

VICTORIA.



ANNO DECIMO QUINTO

VICTORIÆ REGINÆ.

By His Excellency CHARLES JOSEPH LA TROBE, ESQUIRE, Lieutenant Governor of the Colony of Victoria and its Dependencies, with the advice and consent of the Legislative Council.

No. X.

An Act to make provision for the better Administration of Justice in the Colony of Victoria.
[Assented to 6th January, 1852.]

WHEREAS by an Act of the Imperial Parliament of Great Britain and Ireland passed in the thirteenth and fourteenth year of the reign of Her present Majesty intituled "*An Act for the better government of Her Majesty's Australian Colonies*" it was enacted that it should be lawful for Her Majesty by letters patent under the great Seal of the United Kingdom of Great Britain and Ireland to erect and appoint a Court of Judicature in the Colony of Victoria which should be styled "The Supreme Court of the Colony of Victoria" And that such Court should be holden by one or more Judge or Judges and should have such ministerial and other officers as should be necessary for the administration of Justice in the said Court and for the execution of Judgments Decrees Orders and Process thereof And that it should be lawful for the Governors and Councils of the Colonies of New South Wales Van Diemen's Land and Victoria respectively from time to time by any Act or Acts to make such provision as to them might seem meet for the better administration of Justice and for defining the constitution of the Courts of Law and Equity and of Juries within the said Colonies respectively or within any present or future dependencies thereof respectively anything in an Act of the ninth year of King George the Fourth intituled "*An Act to provide for the more effectual administration of Justice in New South Wales and its Dependencies*" or in the said recited Act or in any Charter of Justice or Order in Council made or issued in pursuance thereof respectively or in any law Statute or usage to the contrary thereof notwithstanding And whereas no such letters patent have been received in the said Colony of Victoria and the exigencies of the said Colony have rendered it necessary to make provision for the better administration of Justice therein and it is expedient to repeal the several Acts and portions of Acts of the Governor and Legislative Council of the Colony of New South Wales hereinafter mentioned Be it therefore enacted by His Excellency the Lieutenant Governor of the Colony of Victoria by and with the advice and consent of the Legislative Council thereof that from and after the commencement of this Act An Act of the Governor and Legislative Council of the said

Preamble.

Repeal of Acts.

said

32

4 Vic., No. 22.

5 Vic., No. 4.

1, 2, 3, 4, 5, 6, 7, 8, 9,
10, 11, 12, 13, 14
and 31 Sections of
5 Vic., No. 9, and

7 Vic., No. 13.

Supreme Court of the
Colony of Victoria
established.

Proviso.

Judges.

Proviso.

Chief Justice.

said Colony of New South Wales passed in the fourth year of the reign of Her present Majesty Queen Victoria intituled "*An Act to provide for the more effectual administration of Justice in New South Wales and its dependencies*" And an Act passed in the fifth year of the reign of of Her present Majesty Queen Victoria intituled "*An Act to make further provision for the trial of cases in the Circuit Courts of New South Wales and to amend in certain respects the Act providing for trial by Jury in such Courts*" And the first second third fourth fifth sixth seventh eighth ninth tenth eleventh twelfth thirteenth fourteenth and thirty-first sections of an Act passed in the said fifth year of the reign of Her present Majesty Queen Victoria intituled "*An Act for the further amendment of the Law and for the better advancement of Justice*" And also an Act passed in the seventh year of the reign of Her present Majesty Queen Victoria intituled "*An Act for regulating the appointment and duties of Sheriff in New South Wales*" shall be and the same are hereby repealed so far as they relate to the said Colony of Victoria.

II. That from and after the commencement of this Act a Court shall be holden in and for the Colony of Victoria and its dependencies which shall be styled "*The Supreme Court of the Colony of Victoria*" Provided however and be it enacted that no Action Suit or other proceeding at Law or in Equity or any matter or thing whether civil or criminal or relating to affairs Ecclesiastical or of any other description whatsoever which shall then be depending in the several departments of the Supreme Court of New South Wales for the District of Port Phillip shall abate surcease or become discontinued but the same and every of them shall be proceeded with heard and determined in the Supreme Court of the Colony of Victoria under the several provisions of this Act without any alteration in their intituling address or any part thereof respectively Provided also that no Appeal then pending from the judgment decision decree or order of the Supreme Court of New South Wales for the District of Port Phillip or the Resident Judge thereof heretofore pronounced or made nor the appeal from any judgment decision decree or order of such Court or Judge to be hereafter pronounced or made in any cause or matter then depending or undecided and upon which judgment has been reserved to the Supreme Court of New South Wales or the Judges thereof shall be affected by the provisions of this Act but the same may be respectively instituted proceeded with heard and determined and the judgment thereon enforced as if this Act had not been passed.

