

A BILL

For the further amendment of the Process Practice and mode of Pleading at Law in the Supreme Court and enlarging its Jurisdiction in Common Law Proceedings.

[MR. DARLEY;—23 March, 1870.]

WHEREAS it is desirable further to improve the process practice Preamble.
and mode of pleading in the Supreme Court and in some
respects to enlarge its Jurisdiction in Common Law proceedings Be
it enacted by the Queen's Most Excellent Majesty by and with the
5 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 :—

RELIEF AGAINST FORFEITURE.

1. In the case of any ejection for a forfeiture brought for Relief against forfeiture for non-payment of rent.
10 non-payment of rent the Court or a Judge shall have power upon
rule or summons to give relief in a summary manner up to and within
the like time after execution executed and subject in the same terms
and conditions in all respects as to payment of rent costs and other-
wise as in the Court in its Equitable Jurisdiction And if the lessee 23 and 24 Vic. cap. 126 sec 1.
15 his executors administrators or assigns shall upon such proceeding be
relieved he and they shall hold the demised lands according to the
lease thereof made without any new lease.

2. In the case of any ejection for a forfeiture for breach of a Relief against forfeiture for non-insurance. 23 and 24 Vic. cap. 126 sec. 2.
covenant or condition to insure against loss or damage by fire the
20 Court or a Judge shall have power upon rule or summons to give relief
in a summary manner in all cases in which such relief may now be
obtained in the Court in its Equitable Jurisdiction under the provisions
of "The Trust Property Act of 1862" and upon such terms as would
be imposed in such Court.

Minute of relief granted.
23 and 24 Vic. cap. 126 sec. 3.

3. Where such relief shall be granted the Court or a Judge shall direct a minute thereof to be made by endorsement on the lease or otherwise.

APPEAL.

Appeal to Court from order of Judge.
23 and 24 Vic. cap. 126 sec. 4.

4. Any order made by a Judge upon an application for relief under the provisions of this Act shall be subject to an appeal to the Court and may be discharged varied or set aside by the Court upon such terms as the Court shall think fit on application made thereto by any party dissatisfied with such order.

Notice of appeal.
23 and 24 Vic. cap. 126 sec. 7.

5. No appeal shall be allowed unless notice thereof be given in writing to the opposite party or his attorney and to the Prothonotary within four days after the decision complained of or such further time as may be allowed by the Court or a Judge.

Bail.
23 and 24 Vic. cap. 126 sec. 8.

6. Notice of appeal shall be a stay of execution provided bail to pay the sum demanded and costs be given within eight days after the decision complained of or before execution delivered to the Sheriff such bail to be given in such manner and for such amount as shall be approved of by the Prothonotary.

Form of appeal.
23 and 24 Vic. cap. 126 sec. 9.

7. The appeal hereinbefore mentioned shall be upon a case to be stated by the parties (and in case of difference to be settled by the Court or a Judge thereof) in which case shall be set forth so much of the pleadings facts and the order rule or judgment objected to as may be necessary to raise the question for the decision of the Court.

Judgment of Court.
23 and 24 Vic. cap. 126 sec. 10.

8. The Court shall give such judgment or make such rule as ought to have been given or made by the Judge and all such further proceedings may be taken thereupon as if the judgment or rule had been given or made by the Judge.

Power of Court as to costs &c.
23 and 24 Vic. cap. 126 sec. 11.

9. The Court shall have power to adjudge payment of costs and to order restitution.

INTERPLEADER PROCEEDINGS.

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Interpleader may be granted, though titles have not a common origin.
23 and 24 Vic. cap. 126 sec. 12.

