



S U P P L E M E N T

TO THE

NEW SOUTH WALES

GOVERNMENT GAZETTE,

OF FRIDAY, OCTOBER 8, 1841.

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SATURDAY, OCTOBER 9, 1841.

ANNO QUINTO,
VICTORIÆ REGINÆ.
No. 9.

By His Excellency SIR GEORGE GIPPS, Knight, Captain-General and Governor-in-Chief of the Territory of New South Wales and its Dependencies, and Vice-Admiral of the same, with the advice of the Legislative Council.

"An Act for the further Amendment of the Law, and for the better Advancement of Justice."

WHEREAS, by the Act passed in the last Session, for the more effectual Administration of Justice in this Colony, and its Dependencies, provision was made for (amongst other things) the hearing of Equity Cases pending in the Supreme Court at Sydney, before one Judge only, and for the appointment of a Resident Judge for the District of Port Phillip, and it is expedient to make further provision in the premises; and whereas, certain Acts have been passed of late years in England, for the general amendment of the Law, of which Acts portions have from time to time been introduced into this Colony, and it is expedient now to adopt other portions of them, and otherwise to provide for the better Administration of Justice in the manner herein provided: Be it therefore enacted, by His Excellency the Governor of New South Wales, with the advice of the Legislative Council thereof, That after the passing of this Act, the Resident Judge at Port Phillip, with respect to all offences committed within the limits of that District, shall exclusively have Jurisdiction, and with respect to Offences committed within any

other part of the Colony, the Judges at Sydney shall exclusively have Jurisdiction; and in like manner with respect to Actions and other proceedings at Law, and Suits and Proceedings in Equity, the Resident Judge shall exclusively have Jurisdiction over Persons residing, and Property situate, within Port Phillip, and the Judges of the Supreme Court at Sydney, shall exclusively have Jurisdiction over Persons residing, and Property situate within all other parts of the Colony; but so nevertheless, that no *Venue* shall be necessary to be laid, in any case, Civil or Criminal, after the passing of this Act, other than is now necessary to be laid in any such case.

(Provision for certain cases of Absentees.)

II. Provided always and be it enacted, That nothing in the preceding Section shall be construed to limit the Jurisdiction of the Resident Judge at Port Phillip, (although the party intended to be affected shall not be there resident) or the Jurisdiction of the Judges at Sydney, (although the party be resident at Port Phillip, or elsewhere) in any case where an Action, Suit, or other proceeding, might now by Law be commenced or carried on in the Supreme Court, in the absence of such Party from New South Wales.

(Limits of Port Phillip.)

III. Provided also, and be it declared and enacted, That it shall be lawful for the Governor for the time being, for the purposes of this Act, by Proclamation for that purpose issued, from time to time, to enlarge or alter the limits of the District of Port Phillip, as to him shall seem meet; and the words "Port Phillip" used in this Act, shall be taken to intend and include the limits assigned to that District for the time being.

(Provision for mutual Jurisdiction within certain distance.)

IV. Provided further and be it enacted, That

along the borders of the line now dividing, or which shall at any time hereafter divide, the said District from the other parts of New South Wales, and throughout a space or tract of Country extending twenty-five miles on each side of such line, the Judges of the Supreme Court at Sydney, and the Resident Judge at Port Phillip, shall respectively have a concurrent Jurisdiction, in all cases Criminal as well as Civil.

(Appellate Jurisdiction; and power to issue Subpœnas, &c.)

V. And be it declared and enacted, That nothing hereinbefore contained shall extend or be taken to abridge or affect the Appellate Jurisdiction of the Judges at Sydney, or the power of the Supreme Court, and of the Resident Judge, respectively, to cause the Writs mentioned in the said recited Act in that behalf, to be executed in any part of the Colony, but the same Jurisdiction and power respectively shall continue as if this Act had not been passed.

(Mode of reciprocally enforcing Judgments.)

VI. Provided always and be it enacted, That it shall be lawful for the Plaintiff in any Action, after Judgment recovered therein at Port Phillip, to cause a Memorial of the same, containing the particulars hereinafter mentioned, to be filed in the Office of the Supreme Court at Sydney, such Memorial being duly certified by the proper Officer at Port Phillip, and authenticated by the Seal of the Court there; and such Memorial being so filed, shall be deemed and taken to be thenceforth a Record of such Judgment, and Process shall or lawfully may thereafter be from time to time sued out upon the same, and be executed, and returned, or otherwise dealt with, in the same manner as if such Judgment had in fact been recovered at Sydney; and the like course shall or lawfully may be taken, and the like proceedings had, at Port Phillip, with respect to Judgments recovered in the Supreme Court at Sydney.

(Memorial of such Judgments.)

VII. And be it enacted, That every such Memorial shall be on Parchment, and be signed by the Plaintiff or his Attorney, and shall contain the following particulars, all of which shall be fairly written in words at length, without interlineation, or erasure; that is to say, the names and residences, or supposed residences, and additions of the parties, Plaintiff and Defendant respectively; the form or nature of the Action, and when commenced; the date of the signing or entering up of the Judgment; and the amount thereof, distinguishing Debt from Costs, and specifying the total amount recovered; and (if there was a Trial) the date of such Trial, and the amount of the Verdict given; and in cases such Judgment shall have been entered up more than six months, then no execution shall be sued out thereon, without an affidavit by the Plaintiff, or some competent person on his behalf, that the sum for which the Writ is sought to be sued out is still due.

(Foreign Attachment and Pleas in Abatement.)

VIII. And be it enacted, That after the passing of this Act, the Plaintiff in any Action at Law, commenced at Port Phillip, may proceed by Foreign Attachment, in the manner prescribed by the Act in that case made, in respect of any Defendant not residing within that District; and

the Plaintiff in any Action commenced at Sydney, may proceed by Foreign Attachment in respect of any Defendant residing at Port Phillip, in the same manner, respectively, as if such Defendant resided out of the Colony; and no Plea in Abatement for the non-joinder of any person as a Defendant, shall be sustained, where the place of residence of such person (if the Action be pending at Sydney) shall be within the District of Port Phillip, or where (if the Action be pending in that District) such place of residence shall be in any other part of the Colony.

(Publication of Notice in Foreign Attachment cases.)

IX. And be it enacted, That after the passing of this Act, where a Foreign Attachment shall be issued at Port Phillip, no Publication of Notice as to such issue shall be necessary, other than in two of the Public Newspapers there; and where a Foreign Attachment shall issue at Sydney, in respect of any Defendant residing at Port Phillip, no Publication of Notice shall be necessary other than in Newspapers published in Sydney.

(Simultaneous Sitzings of Supreme Court at Sydney and Port Phillip.)

X. And in order that no doubt may arise, be it declared and enacted, That no sitting of the Supreme Court holden before the Resident Judge at Port Phillip, can be taken to be void, nor any such Sitting, nor any Judgment or proceeding thereat be in any manner prejudiced or affected, by reason that a Sitting of the Supreme Court has been, or may hereafter be holden at Sydney, or elsewhere, at the same time; nor shall any Judgment or Proceeding of the Supreme Court, at Sydney, be affected, by reason of any simultaneous Sitting of the Court at Port Phillip.

(Special Cases and points reserved.)

XI. And be it enacted, That it shall be lawful for the resident Judge at Port Phillip, from time to time, in any cause or matter civil or criminal pending before him, to state, or cause, or direct to be stated, and to transmit to the Judges of the Supreme Court, at Sydney, under his Hand and Seal, for their opinion and decision thereon, any Special Case, or to reserve for such opinion and decision any point or points of Law, at his discretion; and the said Judges, after argument before them (or without argument if they think fit) shall, as soon as conveniently may be, certify and transmit to such Judge their opinions and decision thereon accordingly, which decision shall thereafter (on the point or matter in question) be binding and conclusive.

(Absence or illness of Judge in Equity provided for.)

XII. And be it enacted, That after the passing of this Act, in case of the absence from Sydney, or illness of the Chief Justice, or other Judge appointed to sit in Equity, it shall be lawful for either of the other Judges (during such absence or illness) to sit alone, and hear and determine all causes and matters in Equity, in like manner as the Judge so being ill or absent might have done, if not so incapacitated, but subject nevertheless to the like Appeal.

(Appeals in Equity.)