III. That such Supreme Court of the Colony of Victoria shall consist of and be holden by and before a Judge or Judges not exceeding three in number each of whom shall be a practising Barrister of England or Ireland or Advocate of Scotland of not less than five years' standing or a practising Barrister of the said Court not previously admitted in any of the Superior Courts of Westminster Dublin or Edinburgh of not less than eight years' standing That such Judges shall be appointed by Her Majesty's letters patent And the Salaries of such Judges shall be paid to each of them so long as their Commissions shall remain in force respectively And it shall be lawful for the Lieutenant Governor of the said Colony to appoint such Judge or Judges until the pleasure of Her Majesty be known Provided that until such appointment the Resident Judge of the Supreme Court of New South Wales for the District of Port Phillip shall exercise all the jurisdiction power and authorities of a Judge of the Supreme Court of the Colony of Victoria.

IV. That one of the said Judges shall be styled "*The Chief Justice of the Supreme Court of the Colony of Victoria*" and until Her Majesty's pleasure be known he shall have rank and precedence above and

and before all persons whomsoever in the said Colony of Victoria excepting the Governor and Lieutenant Governor thereof and except all such persons as by law or usage take place in England before the Lord Chief Justice of the Court of Queen's Bench.

V. That it shall be lawful for the Lieutenant Governor of the said Colony with the advice of the Executive Council thereof to suspend from his Office until the pleasure of Her Majesty be known any Judge of the said Court who shall be wilfully absent from the said Colony without a reasonable cause to be allowed by the said Lieutenant Governor and Executive Council And also any Judge who shall become incapable or who shall neglect to perform the duties of his Office or who shall otherwise misbehave therein And if any Judge of the said Court shall die or resign his Office or by reason of suspension or in consequence of sickness leave of absence or any other temporary cause be unable to perform the duties of his Office it shall be lawful for the said Lieutenant Governor with the advice of the said Executive Council to appoint some other fit and proper person qualified as hereinbefore required to perform the duties of such Judge until the pleasure of Her Majesty be known And such person so to be appointed shall possess all the powers and privileges and perform all the duties of the Judge in whose place he may be so appointed.

Removal of Judges.

VI. That no Judge of the said Court shall be capable of accepting taking or performing the duties of any other Office or place of profit or emolument within the said Colony of Victoria excepting such Office as may be granted to such Judge by Her Majesty's sign manual or under the Great Seal of the High Court of Admiralty of England and any such acceptance taking or performance of the duties of any such other Office shall be deemed in law an avoidance of his Office of Judge and his Office and Commission shall be thereby in fact superseded and his Salary thereupon cease.

Judges not to hold any other place of profit.

VII. That the said Court shall have a Master in Equity who shall be a practising Barrister of England or Ireland or Advocate of Scotland of not less than five years' standing or a practising Barrister of the said Court not previously admitted in any of the Superior Courts of Westminster Dublin or Edinburgh of not less than six years' standing a Prothonotary a Registrar and Keeper of the Records and such and so many other Officers as to the Judge or Judges for the time being of the said Court shall appear to be necessary for the administration of Justice and the due execution of all the powers and authorities of the said Court And such Master Registrar Prothonotary Keeper and other Officers shall respectively draw up prepare and settle all such and the like Orders Rules Decrees Reports and Proceedings as are usually drawn up prepared and settled by persons holding similar offices in the Superior Courts of Law and Equity in Westminster without any charge whatsoever for so doing And the appointment of every such person to any such office as is hereinbefore expressly named shall be by letters patent and shall be made during pleasure and in the first instance and until such letters patent shall issue such appointment shall be made by the Lieutenant Governor of the said Colony until the pleasure of Her Majesty be known And all persons who may be appointed to any other Office in the said Court than those hereinbefore particularly enumerated shall be so appointed by the Lieutenant Governor of the said Colony And no new Office shall be created in the said Court unless the Judge or Judges thereof shall certify by writing under his or their hand or hands to the said Lieutenant Governor that such new Office is necessary Provided that until such appointments be made respectively the Master in Equity Registrar and other Officers of the Supreme Court of New South Wales for the District of Port Phillip shall exercise the like powers and

Officers of the Court.

and authorities and discharge the like duties in the Supreme Court of the Colony of Victoria as were by them severally and respectively exercised and discharged in the Supreme Court of New South Wales for the District of Port Phillip up to the time of the commencement of this Act.