10. Where an action has been commenced in respect of a Common Law claim for the recovery of money or goods or where goods or chattels have been taken or are intended to be taken in execution under process issued from the Court and the defendant in such action or the Sheriff or other officer has applied for relief under the provisions of an Act passed in this Colony in the fifth year of His late Majesty King William the Fourth and number eight adopting the Imperial Act first and second William Fourth chapter fifty-eight intituled "*An Act to enable Courts of Law to give relief against adverse claims made upon persons having no interest in the subject of such claims*" it shall

be

be lawful for the Court or a Judge to exercise all the powers and authorities given to them by this Act and the herein before-mentioned Act though the titles of the claimants to the money goods or chattels in question or to the proceeds or value thereof have not a common origin but are adverse to and independent of one another.

11. When goods or chattels have been seized in execution by the Sheriff or other officer under process of the Court and some third person claims to be entitled under a bill of sale or otherwise to such goods or chattels by way of security for a debt the Court or a Judge may order a sale of the whole or part thereof upon such terms as to payment of the whole or part of the secured debt or otherwise as they or he shall think fit and may direct the application of the proceeds of such sale in such manner and upon such terms as to the Court or a Judge may seem just.

Court or a Judge may direct sale of goods seized in execution. 23 and 24 Vic. cap. 126 sec. 13.

12. Upon the hearing of any rule or order calling upon persons to appear and state the nature and particulars of their claims it shall be lawful for the Court or Judge whenever from the smallness of the amount in dispute or of the value of the goods seized it shall appear to them or him desirable and right so to do at the request of either party to dispose of the merits of the respective claims of such parties and to determine the same in a summary manner upon such terms as they or he shall think fit to impose and to make such other rules and orders therein as to costs and all other matters as may be just.

Power to Court or Judge to decide summarily in certain cases. 23 and 24 Vic. cap. 126 sec. 14.

13. In all cases of interpleader proceedings where the question is one of law and the facts are not in dispute it shall be lawful for the Court or Judge to decide the question without directing an action or issue or to order that a special case be stated for the opinion of the Court.

Special case may be stated where facts in dispute. 23 and 24 Vic. cap. 126 sec. 15.

14. The proceedings upon such case shall as nearly as may be be the same as upon a special case stated under "The Common Law Procedure Act of 1853."

Proceedings on special case. 23 and 24 Vic. cap. 126 sec. 16.

15. The judgment in any such action or issue as may be directed by the Court or a Judge in any interpleader proceedings and the decision of the Court or Judge in a summary manner shall be final and conclusive against the parties and all persons claiming by from or under them.

Judgment and decision when to be final.

16. All rules orders matters and decisions to be made and done in interpleader proceedings under this Act (excepting only any affidavits) may together with the declaration in the cause if any be entered

Rules order &c. made in interpleader proceedings may be entered of record and made evidence. 23 and 24 Vic. cap. 126 sec. 16.

entered of record with a note in the margin expressing the true date of such entry to the end that the same may be evidence in future time if required and to secure and enforce the payment of costs directed by any such rule or order and every such rule or order so entered shall have the force and effect of a judgment of the Court. 5

PROCEEDINGS AT THE TRIAL.

Jury may award damages accrued after commencement of action in certain cases.

17. In all actions for a breach of contract or other injury where such breach or injury shall continue after the commencement of the action evidence may be adduced of the damages suffered after the commencement of the action in consequence of such continuance as 10 well as of those in respect of which the action is brought and the jury may award damages accordingly.

Speeches to the jury.

18. The fifty-eighth fifty-ninth and sixtieth sections of the Common Law Procedure Act of 1857 shall be and are hereby repealed and from and after the passing of this Act upon the trial of any cause 15 the addresses to the jury shall be regulated as follows—The party who begins or his counsel shall be allowed in the event of his opponent not announcing at the close of the case of the party who begins his intention to adduce evidence to address the jury a second time at the close of such case for the purpose of summing up the evidence and the party 20 on the other side or his counsel shall be allowed to open the case and also to sum up the evidence (if any) and the right to reply shall be the same as at present.

17 and 18 Vic. cap. 121 sec. 18.

MISJOINDER OF PLAINTIFF'S.

Joinder as plaintiffs of all persons supposed to be legally entitled. 23 Vic. cap. 126 sec. 19.

