or trustees of all his estate and effects whatsoever for the benefit of all his creditors (to be named in a schedule annexed to such deed with the amounts due to them respectively) and such deed shall be executed by such debtor and trustee or trustees and by the majority in number and in value of such creditors or by the agents of such of them as shall be absent from the Colony the person of such debtor from and after the publication of such notice as is hereinafter mentioned shall be absolutely free from arrest in execution at the suit of any creditor named in such schedule in respect of any debt or sum therein included and if nevertheless arrested by any such creditor he shall (on proof of the facts to the satisfaction of any Judge of the Supreme Court) be discharged from custody with or without costs to be paid by the plaintiff as such Judge shall think fit to order Provided that no creditor whose debt is under fifty pounds shall (under this or the succeeding sections) be reckoned in number but such debt shall be computed in value only Provided also that with respect to debts due on any outstanding bill of exchange or promissory note the actual holder of which shall then be unknown it shall be sufficient if that fact be stated in the schedule with the amount of such bill or note and the date when the same will fall due to give the name of the last known holder and the names of the immediate parties thereto.

Proceedings in
respect of such
assignments.

34. Provided always and be it enacted That every such deed shall be executed by such debtor and trustee or trustees respectively in the presence of and shall be attested by some Justice of the Peace and that a notice of the same attested in like manner (and stating truly where such deed is lying for inspection and execution) shall within fourteen days next after such execution be published in the *Government Gazette* and one other newspaper published at Sydney or (if the debtor be resident within the District of Port Phillip) in not less than two newspapers published at Melbourne in that district Provided also that there shall be annexed to every such deed a true and particular account of all the property of every description (wearing apparel and necessaries to an amount not exceeding twenty-five pounds only accepted) of which the debtor is possessed or any person in trust for him or to which he or any such person is entitled legally or equitably in possession reversion or expectancy so far as such debtor can set forth the same and that in case any part of such property be real estate situate in this Colony a memorial of the deed accompanied by a copy of such last mentioned schedule shall within the like period of fourteen days be duly registered.

Contents of
assignment.

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35. Provided also and be it enacted That no such deed as aforesaid nor any deed of the like nature shall be valid if containing any provision for enabling the debtor to retain possession of his property (except as aforesaid) or any part thereof or to carry on his business (other than for the purpose of winding up the same) or for releasing him from his debts without full payment of the same or for making him any allowance out of such property or business unless such deed shall have been executed by not less than four-fifths in number and in value of his creditors but that where any deed shall be so executed as last aforesaid (whether at the time of or subsequently to and in connexion with such conveyance or assignment as first aforesaid) the same and the several provisions therein shall be binding on all the creditors named in such schedule as aforesaid whether assenting or not.

Special provisions.

36. Provided further and be it enacted That every such deed shall at the instance of any creditor on application to be made to the Court in a summary way for that purpose be liable to be set aside for fraud or for any wilful and material error or omission in either of the schedules annexed to the conveyance or assignment as aforesaid or (at the discretion of the Court) the debtor shall in such case be deprived of all claim under any such deed and of every benefit thereby or by this Act intended in that behalf to have been conferred upon him.

Deeds may be set aside for fraud or wilful error or omission in schedule.

37. And be it enacted That after the execution of any such deed as aforesaid and after the publication of such notice thereof as in that behalf is hereinbefore required all and singular the property of the debtor having executed such deed of any description whatsoever and all his rights and credits including all debts due to him shall be absolutely vested in the trustee or trustees therein named for the purposes in and by such deed declared and such trustee or trustees may recover all such property and sue for and recover all such debts in his or their own name or names and every warrant of attorney or cognovit actionem executed or given and every assignment or delivery or sale of goods by such debtor for or on account of or in satisfaction or part satisfaction or as security of or for any antecedent debt due to any creditor or creditors such warrant of attorney or cognovit or assignment or delivery or sale of goods being within sixty days preceding the date of the first publication of such notice as aforesaid shall as against the creditors having signed such deed as aforesaid or who shall afterwards sign the same be and be adjudged and taken to be fraudulent and void and all such goods as last aforesaid (or the then value thereof in case of any sale or transfer to a third party) may be recovered accordingly by the trustee or trustees in such deed named from the creditor or creditors having taken the same for the benefit of all the creditors.

Effect given to all such assignments.

