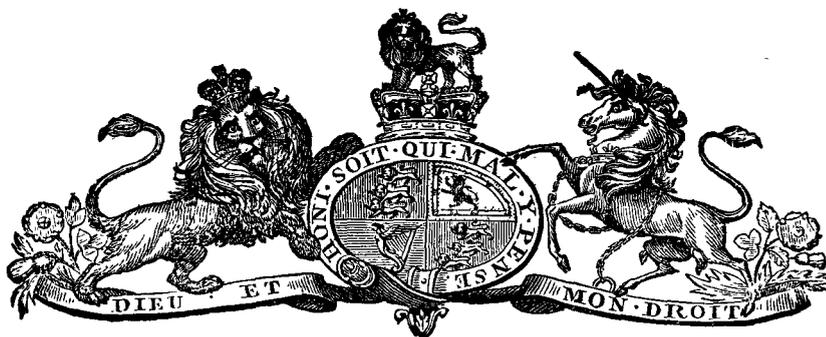


NEW ZEALAND.



QUADRAGESIMO SECUNDO

VICTORIÆ REGINÆ.

No. 27.

ANALYSIS.

- | | |
|---|--|
| <p>Title.
Preamble.
1. Short Title.
2. Commencement of operation of sections 3 to 8.
3. Error abolished in civil cases.
4. Law and equity to be concurrently administered.
5. Rules of law upon certain points. (1.) Administration of assets of insolvent estates, and of companies being wound up. (2.) Statute of limitations inapplicable to express trusts. (3.) Equitable waste. (4.) Merger. (5.) Suits for possession of land by mortgagors. (6.) Assignment of debts and choses in ac-</p> | <p>tion. (7.) Stipulations not of the essence of contracts. (8.) Infants. (9.) Damages by collision at sea. (10.) Cases of conflict not enumerated.
6. Powers of inferior Courts.
7. Counter-claims in inferior Courts, and transfers therefrom.
8. Rules of law to apply to inferior Courts.
9. Power to Judges to make new rules.
10. Interpretation of terms.
11. Notwithstanding "Absent Debtors Act, 1860," defendant may obtain leave to plead to and defend action.</p> |
|---|--|

AN ACT for the Amendment of the Law.

Title.

[29th October, 1878.]

WHEREAS it is expedient to make better provision for the administration of justice: Preamble.

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act shall be "The Law Amendment Act, 1878." Short Title.

2. Sections numbered from three to eight, both inclusive, of this Act shall come into operation on a day to be fixed by the Governor in Council. Commencement of operation of sections 3 to 8.

3. Subject to the provisions hereinafter contained, the sections numbered from thirty-six to fifty-eight, both inclusive, of "The Court of Appeal Act, 1862," so far as they apply to proceedings in error, and so much of "The Court of Appeal Act, 1870," as applies to proceedings in error, are hereby repealed; and no error shall hereafter be brought in civil cases upon any judgment or order of the Supreme Court or Court of Appeal, nor upon any award of a trial *de novo* by the Supreme Court or Court of Appeal: Provided that proceedings in error commenced before the coming into operation of this section may be prosecuted, and error may be brought upon any such prior judgment, order, or award, as if this section of this Act had not been Error abolished in civil cases.

Law Amendment.

passed: Provided also, notwithstanding the said repeal of the said sections of "The Court of Appeal Act, 1862," the same shall, so far as they regulate the manner of giving bail and the amount of bail, and empower the Court of Appeal to award process and otherwise, continue to apply and be in force with regard to such appeals under "The Court of Appeal Act, 1862," and "The Court of Appeal Act Amendment Act, 1870," as by the said Acts they were applied to.

Law and equity to
be concurrently
administered.

4. In every civil cause or matter commenced in the Supreme Court, law and equity shall be administered by the Supreme Court and the Court of Appeal respectively, according to the rules following:—

- (1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right which heretofore could only have been given under the equitable jurisdiction of the Supreme Court, the said Courts respectively, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Supreme Court as a Court of equity in an action or proceeding for the same or the like purpose properly instituted before the coming into operation of this section.
- (2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall give to every equitable estate, right or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect by way of defence against the claim of such plaintiff or petitioner as the Supreme Court in its equitable jurisdiction ought to have given if the same or the like matters had been relied on by way of defence in any action or proceeding instituted in that Court for the same or the like purpose before the coming into operation of this section.
- (3.) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any action instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of Court or any order of the Court, as might properly have been granted against such person if he had been made defendant to a cause duly instituted by the same defendant for a like purpose; and every person served with any such notice shall

Law Amendment.

thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant.