Barristers and Attornies at present admitted to continue, &c.

VIII. That every Barrister and every Attorney Solicitor and Proctor of the Supreme Court of New South Wales for the District of Port Phillip may lawfully practise in the Supreme or other Courts of the Colony of Victoria in the character in which he has been admitted without its being necessary for him to make application to be admitted to practise in such Supreme or other Courts.

Supreme Court of the Colony of Victoria to be a Court of Record; to have a Seal.

IX. That the said Supreme Court of the Colony of Victoria shall be a Court of Record and shall have and use as occasion may require a Seal bearing an impression of the Royal Arms of England having inscribed on a label thereon the words "The Seal of the Supreme Court of the Colony of Victoria" and such Seal shall be delivered by the Lieutenant Governor of the said Colony to and be kept in the custody of the Chief Justice of the said Court And any person who shall forge the Seal or any process document or writing of or issuing from the said Court or any Copy thereof or who shall serve or enforce any such forged process document writing or copy knowing the same to be forged shall be guilty of felony and being convicted thereof shall be liable to be sentenced at the discretion of the Judge presiding at the trial to be worked on the roads of the said Colony for any period not less than five years and not exceeding ten years or to be imprisoned for any period not exceeding three years.

Forging or Counterfeiting Seal or process of the Court, Felony.

Jurisdiction at Common Law.

X. That the said Court shall have cognizance of all civil pleas and shall have jurisdiction within the said Colony of Victoria and its dependencies to hear and determine all Actions whatsoever real personal and mixed as fully and amply to all intents and purposes as Her Majesty's Courts of Queen's Bench Common Pleas and Exchequer of Pleas at Westminster or either of them lawfully have or hath in England.

Criminal Jurisdiction.

XI. That the said Court shall have jurisdiction to enquire of hear and determine within the said Colony of Victoria and its dependencies all Treasons Felonies Misdemeanors and offences of what nature or kind soever and wheresoever committed which can or may be enquired of heard and determined in Her Majesty's Court of Queen's Bench at Westminster or in the Central Criminal Court in London.

Proceeding by Information.

XII. That all Treasons Felonies Misdemeanors and offences cognizable in the said Court or in any Circuit Court in the said Colony shall be prosecuted by Information in the name of Her Majesty's Attorney or Solicitor General for the said Colony or of such other person as the Lieutenant Governor of the said Colony may appoint And all issues at law joined on every information shall be determined by any one or more Judge or Judges of the said Court and all issues of fact joined on every such information shall be tried by and before any one or more such Judge or Judges and a jury of twelve men to be summoned empannelled and sworn as by law provided or to be provided.

Criminal Information.

XIII. That it shall be lawful for any person by leave of the said Court to exhibit a Criminal information against any other person for any crime or misdemeanor not punishable by death alleged to have been by such person committed and it shall not be necessary for any person applying to the Court for leave to exhibit such Criminal information to file any exculpatory Affidavits unless required by order of the Court so to do And every Criminal information exhibited by leave of the Court shall be in the name of Her Majesty the Queen and upon the information of the person to whom such leave has been granted and the prosecutor shall

shall file such information in the said Court and the same shall be heard tried and determined in the same manner as any other information hereinbefore required to be heard tried and determined in the said Court.

XIV. That the said Court shall have Equitable Jurisdiction within the said Colony of Victoria and its dependencies and such power and authority to do exercise and perform all Acts matters and things necessary for the due execution of such Equitable Jurisdiction as is possessed by the Lord High Chancellor of England in the exercise of similar jurisdiction within the Realm of England and also to do all such other Acts matters and things as can and may be done by the said Lord High Chancellor within the Realm of England in the exercise of the Common Law Jurisdiction to him belonging and to appoint Guardians and Committees of the persons and Estates of Infants and of natural born fools lunatics and persons deprived of understanding and reason by the act of God and unable to govern themselves or their Estates and for that purpose to enquire into hear and determine by inspection of the person the subject of such enquiry or by examination on Oath or otherwise of the party in whose custody or charge such person may be or of any other person or persons or by such other ways and means by which the truth may be best discovered and to act in all cases whatsoever as fully and amply to all intents and purposes as the said Lord High Chancellor or the Grantee from the Crown of the persons and Estates of Infants and lunatics natural born fools and persons deprived of understanding as aforesaid may now lawfully do.

