Legislative Council.

21° Victoriæ, 1858.

A BILL

For the further amendment of the Law of Evidence.

WHEREAS it is expedient further to amend the law of evidence by extending certain provisions of the "Common Law Procedure Act of 1857" to proceedings in all the Courts of the Colony: 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:— Preamble.

1. The provisions of the tenth eleventh twelfth thirteenth fourteenth fifteenth and twenty-third sections of the "Common Law Procedure Act of 1857" shall so far as the same may be applicable extend and apply to the Supreme Court in the exercise of all branches of its jurisdiction and to every proceeding in all inferior Courts throughout the Colony. The provisions of sections 10 11 12 13 14 15 & 23 of the "Common Law Procedure Act of 1857" extended to all proceedings in all Courts.

c 40—

Legislative Council.

LAW OF EVIDENCE AMENDMENT BILL.

(New Clauses proposed to be introduced by Sir Alfred Stephen in Committee of the whole House.)

Evidence to prove a conviction sentence or trial

In every case civil or criminal pending in any Court or before Justices in which it shall be necessary to prove that any person was at a certain time convicted of any offence or sentenced to any punishment or pecuniary fine before or by any Court or Justices or was ordered by any Court or Justices to pay any sum of money or that any particular cause or case or matter was tried or under inquiry before or by any Court or Justices or Justice a certificate under the hand (or purporting so to be) of the officer having ordinarily the custody and charge of the records or documents and proceedings shewing such conviction sentence order trial or inquiry shall be taken as evidence of the fact of such conviction sentence order trial or inquiry (as the case may be) if stated in such certificate Provided that the time and place of such conviction sentence order trial or inquiry shall be also stated therein with the title of the Court in which or the names or name of the Justices or Justice by or before whom the same was had or made or occurred and the particular offence or matter (in substance) in respect of which such conviction sentence order trial or inquiry was so had or made or occurred And the fact that the party signing or appearing to have signed such certificate had ordinarily the custody of such records or documents and proceedings as aforesaid shall if stated in the certificate be taken to be proved thereby without other evidence.

Any false certificate.

If any person shall sign or issue or give or tender in evidence any such certificate knowing the same to be false in any particular or shall forge or procure to be forged the signature of any officer or person to any such certificate or to any paper purporting to be such a certificate or shall fraudulently alter any such certificate after it has been signed or shall give or tender in evidence any such forged certificate or paper or any such altered certificate knowing the same to be forged or fraudulently altered he shall be guilty of a misdemeanor and be liable to imprisonment with or without hard labor for any term not exceeding five years.

Parties and husbands and wives may be witnesses.

On the trial of any issue joined or any matter or question or any inquiry arising in any suit action or proceeding in any Court or before any person having by law or by consent of parties authority to hear receive and examine evidence the parties thereto and the persons in whose behalf any suit action or proceeding may be brought or defended and the husbands and wives of such parties and persons respectively shall (except as hereinafter excepted) be competent and compellable to give evidence either in person or by deposition according to the practice of the Court on behalf of either or any of the parties to the said suit action or proceeding.

Exceptions as to criminal cases.

Nothing herein contained shall render any person who in any criminal proceeding is charged with the commission of any indictable offence or any offence punishable on summary conviction competent or compellable to give evidence for or against himself or shall render any person compellable to answer any question tending to criminate himself or shall in any criminal proceeding render any husband competent or compellable to give evidence for or against his wife or any wife competent or compellable to give evidence for or against her husband.

Communications to husband or wife privileged.

No husband shall be competent or compellable to disclose any communications made to him by his wife during the marriage and no wife shall be competent or compellable to disclose any communication made to her by her husband during the marriage.

Persons may be examined without a subpœna.

Any person present at any trial or other proceeding wherein he might have been compellable to give evidence and produce documents by virtue of a subpœna or other summmons or order duly issued and served for that purpose shall be compellable to give evidence and produce documents then in his possession and power in the same manner and in case of refusal shall be subject to the same penalties and liabilities as if he had been duly subpœnaed or summoned for that purpose.