38. And be it enacted That after the passing of this Act in all cases of variance between the proof and the record in any action at law now or hereafter depending in the Supreme Court it shall be lawful for the said Court or the Judge before whom the trial is had if such Court or Judge shall think fit instead of causing the record or document on which such trial is proceeding to be amended at such trial as by the rules and course of practice of the said Court is now provided in that behalf to direct the jury or assessors (as the case may be) to find the fact or facts according to the evidence and thereupon such finding shall be stated on the said record or document and notwithstanding the finding on the issue or issues joined the said Supreme Court shall thereafter if it shall appear to the said Court that the variance was immaterial to the merits of the case and such as could not have prejudiced the opposite party in the conduct of the action or defence give judgment according to the right and justice of the case and

Amendments at trial. (3 and 4 William IV. cap. 42 sec. 24.)

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and the same power and the power of causing amendments to be made in all such cases of variance as aforesaid in the manner prescribed by the Act in that behalf made shall from and after the passing of this Act be vested not only in the Supreme Court and the several Judges thereof but also in the several Circuit Courts now or hereafter to be instituted.

Limitation of certain actions of debt &c. (3 & 4 William IV. cap. 42 sec. 3.)

39. And be it enacted That after the passing of this Act all actions of debt for rent upon any indenture of demise all actions of covenant or debt upon any bond or other specialty and all actions of debt or *scire facias* upon any recognizance and all actions of debt upon any award where the submission is not by specialty or for money levied under any *feri facias* and all actions for penalties damages or sums given to the party grieved by any law now or hereafter in force in this Colony shall be commenced and sued within the time and limitation hereinafter expressed but not afterwards that is to say the said actions of debt for rent or covenant or debt upon any bond or other specialty and actions of debt or *scire facias* upon recognizance within ten years after the passing of this Act or within twenty years after the cause of such actions the said actions by the party grieved within one year after the passing of this Act or within two years after the cause of such actions and the said other actions within three years after the passing of this Act or within six years after the cause of such actions Provided that nothing herein contained shall extend to any actions given by any Act or Statute where the time for bringing such action is or shall be thereby specially limited.

Infants and persons beyond sea &c. (*Ibid.* sec. 4.)

40. And be it enacted That if any person entitled to any such action or *scire facias* shall be at the time the cause of action accrued within the age of twenty-one years feme covert *non compos mentis* or beyond sea then such person shall be at liberty to commence the same action within such times after being of full age discoverd of sound memory or returned from beyond sea as other persons having no such impediment should have done and if any person against whom there shall be any such cause of action shall be at the time such action accrued beyond sea then the party entitled to any such cause of action shall be at liberty to bring the same against such person within such times as are before limited after the return of such person from beyond sea.

Proviso as to acknowledgments. (*Ibid.* 5.)

41. Provided always That if any acknowledgment shall have been made either by writing signed by the party liable under any such indenture specialty or recognizance or his agent or by part payment or satisfaction on account of the principal or interest due thereon it shall be lawful for the person entitled to such actions to bring his action for the money remaining unpaid and so acknowledged within twenty years after such acknowledgment on part payment or satisfaction or in case any person entitled to such action shall at the time of such acknowledgment be under disability as aforesaid or the party making such acknowledgment shall then be beyond sea then within twenty years after such disability shall have ceased or such party shall have returned from beyond sea as the case may be and in answer to a plea of this Act the plaintiff in any such action may reply such acknowledgment and that such action was brought within such time as aforesaid.

Feigned issues and new trials.

42. And be it enacted That in all cases where the Supreme Court or any Judge thereof now are or is or hereafter shall be authorized to direct the trial of any feigned issue or the said Court shall in any action grant a new trial it shall be lawful for the said Court or Judge to impose such conditions on the parties respectively and to direct such admissions to be made by them or either of them for the purpose of any such trial or new trial and (in every case of new trial) to grant the

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the same either generally or on some particular point or points only as to such Court or Judge respectively shall seem meet and upon any such new trial as aforesaid (if the said Court or Judge shall think fit) to order that the testimony of any witnesses examined at the former trial may be read from the Judge's notes instead of any such witnesses being again examined in open Court and upon any such feigned issue as aforesaid to permit both or either of the parties to examine on oath the other of them and for the several purposes aforesaid to make all such orders from time to time as may be necessary.

43. And be it enacted That after the passing of this Act all decrees and orders of the Supreme Court in Equity and all rules and orders of the said Court at Common Law or in its Ecclesiastical Jurisdiction whereby any sum of money or any costs charges or expenses shall be payable to any person shall have the effect of judgments at law and such person shall or lawfully may have execution thereon for the monies so payable and the Judges of the said Court may from time to time cause writs of execution to be framed accordingly and to issue as they shall think fit and all such writs shall be enforced in the same manner as writs of execution are in ordinary cases.

Decrees rules and orders to have effect of judgments.
