

No. VIII.

An Act for adopting and applying certain Acts of Parliament passed in the Eleventh Year of the Reign of His late Majesty and First Year of the Reign of His present Majesty and in the First and Second Years of the Reign of His present Majesty respectively in the Administration of Justice in New South Wales in like manner as other Laws of England are applied therein. [25th July, 1834.]

IMPERIAL ACTS
ADOPTION.

WHEREAS certain Acts of Parliament were passed in the eleventh year of the reign of His late Majesty King George the Fourth and in the first year of the reign of His present Majesty King William the Fourth intituled respectively "*An Act for altering*" ^{11 Geo. IV. and} "*and amending the Law regarding Commitments by Courts of*" ^{1 Wm. IV. cap. 36} "*Equity for Contempts and taking Bills pro confesso*" and "*An Act for making better provision for the disposal of the undisposed of*" ^{Cap. 40.} "*residues of the Effects of Testators*" and "*An Act to alter and*" ^{Cap. 46.} "*amend the Law relating to illusory Appointments*" and "*An Act for*" ^{Cap. 47.} "*consolidating and amending the Laws for facilitating the payment*" ^{Cap. 60.} "*of Debts out of Real Estate*" and "*An Act for amending the Laws*" ^{Cap. 65.} "*respecting Conveyances and Transfers of Estates and Funds vested*" "*in Trustees and Mortgagees and for enabling Courts of Equity to*" "*give effect to their Decrees and Orders in certain cases*" and "*An Act for consolidating and amending the Law relating to Property*" "*belonging to Infants Femmes Coverts Idiots Lunatics and persons of*" "*unsound mind*" and a certain other Act of Parliament was passed in the first year of the reign of His said present Majesty intituled "*An Act to improve the proceedings in prohibition and on Writs of Mandamus*" ^{1 Wm. 4 cap. 21.} and a certain other Act of Parliament was passed in the first and second years of the reign of His said present 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*" ^{1 and 2 Wm. 4 cap. 58.} And whereas it is expedient to adopt and apply the said recited Acts of Parliament in the administration of justice in New South Wales Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That the said recited Acts of Parliament and every clause provision and enactment therein respectively contained shall be and the same are and is hereby adopted and directed to be applied in the administration of justice in the said Colony and its Dependencies in like manner as other Laws of England are therein applied.

Adopted and to be
applied in the
administration of
justice.

2. And be it further enacted That this Act shall commence and take effect from and after the fourth day of August one thousand eight hundred and thirty-four and every suit matter or thing now in progress and not completed shall and may be completed under the powers of this Act.

Commencement of
Act.

English Chancery Contempts Act Adopted, 11 G. 4 & 1 Wm. 4, c. 36.

ANNO UNDECIMO GEORGII IV. REGIS. ET ANNO
PRIMO GULIELMI IV. REGIS.

CAP. XXXVI.

ENGLISH CHANCERY
CONTEMPTS ACT
ADOPTED.

An Act for altering and amending the Law regarding Commitments by Courts of Equity for Contempts and the taking Bills *pro confesso*. [16th July, 1830.]

5 Geo. II. c. 25.

45 Geo. III. c. 124.

Recited Act 5 Geo. II. and so much of 45 Geo. III. as relates to Courts of Equity and the reading of bills of discovery as evidence repealed.

Warden of the Fleet to keep a register of persons committed and report four times a year to the Lord Chancellor.

Manner of proceeding in case of persons not appearing within the usual time after subpoena or other process has been issued.