XIII. Provided always, and be it enacted, That every Appeal from any Decree or Order made, or

to be made, under this or the aforesaid Act, shall hereafter be preferred to, and shall be set down, and come on to be heard and decided before and by the three Judges, at Sydney, in such manner and form, and subject to such General Rules as they shall from time to time prescribe and make, or (in the absence of any such Rule) as they shall in any case direct; and the Decree or Decision of such Judges thereupon, or of the majority of them, in case of a difference of opinion, (subject always to such further Appeal, as Her Majesty may in any such case think fit to grant,) shall be conclusive and final.

(Pending Appeals.)

XIV. And be it enacted, That in every case where any Cause or Matter in Equity shall, at the time of the passing of the aforesaid Act to provide for the more effectual Administration of Justice, have stood for a re-hearing, or been partially heard on Appeal or Petition for a re-hearing, or where in any such cause or matter, there shall at the time of the passing of this Act be an Appeal pending, the same shall respectively be proceeded in, and be set down for hearing, before the said three Judges; and the same shall or lawfully may be by them, or the majority of them thereupon determined, in the same manner as nearly as may be, as if the case had been one of Appeal, under the preceding section.

(As to examination of Witnesses on interrogatories &c., Sec. 1, W. IV, cap. 22.)

XV. And be it enacted, That after the passing of this Act, the same Powers and Jurisdiction with respect to the examination of Witnesses, by Commission or otherwise, shall, in every Action and Suit in the Supreme Court of New South Wales, be vested in, and may be exercised by, the Judge of the said Court at Sydney, and each of them, and by the resident Judge at Port Phillip, respectively, (whether any such Witness shall reside within the Jurisdiction of any such Judge or not,) as are vested in the several Courts at Westminster, and the Judges thereof respectively, in actions there pending, by the Act passed in the First year of His late Majesty, intituled, "An Act to enable Courts of Law to order the examination of Witnesses upon Interrogatories and otherwise."

(Where such Examinations to be read, &c.)

XVI. Provided always, and be it enacted, That whereafter the passing of this Act, any examination taken under the order of any Judge for that purpose, (whether in pursuance of the said last recited Act or not,) shall be offered in evidence, the same may be read without proof of the Examinant being beyond the Jurisdiction of the Court, or unable to attend the trial; and where such Examination shall appear to be certified, under the hand of the person appointed or authorised to take the same, no proof shall be necessary of the signature of such person: Provided nevertheless, That where it shall be made to appear, that in fact the Examinant is within the Jurisdiction, and able to attend as aforesaid, then such Examination shall be rejected.

(Misnomers not to be pleaded; and initial letters may be used. (See 3 & 4, W. IV, cap. 42, sections 11 & 12.)

XVII. And be it enacted, That after the passing of this Act, no Plea in Abatement for a Misnomer shall be allowed in any Action; but the Defendant shall be at liberty to cause the Decla-

ration to be amended at the cost of the Plaintiff upon a Judge's Summons, founded on an affidavit of the right name; And in all Actions on any written Instrument, where any of the parties thereto, are therein designated by any initial letter or letters, or other contraction of the first or other name or names, it shall be sufficient to designate such Parties by such initial letter or letters, or other contraction as aforesaid.

(Power to refer causes to Arbitration.)

XVIII. And be it enacted, That in every Action now or hereafter depending in the Supreme Court, wherein on the application of either of the parties, Plaintiff or Defendant, it shall be made to appear to the said Court or a Judge thereof, that the Plaintiff's claim arises out of, or involves matters of Account in dispute between the said parties, or where a plea of Set-off is pleaded, that the Defendant's claim under such Set-off arises out of or involves any such matters of account, it shall be lawful for the said Court or Judge to make a Rule or Order, if such Court or Judge shall see fit, to refer all or any of such matters of Account to some Commissioner or Officer of the Court, or (if both parties shall so require) to some Barrister at Law, to be named in such Rule or Order; and for the purposes of such Reference, to give all such directions from time to time, and impose all such terms on the Parties respectively, as to the production of books and writings, and for the examination of such Parties, and their Witnesses, and otherwise for proceeding in the matter of such Reference, as the said Court or any Judge thereof may think fit; and upon the coming in of the Report or Award of such Commissioner, Barrister, or Officer, the said Court or any Judge thereof, shall or lawfully may make such further Order or Orders in the premises, and finally give such Judgment therein, and for those purposes, cause such entry or entries to be made on the Record in such Action, as the case shall appear to such Court or Judge to require.

(Proceedings before such Referee.)

XIX. And be it enacted, That every such Commissioner, Barrister, or Officer, shall for the purposes of every such Reference, and Report, or Award, as aforesaid, have the same powers, and (unless in any case otherwise directed) shall proceed in the same manner, as if he had been appointed an Arbitrator between the parties in such Action as aforesaid, under a Rule of Court, in the ordinary course; and the costs of every such Reference, and Report, or Award, (unless the Court or a Judge shall have otherwise ordered) shall be in his discretion; but where no such order shall have been made, and the Commissioner, Barrister, or Officer, shall also make no order in that behalf, such costs shall form and be costs in the cause; and, after the passing of this Act, it shall not be necessary in any case whatsoever of Reference to Arbitration, by consent of Parties, to make the Order of a Judge a Rule of Court; but the like proceedings may, in every such case, be had and taken upon any such Order, as might be had and taken on a Rule of Court of the same tenor.

(Proceedings on Trials in Local District. 4 Vic., No. 22, sec. 26.)

XX. And be it enacted, That on the return of every Writ of Inquiry, or Writ of Trial, issued or

to be issued, in any of the cases contemplated by the said recited Act for the more effectual Administration of Justice, in that behalf, the Party succeeding may Tax his costs, and sign judgment, and issue Execution forthwith, unless the Commissioner to whom such Writ shall have been directed, shall certify to the Court that, in his opinion, an opportunity should be afforded to the unsuccessful party, to move for a new Trial or Assessment, (as the case may be,) or unless a Judge shall stay Judgment or Execution therein; and every such Inquiry or Trial shall be by such Commissioner, and two Assessors to be named and summoned by him; and the Verdict of such Commissioner and Assessors, or of the Majority of them, shall be of the like force as the Verdict of a Jury at *Nisi Prius*.

(*Power to state Special Cases, 3 & 4, W. IV. cap. 42. sec. 25.*)

XXI. And be it enacted, That after the passing of this Act, it shall be lawful for the Parties in any Action, after Issue joined, by consent, to state the facts, as the same may be agreed upon between them, in the form of a *Special Case* for the opinion of the Court; and to agree that a Judgment shall be entered thereupon for the Plaintiff or Defendant, by confession, or *Nolle Prosequi*, or otherwise, after the decision of such case, as the Court shall think fit, and Judgment shall be entered accordingly; and in all other cases, where by any Law now in force in this Colony, the Court, or any Judge thereof, is empowered to direct or authorise the Trial of a *Feigned Issue*, for the determination of any question of fact, it shall be lawful for such Court, or Judge, to direct or allow the statement of a *Special Case* for the opinion of the Court on any matter of Law; and it shall be lawful for the Court, on the decision of any such case, to make such Order or Orders in the matter, and to give such Adjudication, or cause such Judgment to be entered therein, as the said Court shall think fit.

(*Payment of money into Court, same Act, sec. 21.*)

XXII. And be it enacted, That after the passing of this Act, it shall be lawful for the Defendant in all personal Actions, (except Actions for Libel, Malicious Prosecution, or Arrest, Criminal Conversation, or the Debauching of the Plaintiff's Daughter or Servant,) by leave of a Judge, to pay into Court a sum of money by way of compensation or amends, in such manner, and under such regulations as to costs and the form of pleading, as the said Court shall, by General Rules, or otherwise, in any case prescribe.

(*Interest to be allowed on Trials in certain cases. same Act, sec. 28.*)

XXIII. And be it enacted, That upon all debts, or sums certain, hereafter to be recovered in any Action, the Jury or Assessors (as the case may be) on the trial of any Issue, or Assessment of any Damages, may, if they think fit, allow Interest to the Creditor, at a rate not exceeding eight per cent., or (in respect of any Bill of Exchange or Promissory Note) at a rate not exceeding twelve per cent. per annum, from the time when such debt or sum was payable, (if payable by virtue of some written instrument, and at a date or time certain) or if payable otherwise, then from the time when demand of payment shall have been made in writing, giving notice to the Debtor that Interest

would be claimed from the date of such demand: Provided that nothing herein contained, shall extend to authorise the computation of Interest on any Bill of Exchange, or Promissory Note, at a higher rate than eight per cent. per annum, where there shall have been no Plea pleaded.