19. The joinder of too many plaintiffs shall not be fatal but 25 every action may be brought in the name of all the persons in whom the legal right may be supposed to exist and judgment may be given in favour of the plaintiffs by whom the action is brought or of one or more of them or in case of any question of misjoinder being raised then in favour of such one or more of them as shall be adjudged 30 by the Court to be entitled to recover Provided always that the defendant though unsuccessful shall be entitled to his costs occasioned by joining any person or persons in whose favour judgment is not given unless otherwise ordered by the Court or a Judge.

Defendant to have benefit of set-off though some plaintiffs improperly joined. 23 and 24 Vic. cap. 126 sect 20.

20. Upon the trial of such cause a defendant who has therein 35 pleaded a set-off may obtain the benefit of his set-off by proving either that all the parties named as plaintiffs are indebted to him notwithstanding that one or more of such plaintiffs was or were improperly joined or on proving that the plaintiff or plaintiffs who establish their right to maintain the cause is or are indebted to him. 40

21. No other action shall be brought against the defendant by any person so joined as plaintiff in respect of the same cause of action. No other action for same claim to be brought. 23 and 24 Vic. cap. 126 sec 21.

EQUITABLE RELIEF IN EJECTMENT.

22. In any action of ejectment on the title to be commenced after the passing of this Act where the defendant's contention is that the plaintiff is a trustee for him of the legal estate either constructively or otherwise it shall be lawful for the Court or a Judge to make an order directing that the real title shall be tried notwithstanding such legal estate being vested in the plaintiff in any case in which it shall appear to the satisfaction of the Court or a Judge that upon a Bill being filed for that purpose a decree or decretal order would be pronounced by the Court in its Equitable Jurisdiction restraining the plaintiff from further proceeding in such action and declaring the plaintiff to be a trustee for the defendant of the legal estate but upon such terms or conditions as to the Court or a Judge shall seem just. In ejectment when the plaintiff is a trustee of the legal estate for the defendant the Court or a Judge may direct the real title to be tried.

23. If in any such last-mentioned action a verdict shall be found for the defendant the plaintiff shall at such time as the defendant shall be entitled to sue out execution for his costs of the said action execute a conveyance of the legal estate to the defendant and for the purpose of enforcing the execution of such conveyance the Court shall possess all the powers at present possessed by the Court in its Equitable Jurisdiction to compel the execution of a deed in pursuance of a decree for that purpose. Provided always that in compelling the execution of such conveyance the Court may impose such terms and conditions upon the plaintiff as to the Court shall seem just. If verdict found for defendant plaintiff to convey the legal estate to defendant.

24. In any action of ejectment on the title to be commenced after the passing of this Act it shall be lawful for the Court or a Judge to make an order directing temporary bars to be waived and the real title tried in such ejectment in any case in which it shall appear to the satisfaction of the Court or a Judge that a decree or decretal order to the same effect would be pronounced by the Court in its Equitable Jurisdiction upon a bill filed for the purpose of having temporary bars waived but upon such terms or conditions as to the Court or a Judge shall seem just. In ejectment the Court or a Judge may make an order directing temporary bars to be waived. 19 and 20 Vic. cap. 113 sec. 19.

35 REPLEVIN.

25. The plaintiff in replevin may in answer to an avowry pay money into Court in satisfaction in like manner and subject to the same proceedings as to costs and otherwise as upon a payment into Court by a defendant in other actions. Payment into Court in replevin. 23 and 24 Vic. cap. 126 sec 23.

Effect of such payment.
23 and 24 Vic. cap.
126 sec. 24.

26. Such payment into Court in replevin shall not nor shall the acceptance thereof by the defendant in satisfaction work a forfeiture of the replevin bond.

PAYMENT INTO COURT UPON BOND AND DETINUE.

Payment into Court in action on money bonds for detainer
23 and 24 Vic. cap.
126 sec. 25.