WHEREAS by two several Acts the one passed in the fifth year of the reign of His late Majesty George the Second intituled “*An Act for making Process in Courts of Equity effectual against persons who abscond and cannot be served therewith or refuse to appear*” and the other passed in the forty-fifth year of the reign of his late Majesty King George the Third intituled “*An Act to amend an Act passed in the fourth year of His present Majesty intituled ‘An Act for preventing inconveniences arising in cases of merchants and such other persons as are within the description of the Statutes relating to Bankrupts being entitled to privilege of Parliament and becoming Insolvent and to prevent delay in the entering appearances in actions brought against persons having privilege of Parliament’*” certain provisions were made for entering appearances and taking Bills of Equity *pro confesso* And whereas it is expedient to alter and amend and to consolidate the Laws on that subject and it is also expedient to alter and amend the Law relating to Commitments by Courts of Equity for Contempts Be it therefore enacted by the King’s Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same That the whole of the said recited Act of the fifth year of King George the Second and so much of the said recited Act of the forty-fifth year of His late Majesty George the Third as relates to Courts of Equity and the reading of bills of discovery as evidence shall be and the same are hereby repealed but so as not to affect any thing done or executed in pursuance thereof respectively and any suit matter or thing now in progress under the authority of the said Acts respectively and not completed shall or may be completed under the powers of this Act and all the powers of this Act shall or may be exercised as well in regard to new suits commitments discharges conveyances fines recoveries matters or things as to suits commitments discharges conveyances fines recoveries matters or things now subsisting or remaining to be made done or perfected whether the powers of the said Acts or any of them respectively shall or shall not have been applied thereto.

2. And be it further enacted That the Warden of the Fleet Prison shall keep a register of the names of all persons committed by the Courts of Equity for contempts stating the dates and the grounds of their several commitments and the dates of their respective discharges and shall on the twentieth day of January the twentieth day of April the twentieth day of July and the twentieth day of October in every year make a report to the Lord Chancellor of the names and descriptions of such prisoners in his custody on each of such days respectively with the causes and dates of their respective commitments.

3. “And whereas sometimes persons have withdrawn themselves beyond the seas or otherwise absconded to avoid appearing in Courts of Equity or being served with process for that purpose or being brought into Court by *habeas corpus* have refused to appear” for remedy of the inconvenience thence ensuing be it further enacted That if in any suit which hath been or hereafter shall

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English Chancery Contempts Act Adopted, 11 G. 4 & 1 Wm. 4, c. 36.

be commenced in any Court of Equity any defendant against whom any subpoena or other process shall issue shall not cause his appearance to be entered upon such process within such time and in such manner as according to the rules of the Court the same ought to have been entered in case such process had been duly served and an affidavit or affidavits shall be made to the satisfaction of such Court that such defendant is beyond the seas or that upon enquiry at his usual place of abode he could not be found so as to be served with such process and that there is just ground to believe that such defendant is gone out of the realm or otherwise absconded to avoid being served with the process of such Court then and in such case the Court out of which such process issued may make an order directing and appointing such defendant to appear at a certain day therein to be named and a copy of such order shall within fourteen days after such order made be inserted in the *London Gazette* and published on some Lord's Day immediately after Divine Service in the Parish Church of the Parish where such defendant made his usual abode within thirty days next before such his absenting and also a copy of such order shall within the time aforesaid be posted up as after mentioned (that is to say) a copy of every such order made in His Majesty's High Court of Chancery Court of Exchequer or the Court of the Duchy Chamber of Lancaster at Westminster shall be posted up in some public place at the Royal Exchange in London and a copy of every such order made in any of the Courts of Equity of the Counties Palatine of Chester Lancaster and Durham or of the Great Sessions in Wales shall be posted up at some public place in some market town within the jurisdiction of the Court by which such order was made and nearest to the place where such defendant made his usual abode as aforesaid such place of abode being also within the jurisdiction of the said Court and if the defendant do not appear within the time limited by such order or within such further time as the Court shall appoint then on proof made of such publication of such order as aforesaid the Court being satisfied of the truth thereof may order the plaintiff's bill to be taken *pro confesso* and make such decree thereupon as shall be thought just and may thereupon issue process to compel the performance of such decree either by an immediate sequestration of the real and personal estate and effects of the party so absenting (if any such can be found) or such part thereof as may be sufficient to satisfy the demands of the plaintiff in the said suit or by causing possession of the estate or effects demanded by the bill to be delivered to the plaintiff or otherwise as the nature of the case shall require and the said Court may likewise order such plaintiff to be paid and satisfied his demands out of the estate or effects so sequestered according to the true intent and meaning of such decree such plaintiff first giving sufficient security in such sum as the Court shall think proper to abide such order touching the restitution of such estate or effects as the Court shall think proper to make concerning the same upon the defendant's appearance to defend such suit and paying such costs to the plaintiff as the Court shall order but in case such plaintiff shall refuse or neglect to give such security as aforesaid then the said Court shall order the estate or effects so sequestered or whereof the possession shall be decreed to be delivered to remain under the direction of the Court either by appointing a receiver thereof or otherwise as to such Court shall seem meet until the appearance of the defendant to defend such suit and his paying such costs to the plaintiff as the said Court shall think reasonable or until such order shall be made therein as the Court shall think just.