(*Damages in the nature of Interest in certain Actions. Ibid, sec. 29.*)

XXIV. And be it enacted, That the Jury or Assessors may, on any Trial or Assessment of Damages, give Damages in the nature of Interest, if they think fit, over and above the value of the goods at the time of the Conversion, in all Actions of Trover, or Trespass concerning goods, and over and above the money receivable in all Actions on any Policies of Insurance, made after the passing of this Act.

(*Witnesses interested solely on account of Verdict. Ibid, sec. 26.*)

XXV. And be it enacted, That if any witness shall, after the passing of this Act, be objected to as incompetent, on the ground that the Verdict or Judgment in the Action, would be admissible in evidence for or against him, such witness shall nevertheless be examined; but in that case no Verdict or Judgment in that Action (whether in favour of or against the party calling him) shall at any time be admissible in evidence, for or against such witness, or any one claiming under him. Provided that the name of every witness so objected to shall, at the trial, at the request of either party, be endorsed on the Record or Document on which such Trial is had, by some Officer of the Court, together with the name of the party calling him, and be afterwards entered on the Record of the Judgment; which Judgment or Entry shall in any subsequent proceeding, be sufficient evidence that such witness was so examined.

(*Costs to one or more of several Defendants obtaining Verdicts. Ibid, sec. 32.*)

XXVI. And be it enacted, That where two or more persons shall be made Defendants in any personal Action, any one or more of them who shall have a *Nolle Prosequi* entered, or shall obtain a Verdict, shall have Judgment for and recover his reasonable costs of suit; and where any *Nolle Prosequi* shall have been entered on any Count, or as to part of a Declaration, the Defendant shall have Judgment for and recover costs in that behalf; and also, in all Writs of *Scire Facias*, the Plaintiff shall recover his costs, as well upon a Judgment by Default, as on a Judgment after Plea or Demurrer: and where Judgment shall be given on a *Demurrer*, in any Action whatever, the party in whose favour such Judgment is given, shall have Judgment to recover his costs.

(*Executors of Lessor may distrain. Ibid, sec. 37.*)

XXVII. And be it enacted, That it shall be lawful for the Executors or Administrators of any Lessor or Landlord, to distrain upon the Lands demised for any term or at will, for Arrears of Rent due to such Lessor or Landlord, in his life time, in like manner as such Lessor or Landlord might have done; and such arrears may be distrained for, after the end or determination of such term or lease, in the same manner as if it had not been determined: Provided, that such distress be made within six calendar months after the determination of such term or lease, and during the

continuance of the possession of the tenant from whom such arrears became due; and that all provisions in force by law relating to Distresses for rent, shall be applicable to every distress so made.

(Executors to pay Costs. *Ibid*, sec. 31.)

XXVIII. And be it enacted, That in all Actions hereafter brought by Executors or Administrators, in right of their Testator or Intestate, such Executors or Administrators, (unless the Court or a Judge shall otherwise order,) shall be liable to pay costs to the Defendant, in case of being nonsuited, or a Verdict passing against them; and in all other cases in which they would be liable to costs, if suing upon a cause of Action accruing to themselves in their own right; and the Defendant shall have Judgment for such costs, accordingly.

(Debt on Simple Contract. *Ibid*, sec. 13.)

XXIX. And be it enacted, That no Wager of Law shall be hereafter allowed; and that Actions of Debt shall be maintainable on Simple Contract against Executors or Administrators.

(Actions by and against Executors, for Injuries in Testator's life time. *Ibid*, sec. 2.)

XXX. And be it enacted, That Actions of Trespass or on the case, may be maintained by Executors or Administrators, for any injury to the Real Estate of their Testator, or Intestate, committed in his life time, for which the like Actions might have been maintained by him: Provided that every such Action shall be brought within one year after the death of such Testator or Intestate, and that the injury shall have been committed within six calendar months before his death; and the Damages, when recovered, shall form part of the Deceased's personal Estate; and the like Actions may be maintained against Executors or Administrators, for any wrong committed by their Testator or Intestate to another, in respect of his property real or personal: Provided that every such Action shall be brought within six months after such Executors or Administrators shall have taken on themselves the administration of the Estate of the deceased, and that the injury shall have been committed within the like period preceding his death; and the Damages recovered in such Action, shall be payable in like order of administration, as the deceased's Simple Contract Debts.

(Sheriff may sell Equities of Redemption.)

XXXI. And be it enacted, That after the passing of this Act, it shall be lawful for the Sheriff to whom any Writ of *Fieri Facias* issued out of the Supreme Court shall be directed, (and for the Deputy Sheriff within the District of Port Phillip) to take in execution, and cause to be put up for sale, and sold under such Writ, any Equity of Redemption, or other Equitable Interest, or any *Chose in Action* of or belonging to the Defendant therein named; and every such Sale, (the same being by Public Auction only, and in cases of Equity of Redemption, being previously advertised in the *New South Wales Government Gazette*, and in one or more Newspaper, or Newspapers, at least one calendar month before the same shall take place,) shall be as valid and effectual, to pass all such Defendant's Right and Title to and Interest in such Equity, or Equitable Interest, or *Chose in Action*, as if the same had been conveyed or assign-

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ed to the Purchaser by such Defendant himself: Provided that, where any such Equity, or Equitable Interest, or *Chose in Action*, shall relate to Real Estate, a Deed of "Bargain and Sale" thereof, or of such Defendant's Right and Title to and Interest therein, shall be executed by such Sheriff, or Deputy Sheriff, to such Purchaser, and be by him duly registered within one calendar month next after such sale.

(Costs on Verdicts under 40s.)

XXXII. And be it enacted, That after the passing of this Act, in every Action at Law now depending or hereafter to be brought, if the Plaintiff therein shall, by Verdict or otherwise, recover less than the sum of Forty Shillings, he shall not have or be entitled to any Costs whatever, (whether the Defendant shall have pleaded or not, and whether the Title to Land shall have come in question or not), unless the Judge before whom the case shall have been tried, shall under his hand certify that the Action was in his opinion not vexatious, and that the same was a fit and proper case for inquiry in the Supreme Court: Provided that in all other cases the Plaintiff shall have Judgment for, and shall recover his Costs, notwithstanding that the Sum recovered (if above Forty Shillings) shall not exceed Ten Pounds, unless it shall appear that the same could have been recovered in one of the Courts of Requests, and the Judge shall certify that in his opinion the same ought to have been there sued for.

(Assignments in trust for Creditors.)

XXXIII. And be it enacted, That in every case where, after the passing of this Act, any Debtor resident in this Colony shall execute any conveyance or assignment by Deed to a Trustee or Trustees, of all his Estate and Effects whatsoever, for the benefit of all his Creditors, (to be named in a Schedule annexed to such Deed, with the Amounts due to them respectively), and such Deed shall be executed by such Debtor and Trustee or Trustees, and by the majority in number and in value of such Creditors, or by the Agents of such of them as shall be absent from the Colony, the person of such Debtor, from and after the publication of such Notice as is hereinafter mentioned, shall be absolutely free from Arrest in execution at the suit of any Creditor named in such Schedule, in respect of any Debt or Sum therein included; and if nevertheless Arrested by any such Creditor, he shall (on proof of the facts to the satisfaction of any Judge of the Supreme Court) be discharged from custody with or without Costs, to be paid by the Plaintiff, as such Judge shall think fit to order: Provided that no Creditor whose Debt is under Fifty Pounds, shall (under this or the succeeding Sections) be reckoned in number, but such Debt shall be computed in value only: Provided also, that with respect to Debts due on any outstanding Bill of Exchange, or Promissory Note, the actual holder of which shall then be *unknown*, it shall be sufficient, if that fact be stated in the Schedule, with the amount of such Bill or note, and the date when the same will fall due, to give the name of the last known holder, and the names of the immediate parties thereto.

(Proceedings in respect of such Assignments.)