27. In any action brought upon a bond which has a condition or a defeasance to make void the same upon payment of a lesser sum upon a day or place certain with a penalty and in any action for detaining the goods of the plaintiff it shall be lawful for the defendant by leave of the Court or a Judge and upon such terms as they or he shall think fit to pay into Court a sum of money to answer the claim of the plaintiff in respect of such bond in the former case and in the latter case to the value of the goods alleged to be detained And such payment into Court shall be made and pleaded in like manner and according to the provisions of the Common Law Procedure Act of 1853 and the like proceedings may be had and taken thereupon as to costs and otherwise.

ATTACHMENT OF DEBTS.

Judge may refuse to interfere in proceedings to attach debts.
23 and 24 Vic. cap.
126 sec. 28.

28. In proceedings to obtain an attachment of debts under "The Common Law Procedure Act of 1857" the Judge may in his discretion refuse to interfere where from the smallness of the amount to be recovered or of the debt sought to be attached or otherwise the remedy sought would be worthless or vexatious.

Proceedings when third person has a lien on the debt.
23 and 24 Vic. cap.
126 sec. 29.

29. Whenever in any proceedings to obtain an attachment of debts under the Act above mentioned it is suggested by the garnishee that the debt sought to be attached belongs to some third person who has a lien or charge upon it the Judge may order such third person to appear before him and state the nature and particulars of his claim upon such debt.

Judge may hear claim of third person and make order.
23 and 24 Vic. cap.
126 sec. 30.

30. After hearing the allegations of such third person under such order and of any other person whom by the same or any subsequent order the Judge may think fit to call before him or in case of such third person not appearing before him upon such summons the Judge may order execution to issue to levy the amount due from such garnishee or the judgment creditor to proceed against the garnishee according to the provisions of "The Common Law Procedure Act of 1857" and he may bar the claim of such third person or make such other order as he shall think fit upon such terms in all cases with respect to the lien or charge (if any) of such third person and to costs as he shall think just and reasonable.

31. The provisions of "The Common Law Procedure Act of 1857" so far as they are applicable shall apply to any order and the proceedings thereon made and taken in pursuance of the herein next before-mentioned powers under this Act.

Provisions of 20 Vic. No. 31 to apply to orders. 23 and 24 Vic. cap. 126 sec. 31.

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MANDAMUS AND INJUNCTION.

32. In all cases in which a writ of mandamus or of injunction is issued under the provisions of "The Common Law Procedure Act of 1857" such writ shall unless otherwise ordered by the Court or a Judge in addition to the matter directed to be inserted therein command the defendant to pay to the plaintiff the costs of preparing issuing and serving such writ and payment of such costs may be enforced in the same manner as costs payable under a rule of Court are now by law enforceable.

Costs of writ of mandamus and injunction may be included in writ. 23 and 24 Vic. cap. 126 sec. 32.

33. Writs of injunction against a corporation may be enforced either by attachment against the Directors or other officers thereof as in the case of a mandamus or by writ of sequestration against their property and effects to be issued in such form and tested and returnable in like manner as writs of execution and to be proceeded upon and executed in like manner as writs of sequestration issuing out of the Court in its Equitable Jurisdiction.

Modes of enforcing writ of injunction against corporation. 23 and 24 Vic. cap. 126 sec. 33.

DEMURRERS.

34. In any action where either parties pleading is demurred to such party may before Joinder of Issue as of course and without the leave of a Judge amend such pleading upon payment of the costs of and incidental to such amendment Provided always that the demurring party may apply to a Judge to strike out such amendment or to make such other order in the premises as to such Judge shall seem fit.

Pleadings may be amended as of course after demurrer.

WRITS OF EXECUTION.

35. No writ of *feri facias* or other writ of execution and no writ of attachment against the goods of a debtor shall prejudice the title to such goods acquired by any person *bonâ fide* and for a valuable consideration before the actual seizure or attachment thereof by virtue of such writ Provided that such person had not at the time when he acquired such title notice that such writ or any other writ by virtue of which the goods of such owner might be seized or attached had been delivered to and remained unexecuted in the hands of the Sheriff or other officer charged with the execution thereof.