- (4.) The said Courts respectively, and every Judge thereof, shall recognize and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Supreme Court in its equitable jurisdiction would have recognized and taken notice of the same in any action or proceeding duly instituted therein before the coming into operation of this section.
 - (5.) No cause or proceeding at any time pending in the Supreme Court or before the Court of Appeal shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled if this Act had not passed to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce by attachment or otherwise any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally or so far as may be necessary for the purposes of justice, and the Court shall thereupon make such order as shall be just.
 - (6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognize and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the common law, or by any custom, or created by any Statute, in the same manner as the same would have been recognized and given effect to by the Supreme Court if this Act had not been passed.
 - (7.) The Supreme Court and the Court of Appeal respectively, in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter, so that as far as possible all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.
5. And whereas it is expedient to amend and declare the law to

Law Amendment.

be hereafter administered in New Zealand as to the matters next hereinafter mentioned: Be it enacted as follows:—

Administration of assets of insolvent estates, and of companies being wound up.

(1.) In the administration by any Court of the assets of any person who may die after the coming into operation of this section, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding-up of any company under "The Joint Stock Companies Act, 1860," and Acts amending the same, or "The Mining Companies Act, 1872," whose assets may prove insufficient for the payment of its debts and liabilities, and the cost of winding-up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities, and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding-up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

Statute of limitations inapplicable to express trusts.

(2.) No claim of a *cestui que* trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations.

Equitable waste.

(3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Merger.

(4.) There shall not, after the commencement of this section, be any merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Suits for possession of land by mortgagors.

(5.) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Assignment of debt and choses in action.

(6.) In lieu of that part of section nine of an Ordinance of the Governor and Legislative Council of New Zealand, Session II., No. 10, commonly known as "The Conveyancing Ordinance," which enacts that every chose in action may be assigned by law, be it enacted as follows: Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been

Law Amendment.

entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the Supreme Court under and in conformity with the provisions of the Acts for the relief of trustees.

- (7.) Stipulations in contracts as to time or otherwise which would not, before the coming into operation of this section, have been deemed to be or to have become the essence of such contracts in a Court of equity shall receive in all Courts the same construction and effect as they would have heretofore received in equity. Stipulations not of the essence of contracts.
- (8.) In questions relating to the custody and education of infants the rules of equity shall prevail. Infants.
- (9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Vice-Admiralty, so far as they have been at variance with rules in force in the Supreme Court, shall prevail. Damages by collision at sea.
- (10.) Generally, in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail. Cases of conflict not enumerated.

6. Every inferior Court which now has, or which may after the passing of this Act have, jurisdiction in equity, or at law and in equity respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such Court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provisions next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the Supreme Court.

7. Where in any proceeding before any such inferior Court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter-claim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counter-claim: Provided always that in such case it shall be lawful for the Supreme Court, or any Judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior Court to the Supreme Court, and in such case the record in such proceeding

Powers of inferior Courts.

Counter-claims in inferior Courts, and transfers therefrom.

Law Amendment.

shall be transmitted by the Registrar or other proper officer of the inferior Court to the said Supreme Court, and the same shall thenceforth be continued and prosecuted in the said Supreme Court as if it had been originally commenced therein.

Rules of law to apply to inferior Courts.

8. The several rules of law enacted by this Act shall be in force and receive effect in all Courts whatsoever, so far as the matters to which such rules relate shall be respectively cognizable by such Courts.

Power to Judges to make new rules.

9. In addition to the powers now vested in the Judges of the Supreme Court by the twentieth section of "The Supreme Court Act, 1860," and the sixteenth section of "The Supreme Court Amendment Act, 1862," to make and alter rules, it shall be lawful for such Judges, or any three of them, but only with the approval of the Governor in Council, from time to time to make new rules of practice, pleading, and procedure, which shall be valid and effectual notwithstanding that such rules may modify or alter or conflict or be inconsistent with any Statute now in force regulating the practice, pleading, or procedure of the Supreme Court.

Interpretation of terms.

10. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have or include the meanings following, that is to say,—

"Cause" shall include any action or other original proceeding between a plaintiff and a defendant.

"Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of Court.

"Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, petition, motion, summons, or otherwise.

"Petitioner" shall include every person making any application to the Court either by petition, motion, or summons, otherwise than against any defendant.

"Defendant" shall include every person served with any writ of summons or process, or served with notice of or entitled to attend any proceedings.

"Party" shall include every person served with notice of or attending any proceeding, although not named on the record.

"Matter" shall include every proceeding in the Court not in a cause.

"Pleading" shall include any petition or summons, and also shall include the statements in writing of the claim of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.

"Judgment" shall include decree.

"Order" shall include rule.

Notwithstanding "Absent Debtors Act, 1860," defendant may obtain leave to plead to and defend action.

11. Notwithstanding anything contained in "The Absent Debtors Act, 1860," it shall be lawful for the Supreme Court, or any Judge thereof, in any action heretofore commenced or hereafter to be commenced under the provisions of that Act, to grant to the defendant leave to plead to the action, and to defend the same at any time, upon such terms as to the Court or Judge shall seem fit.