XXXIV. Provided always and be it enacted, That every such Deed shall be executed by such

Debtor and Trustee or Trustees respectively, in the presence of, and shall be attested by, some Justice of the Peace, and that a Notice of the same, attested in like manner (and stating truly where such Deed is lying for inspection and execution) shall, within fourteen days next after such execution, be published in the *Government Gazette* and one other Newspaper published at Sydney; or, (if the Debtor be resident within the District of Port Phillip), in not less than two Newspapers published at Melbourne in that District: Provided also, that there shall be annexed to every such Deed, a true and particular account of all the property of every description (wearing apparel and necessaries to an amount not exceeding Twenty-five pounds only excepted) of which the Debtor is possessed, or any person in Trust for him, or to which he or any such person is entitled legally or equitably in possession, reversion, or expectancy, so far as such Debtor can set forth the same; and that in case any part of such property be Real Estate situate in this Colony, a Memorial of the Deed, accompanied by a copy of such last mentioned Schedule, shall, within the like period of fourteen days, be duly Registered.

(Special Provisions.)

XXXV. Provided also, and be it enacted, That no such Deed as aforesaid, nor any Deed of the like nature, shall be valid, if containing any provision for enabling the Debtor to retain possession of his property (except as aforesaid) or any part thereof, or to carry on his business, (other than for the purpose of winding up the same) or for releasing him from his Debts without full payment of the same, or for making him any allowance out of such property or business, unless such Deed shall have been executed by not less than four-fifths in number and in value of his Creditors; but that where any Deed shall be so executed as last aforesaid, (whether at the time of, or subsequently to, and in connexion with, such Conveyance or Assignment as first aforesaid) the same and the several Provisions therein shall be binding on all the Creditors named in such Schedule as aforesaid, whether assenting or not.

(Deeds may be set aside for fraud, or wilful error or omission in Schedule.)

XXXVI. Provided further, and be it enacted, That every such Deed shall, at the instance of any Creditor, on application to be made to the Court in a summary way, for that purpose, be liable to be set aside for fraud, or for any wilful and material error or omission in either of the Schedules annexed to the conveyance or Assignment as aforesaid; or (at the discretion of the Court) the Debtor shall in such case be deprived of all claim under any such Deed, and of every benefit thereby, or by this Act, intended in that behalf to have been conferred upon him.

(Effect given to all such Assignments.)

XXXVII. And be it enacted, That after the execution of any such Deed as aforesaid, and after the publication of such notice thereof as in that behalf is hereinbefore required, all and singular the property of the Debtor having executed such Deed, of any description whatsoever, and all his rights and credits, including all debts due to him, shall be absolutely vested in the Trustee or Trustees therein named, for the purposes in and

by such Deed declared, and such Trustee or Trustees may recover all such property, and sue for and recover all such debts, in his or their own name or names; and every Warrant of Attorney, or *Cognovit Actionem*, executed or given, and every Assignment or Delivery, or Sale of Goods, by such Debtor, for or on account of, or in satisfaction or part satisfaction, or as security of, or for any antecedent debt due to any Creditor or Creditors, such Warrant of Attorney, or *Cognovit*, or Assignment, or Delivery, or Sale of Goods, being within sixty days preceding the date of the first publication of such notice as aforesaid, shall, as against the Creditors having signed such Deed as aforesaid, or who shall afterwards sign the same, be, and be adjudged and taken to be, fraudulent and void; and all such Goods as last aforesaid, (or the then value thereof, in case of any Sale or transfer to a third party) may be recovered accordingly, by the Trustee or Trustees in such Deed named, from the Creditor or Creditors having taken the same, for the benefit of all the Creditors.

(Amendments at Trial. 3 & 4 William IV. cap. 42, sec. 24.)

XXXVIII. And be it enacted, That after the passing of this Act, in all cases of variance between the proof and the record in any Action at Law, now or hereafter depending in the Supreme Court, it shall be lawful for the said Court, or the Judge before whom the Trial is had, if such Court or Judge shall think fit, instead of causing the Record or Document on which such Trial is proceeding, to be amended at such Trial as by the Rules and Course of Practice of the said Court is now provided in that behalf, to direct the Jury or Assessors (as the case may be,) to find the fact or facts according to the evidence; and thereupon such finding shall be stated on the said Record or Document; and notwithstanding the finding on the Issue or Issues joined, the said Supreme Court shall thereafter, if it shall appear to the said Court that the variance was immaterial to the merits of the case, and such as could not have prejudiced the opposite Party in the conduct of the Action or Defence, give Judgment according to the right and justice of the case; and the same power, and the power of causing amendments to be made in all such cases of variance, as aforesaid, in the manner prescribed by the Act in that behalf made, shall from and after the passing of this Act, be vested not only in the Supreme Court and the several Judges thereof, but also in the several Circuit Courts now or hereafter to be instituted.

(Limitation of certain Actions of Debt &c. 3 & 4, William IV, cap. 42, sec. 3.)

XXXIX. And be it enacted, That after the passing of this Act, all Actions of Debt for Rent upon any Indenture of Demise, all Actions of Covenant or Debt upon any Bond or other Specialty, and all Actions of Debt or *Seire Facias* upon any Recognizance, and all Actions of Debt upon any Award where the submission is not by specialty, or for money levied under any *Fieri Facias*, and all Actions for Penalties, Damages, or Sums given to the Party grieved, by any Law now or hereafter in force in this Colony, shall be commenced and sued within the time and limitation hereinafter expressed, but not afterwards; that is to say, the said Actions of Debt for Rent,

or Covenant or Debt upon any Bond or other Specialty, and Actions of Debt or *Scire Facias* upon recognizance, within Ten years after the passing of this Act, or within Twenty years after the cause of such Actions; the said Actions, by the party grieved, within One year after the passing of this Act, or within Two years after the cause of such Actions; and the said other Actions, within Three years after the passing of this Act, or within Six years after the cause of such Actions: Provided that nothing herein contained shall extend to any Actions given by any Act or Statute, where the time for bringing such Action is, or shall be, thereby specially limited.

(Infants and persons beyond sea, &c., ibid. sec. 4.)

XL. And be it enacted, That if any person entitled to any such Action, or *Scire Facias*, shall be, at the time the cause of Action accrued, within the age of twenty-one years, *feme covert*, *non compos mentis*, or beyond sea, then such person shall be at liberty to commence the same Action within such times, after being of full age, discoverd, of sound memory, or returned from beyond sea, as other persons having no such impediment should have done; and if any person against whom there shall be any such cause of Action, shall be at the time such Action accrued, beyond sea, then the party entitled to any such cause of Action shall be at liberty to bring the same against such person, within such times as are before limited after the return of such person from beyond sea.

(Proviso as to acknowledgments, ibid. sec. 5.)

XLI. Provided always, That if any acknowledgment shall have been made, either by writing signed by the party liable under any such Indenture, specialty, or recognizance, or his agent, or by part payment or satisfaction on account of the principal or interest due thereon, it shall be lawful for the person entitled to such Actions, to bring his Action for the money remaining unpaid and so acknowledged, within twenty years after such acknowledgment, on part payment, or satisfaction, or in case any person entitled to such Action shall, at the time of such acknowledgment, be under disability as aforesaid, or the party making such acknowledgment shall then be beyond sea, then within twenty years after such disability shall have ceased, or such party shall have returned from beyond sea, as the case may be; and in answer to a plea of this Act, the Plaintiff in any such Action may reply such acknowledgment, and that such action was brought within such time as aforesaid.

(Feigned Issues and New Trials.)

XLII. And be it enacted, That in all cases where the Supreme Court or any Judge thereof now are, or is, or hereafter shall be authorised to direct the Trial of any Feigned Issue, or the said Court shall in any Action grant a New Trial, it shall be lawful for the said Court or Judge to impose such conditions on the parties respectively, and to direct such admissions to be made by them, or either of them, for the purpose of any such Trial, or New Trial, and (in every case of New Trial) to grant the same either generally, or on some particular point or points only, as to such Court or Judge respectively shall seem meet; and upon any such New Trial as aforesaid, (if the said Court or Judge shall think fit) to order that the

testimony of any witnesses examined at the former Trial may be read from the Judge's Notes, instead of any such witnesses being again examined in open Court; and upon any such Feigned Issue as aforesaid, to permit both or either of the parties to examine on oath the other of them; and, for the several purposes aforesaid, to make all such orders from time to time as may be necessary.

(Decrees, Rules, and Orders, to have effect of Judgments.)