No clergyman of any church or religious denomination shall without the consent of the person making the confession divulge in any suit action or proceeding whether civil or criminal any confession made to him in his professional character according to the usage of the church or religious denomination to which he belongs and no physician or surgeon shall without the consent of his patient divulge in any civil suit or action or proceeding unless the sanity of the patient be the matter in dispute any information which he may have acquired in attending the patient and which was necessary to enable him to prescribe or act for the patient.

Confessions to clergymen and medical men.

No confession which is tendered in evidence on any trial shall be rejected on the ground that a promise or threat has been held out to the person confessing unless the Judge or other presiding officer shall be of opinion that the inducement was really calculated to cause an untrue admission of guilt to be made nor shall any confession which is tendered in evidence on any trial be rejected on the ground that it purports to have been made on oath if proof can be given to the Judge or other presiding officer that in fact it was not so made.

Confession after promise or threat or purporting to be on oath.

When any writing whatsoever shall have been copied by means of any machine or press which produces a fac-simile impression or copy of such writing such impression or copy shall upon proof to the satisfaction of the Court or person having by law or by consent of parties authority to hear receive and examine evidence that the same was taken or made from the original writing by means of such machine or press as aforesaid be sufficient *primâ facie* evidence of such writing without any proof that such impression or copy was compared with the said original thereof and without any notice to produce such original.

Machine copies to be evidence.

Legislative Council.

21° VICTORIÆ, 1858.

A BILL

For the further amendment of the Law of Evidence.

(*As Amended in Committee of the whole House.*)

WHEREAS it is expedient further to amend the law of evidence 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 :— Preamble.

1. The provisions of the tenth eleventh twelfth thirteenth fourteenth fifteenth and twenty-third sections of the "Common Law Procedure Act of 1857" shall so far as the same may be applicable extend and apply to the Supreme Court in the exercise of all branches of its jurisdiction and to every proceeding in all inferior Courts throughout the Colony. The provisions of sections 10 11 12 13 14 15 & 23 of the "Common Law Procedure Act of 1857" extended to all proceedings in all Courts.

2. On the trial of any issue joined or any matter or question or any inquiry arising in any suit action or proceeding in any Court or before any person having by law or by consent of parties authority to hear receive and examine evidence the husbands and wives of the parties thereto and of the persons in whose behalf any suit action or proceeding may be brought or defended shall (except as hereinafter excepted) be competent and compellable to give evidence either orally or by deposition according to the practice of the Court on behalf of either or any of the parties to the said suit action or proceeding. Parties and husbands and wives may be witnesses.

3. Nothing herein contained shall render any husband competent or compellable to give evidence for or against his wife or any wife competent or compellable to give evidence for or against her husband in any criminal proceeding or in any proceeding instituted in consequence of adultery. Exceptions as to criminal cases.

4. No husband shall be competent or compellable to disclose any communication made to him by his wife during the marriage and no wife shall be competent or compellable to disclose any communication made to her by her husband during the marriage. Communications to husband or wife privileged.

Persons may be examined without a subpœna.

5. Any person present at any trial or other proceeding wherein he might have been compellable to give evidence and produce documents by virtue of a subpœna or other summons or order duly issued and served for that purpose shall be compellable to give evidence and produce documents then in his possession and power in the same manner and in case of refusal shall be subject to the same penalties and liabilities as if he had been duly subpœnaed or summoned for that purpose.

Machine copies to be evidence.

6. When any writing whatsoever shall have been copied by means of any machine or press which produces a fac-simile impression or copy of such writing such impression or copy shall upon proof to the satisfaction of the Court or person having by law or by consent of parties authority to hear receive and examine evidence that the same was taken or made from the original writing by means of such machine or press as aforesaid be *primâ facie* evidence of such writing without any proof that such impression or copy was compared with the said original thereof and without any notice to produce such original.

Evidence to prove a conviction or sentence.

7. In every case civil or criminal in which it shall be necessary to prove that any person was convicted of any offence or sentenced to any punishment or pecuniary fine before or by any Court or Justices or was ordered by any Court or Justices to pay any sum of money a certificate under the hand (or purporting so to be) of the officer having ordinarily the custody of the records or documents and proceedings shewing such conviction sentence or order shall upon proof of the identity of the party be sufficient evidence of such conviction sentence or order and of the particular offence or matter in respect of which it was had or passed or made if stated in such certificate Provided that the time and place of such conviction sentence or order shall be stated therein with the title of the Court in which or the names of the Justices by or before whom the same was so had or made.