Persons acquiring title to goods before they have been seized or attached under a writ against the seller protected. 19 and 20 Vic. cap. 97 sec. 1.

SPECIFIC DELIVERY OF GOODS SOLD.

Specific delivery of goods sold. 19 and 20 Vic. cap. 97 sec. 2.

36. In all actions and suits in the Court for breach of contract to deliver specific goods for a price in money on the application of the plaintiff and by leave of the Judge before whom the cause is tried the jury shall if they find the plaintiff entitled to recover find by their verdict 5 what are the goods in respect of the non-delivery of which the plaintiff is entitled to recover and which remain undelivered what (if any) is the sum the plaintiff would have been liable to pay for the delivery thereof what damages (if any) the plaintiff would have sustained if the goods should be delivered under execution as hereinafter mentioned and what 10 damages if not so delivered And thereupon if judgment shall be given for the plaintiff the Court or any Judge thereof at their or his discretion on the application of the plaintiff shall have power to order execution to issue for the delivery on payment of such sum (if any) as shall have been found to be payable by the plaintiff as aforesaid of 15 the said goods without giving the defendant the option of retaining the same upon paying the damages assessed and such writ of execution may be for the delivery of such goods And if such goods so ordered to be delivered or any part thereof cannot be found and unless the Court or such Judge as aforesaid shall otherwise order the Sheriff or other 20 officer shall distrain the defendant by all his lands and chattels till the defendant deliver such goods or at the option of the plaintiff cause to be made of the defendant's goods the assessed value or damages or a due proportion thereof Provided that the plaintiff shall either by the same or a separate writ of execution be entitled to have 25 made of the defendant's goods the damages costs and interest in such action or suit.

GUARANTEE.

Consideration for guarantee need not appear in writing. 19 and 20 Vic. c. 97 s. 3.

37. No special promise to be made by any person after the passing of this Act to answer for the debt default or miscarriage of 30 another person being in writing and signed by the party to be charged therewith or some other person by him thereunto lawfully authorized shall be deemed invalid to support an action suit or other proceeding to charge the person by whom such promise shall have been made by reason only that the consideration for such promise does not 35 appear in writing or by necessary inference from a written document.

Guarantee to or for a firm to avow upon a change in the firm except in special cases. 19 and 20 Vic. c. 97 s. 4.

38. No promise to answer for the debt default or miscarriage of another made to a firm consisting of two or more persons or to a single person trading under the name of a firm and no promise to answer for the debt default or miscarriage of a firm consisting of two 40

or

or more persons or of a single person trading under the name of a firm shall be binding on the person making such promise in respect of anything done or omitted to be done after a change shall have taken place in any one or more of the persons constituting the firm or in
 5 the persons trading under the name of a firm unless the intention of the parties that such promise shall continue to be binding notwithstanding such change shall appear either by express stipulation or by necessary implication from the nature of the firm or otherwise.

39. Every person who being surety for the debt or duty of
 10 another or being liable with another for any debt or duty shall pay such debt or perform such duty shall be entitled to have assigned to him or to a trustee for him every judgment specialty or other security which shall be held by the creditor in respect of such debt or duty
 15 whether such judgment specialty or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt or performance of the duty and such person shall be entitled to stand in the place of the creditor and to use all the remedies and if need be and upon a proper indemnity to use the name of the creditor in any action or other proceeding at law or in equity in order to obtain from
 20 the principal debtor or any co-surety co-contractor or co-debtor as the case may be indemnification for the advances made and loss sustained by the person who shall have so paid such debt or performed such duty and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him Pro-
 25 vided always that no co-surety co-contractor or co-debtor shall be entitled to recover from any other co-surety co-contractor or co-debtor by the means aforesaid more than the just proportion to which as between those parties themselves such last mentioned person shall be justly liable.