Equitable Jurisdiction.

XV. That the said Court shall have Ecclesiastical Jurisdiction within the said Colony of Victoria and its dependencies and shall have power and authority to grant probate under its Seal of the last Will of any person who shall die leaving personal effects within the said Colony and to commit letters of administration under its Seal of all the personal effects whatsoever within the said Colony of any person who shall die intestate and to commit letters of administration under its Seal with the Will annexed of all the personal effects whatsoever within the said Colony of any person who shall have made a Will without having named an Executor thereof or without having named an Executor thereof resident within the said Colony or where the Executor being duly cited shall not appear and sue forth probate thereof with reservation nevertheless in any of the two last mentioned cases to revoke such letters of administration and to grant probate of the said Will to the Executor therein named when he shall duly appear and sue forth such probate And such letters of administration shall be committed by the said Court to any person whether of kin to or a Creditor of the person so dying as aforesaid or not as to the said Court shall seem meet And in every case in which letters of administration are granted by the said Court it shall have power and authority to sequester all the personal effects whatsoever within the said Colony of the person so dying as aforesaid in cases allowed by law as the same is and may be now used in the Province of Canterbury And the said Court shall have power and authority to require hear examine and allow and if necessary to disallow and reject the accounts of the persons to whom probates may be granted and letters of administration committed in such manner and form and as fully and amply to all intents and purposes whatsoever as may now be done in the Province aforesaid subject nevertheless to such orders and directions as may be made by the said Court either generally as applicable to all cases or specially with reference to any case in particular or to such rules of Court as may be made as hereinafter provided.

Ecclesiastical Jurisdiction

XVI. That it shall be lawful for the said Court to make all such orders as may be necessary for the due administration of the Assets of any

Court may make orders for administration of effects of deceased persons.

any such Estate to all persons entitled thereunto and also for the payment out of such Assets to the persons administering the same of any costs charges and expenses which may have been lawfully incurred by them and also such commission or per centage as shall be just and reasonable for their pains and trouble therein And if any such Executor or administrator shall neglect to pass his accounts or to pay deposit or dispose of the goods chattels and credits belonging to the Estate of any deceased person at the time and in the manner directed it shall be lawful for the said Court on the application of any person aggrieved by such neglect to order and direct that such Executor or administrator shall pay interest at a rate not exceeding eight pounds per centum per annum for such sums of money as from time to time shall have been in his hands and the costs occasioned by the application.

Circuit Courts.

XVII. That it shall be lawful for the Lieutenant Governor of the said Colony by any orders to be by him with the advice of the Executive Council thereof from time to time made and proclaimed to define the limits of districts within and the times at which Circuit Courts shall be holden in the said Colony and the said limits and times to alter and vary as he shall with the advice aforesaid deem necessary and to direct that Circuit Courts shall be holden at such towns or places within those limits as he shall with the advice aforesaid think fit to appoint and every such Circuit Court shall be holden in and for such district by one or more Judge or Judges of the said Court and shall be a Court of Record and shall have power to punish for contempt and shall have the same power authority and jurisdiction to hear and determine all civil issues to be tried within the limits of the Circuit district in which the same is held and all Treasons Felonies Misdemeanors and offences wheresoever committed as Courts of *Nisi Prius* Assize Oyer and Terminer and General Gaol Delivery in England possess and also to enquire into and assess damages in any Action at law commenced in the said Supreme Court and all persons convicted in any such Circuit Court of any Treason Felony Misdemeanor or other offence cognizable therein shall be subject and liable to the same penalties and punishments as by law could be inflicted on them if convicted thereof in the said Supreme Court And every such Circuit Court shall stand in the same relation to the said Supreme Court with respect to civil issues as the Court of *Nisi Prius* in England stands with respect to the Superior Court from which the *Nisi Prius* record is sent Provided however that it shall not be necessary to issue any special commission to any Judge or Judges of the said Supreme Court to empower him or them to hold any such Circuit Court.