The like as to the fact of a Trial or Inquiry.

8. In every case civil or criminal in which it shall be necessary to prove that any particular cause or case or matter was tried or under inquiry in any Court or before any Judge or Justices or Justice a like certificate under the hand (or purporting so to be) of the officer having ordinarily the custody of the records or documents and proceedings shewing the pendency or existence of such cause or case or matter shall be taken as evidence of the fact of such trial or inquiry and of the particular nature and occasion or ground and cause thereof if stated in such certificate Provided that the time and place of such trial or inquiry shall be stated therein with the title of the Court in which or the names or name of the Justices or Justice by or before whom the same occurred or was had or pending.

Proof of certificate.

9. Every such certificate or paper purporting to be such a certificate stating that the parting signing the same has ordinarily the custody of the records documents or proceedings referred to therein shall be *primâ facie* evidence of that fact and of the signature and official character of such party.

False certificate &c. misdemeanor.

10. If any person shall sign or issue or give or tender in evidence any such certificate or paper purporting so to be knowing the same to be false in any particular or shall forge or procure to be forged the signature of any officer or person to any such certificate or to any paper purporting to be such a certificate or shall fraudulently alter any such certificate after it has been signed or shall give or tender in evidence any such forged or altered certificate or paper knowing the same to be forged or fraudulently altered he shall be guilty of a misdemeanor and be liable to imprisonment with or without hard labor for any term not exceeding five years.

Confessions.

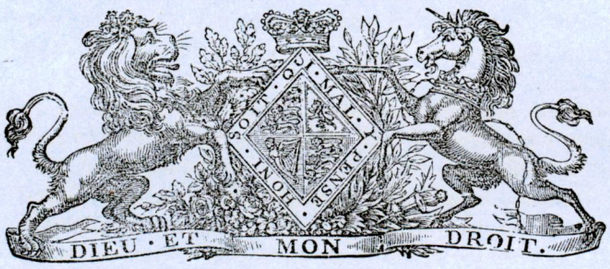
11. No confession which is tendered in evidence on any criminal proceeding shall be received which has been induced by any untrue representation or by any threat or promise whatever.

12.

12. Nothing in this Act shall be construed to exclude any evidence which is now admissible under the Acts relating to Insolvents. **Not to affect Insolvents' Acts.**

13. Where any person duly bound by recognizance or served with a subpœna to attend in any Court as a witness at the trial of any case civil or criminal shall fail to appear when called in open Court either at such trial or upon the day appointed for such trial it shall be lawful for the Court upon proof of such recognizance or of his having been duly served with such subpœna to call upon such person to shew cause why execution upon such recognizance or why an attachment for disobedience to such subpœna should not be issued against him or upon proof of those facts and also that the person's non-appearance was without just cause or reasonable excuse and upon oath that he will probably be able to give material evidence to issue a warrant to bring him before the Court to give evidence at such trial. **Witnesses without just excuse neglecting to attend.**

14. Such proof may be oral before the Court or by affidavit sworn before any Commissioner of the Supreme Court or any Justice of the Peace and every Rule or Order to shew cause as aforesaid may be made returnable either before the Court itself at the then sittings or at some future sitting or in respect of the non-appearance of a witness at a Circuit Court or on the trial of a case pending in the Supreme Court the Rule or Order may be made returnable in the Supreme Court And on the return of any such Rule or Order the Court may deal with the case as the Supreme Court might and would have done upon a Rule to the like effect issued out of that Court. **Mode of proceeding.**



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, 16th July, 1858.

Wm. MACPHERSON,
Clerk of the Legislative Council.

New South Wales.

ANNO VICESIMO SECUNDO

VICTORIÆ REGINÆ.

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No. .

An Act for the further amendment of the Law of Evidence.

Preamble.

WHEREAS it is expedient further to amend the law of evidence 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:—

The provisions of sections 10 11 12 13 14 & 15 of the "Common Law Procedure Act of 1857" extended to all proceedings in all Courts.