XLIII. And be it enacted, That after the passing of this Act, all Decrees and Orders of the Supreme Court, in Equity, and all Rules and Orders of the said Court, at Common Law, or in its Ecclesiastical Jurisdiction, whereby any sum of money, or any Costs, Charges, or Expenses shall be payable to any person, shall have the effect of Judgments at Law, and such person shall or lawfully may have Execution thereon for the monies so payable; and the Judges of the said Court may from time to time cause Writs of Execution to be framed accordingly, and to issue, as they shall think fit; and all such Writs shall be enforced in the same manner as Writs of Execution are in ordinary cases.

GEORGE GIPPS,

Passed the Legislative Council, } Governor.
this Twenty-eighth day of }
September, One thousand eight }
hundred and forty-one.

WM. MACPHERSON,

Clerk of Councils.

ANNO QUINTO,

VICTORIÆ REGINÆ.

By His Excellency SIR GEORGE GIPPS, Knight, Captain-General and Governor-in-Chief of the Territory of New South Wales, and its Dependencies, and Vice-Admiral of the same, with the Advice of the Legislative Council.

“An Act to enable the Members of an Association, called ‘THE MUTUAL FIRE INSURANCE ASSOCIATION,’ to sue and be sued in the name of the ‘Chairman of the said Association for the time-being, and for other purposes therein mentioned.’”

WHEREAS several persons have formed themselves into an Association or Society, Preamble. under the name or style of “THE MUTUAL FIRE INSURANCE ASSOCIATION,” for the purpose of effecting Insurances on Houses, Warehouses, and other Buildings, Goods, Wares, Merchandise, Stock, Effects, and all other kinds of Property, within the Colony of New South Wales, from damage or destruction by Fire; and whereas the said Association is now being carried on in Sydney, and is under the care, management, and superintendence of twenty-one Directors, and an Actuary, one of the said Directors being Chairman, and another Deputy Chairman of the said Association; and whereas difficulties may arise in recovering Debts due to the said Association, and in maintaining Actions or Proceedings for Damages done to their Property, and also in prosecuting Persons who may Steal or Embezzle the Bills, Notes, Bonds, Securities, Monies, Goods, Chattels, or Effects of the said Association; and whereas it would be convenient and just that Persons having demands against the said Association should be entitled to sue some

Member thereof, in place and stead of the whole; but as these purposes cannot be effected without the aid and authority of the Legislature: Be it therefore enacted, by His Excellency the Governor of New South Wales, with the advice of the Legislative Council thereof, That from and after the passing of this Act, all Actions, and Suits, and all Proceedings at Law or in Equity, to be commenced, instituted, and prosecuted, or carried on by or on behalf of the said Association, or wherein the said Association is or shall be in any way concerned, against any body or bodies, politic or corporate, or against any person or persons whomsoever, whether a Member or Members of the said Association or otherwise, shall and lawfully may, from and after the passing of this Act, be commenced, instituted, and prosecuted, or carried on in the name of the person who shall be Chairman of the said Association at the time any such Action, Suit, or Proceeding shall be commenced, or instituted, as the nominal Plaintiff, Complainant, or Petitioner, for or on behalf of the said Association; and that all Actions, Suits, or Proceedings at Law or in Equity as aforesaid, to be commenced, instituted, and prosecuted or carried on against the said Association, shall and lawfully may be commenced, instituted, and prosecuted against the Chairman for the time-being of the said Association, as the nominal Defendant for or on behalf of the said Association; and that all Indictments, Informations, and Criminal Prosecutions to be brought, instituted, or carried on, by or on behalf of the said Association, for Embezzlement, Robbery, Stealing, Counterfeiting, or Forging the Bills, Notes, Bonds, Securities, Monies, Goods, Chattels, or Effects of the said Association, or for any Fraud, Felony, Crime, Misdemeanor, or other offence committed against, or with intent to injure or defraud the said Association, shall and may be lawfully so brought, instituted, and carried on in the name of such Chairman for the time being of the said Association; and in all Indictments and Informations, it shall and may be lawful to state the property of the said Association, to be the property of such Chairman; and any Forgery, Fraud, Crime, Misdemeanor, or other Offence, committed with intent to injure or defraud the said Association, shall and lawfully may, in any Prosecution or Indictment for the same, be stated or laid to have been committed against, or with intent to injure or defraud such Chairman, and any Offender or Offenders may thereupon be lawfully convicted of any such Forgery, Fraud, Crime, Misdemeanor, or other Offence; and the Death, Resignation, Removal, or other Act of such Chairman, shall not abate or prejudice any such Action, Suit, Indictment, Information, Prosecution, or other Proceedings commenced against, or by or on behalf of the said Association, but the same may be continued where it left off, and be prosecuted or carried on in the name of any other person who may be or become Chairman for the time-being of the said Association.

(Funds of the Association not to be employed in discounting.)

II. Provided always, and be it enacted, That the said Association shall not, either by the Directors or by any Member or Members thereof, or

by their Agent, or by any other person on their behalf, employ any funds whatever of the said Association, in Discounting Bills of Exchange, or Promissory Notes payable in the Colony, under penalty or forfeiture of treble the sum or sums so discounted, lent, or advanced, by or on behalf of the said Association, to be recovered in the Supreme Court or any Circuit Court of the said Colony, by Action of Debt, Bill, Plaint, or Information; and one moiety or half of such Penalty or forfeiture, when recovered, shall, after deducting the charges of prosecution, be paid to the Colonial Treasurer of the said Colony for the use of Her Majesty, Her Heirs and Successors, for the public uses of the said Colony, and in support of the Government thereof, and the other moiety shall be paid to the Informer suing for the said penalty.

(Memorial of the name of the Chairman to be recorded in the Supreme Court of New South Wales, and renewed when any new Chairman shall be elected.)

III. And be it enacted, That a Memorial containing the name of the Chairman for the time being of the said Association, in the form or to the effect set forth in the Schedule to this Act annexed, marked B, signed by the said Chairman, and by a majority of the Directors of the said Association, shall be recorded in the Office of the Registrar of the Supreme Court of New South Wales, within thirty days from and after the passing of this Act, upon oath of one of the Directors for the time being of the said Company, administered by any Commissioner of the said Court; and when and as often as any person shall be newly elected Chairman of the said Association, a Memorial of the name of such newly elected Chairman, in the same form or to the same effect as the above-mentioned Memorial, signed by such newly elected Chairman, and by a majority of such Persons as shall be the Directors of the said Association at the time of the election of such newly elected Chairman, shall, in like manner, be recorded upon oath in the Office of the Registrar of the said Supreme Court, within thirty days next after the election of such Chairman.

(No Action to be brought until Memorial be recorded.)

IV. Provided always, and be it enacted, That until such Memorial, as hereinbefore first mentioned, be recorded in the manner herein directed, no Action, Suit, or other Proceedings shall be brought by the said Association in the name of the Chairman as aforesaid, under the authority of this Act.

(Only one Action to be brought against the Chairman upon the same cause, where the merits have been tried.)

V. And be it enacted, That no person or persons, or body or bodies, politic or corporate, having or claiming to have any demand upon or against the said Association shall, for the same cause, bring more than one Action or Suit, in case the merits shall have been tried in such Action or Suit in respect of such Demand; and the Proceedings in any Action or Suit, by or against the said Chairman for the time being of the said Association, may be pleaded in bar of any other Action or Actions, Suit or Suits, for the same demand, by

or against the said Chairman for the time being of the said Association.

(The Chairman or any other Officer of the Association to give evidence, notwithstanding they shall be interested.)

VI. Provided always, and be it enacted, That in all Actions, Suits, Petitions, Informations, Indictments, Prosecutions, or Proceedings in which the said Chairman for the time being, shall be on behalf of the said Association, and under and by virtue of this Act, Plaintiff, Complainant, Petitioner, Prosecutor, or Defendant, it shall and may be lawful for such Chairman, or the Deputy Chairman for the time being, or the Actuary, or any other Officer engaged in the executive duties of the said Association, to give evidence in such Action, Suit, Petition, Information, Indictment, Prosecution, or other Proceedings, notwithstanding the name of such Chairman shall be made use of as such Plaintiff, Complainant, Petitioner, Prosecutor, or Defendant therein, and notwithstanding that such Chairman, Deputy Chairman, Actuary, or other Officer as aforesaid, shall or may be interested in the result of such Action as a Member of the said Association; and that no Member of the said Association shall, by reason of his Interest as such Member, be disqualified from being a Witness or Juror in any Action, Suit, Petition, Information, Indictment, Prosecution, or other Proceeding, unless such person be a party to, or have any interest therein, other than as a Member of the said Association.