Opening
Court.

Circuit

XVIII. That every such Circuit Court shall be opened by the Judge or Judges of Assize at the place and time proclaimed provided however that should such Judge or Judges not arrive at the place where such Court is to be holden in time to open the same on the day appointed by proclamation it shall be lawful for the said Judge or Judges or for some other Judge of the said Supreme Court to open and hold the said Circuit Court on any day or days following the day upon which the same should have been opened and held and the proceedings of such Circuit Court shall be as valid as if the same had been duly opened and held at the appointed time.

Power of Judge in
vacation.

XIX. That every Judge of the said Supreme Court of the Colony of Victoria shall have power in Vacation if under the special circumstances of the case he shall see fit to make all such Orders and grant all such Writs as can only under ordinary circumstances be made or granted by the Court and every such Order and Writ shall have the same force and effect as a Rule of the said Court without the necessity for any further motion or order of the said Court Provided that every such Order or Writ so made shall be liable to be set aside on application to be made

to

to the said Court by motion on notice at any time within the first four days of the next ensuing Term.

XX. That if at any time there shall be only two Judges of the said Court and a difference of opinion shall arise between them respecting the judgment or decision to be given or Decree or Order to be made by them or the said Court upon any subject matter or proceeding civil criminal relating to affairs Ecclesiastical or otherwise brought before them or the said Court the judgment decision Decree or Order of the Chief Justice or of the Senior Judge as the case may be shall be the judgment decision Decree or Order of the said Court.

Judgment of Chief Justice, or of Senior Judge.

Judgment of Court if two Judges differ.

XXI. That it shall be lawful for the Lieutenant Governor of the said Colony from time to time to appoint a Sheriff for the Colony of Victoria and its Dependencies who shall hold office during pleasure That such Sheriff by himself or his Officers to be by him appointed and duly authorised under his hand and seal and for whose acts he shall be accountable during his continuance in such office and their employment by him shall execute all Writs Summonses Rules Orders Warrants Precepts Commands and Process of the said Court which may be from time to time directed to him and shall make return of the same to the said Court together with the manner of the execution thereof as he may be thereby required And shall receive and detain all such persons as shall be committed into his custody and shall discharge such persons as he may be by law enjoined.

Duty of Sheriff.

XXII. That it shall be lawful for the Lieutenant Governor of the the said Colony to appoint deputies for the said Sheriff in the Districts in which Circuits of the said Court are to be held which deputies shall when required by the said Court or any Judge thereof by any Writ Process or other proceeding to them respectively directed or in any other manner perform within such Districts all such acts as the Sheriff would be bound to perform were he personally present and acting in such District.

Deputies of the Sheriff to be appointed by the Governor.

XXIII. That the said Sheriff and each of such Deputy Sheriffs respectively shall give security to Her Majesty her heirs and successors by bond or recognizance of himself and two responsible sureties or otherwise in such reasonable amount as may be fixed by the Lieutenant Governor of the said Colony conditioned for the due performance by such Sheriff and Deputy Sheriffs respectively of the duties of their offices and for the payment by him and them as he and they may be respectively directed of all monies which shall come to his or their hands respectively.

Sheriff's recognizances.

XXIV. That whenever the said Court or any Judge thereof shall direct any process to issue against the said Sheriff or award any process in any cause matter or thing wherein the said Sheriff on account of his being related to any of the parties thereto or by reason of any good cause of challenge which would be allowed against any Sheriff in England ought not to execute the same it shall be lawful for the said Court or for any Judge thereof to appoint some other fit person to execute the same and whenever the Process of the Court is to be executed at a distance of One hundred miles from the place at which the said Court is holden the said Sheriff shall not be compelled to go in person or by his Officers to execute the same And it shall be lawful for the said Court or for any Judge thereof upon the application of any person party in the cause or matter to order that such Process be directed to some fit person instead of to the said Sheriff and executed in such manner and under such terms and conditions as the said Court or Judge shall deem meet And in any such case the said Sheriff shall not be responsible for the acts or defaults of the person named in such Process but the party aggrieved by any act or default of such person shall

Power to appoint person to execute process.

shall have the like remedy against him that he might have had against the said Sheriff in case such Process had been directed to the said Sheriff and the act or default been committed by him. Provided that in any such case all fees of right payable to the Sheriff by the person against whom such Process is directed shall with the exception of those for registering the Warrant and returning the same be paid to the person on whose behalf such Process was issued.