1. The provisions of the tenth eleventh twelfth thirteenth fourteenth and fifteenth sections of the "Common Law Procedure Act of 1857" shall extend and apply to the Supreme Court in the exercise of all branches of its jurisdiction and to every proceeding in all inferior Courts throughout the Colony.

Parties and husbands and wives may be witnesses.

2. On the trial of any issue joined or any matter or question or any inquiry arising in any suit action or proceeding in any Court or before any person having by law or by consent of parties authority to hear receive and examine evidence the husbands and wives of the parties thereto and of the persons in whose behalf any suit action or proceeding may be brought or defended shall (except as hereinafter excepted) be competent and compellable to give evidence either orally or by deposition according to the practice of the Court on behalf of either or any of the parties to the said suit action or proceeding.

Exceptions as to criminal cases.

3. Nothing herein contained shall render any husband competent or compellable to give evidence for or against his wife or any wife competent or compellable to give evidence for or against her husband in any criminal proceeding or in any proceeding instituted in consequence of adultery.

Communications to husband or wife privileged.

4. No husband shall be competent or compellable to disclose any communication made to him by his wife during the marriage and no wife shall be competent or compellable to disclose any communication made to her by her husband during the marriage.

5. Any person present at any trial or other proceeding wherein he might have been compellable to give evidence and produce documents by virtue of a subpœna or other summons or order duly issued and served for that purpose shall be compellable to give evidence and produce documents then in his possession and power in the same manner and in case of refusal shall be subject to the same penalties and liabilities as if he had been duly subpœnaed or summoned for that purpose. Persons may be examined without a subpœna.

6. When any writing whatsoever shall have been copied by means of any machine or press which produces a fac-simile impression or copy of such writing such impression or copy shall upon proof to the satisfaction of the Court or person having by law or by consent of parties authority to hear receive and examine evidence that the same was taken or made from the original writing by means of such machine or press as aforesaid be *primâ facie* evidence of such writing without any proof that such impression or copy was compared with the said original thereof and without any notice to produce such original. Machine copies to be evidence.

7. In every case civil or criminal in which it shall be necessary to prove that any person was convicted of any offence or sentenced to any punishment or pecuniary fine before or by any Court or Justices or was ordered by any Court or Justices to pay any sum of money a certificate under the hand (or purporting so to be) of the officer having ordinarily the custody of the records or documents and proceedings shewing such conviction sentence or order shall upon proof of the identity of the party be sufficient evidence of such conviction sentence or order and of the particular offence or matter in respect of which it was had or passed or made if stated in such certificate Provided that the time and place of such conviction sentence or order shall be stated therein with the title of the Court in which or the names of the Justices by or before whom the same was so had or made. Evidence to prove a conviction or sentence.

8. In every case civil or criminal in which it shall be necessary to prove that any particular cause or case or matter was tried or under inquiry in any Court or before any Judge or Justices or Justice a like certificate under the hand (or purporting so to be) of the officer having ordinarily the custody of the records or documents and proceedings shewing the pendency or existence of such cause or case or matter shall be taken as evidence of the fact of such trial or inquiry and of the particular nature and occasion or ground and cause thereof if stated in such certificate Provided that the time and place of such trial or inquiry shall be stated therein with the title of the Court in which or the names or name of the Justices or Justice by or before whom the same occurred or was had or pending. The like as to the fact of a Trial or Inquiry.

9. Every such certificate or paper purporting to be such a certificate stating that the party signing the same has ordinarily the custody of the records documents or proceedings referred to therein shall be *primâ facie* evidence of that fact and of the signature and official character of such party. Proof of certificate.

10. If any person shall sign or issue or give or tender in evidence any such certificate or paper purporting so to be knowing the same to be false in any particular or shall forge or procure to be forged the signature of any officer or person to any such certificate or to any paper purporting to be such a certificate or shall fraudulently alter any such certificate after it has been signed or shall give or tender in evidence any such forged or altered certificate or paper knowing the same to be forged or fraudulently altered he shall be guilty of a misdemeanor and be liable to imprisonment with or without hard labor for any term not exceeding five years. False certificate &c. misdemeanor.