A surety who discharges the liability to be entitled to assignment of all securities held by the creditor.
 19 and 20 Vic. c. 97 s. 5.

30 **BILLS OF EXCHANGE.**

40. No acceptance of any bill of exchange whether inland or
 foreign made after the day of eighteen hundred and
 seventy shall be sufficient to bind or charge any person unless the
 same be in writing on such bill or if there be more than one part of
 35 such bill on one of the said parts and signed by the acceptor or some person duly authorized by him.

Acceptance of a bill inland or foreign to be in writing on it and signed by the acceptor or his agent.
 19 and 20 Vic. cap. 97 sec. 6.

LIMITATION OF ACTIONS.

41. All actions of account or for not accounting and suits for
 such accounts as concern the trade of merchandise between merchant
 c 23 and

Limitation of actions for "merchants' accounts."
 19 and 20 Vic. cap. 97 sec. 9.

and merchant their factors or servants shall be commenced and sued within six years after the cause of such actions or suits or when such cause has already arisen then within six years after the passing of this Act And no claim in respect of a matter which arose more than six years before the commencement of such action or suit shall be enforceable by action or suit by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of such action or suit.

Absence beyond seas or imprisonment of a creditor not to be a disability. 19 and 20 Vic. cap. 97 sec. 10.

42. No person or persons who shall be entitled to any action or suit with respect to which the period of limitation within which the same shall be brought is fixed by the Act twenty-first James the First chapter sixteen section three or by the Act fourth Anne chapter sixteen section seventeen or by the Act third and fourth William the Fourth chapter twenty-seven sections forty forty-one and forty-two and which last mentioned Act has been adopted in this Colony by the Act eighth William the Fourth number three or by the Act fifth Victoria number nine section thirty-nine shall be entitled to any time within which to commence and sue such action or suit beyond the period so fixed for the same by the enactments aforesaid by reason only of such person or some one or more of such persons being at the time of such cause of action or suit accrued beyond the seas or in the cases in which by virtue of any of the aforesaid enactments imprisonment is now a disability by reason of such person or some one or more of such persons being imprisoned at the time of such cause of action or suit accrued.

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Period of limitation to run as to joint debtors in the Colony though some are beyond seas. Judgment named against joint debtors in the Colony to be no bar to proceeding against others beyond seas after their return. 19 and 20 Vic. cap. 97 sec. 11.

43. Where such cause of action or suit with respect to which the period of limitation is fixed by the enactments aforesaid or any of them lies against two or more joint debtors the person or persons who shall be entitled to the same shall not be entitled to any time within which to commence and sue any such action or suit against any one or more of such joint debtors who shall not be beyond the seas at the time such cause of action or suit accrued by reason only that some other one or more of such joint debtors was or were at the time such cause of action accrued beyond the seas and such person or persons so entitled as aforesaid shall not be barred from commencing and suing any action or suit against the joint debtor or joint debtors who was or were beyond the seas at the time the cause of action or suit accrued after his or their return from beyond seas by reason only that judgment was already recovered against any one or more of such joint debtors who was not or were not beyond seas at the time aforesaid.

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44. No part of the Australasian Colonies including the Colony of New Zealand shall be deemed to be beyond seas within the meaning of the Act fourth and fifth Anne chapter sixteen or of this Act.

Definition of "beyond seas" within 4 and 5 Anne cap. 16 and this Act.
19 and 20 Vic. cap. 97 sec. 12.
Provision of 9 Geo. 4 cap. 14 s. 1 and 8 extended to acknowledgments by agents.
19 and 20 Vic. cap. 97 sec. 13.

45. In reference to the provisions of the Act ninth George the Fourth chapter fourteen sections one and eight and which Act has been adopted in this Colony by the Act fourth William Fourth number seventeen an acknowledgment or promise made or contained by or in a writing signed by the agent of the party chargeable thereby duly authorized to make such acknowledgment or promise shall have the same effect as if such writing had been signed by such party himself.