(Execution upon any Judgment may be issued against any Director of the said Association.)

VII. Provided always, and be it enacted, That Execution upon any Decree or Judgment in any such Action, Suit, Petition, Information, Indictment, Prosecution, or other Proceeding, obtained against the Chairman for the time being of the said Association, whether he be Plaintiff or Defendant therein, may be issued against, and levied upon the Goods and Chattels, Lands and Tenements, of any Director or Directors whomsoever of the said Association for the time being, in like manner, and not otherwise, than is if such Decree or Judgment had been obtained against such Director or Directors personally: Provided however, that no claim for loss or damage by Fire shall be paid, except in manner provided by the Rules of the said Association, set forth in the Schedule to this Act annexed, marked A.

(Such Director to be indemnified out of the Funds of the Association, or by contribution from the Members thereof, according to their Rules.)

VIII. Provided further, and be it enacted, That every such Chairman for the time being, in whose name any such Action, Suit, Petition, Information, Indictment, Prosecution, or other Proceedings shall be commenced, prosecuted, carried on, or defended, and every such Director or Directors against whose Goods and Chattels, Lands and Tenements, Execution upon any Judgment or Decree obtained or issued in any such Action, Suit, Petition, Information, Indictment, Prosecution, or other Proceedings, shall be issued or levied as aforesaid, shall in every case be justly indemnified, Reimbursed, and Paid out of the Funds of the said Association, or in failure thereof, by contribution from the Members of the said Association,

according to the rules of the said Association in the Schedule to this Act annexed, marked A, all such Loss, Dues, Damages, Expenses, Costs, and Charges whatsoever, without any deduction, which any such Chairman for the time being, or Director or Directors shall or may have incurred or become chargeable with, by reason of such Execution; and all such remedies for the recovery of the same shall be allowed between the several Members of the said Association, as if this Act had not been passed: Provided further, that the body of such Chairman shall not, by reason of his being Defendant in any such Action, Suit, or Proceeding, be liable to be arrested, seized, or taken in execution.

(Provisions of this Act to extend to the said Association, notwithstanding any change in the Members thereof.)

IX. And be it enacted, That the provisions in this Act contained, shall be construed and taken to extend to the said Association at all times, during the continuance of the same, whether the said Association be now or hereafter constituted of all or any of the Persons who were the original Members thereof, or of all or any of those persons together with any other person or persons, or shall be constituted altogether of persons who were not the original Members thereof.

(Association not incorporated by this Act.)

X. Provided always, and be it enacted, That nothing in this Act contained shall be construed or taken to extend to Incorporate the Members of the said Association, or to relieve or discharge them, or any of them, from any responsibility, Duties, Contracts, or Obligations whatsoever, which by Law they now are, or at any time hereafter during the existence of the said Association, shall or may be subject or liable to, either between the said Association and others, or between the individuals who constitute or constituted the said Association, or any of them and others, or among themselves, or in any manner whatsoever, except so far as the same is affected by the provisions of this Act, and the true intent and meaning of the same.

(Bonds, &c., taken in the name of the Chairman may be put in suit either in the name of the Chairman in whose name originally taken, or in the name of the Chairman for the time being.)

XI. And be it enacted, That all Bonds, Mortgages, Warrants of Attorney, and other Securities, not being assignable in Law, which have been, or which shall or may be, at any time hereafter taken in the name of any person as Chairman for the time being of the said Association, for or on account of the said Association, shall and may be put in Suit, and be Sued and Prosecuted upon at Law, or in Equity, in the name of the Chairman in whose name the same have been taken, or in the name of any person who shall or may succeed to that Office and be the Chairman of the said Association at the time such Proceeding or Proceedings shall be Instituted or Commenced, notwithstanding the name of such succeeding Chairman be not inserted in such Bond, Mortgage, Warrant of Attorney, or other such Security, as an Obligee, Mortgagee, Assignee, or Payee of the Sum or Sums of Money therein mentioned; and the Death, Resignation, or Removal, or other act of any such Chairman for the time being of the

said Association in whose name any such Bond, Mortgage, Warrant of Attorney, or other Security as aforesaid, shall be so put in Suit, shall not abate any Action, Suit, or other Proceeding had thereon, but the same may be continued where it left off, and be Prosecuted and carried on in the name of any person who may succeed to that Office, or be or become the Chairman for the time being of the said Association; and the Legal Estate in all Lands and Tenements belonging or Mortgaged to the said Association, and all Legal Rights and capacities in respect of the said Association, shall be and become vested in such succeeding Chairman as aforesaid, to all intents and purposes whatsoever, immediately upon the recording of the Memorial of the name of such Chairman, in the said Supreme Court of New South Wales, in manner aforesaid; and so on *toties quoties*, whensoever any new appointment or Election of a Chairman for the time being of the said Association shall take place, and such new Memorial thereof shall be recorded as aforesaid.

(Plaintiff not to be nonsuited for want of proof of record of Memorial)

XII. And be it enacted, That in any Action or Suit to be brought by any Chairman for the time being of the said Association, under and by virtue of this Act, the Plaintiff therein shall not be nonsuited, nor shall a verdict be given against the Plaintiff for want of proof of the Record of such Memorial or Memorials as hereinbefore mentioned; but in case the Defendant in any such Action or Suit, shall make it appear in any such Trial that no such Memorial or Memorials has or have been Recorded, then a nonsuit shall be entered in such Action.

(Who shall be deemed Members of the Association.)

XIII. And be it enacted, That any person or persons who shall at any time hereafter insure, or cause to be insured any property in the said Association, and who shall execute or sign, or cause to be executed or signed, the Bond or other Document required by the Association on effecting any such Insurance, shall be deemed and construed to be and continue a Member or Members of the said Association, so long as the Policy or Policies executed in respect of such Insurance shall be good and valid in the Law, and no longer, except as hereinafter specially excepted: Provided, however, that nothing herein contained shall avoid any liability or liabilities that shall have attached to any person or persons during the time he, she, or they shall have been a Member or Members of the said Association, by reason of his, her, or their being such Member or Members thereof, notwithstanding that the validity of such Policy or Policies may have ceased or determined.

(That within thirty days from the passing of this Act, and thereafter in the month of January in each year, a List of the names of the then existing Members shall be recorded in the Office of the Registrar of the Supreme Court.)

XIV. And be it enacted, That the Chairman of the said Association shall, within thirty days from and after the passing of this Act, and thereafter in the month of January in each and every year, cause a true List of the names of all the then existing Members of such Association, with their respective places of abode and descriptions, to be recorded in the Office of the Registrar of the Su-

preme Court of New South Wales, on oath administered by any Commissioner of the said Court; and such List shall be open for inspection at all reasonable times, by any Persons requiring the same, on payment of a Fee of One Shilling; and if any Chairman of the said Association shall fail to cause such List to be recorded, in manner aforesaid, he shall be liable to a penalty of One Hundred Pounds, to be recovered by Action of Debt, in the said Supreme Court, by any person or persons who shall sue for the same.

(Such persons so recorded to be considered liable as Members.)

XV. And be it enacted, That every person whose name shall be so recorded, shall be considered a Member of the said Association, and be liable as such, until a new List of the Members' Names shall be recorded as aforesaid, or until he or she shall have given notice in the *New South Wales Government Gazette*, of his or her retirement from the said Association.

(That Rules shall be binding.)

XVI. And be it enacted, That the Rules set forth in the Schedule to this Act annexed, marked A, shall be binding upon all persons who now are, or shall hereafter become, Members or Officers of the said Association.

(That additional Rules may be made under certain restrictions.)

XVII. And be it enacted, That it shall be lawful for the said Association to make additional Rules or Bye Laws from time to time as occasion shall require, and to amend or repeal the same, under such restrictions as are in this Act contained; and such additional Rules or Bye Laws, and such amended additional Rules or Bye Laws, after the same shall have been approved, and a Transcript thereof registered, as hereinafter respectively provided, shall be binding upon all persons who now are, or shall hereafter become, Members of the said Association, in like manner as the said Rules set forth in the Schedule to this Act annexed, marked A.

(Additional Rules to be registered.)

