

ANNO DUODECIMO
VICTORIÆ REGINÆ.

No. I.

LAW SIMPLIFICATION. An Act to simplify and alter the Law in some respects. [20th June, 1848.]

Preamble.

Sect. 32 of 5 Vic. No. 9
sect. 11 of 6 Vic.
No. 15 and

sections 12 and 13
of 10 Vic. No. 10
repealed.

Cases in trials before
the Supreme Court
in which plaintiff
shall not recover
costs.

Court or Judge may
amend notices of
motion rule *nisi* &c.

Sections 18 19 and
20 of 5 Vic. No. 9
repealed.

Part of sect. 31 of 5
Vic. No. 9 repealed.

As to demurrers.

WHEREAS it is expedient to simplify the Law in some respects Be it enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That the thirty-second section of an Act passed in the fifth year of the reign of Her present Majesty intituled "*An Act for the further amendment of the Law and for the better advancement of Justice*" and the eleventh section of an Act passed in the sixth year of the reign of Her said Majesty intituled "*An Act to consolidate and amend the Law relating to Courts of Requests and to extend the jurisdiction of such Courts in the County of Cumberland*" and the twelfth and thirteenth sections of an Act passed in the tenth year of the reign of Her said Majesty intituled "*An Act to amend the Law respecting the recovery of Small Debts in all parts of the Colony*" shall be and the same are hereby repealed.

2. And be it enacted That if any plaintiff in a trial before the Supreme Court of the said Colony shall obtain a verdict for less than ten pounds unliquidated damages or less than thirty pounds liquidated damages or debt and if the presiding Judge on such trial shall certify that the cause of action was not of sufficient value to justify an action in the Supreme Court the plaintiff shall recover no costs.

3. And be it enacted That the Court or any Judge thereof as the case may be shall have power to amend any notice of motion rule *nisi* summons writ pleading affidavit jurat or title of affidavit record precipe or other proceeding used before such Court or Judge in any matters that shall appear to the said Court or Judge not likely to mislead the opposite party on any point essential to the merits of the case and to award such reasonable costs of such amendment as to the said Court or Judge shall seem meet.

4. And whereas it is expedient to abolish the power of compulsory reference to arbitration Be it enacted That the eighteenth nineteenth and twentieth sections of the said first recited Act passed in the fifth year of the reign of Her said Majesty shall be and the same are hereby repealed.

5. And be it enacted That so much of the thirty-first section of the Act last aforesaid as authorizes the Sheriff or the Deputy Sheriff as the case may be to sell under a writ of *fiery facias* any chose in action belonging to the defendant shall be and the same is hereby repealed.

6. And be it enacted That any party in an action who shall demur specially shall be restricted to grounds of special demurrer and that no motion in arrest of judgment shall be allowed for any defect which might have been taken advantage of by demurrer.

Law Simplification.

7. And be it enacted That it shall be lawful for any plaintiff or defendant on the record to examine the adverse party as a witness Plaintiff or defendant may be examined. Provided always that notice shall be given of such examination to the said adverse party three days at least before the day on which the cause is set down for trial. Provided also that in any cross-examination of such witnesses no questions shall be allowed to be put except such Proviso as to questions. as arise out of the examination-in-chief.

8. And be it enacted That no petition except a petition of course shall hereafter be necessary in the Supreme Court in its Equity Jurisdiction but that the same relief which has hitherto been given on petition may henceforth be given on motion. In Equity cases motions substituted for petitions.

9. And be it enacted That it shall be lawful for any person or persons or body or bodies politic or corporate requiring such relief or discovery in Equity as cannot now be obtained without the filing of a bill whether original not original or in the nature of an original bill instead of filing such bill to apply on affidavit to the Supreme Court sitting in Banco for a rule *nisi* calling upon the person or persons or body or bodies politic or corporate who would have been defendant or defendants to such bill to shew cause why the said rule *nisi* should not be made absolute and it shall be lawful for the said Court if it shall see fit upon the granting of the said rule *nisi* to make an order for a common or special injunction or any other interlocutory order which according to the practice of the said Supreme Court in its Equity Jurisdiction can now be made between the filing of the bill and the hearing of the cause and further that upon motion to make the said rule *nisi* absolute it shall be lawful for the Court to make the rule absolute against all or any of the parties or to deal with the cause in the same manner as if the said rule *nisi* had been the prayer of a Bill concluding with a prayer for general relief and to make all such decrees and decretal orders and references to the Master thereupon as can now be made by the said Court in its Equity Jurisdiction upon and after the hearing of any cause. Provided always that it shall be lawful for the said Court if it shall think fit upon the motion for the said rule *nisi* or upon the motion to make it absolute or upon motion made for that purpose to discharge the said rule *nisi* with leave to the party or parties who have applied for the same to file a bill or to enlarge the said rule *nisi* and to direct evidence to be taken from the parties and other witnesses before the Master according to the practice of the said Court in its Equitable Jurisdiction for and against the said rule *nisi* and upon the coming in of such evidence to deal with the said rule in such manner as to the Court shall seem fit. Persons or bodies politic or corporate instead of filing bill in Equity may obtain a rule nisi and injunction.

10. And be it enacted That it shall be lawful for the Judges to make such rules as may seem to them requisite for carrying this Act or any part thereof into effect and such rules from time to time to revoke alter and amend. Judges may make rules for carrying this Act into effect.

11. Whereas it is expedient that the Sheriff by himself or his Bailiffs should have power to sell by public auction goods or property of any description taken in execution. Be it enacted That the Sheriff of New South Wales and the Deputy Sheriff of Port Phillip by themselves or deputies shall have power and authority to sell by public auction all goods and other property of whatever kind taken by them respectively in execution without taking out an Auctioneer's license anything in an Act passed in the eleventh year of Her Majesty's reign intituled "*An Act to regulate the licensing of Auctioneers and the collection of Duties on Property sold by them*" to the contrary notwithstanding. Sheriff or his deputies empowered to sell by public auction goods or property taken in execution without a license.

11 Vic. No. 16.