Property of Debtor
liable to be sold in
Execution.

XXV. That it shall be lawful for the said Sheriff to seize and take under any Writ of Execution whereby he is directed to levy any sum of money and to cause to be sold all and singular the lands tenements goods chattels choses in action and other property within the said Colony of or to which the person named in the said Writ against whom any Judgment Decree or Order has been recovered or pronounced is or may be seized possessed or entitled or which he can either at Law or in Equity assign or dispose of whether such person be resident or domiciled within or without the said Colony. Provided however that this Act shall not empower such Sheriff to sell any mere claim or right of entry to which such person is or may be entitled.

Sheriff may sell
property without
taking out an
Auctioneer's Li-
cense.

XXVI. That it shall be lawful for the said Sheriff by himself or his Deputy to sell by Auction all property of whatever nature which may be taken by him in execution without having taken out an Auctioneer's License anything in any law now in force to the contrary notwithstanding.

Sheriff to execute deed
of bargain and sale
to purchaser.

XXVII. That in case of any sale by the said Sheriff by himself or his Deputy of the right title and interest of any person of to or in any lands the said Sheriff is hereby required to execute a proper deed of bargain and sale of the right title and interest of such person to the purchaser thereof.

Power to take re-
plevin.

XXVIII. That the Sheriff or his Deputy by him specially appointed for that purpose shall have power to grant replevin in all cases in which a Sheriff in England has power to grant the same and every person who shall apply to make replevin shall enter a plaint in replevin in the form to be fixed by rules of Court as hereinafter provided in the Office of said Sheriff and upon such security being given by bond as hereinafter mentioned a precept in replevin in the form to be fixed in like manner shall issue to cause the goods seized to be re-delivered to the person replevying the same and such Sheriff and Deputy shall have power to take and shall require before he grants any such replevin from the person desiring to make replevin a bond with one or more responsible Surety or Sureties in a competent amount the condition of which bond shall be that the party desiring to make such replevin shall prosecute his Suit in the said Court with effect and without delay and make return of the goods and chattels seized if return thereof shall be adjudged. And such bond may be assigned by such Sheriff and sued on in like manner as in like cases in England.

List of fines made out
by the Sheriff
monthly.

XXIX. That the said Sheriff shall make out and deliver to the Lieutenant Governor of the said Colony on the second Monday in every month a list of all Fines which during the preceding month have been inflicted by the said Court or by any Judge thereof and which he has been ordered to collect or which it may otherwise be his duty to collect which list shall show the names of the parties fined the amount of the fines inflicted collected or remaining uncollected.

Sheriff not liable in
an Action of Debt
if Debtor escape.

XXX. That if any debtor in execution shall escape out of legal custody after the passing of this Act the Sheriff Deputy Sheriff Bailiff or other person having the custody of such debtor shall be liable only to any action upon the case for damages sustained by the person at whose suit such debtor was taken or imprisoned and shall not be liable to any action of debt in consequence of such escape.

XXXII.

XXXI. That it shall be lawful for the said Court at any stage of any proceedings civil or criminal depending therein or in any Circuit Court whether the Venue be by law local or not to order that the Venue be changed and to direct that the trial thereof be had in Melbourne or in some particular Circuit District of the said Colony in such cases and for such reasons as the justice of the case may require and subject to such conditions as the said Court may in its discretion impose.

Change of Venue.