XVIII. And be it enacted, That as often as any additional Rules or Bye Laws of the said Association shall be made, or as often as any such additional Rules or Bye Laws shall be amended as aforesaid, and approved respectively as hereinafter mentioned, a copy of such additional Rules or Bye Laws, or such amended additional Rules or Bye Laws, as the case may be, attested by the Actuary for the time being of the said Association, to be a true Transcript of such additional or amended Rules or Bye Laws, shall, within thirty days from and after the approval of the same as hereinafter mentioned, be registered in the Office of the Registrar of the said Supreme Court, by the said Actuary; and such Transcript shall be open for inspection at all reasonable times, by any person requiring to inspect the same, on payment of a fee of One Shilling for each such inspection; and if any such Actuary shall omit or neglect so to register such attested copy of such Rules, within the time hereinafter prescribed for registering the same, he shall be subject and liable to a penalty of One Hundred Pounds, to be recovered by an Action of Debt in the said Supreme Court, or in any other Court of competent jurisdiction within the said Colony or

its Dependencies, by any person who shall sue for the same.

(Manner of making or amending additional Rules or Bye Laws.)

XIX. And be it enacted, That whenever any such additional Rules or Bye Laws, or such amended additional Rules or Bye Laws shall be made, under the provisions of this Act, a Transcript of such additional Rules or Bye Laws, or of such amended additional Rules or Bye Laws, as the case may be, fairly written on paper or parchment, and signed by not less than three Directors and the Actuary of the said Association, shall, with all convenient speed, before the same are registered as aforesaid, be submitted to Her Majesty's Attorney General of New South Wales, or any person deputed by him in that behalf, for the purpose of ascertaining whether the said additional Rules or Bye Laws, or amended additional Rules or Bye Laws, as the case may be, are calculated to carry into effect the intention of the parties making the same, and that the same are not repugnant to the provisions of this Act, or to the Rules in the Schedule to this Act annexed, marked A; and the said Attorney General, or person deputed by him, shall advise with the said Actuary or the Attorney of the said Association, if required, and shall give a Certificate on the said Transcript that such additional Rules or Bye Laws, or such amended additional Rules or Bye Laws, as the case may be, are calculated to carry into effect the intention of the parties making the same, and are not repugnant to the provisions of this Act, or to the said Rules in the Schedule to this Act annexed, marked A, or shall point out to the said Actuary or Attorney, in what part or parts the same fail to accomplish such intention, or are repugnant to this Act or to the said Rules; and the fee payable to the said Attorney General, or the person so deputed by him for advising as aforesaid, and perusing the said additional Rules or Bye Laws, or amended additional Rules or Bye Laws, as the case may be, and giving such Certificate as aforesaid, shall not at any one time exceed the sum of Five Guineas; Provided always, that if the Rule or Bye Law, or Rules or Bye Laws submitted as aforesaid to the said Attorney General, or the person so deputed by him as aforesaid, merely relate to any fresh Election or change of Officers in the said Association, the fee payable for perusing and certifying the same shall not exceed One Guinea.

(Manner of proceeding in case Attorney General or his Depute refuse to certify.)

XX. Provided always, That in case the said Attorney General, or the person so deputed by him as aforesaid, shall refuse to certify all or any of such additional Rules or Bye Laws, or of such amended additional Rules or Bye Laws, as the case may be, which shall be submitted for his perusal and certificate, it shall then be lawful for the said Association to submit the same to the Chief Justice, for the time being of the said Colony, together with the reasons assigned by the Attorney General, or the person so deputed by him as aforesaid, in writing, for any such rejection or disapproval of any or more of such additional Rules or Bye Laws, or amended additional Rules or Bye Laws, as the case may be; and such Chief Justice shall and may, if he so think fit, confirm and allow

the same, notwithstanding any such rejection or disapproval by the said Attorney General, or the person so deputed by him as aforesaid.

(Nothing in this Act contained to affect any right, &c., of Her Majesty, or any Corporation.)

XXI. Provided always, and be it enacted, That nothing in this Act contained shall be construed or taken to affect or apply to any Right, Title, Privilege, Immunity, or Interest of Her Majesty, Her Heirs and Successors, or of any Body or Bodies, Politic or Corporate, or of any other Person or Persons, except such as are mentioned therein, or of those claiming by or under him, her, or them.

(This Act to take effect when it shall have received the Royal Approbation.)

XXII. And be it enacted, That this Act shall not commence, or take effect, until the same shall have received the Royal Approbation, and the notification of such Approbation shall have been made in the *New South Wales Government Gazette*, by order of His Excellency the Governor for the time being of the said Colony.

(Then this Act to be deemed a Public Act.)

XXIII. And be it enacted, That when and as soon as this Act shall have received the Royal Approbation, and the notification thereof shall have been made as aforesaid, the same shall be deemed and taken to be a Public Act, and shall be judicially taken notice of as such by the Judges of the Supreme Court of New South Wales, and by all other Judges, Justices, and others, within the Colony of New South Wales and its Dependencies, without being specially pleaded.

GEORGE GIPPS,

*Passed the Legislative Council } Governor.
this Twenty-eighth day of Sep- }
tember, One thousand eight }
hundred and forty-one. }*

WM. MACPHERSON,

Clerk of Councils.

SCHEDULES REFERRED TO.

A.

RULES of the MUTUAL FIRE INSURANCE ASSOCIATION, to be acted upon under the foregoing Act of Council.

WHEREAS, at various Public Meetings, holden at Sydney, in the Colony of New South Wales, in or about the months of April and May, in the year one thousand eight hundred and forty, it was agreed, that an Association, to be called "The MUTUAL FIRE INSURANCE ASSOCIATION," should be formed for reciprocal indemnification, under certain conditions, from loss, by damage or destruction by Fire, of any House or Houses, Warehouses, or other buildings, or of any Goods, Wares, Merchandise, Stock, Effects, or any other description of property whatever, within the said Colony, belonging to or held by any Member of the said Association; and that such Association should be considered as formed, and such reciprocal Insurance should commence, so soon as there should be found a sufficient number of persons willing to insure with the said Association, Property to the value of Five Hundred Thousand Pounds Sterling; and whereas Insuran-

ces having been effected on property exceeding that amount in value, the said Association has accordingly been formed, and the following Rules have been established for the management of the said Association, and for conducting the business thereof, viz:—

I. That the said Association shall be carried on in Sydney, under the care, management, and superintendence of Twenty-one Directors and an Actuary, one of the said Directors being Chairman, and another Deputy Chairman, of the said Association.

II. That before any person shall become a Member of the said Association, or effect an Insurance therein, he or she shall execute a Bond, in a penalty to be named by the Directors, to abide by, and perform these Rules, and such other Rules or Bye Laws as shall or may at any time or times hereafter be made in manner appointed by the Act of the Governor and Council of New South Wales, passed in the Fifth year of the Reign of Her present Majesty Queen Victoria, intituled, "*An Act to enable the Members of an Association, called 'The Mutual Fire Insurance Association,' to sue and be sued in the name of the Chairman of the said Association for the time being, and for other purposes therein mentioned;*" and to pay all such sum or sums of money as shall or may be or become payable in respect of his or her Insurance, by any call or calls of the Directors of the said Association, as hereinafter mentioned.

III. That every Member, his or her executors, administrators, and assigns, shall, in proportion to the sum for which he or she may be insured, be answerable for, and liable to pay, all losses or damage by Fire which shall be sustained by any Member or Members of the said Association, and also all calls or demands which shall be made by virtue of these Rules, or of any other lawful Rules or Bye Laws, conditions, or resolutions, which shall or may at any time or times hereafter be made and passed by the Directors of the said Association, in accordance with the provisions of the said recited Act.

IV. That every Policy of Insurance shall be signed by three of the Directors of the Association; and if at any time any alteration is required, the said Policy shall be given up, and a new one granted, after the same shall have received the sanction of the Directors; provided that such new Policy shall be in all respects in conformity with, and subject to, the then existing Rules and Bye Laws of the Association, and shall not in any manner whatever release or relieve the Member or Members obtaining the same, from any liability he, she, or they may have incurred under the previous Policy, as a Member or Members of the said Association.

V. That every Policy shall be in force for one year from the day of the date thereof, and shall be deemed to be the Act of all the Members, and shall be binding on each of the said Members, his or her heirs, executors, and administrators, but only in the proportion for which each Member is insured, and for the time such Policy shall remain in force, or such Member shall continue to be a Member of the said Association, according to the provisions of the said recited Act; provided that such Policy may be renewed from year to year, on payment of the regulated annual premium.