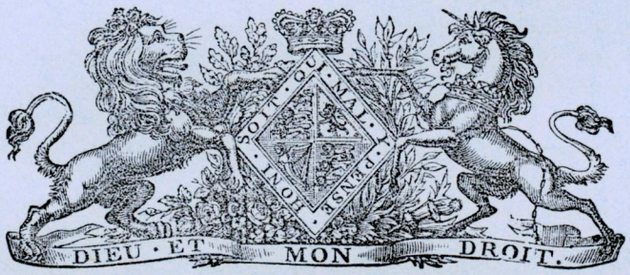
11. No confession which is tendered in evidence on any criminal proceeding shall be received which has been induced by any untrue representation or by any threat or promise whatever and every confession made after any such representation, or threat or promise shall be deemed to have been induced thereby, unless the contrary be shewn. Confessions.

12.

12. Nothing in this Act shall be construed to exclude any evidence which is now admissible under the Acts relating to Insolvents. **Not to affect Insolvents' Acts.**

13. Where any person duly bound by recognizance or served with a subpœna to attend in any Court as a witness at the trial of any case civil or criminal shall fail to appear when called in open Court either at such trial or upon the day appointed for such trial it shall be lawful for the Court upon proof of such recognizance or of his having been duly served with such subpœna to call upon such person to shew cause why execution upon such recognizance or why an attachment for disobedience to such subpœna should not be issued against him or upon proof of those facts and also that the person's non-appearance was without just cause or reasonable excuse and upon oath that he will probably be able to give material evidence to issue a warrant to bring him before the Court to give evidence at such trial. **Witnesses without just excuse neglecting to attend.**

14. Such proof may be oral before the Court or by affidavit sworn before any Commissioner of the Supreme Court or any Justice of the Peace and every Rule or Order to shew cause as aforesaid may be made returnable either before the Court itself at the then sittings or at some future sitting or in respect of the non-appearance of a witness at a Circuit Court or on the trial of a case pending in the Supreme Court the Rule or Order may be made returnable in the Supreme Court And on the return of any such Rule or Order the Court may deal with the case as the Supreme Court might and would have done upon a Rule to the like effect issued out of that Court. **Mode of proceeding.**



New South Wales.

ANNO VICESIMO SECUNDO

VICTORIÆ REGINÆ.

* * *

No. VII.

An Act for the further amendment of the Law of Evidence.
[Assented to, 25th August, 1858.]

Preamble.

WHEREAS it is expedient further to amend the law of evidence 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 :—

The provisions of sections 10 11 12 13 14 & 15 of the "Common Law Procedure Act of 1857" extended to all proceedings in all Courts.

1. The provisions of the tenth eleventh twelfth thirteenth fourteenth and fifteenth sections of the "Common Law Procedure Act of 1857" shall extend and apply to the Supreme Court in the exercise of all branches of its jurisdiction and to every proceeding in all inferior Courts throughout the Colony.

Parties and husbands and wives may be witnesses.

2. On the trial of any issue joined or any matter or question or any inquiry arising in any suit action or proceeding in any Court or before any person having by law or by consent of parties authority to hear receive and examine evidence the husbands and wives of the parties thereto and of the persons in whose behalf any suit action or proceeding may be brought or defended shall (except as hereinafter excepted) be competent and compellable to give evidence either orally or by deposition according to the practice of the Court on behalf of either or any of the parties to the said suit action or proceeding.

Exceptions as to criminal cases.

3. Nothing herein contained shall render any husband competent or compellable to give evidence for or against his wife or any wife competent or compellable to give evidence for or against her husband in any criminal proceeding or in any proceeding instituted in consequence of adultery.

Communications to husband or wife privileged.

4. No husband shall be competent or compellable to disclose any communication made to him by his wife during the marriage and no wife shall be competent or compellable to disclose any communication made to her by her husband during the marriage.

5.

Persons may be examined without a subpœna.

5. Any person present at any trial or other proceeding wherein he might have been compellable to give evidence and produce documents by virtue of a subpœna or other summons or order duly issued and served for that purpose shall be compellable to give evidence and produce documents then in his possession and power in the same manner and in case of refusal shall be subject to the same penalties and liabilities as if he had been duly subpœnaed or summoned for that purpose.

Machine copies to be evidence.

