

**No. XXII.****EQUITY APPEALS.**

An Act to amend the Law relative to the security to be given on Appeals from the decrees and orders of the Primary Judge in Equity to the three Judges of the Supreme Court of New South Wales. [1st October, 1847.]

## Preamble.

4 Vic. No. 22 sec. 20.

**W**HEREAS by an Act made and passed in the fourth year of the reign of Her present Majesty by the then Governor and Legislative Council of the Colony of New South Wales intituled "*An Act to provide for the more effectual Administration of Justice in New South Wales and its Dependencies*" it was (amongst other things) provided and enacted that it should be lawful for the Governor of New South Wales for the time being to nominate and appoint from time to time either the Chief Justice or if he should decline such appointment then one of the Puisnè Judges of the Supreme Court of the said Colony to sit and hear and determine without the assistance of the other Judges or either of them all causes and matters at any time depending in the said Supreme Court in Equity and coming on to be heard and decided at Sydney and that every decree or order of such Chief Justice or of the Judge so appointed should in any such cause or matter (unless appealed from in the manner in the said Act provided) be as valid effectual and binding to all intents and purposes as if such decree or order had been pronounced and made by the full Court and in and by the said Act it was also (amongst other things) provided and enacted that it should be lawful for any person feeling aggrieved by any such decree or order at any time within fourteen days next after the pronouncing or making of the same to enter an appeal in the office of the Court against such decree or order to the other two Judges at Sydney aforesaid such person giving security within fourteen days thence next following in such manner as should for that purpose be provided by general rules to be in that behalf made to prosecute such appeal with effect and to obey such decree or order in all things in case of the eventual affirmance of the same and also to pay the costs of such appeal if costs should be thereupon awarded against him And whereas by another Act made and passed in the fifth year of the reign of Her said present Majesty by the then Governor and Legislative Council of the said Colony intituled "*An Act for the further amendment of the Law and for the better advancement of Justice*" it was (amongst other things) enacted that after the passing thereof in case of the absence from Sydney or illness of the Chief Justice or other Judge appointed to sit in Equity it should 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 and in and by the said lastly hereinbefore mentioned Act it was also (amongst other things) provided and enacted that every appeal from any decree or order made or to be made under the said last mentioned Act or the Act firstly hereinbefore mentioned should thereafter be preferred to and should 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 should from time to time prescribe and make or (in the absence of any such rule) as they should in any case direct And whereas in pursuance of the provisions of the Act firstly hereinbefore

Sec. 21.

5 Vic. No. 9 sect. 12.

Sec. 13.

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hereinbefore mentioned one of the Puisnè Judges of the said Court has been duly nominated and appointed to sit and hear and determine without the assistance of the other Judges or either of them all causes and matters at any time depending in the said Supreme Court in Equity and coming on to be heard and decided at Sydney aforesaid the Chief Justice of the said Court having declined such appointment And whereas under and by virtue of the provisions of the said Acts and of general rules of the said Supreme Court made in pursuance thereof no appeal from any decree or order of the said Judge so nominated and appointed to hear and determine causes and matters in the said Court in Equity as aforesaid can be made to the three Judges of the said Court unless the person appealing shall give security by a bond of himself and two sureties not only to pay the costs of such appeal if costs shall be thereupon awarded against him but also to prosecute such appeal with effect and to obey the decree or order appealed from in all things in case of the eventual affirmance of the same by reason whereof persons feeling aggrieved by such decrees or orders may be unjustly precluded from appealing therefrom to the three Judges of the said Court and it is therefore just and expedient to make other provision relative to the security to be given in reference to such appeals Be it therefore enacted by His Excellency the Governor of the said Colony by and with the advice and consent of the Legislative Council thereof That from and after the passing hereof any person or persons appealing from any such decree or order to the three Judges of the said Court under the provisions of the said Acts or either of them shall within fourteen days from the time of lodging or filing such appeal deposit in the hands of the Master in Equity of the said Court such sum of money not exceeding the sum of one hundred pounds as such Master shall in each case direct or at the option of the person or persons appealing give and deposit with such Master a bond of two persons to be approved of by such Master in such sum of money not exceeding the sum of one hundred pounds as such Master shall in each case direct which bond shall be from such two persons binding them their heirs executors and administrators to the person or persons in whose favor the decree or order appealed from shall be his her or their executors and administrators conditioned to be void if the person or persons by whom such appeal shall be made shall prosecute the same with all due diligence and pay all such costs of and occasioned by such appeal as the said Court shall adjudge or award and which said sum of money or bond as the case may be shall be held by such Master subject to the order of the said Court as security that the person or persons by whom such appeal shall be made shall prosecute the same with all due diligence and pay all such costs of and occasioned by such appeal as the said Court shall adjudge or award and that no other security shall be required from any person or persons so appealing from any such decree or order as aforesaid in reference to any such appeal anything in the said Acts or either of them or any rule or rules of the said Court to the contrary in anywise notwithstanding Provided that all and every securities or security already given in reference to any such appeal shall remain and be as valid and effectual to all intents and purposes whatsoever as if this Act had not been passed.

2. Provided always and be it further enacted That if such sum of money or such bond as is hereby directed shall not be so deposited as aforesaid within the said period hereby provided from the time of lodging or filing any such appeal then such appeal shall be deemed to have been abandoned.

3. Provided also and be it further enacted That no such appeal in pursuance of the Acts hereinbefore mentioned or either of them shall stay the execution of or any proceeding upon any decree or order

Persons appealing from the decrees or orders of the Primary Judge in Equity to the three Judges to deposit a sum not exceeding £100 as security to prosecute such appeal with all due diligence and to pay costs if awarded against them.

No other security to be required anything in 4 Vic. No. 22 and 5 Vic. No. 9 or rules of Supreme Court notwithstanding.

If money not deposited appeal to be deemed abandoned.

Execution of such decrees or orders not to be stayed by appeal unless the

*Merchant Seamen.*

Primary Judge shall  
so order.

thereby appealed from but that every such decree or order may be carried into execution and all proceedings taken thereupon in like manner as if no such appeal had been made therefrom unless the Judge for the time being appointed in pursuance of the provisions of the Act firstly hereinbefore mentioned to sit and hear and determine causes and matters in the said Court in Equity shall in pursuance of the provision hereinafter contained order the execution of such decree or order to be stayed Provided that nothing herein contained shall apply to any appeal upon which security has been already given in pursuance of the aforesaid Acts or either of them or the aforesaid rules of the said Supreme Court made in pursuance thereof.

Primary Judge may  
order execution of  
decrees or orders to  
be stayed either with  
or without terms as  
to security or other-  
wise.

4. Provided also and be it further enacted That it shall be lawful for the said Judge so appointed for the time being as aforesaid to order that the execution of any such decree or order shall be stayed until any such appeal therefrom shall be determined which order the said Judge is hereby authorized and empowered to make either upon such terms as to security or otherwise or absolutely without any terms whatever as to such Judge shall seem fit.

Act may be altered  
or repealed.

5. And be it further enacted That this Act or any part thereof may be altered varied or repealed by any Act or Acts to be passed in the present Session of the said Council.