



ANNO QUINTO

# GULIELMI IV. REGIS.

No. 2.

*By His Excellency Colonel GEORGE ARTHUR, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies, with the advice of the Legislative Council.*

*AN ACT for introducing into this Island parts of certain Statutes passed in England relative to the Examination of Witnesses—to giving summary Relief in cases of conflicting Claims—and to the Improvement of Proceedings in Prohibition and Writs of Mandamus.*

**W**HEREAS great difficulties and delays are often experienced and PREAMBLE. sometimes a failure of justice takes place in actions and other proceedings at law by reason of the want of power in the Court to order the examination of witnesses when the same may be required before the trial—

**AND WHEREAS** for the purpose of supplying a remedy for those evils in England a statute was passed in the first year of the reign of His present Majesty intituled “An Act to enable Courts of Law to 1 W. 4 c. 22. order the examination of witnesses upon interrogatories and other—wise”—and it would be highly beneficial if certain of the provisions of that statute were introduced into this Island—

**BE IT THEREFORE ENACTED** by His Excellency Colonel Supreme Court GEORGE ARTHUR Lieutenant-Governor of the Island of Van Diemen's may order exami-

nation of witnesses  
on interrogatories  
or otherwise.

Land and its Dependencies with the advice of the Legislative Council that whenever it shall appear that the examination of witnesses as hereinafter provided for will be conducive to the ends of justice it shall be lawful for the Supreme Court of Van Diemen's Land or either of the Judges thereof in any action or other matter depending in the said Court upon application on behalf of any party interested therein to order the examination on oath upon interrogatories or otherwise before some officer of the said Court or other person or persons to be named in such order of any witnesses then being within the jurisdiction of the said Court—or that a commission do issue for the examination of any witnesses on oath at any place or places out of such jurisdiction by interrogatories or otherwise—and by the same or any subsequent order or orders from time to time to give all such directions touching the time place and manner of such examination as well within such jurisdiction as without and touching all other matters and circumstances connected with such examinations as may appear reasonable and just.

Compelling at-  
tendance of wit-  
nesses or produc-  
tion of documents.

II. AND BE IT ENACTED that when any such order shall be made for the examination of witnesses within the jurisdiction of the Court it shall be lawful for the Court or any Judge thereof by the first or any subsequent order to be made in the matter to command the attendance of any witness for the purpose of being examined or the production of any writings or other documents and to direct the attendance of any such witness to be at his own place of abode or elsewhere if necessary or convenient so to do—AND the wilful disobedience of any such order shall be deemed a contempt of Court and proceedings may be thereupon immediately had by attachment if in addition to the service of the order an appointment of the time and place of attendance in obedience thereto signed by the officer or person or persons appointed to take the examination or by one or more of such persons shall have been also served therewith.

Payment of ex-  
penses.

III. PROVIDED ALWAYS that every person whose attendance shall be so required shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial—AND PROVIDED ALSO that no person shall be compelled to produce under any such order any writing or other document that he would not be compellable to produce at such trial.

Prisoners may be  
removed for exa-  
mination.

IV. AND BE IT ENACTED that it shall be lawful for any Sheriff Gaoler or other Officer having the custody of any prisoner to take such prisoner for examination under the authority of this Act by virtue of a Writ of Habeas Corpus to be issued for that purpose which Writ may be issued under such circumstances and in such manner as

the said Court or any Judge thereof may now by law issue the writ commonly called a Writ of Habeas Corpus ad testificandum.

V. AND BE IT ENACTED that it shall be lawful for every such Officer of the Court or other person authorized to take the examination of witnesses by any such Order or Commission made or issued in pursuance of this Act to take all such examinations upon the oath of the witnesses (or their affirmation in cases where the same is allowed by law) to be administered by the said Officer or person so authorized and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence every person so offending shall be deemed guilty of perjury and may be prosecuted for such offence accordingly.

Examinations of witnesses to be taken upon oath.

Persons giving false evidence to be deemed guilty of perjury.