46. In reference to the provisions of the Acts twenty-first James the First chapter sixteen section three and of the Act fifth Victoria number nine section thirty-nine when there shall be two or more co-contractors or co-debtors whether bound or liable jointly only or jointly and severally or executors or administrators of any contractor no such co-contractor or co-debtor executor or administrator shall lose the benefit of the said enactments or any of them so as to be chargeable in respect or by reason only of payment of any principal interest or other money by any other or others of such co-contractors or co-debtors executors or administrators.

Part payment by one contractor &c., not to prevent bar by certain statutes of limitations in favour of another contractor.
19 and 20 Vic. cap. 97 sec. 13.

EVIDENCE.

47. Whereas inconvenience is occasionally felt by the necessity of proving the Statute Laws of the United Kingdom of Great Britain and Ireland and of the adjoining Colonies of Victoria South Australia and Queensland by the evidence of some expert in such laws be it enacted that after the passing of this Act any copy of the Statutes of Great Britain and Ireland if purporting to be printed and published by the Printer to Her Majesty and also any copy of the Statutes of the Colonies of Victoria South Australia and Queensland if purporting to be printed and published by the Government Printer or by the authority of the Government of such Colonies shall be admitted as *prima facie* evidence of the Statutes and of the Laws therein contained by all Courts Judges Justices or others in this Colony without proof being given that such copies were so printed.

Copies of the statutes of Great Britain and Ireland and of the Colonies of Victoria South Australia and Queensland admissible as evidence of the laws therein contained.

35 RULES AND REGULATIONS.

48. In order to enable the Court and the Judges thereof to make laws and regulations and to frame writs and proceedings for the purpose of giving effect to this Act the one hundred and seventy-fourth and one hundred and seventy-fifth sections of the Common Law

Rules or regulations may be made and provisions framed for the purposes of this Act.
19 & 20 Vic. cap. 97 sec. 15.

Procedure

Procedure Act of 1853 shall be incorporated with this Act as if those provisions had been severally herein repeated and made to apply to this Act.

AMENDMENTS.

Amendment of proceedings under this Act. 23 & 24 Vic. cap. 128 sec. 36.

49. It shall be lawful for the Courts and every Judge thereof 5 and any Judge sitting at nisi prius at all times to amend all defects and errors in any proceedings under the provisions of this Act whether there is anything in writing to amend by or not and whether the defect or error be that of the party applying to amend or not and all such amendments may be made with or without costs and upon such 10 terms as to the Court or Judge may seem fit And all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made if duly applied for.

INTERPRETATION.

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Meaning of the words "the Court."

50. In the construction of this Act the words "the Court" shall be understood to mean the Supreme Court in its Common Law Jurisdiction unless the context otherwise indicates.

COMMENCEMENT OF ACT.

Commencement of Act. 23 & 24 Vic. cap. 126 sec. 43.

51. The provisions of this Act shall come into operation on the 20 one thousand eight hundred and seventy.

The Governor with the advice of the Executive may direct all or part of this Act to extend to any Court of Record. 23 & 24 Vic. cap. 126 sec. 44.

52. It shall be lawful for the Governor with the advice of the Executive Council from time to time to order that all or any part of the provisions of this Act shall apply to all or any Court or Courts of 25 Record in the Colony and within one month after such order shall have been made and published in the *Government Gazette* such provisions and rules respectively shall extend and apply in manner directed by such order and any such order may be in like manner from time to time altered and annulled and in and by any such order 30 the Governor with the advice aforesaid may direct by whom any powers or duties incident to the provisions applied under this Act shall and may be exercised with respect to matters in such Court or Courts and may make any order or regulation which may be deemed requisite for carrying into operation in such Court or Courts the provisions 35 so applied.

Short title.

53. In citing this Act in any instrument document or proceeding it shall be sufficient to use the expression "The Common Law Procedure Act of 1870."