6. When any writing whatsoever shall have been copied by means of any machine or press which produces a fac-simile impression or copy of such writing such impression or copy shall upon proof to the satisfaction of the Court or person having by law or by consent of parties authority to hear receive and examine evidence that the same was taken or made from the original writing by means of such machine or press as aforesaid be *primâ facie* evidence of such writing without any proof that such impression or copy was compared with the said original thereof and without any notice to produce such original.

Evidence to prove a conviction or sentence.

7. In every case civil or criminal in which it shall be necessary to prove that any person was convicted of any offence or sentenced to any punishment or pecuniary fine before or by any Court or Justices or was ordered by any Court or Justices to pay any sum of money a certificate under the hand (or purporting so to be) of the officer having ordinarily the custody of the records or documents and proceedings shewing such conviction sentence or order shall upon proof of the identity of the party be sufficient evidence of such conviction sentence or order and of the particular offence or matter in respect of which it was had or passed or made if stated in such certificate Provided that the time and place of such conviction sentence or order shall be stated therein with the title of the Court in which or the names of the Justices by or before whom the same was so had or made.

The like as to the fact of a Trial or Inquiry.

8. In every case civil or criminal in which it shall be necessary to prove that any particular cause or case or matter was tried or under inquiry in any Court or before any Judge or Justices or Justice a like certificate under the hand (or purporting so to be) of the officer having ordinarily the custody of the records or documents and proceedings shewing the pendency or existence of such cause or case or matter shall be taken as evidence of the fact of such trial or inquiry and of the particular nature and occasion or ground and cause thereof if stated in such certificate Provided that the time and place of such trial or inquiry shall be stated therein with the title of the Court in which or the names or name of the Justices or Justice by or before whom the same occurred or was had or pending.

Proof of certificate.

9. Every such certificate or paper purporting to be such a certificate stating that the party signing the same has ordinarily the custody of the records documents or proceedings referred to therein shall be *primâ facie* evidence of that fact and of the signature and official character of such party.

False certificate &c. misdemeanor.

10. If any person shall sign or issue or give or tender in evidence any such certificate or paper purporting so to be knowing the same to be false in any particular or shall forge or procure to be forged the signature of any officer or person to any such certificate or to any paper purporting to be such a certificate or shall fraudulently alter any such certificate after it has been signed or shall give or tender in evidence any such forged or altered certificate or paper knowing the same to be forged or fraudulently altered he shall be guilty of a misdemeanor and be liable to imprisonment with or without hard labor for any term not exceeding five years.

Confessions.

11. No confession which is tendered in evidence on any criminal proceeding shall be received which has been induced by any untrue representation or by any threat or promise whatever and every confession made after any such representation, or threat or promise shall be deemed to have been induced thereby, unless the contrary be shewn.

12.

12. Nothing in this Act shall be construed to exclude any evidence which is now admissible under the Acts relating to Insolvents. **Not to affect Insolvents' Acts.**

13. Where any person duly bound by recognizance or served with a subpœna to attend in any Court as a witness at the trial of any case civil or criminal shall fail to appear when called in open Court either at such trial or upon the day appointed for such trial it shall be lawful for the Court upon proof of such recognizance or of his having been duly served with such subpœna to call upon such person to shew cause why execution upon such recognizance or why an attachment for disobedience to such subpœna should not be issued against him or upon proof of those facts and also that the person's non-appearance was without just cause or reasonable excuse and upon oath that he will probably be able to give material evidence to issue a warrant to bring him before the Court to give evidence at such trial. **Witnesses without just excuse neglecting to attend.**

14. Such proof may be oral before the Court or by affidavit sworn before any Commissioner of the Supreme Court or any Justice of the Peace and every Rule or Order to shew cause as aforesaid may be made returnable either before the Court itself at the then sittings or at some future sitting or in respect of the non-appearance of a witness at a Circuit Court or on the trial of a case pending in the Supreme Court the Rule or Order may be made returnable in the Supreme Court And on the return of any such Rule or Order the Court may deal with the case as the Supreme Court might and would have done upon a Rule to the like effect issued out of that Court. **Mode of proceeding.**

By Authority: William Hanson, Government Printer, Sydney, 1858.