VI. That in case any loss or damage by Fire shall happen to any Member, he or she shall forthwith give notice thereof to the Actuary of the Association, at the Office of the Association; and shall, within ten days from the occurrence thereof, deliver in to the said Actuary, as particular an account of such loss or damage as the nature of the case shall admit; and shall place the property which shall have been damaged by Fire (in cases where such property shall consist of merchandise or other moveable goods,) at the disposal of the Board of Directors, who shall be specially convened for the purpose of settling the best way of disposing of the same, for the joint advantage of the Association, and towards payment of such Member's loss; and such Member shall forthwith be paid the full amount of any loss or damage which he or she may have so sustained, if the same shall not exceed the sum of Five thousand pounds; but if the aggregate amount of loss or damage by any Fire or Fires shall at any one time exceed the sum of Five thousand pounds, and not exceed the sum of Ten thousand pounds, the said Association shall be permitted to pay the Member sustaining such loss or damage, or, if more than one, then each of such Members, rateably, the amount of such loss or damage, within three months after the same shall have been incurred; and if the aggregate amount of any such loss or damage shall at any one time exceed the sum of Ten thousand pounds, and not exceed the sum of Fifteen thousand pounds, the said Association shall be permitted to pay the Member sustaining such loss or damage, or, if more than one, then each of such Members, rateably, the sum of Ten thousand pounds, within three months after the occurrence of such loss or damage, and the remainder within three months next following such payment; and if the aggregate amount of any such loss or damage shall at any one time exceed the sum of Fifteen thousand pounds, the said Association shall be permitted to pay the Member sustaining such loss or damage, or, if more than one, then each of such Members, rateably, the sum of Ten thousand pounds, within three months of the occurrence of such loss or damage, and the remainder in sums of not less than Five thousand pounds, at the end of every succeeding three months, commencing from the date of payment of the said sum of Ten thousand pounds, until such loss or damage shall be reduced to a less sum than Five thousand pounds, when the balance due from the said Association to the Member or Members sustaining such loss or damage, shall be paid within the three months next following such last payment; provided that the Member or Members who shall have sustained such loss or damage, shall pay his or her own share of the same as a Member or Members of the Association, in proportion to the amount for which he, she, or they shall have been insured.

VII. That the Directors shall apply any part of the fund in hand of the said Association in or towards payment of all losses or damages which may happen to any Member or Members so insured as aforesaid; and shall call upon each Member (including the Member or Members sustaining such loss or damage as aforesaid) for his, her, or their contribution towards payment of such loss or damage, in proportion to the amount

for which each shall be insured; and in the event of neglect or refusal to pay by any Member so called upon, such Member shall be liable to be sued for such his or her proportion of such loss or damage, by the Chairman for the time being of the said Association, pursuant to the Act of Council hereinbefore recited; and the Directors shall moreover have power to declare the Policy of such Member to be void, and to expel such Member from the Association.

VIII. That within six months from the passing of the said recited Act, the Directors shall, by one or more call or calls, as may be necessary, make the funds of the said Association amount to one and-a-half per cent. upon the amount insured; and whenever afterwards the said funds shall be less than one and-a-half per cent. upon the amount insured, the Directors shall, every three months, make a call upon each Member of one-fourth per cent., or five shillings for every one hundred pounds insured by such Member; and in case of loss or damage, the Directors shall also call on each Member for his or her proportion of such loss, in pursuance of the true intent and meaning of these or any other Rules or Bye Laws of the said Association, which may be lawfully in force at the time.

IX. That all losses or damage by Fire, sustained by any Member who shall be insured in the said Association, shall be assessed by the Directors; but in case the party insured shall be dissatisfied with such assessment, and such dissatisfaction shall be communicated in writing to the Directors within one month after such assessment shall have been made, then and in such case the loss or damage shall be estimated in manner following, that is to say:—the name of each Member insured in the sum of three thousand pounds shall be written on a slip of paper, and placed in a bag, and the person who shall have sustained the loss shall draw from such bag thirty-seven of such names, and the Directors, and the Member who shall have sustained such loss, shall alternately strike from such slips, the names of twenty-four of such Members; and the assessment of the majority of the remaining thirteen Members, whose name shall not be struck from such slips, shall be conclusive and binding on the person who shall have sustained such loss, and on the said Association.

X. That it shall be lawful for the Directors, or their Surveyor, or other Agent or Agents of the said Association, on demand for such purpose made, at any time or times during the continuance of any Policy of Insurance, to enter and go into and upon any property insured in the said Association, or any part thereof, and to view and ascertain, to their or his satisfaction the state and condition of the same; and in case they or he shall discover on such survey or inspection any thing which shall or may have increased, or tend to increase, the risk borne by the Association in respect of such Property, then it shall be lawful for the Directors to desire that such alteration shall be made as will reduce the risk on such property to the state in which it was originally taken, and to declare, in the mean time, the Policy of the party owning or holding such property, to be void until such alteration shall have been made to their satisfaction, or to the

satisfaction of such their Surveyor, or other Agent or Agents; or, if the said Directors shall think fit, they may compel the party owning or holding such Property to produce his Policy of Insurance, in order to its being altered to correspond with the additional risk incurred; and in case of refusal, to make such alteration or to produce such Policy for the purpose aforesaid; then, or in either case, such Policy shall become absolutely void, and of no effect; and the Directors shall have full power, at all times during the continuance of any Policy, to inspect, and to request from the party insured the amount and value of all or any stock which he or she may have insured in the said Association; and should the amount or value of the said stock be lower than that for which it stands insured, the Directors shall compel such party to produce his Policy of Insurance, in order to its being altered and reduced to correspond with such valuation of such stock as shall be made to their satisfaction; and in case of refusal so to produce such Policy, for the purpose aforesaid, the same shall become absolutely void and of no effect.

XI. That no Policy of Insurance, nor the benefit thereof, shall be assignable, except in the event of the decease of the Member holding the same, in which case such Policy may vest in, or be transmissible to, such Member's personal representatives, and shall continue in force until the period when the premium of Insurance shall then next become payable, but from that period such Policy shall cease and become absolutely void; and any attempt to assign any Policy of Insurance, except as aforesaid, shall immediately render the Policy so attempted to be assigned *ipso facto* void.

XII. That when and so soon as the property of any Director shall have been seized in execution under the said recited Act of Council, it shall be lawful for such Director to treat the Judgment or Decree which shall have been obtained as aforesaid against the Chairman of the Association, as assigned to him, and forthwith to issue upon the said Judgment, in the name of the party who shall have obtained the same, writs of *feri facias* against each and every Member of the said Association; and by each and every of such Writs the Sheriff of New South Wales shall and may levy a sum not exceeding such proportion of the total sum levied upon such Director, as the Member against whom such Writ is directed, ought, by the Rules of the said Association, to pay, in case of loss or damage by fire; provided that in no one case shall a larger sum be levied upon any Member than such his or her proportion of such loss; and the said Sheriff is hereby authorised and required to make such levies at the instance of any Director whose property he may have seized, in manner aforesaid, and to pay over to such Director the proceeds of such levies.

SCHEDULE B. REFERRED TO.

Memorial of the name of the Chairman of "THE MUTUAL FIRE INSURANCE ASSOCIATION," to be recorded in the Office of the Registrar of the Supreme Court of New South Wales, pursuant to an Act of the Governor and Council, passed in the Fifth year of the Reign of Her Majesty Queen

Victoria, intituled, " *An Act to enable the Members of an Association, called 'The Mutual Fire Insurance Association,' to sue and be sued in the name of the Chairman of the said Association, for the time-being, and for other purposes therein mentioned.*"

above-named Mutual Fire Insurance Association, maketh Oath and saith, that he was present, and did see the foregoing Memorial signed by the Chairman and Directors respectively, whose names appear thereto.

	A. B., Chairman.		P. Q.
C. D.	} Directors. }		R. S.
E. F.			T. U.
G. H.			V. W.
I. K.			X. Y.
L. M.			
N. O.			

Z. Z. of Sydney, Gentleman,
of the

Sworn this

day of

Sydney:—Printed by WILLIAM JOHN ROW,
Government Printer, and Published by him at
the Government Printing Office Bent-street.—
October 9, 1841.