VI. AND BE IT ENACTED that it shall be lawful for such Officer or persons named in any such Order as aforesaid for taking any examination in pursuance thereof to make if need be a special report to the Court touching such examination and the conduct or absence of any witness or other person thereon or relating thereto and the said Court is hereby authorized to institute such proceedings and make such order and orders upon such report as justice may require.

Persons appointed for taking examinations to report upon the conduct or absence of witnesses if necessary.

VII. AND BE IT ENACTED that the costs of every order for the examination of witnesses under any Commissioner or otherwise by virtue of this Act and of the proceedings thereupon shall be costs in the cause unless otherwise directed either by the Judge making such order or by the Judge before whom the cause may be tried or by the Court.

Costs of the examination may be made costs in the cause.

VIII. AND BE IT ENACTED that every examination taken by virtue of this Act purporting to be under the hand of the Officer of the Court or other person or persons taking the same under any such order in that behalf as aforesaid may be received and read in evidence (saving all just exceptions thereto) without proof of such signature unless it shall be shewn by the party against whom the examination is offered that the examinant is then within the jurisdiction of the Court and able to attend the trial.

As to the reading of such examinations.

IX. AND WHEREAS a statute was passed in England in the same first year of His Majesty intituled "An Act to improve the proceedings in Prohibition and on Writs of Mandamus" and it is expedient that the same should be extended to this Island—

Recital.  
1 W. 4 c. 21.  
Mandamus.

BE IT THEREFORE ENACTED that from and after the publi-

Extended to this Island.

cation of this Act the said last-mentioned statute shall extend to and be in force within this Island and its dependencies and be applied in the administration of justice accordingly.

Recital.

Cases of adverse and conflicting claims.

X. AND WHEREAS it often happens that a person sued at law for the recovery of money or goods wherein he has no interest and which are also claimed of him by some third party has no means of relieving himself from such conflicting claims but by a Suit in Equity against the plaintiff and such third party usually called a Bill of Interpleader which is attended with expense and delay—AND ALSO difficulties sometimes arise in the execution of process against lands and goods issued under the authority of the said Supreme Court by reason of claims made to such lands and goods by persons not being the parties against whom such process issued whereby the Sheriff of this Island and other Officers are occasionally exposed to the hazard and expense of actions and it is reasonable to afford relief and protection to the Sheriff and such other Officers in such cases—

1 & 2 W. 4 c. 58. Interpleader Act.

AND WHEREAS for the purpose of supplying a remedy in all such cases in England a statute was passed in the first and second year of His said Majesty intituled “An Act to enable Courts of Law to give “Relief against adverse Claims made upon persons having no Interest “in the subject of such Claims” and it would be very beneficial if the provisions of the said last-mentioned statute were extended to this Island—

Extended to this Island.

BE IT THEREFORE ENACTED that from and after the commencement of this Act the said last-mentioned statute shall extend to and be in force within this Island and its dependencies and the same and the several provisions thereof shall accordingly equally apply to the Supreme Court of Van Diemen's Land and the Judges thereof and to actions brought in the said Court as to the several Courts of Law particularly mentioned in the said statute and their respective Judges and to actions brought in such Courts—AND that the provisions of the same statute for giving relief and protection to Sheriffs and such other Officers as are therein mentioned in the execution of process against goods shall equally extend and apply to cases in this Colony where the process is against lands also.

Sheriff may have his costs.

XI. PROVIDED ALWAYS AND BE IT ENACTED that in all cases where it shall appear that the Sheriff hath bonâ fide acted in the discharge of his official duties only in obedience or supposed obedience to process directed to him as such Sheriff it shall be lawful for the Court to allow such Sheriff the costs of any application made by

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him to the Court under the provisions of the said statute if the said Court shall see fit to do so such costs to be paid to him by such party and in such manner as the Court shall think proper in that behalf to order.

GEORGE ARTHUR.

Passed the Legislative Council this second  
day of September one thousand eight  
hundred and thirty-four,

ADAM TURNBULL, *Clerk of the Council.*

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JAMES BARNARD, GOVERNMENT PRINTER, HOBART TOWN. 1839.