XXXII. That it shall be lawful for the said Court from time to time to make such rules for regulating the forms of process and mode of pleading in the said Court and for the practice of the same in all its various departments and for fixing the amount of Fees and Costs to be lawfully demanded by the Master in Equity Registrar Prothonotary Keeper of the Records or other Officers of the said Court for or in respect of the several proceedings and matters in their respective Offices in the said Court and also the amount of all Fees and Costs to be allowed in respect of all other matters at any time depending in the said Court and also for the government and conduct of the officers and ministers of the said Court and for regulating the admission of Barristers and of Attornies Solicitors and Proctors to practice therein and also the qualification of Candidates to practice as Barristers and as Attornies Solicitors and Proctors in the said Court and for regulating the examination or further or renewed examination of such Candidates and the several departments of literature science and law in which respectively such Candidates are to be examined and for fixing the amount of Fees and Costs to be paid by them and the mode of application of the same as to the said Court shall seem meet and such rules from time to time to repeal vary and alter as occasion may require Provided that every such rule when so by such Court made shall be by it sent to the Colonial Secretary of the said Colony and by him laid before the Legislative Council thereof without delay. And it shall be lawful for the said Legislative Council at any time within one calendar month after the same may have been laid before such Council to present an address to the Lieutenant Governor of the said Colony to disallow any such rule who if he think fit shall disallow the same accordingly And if after having been so laid before the said Legislative Council for such time no such address be presented such rule shall be published in the *Government Gazette* of the said Colony And every such rule save as hereinafter provided shall take effect from the promulgation thereof by the said Court and shall have the same force and efficacy as if inserted in this Act unless disallowed as herein mentioned Provided that no such rule relating to any fee to be taken in any Office in any department of the said Court or to any costs to be paid shall have any effect until after the same shall have lain for one calendar month upon the table of the Legislative Council and have been published in the *Government Gazette* as hereinbefore mentioned Provided that a Copy of every such Rule shall with all convenient despatch after the same has been published as aforesaid be forwarded by the said Lieutenant Governor to Her Majesty's Principal Secretary of State for the Colonies for Her Majesty's approval or disallowance thereof as to Her Majesty shall seem meet Provided also that all the rules and orders for regulating the process pleading and practice and other matters hereinbefore enumerated in use in the Supreme Court of New South Wales for the district of Port Phillip at the time of the commencement of this Act shall continue and be in force in the said Supreme Court of the Colony of Victoria until repealed by rules made by virtue of the provisions herein contained except so far as any of them may be inconsistent with or repealed by the provisions of this Act.

Power to make rules of practice.

XXXIII. That if any person feel aggrieved by any decision of the

Appeal.

the said Court in any civil proceeding of any nature depending in the said Court in which the matter in issue amounts to one thousand pounds sterling in value by which decision the merits of the case may be concluded it shall be lawful for such person within thirty days after such decision may have been pronounced to apply to the said Court for leave to appeal therefrom to Her Majesty in Her Privy Council. And in case any such person shall have been by such decision directed to pay any sum of money or perform any duty it shall be lawful for the said Court to direct that such decision be carried into execution or that execution thereof shall be stayed as to the said Court shall appear most consistent with real and substantial justice. And in case the said Court shall direct that such decision be carried into execution it shall be lawful for the said Court to require that the person in whose favor it was pronounced shall before the execution thereof enter into sufficient security to be approved of by the said Court for the due performance of such sentence as Her Majesty's Privy Council may pronounce thereon or in case the said Court shall direct that the execution upon such decision be stayed pending such Appeal it shall be lawful for the said Court to direct that the person against whom such decision shall have been given shall in like manner enter into sufficient security to be approved of as aforesaid for the due performance on his part of such sentence as Her Majesty's Privy Council may pronounce thereon. And it shall be lawful to the said Court if it shall see fit so to do to continue pending any such Appeal any Injunction before that time granted or the appointment of any Receiver appointed by the said Court in such proceedings or to grant an Injunction to restrain the party in possession of the property from disposing thereof and to appoint a Receiver to manage the same pending such Appeal. And in all cases to require that the person appealing from such decision shall give such sufficient security as aforesaid for payment of all costs previously incurred and to be incurred by reason of such Appeal. And in every case of Appeal so allowed to be made the said Court shall transmit to Her Majesty's Privy Council a true copy certified under the Seal of the said Court of all the evidence and proceedings in the cause relating to the matter of the said Appeal.

Right of appeal
waived if security
not given in time.

XXXIV. That if such security as shall be required by the said Court be not entered into within three months from the date of the order made upon such application for leave to Appeal the person applying for such leave shall be held to have waived the benefit of such order unless the time for entering into such security be enlarged by the said Court.

Prerogative of Her
Majesty saved.

XXXV. That nothing in this Act contained shall be construed to affect the Royal Prerogative of Her Majesty or to abridge the power of Her Majesty to allow any person aggrieved by any decision of the said Court to appeal to Her Majesty at any time in such manner as Her Majesty may be graciously pleased to allow.

Commencement of
Act.

XXXVI. That this Act shall commence and take effect from the time of the passing thereof.