4. Provided always and be it further enacted That if any person against whom any decree shall be made upon refusal or neglect to enter

Persons in custody so neglecting to be served with a copy of the decree.

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enter his appearance or appoint a Clerk in Court or Attorney to act on his behalf shall be in custody or forthcoming so that he may be served with a copy of such decree then he shall be served with a copy thereof before any process shall be taken out to compel the performance thereof.

Persons out of the realm affected by such decrees if they return within seven years to be served with a copy or in case of death their heirs &c.

5. Provided also and be it further enacted That if any decree shall be made in pursuance of this Act against any person being out of the realm or absconding in manner aforesaid at the time such decree is pronounced and such person shall within seven years after the making such decree return or become publicly visible then and in such case he shall likewise be served with a copy of such decree within a reasonable time after his return or public appearance shall be known to the plaintiff and in case any defendant against whom such decree shall be made shall within seven years after the making such decree happen to die before his or her return into this realm or appearing openly as aforesaid or shall within the time last before mentioned die in custody before his or her being served with a copy of such decree then his or her heir if such defendant shall have any real estate sequestered or whereof possession shall have been delivered to the plaintiff and such heir may be found or if such heir shall be a femme covert infant or *non compos mentis* the husband guardian or committee of such heir respectively or if the personal estate of such defendant be sequestered or possession thereof delivered to the plaintiff then his executor or administrator (if any such there be) may and shall be served with a copy of such decree within a reasonable time after it shall be known to the plaintiff that the defendant is dead and who is his heir executor or administrator or where he may be served therewith.

Persons not petitioning a rehearing of the cause within six months the decree to be absolutely confirmed.

6. Provided always and be it further enacted That if any person so served with a copy of such decree shall not within six months after such service appear and petition to have the said cause reheard such decree so made as aforesaid shall stand absolutely confirmed against the person so served with a copy thereof his heirs executors and administrators and all persons claiming or to claim by from or under him or any of them by virtue of any act done or to be done subsequent to the commencement of such suit.

Persons petitioning a rehearing within seven years and giving security for costs admitted to answer and the cause to be heard again.

7. Provided always and be it further enacted That if any person so served with a copy of such decree shall within six months after such service or if any person not being so served shall within seven years next after the making such decree appear in Court and petition to be heard with respect to the matter of such decree and shall pay down or give security for payment of such costs as the Court shall think reasonable in that behalf the person so petitioning or his representatives or any person claiming under him by virtue of any act done before the commencement of the suit may be admitted to answer the bill exhibited and issue may be joined and witnesses on both sides examined and such other proceedings decree and execution may be had thereon as there might have been in case the same party had originally appeared and the proceedings had then been newly begun or as if no former decree or proceedings had been in the same cause.

Persons not appearing within seven years and making such petition to be absolutely barred.

8. Provided always and be it further enacted That if any person against whom such decree shall be made his heirs executors or administrators shall not within seven years next after the making of such decree appear and petition to have the cause reheard and pay down or give security for payment of such costs as the Court shall think reasonable in that behalf such decree made as aforesaid shall stand absolutely confirmed against the person against whom such decree shall be made his heirs executors and administrators and against all persons claiming or to claim by from or under him or any of them

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by virtue of any act done or to be done subsequent to the commencement of such suit and at the end of such seven years it shall and may be lawful for the Court to make such further order as shall be just and reasonable according to the circumstances of the case.

9. Provided always and be it further enacted That this Act shall not extend or be construed to extend to warrant or make good any proceeding against any person beyond the seas unless it shall appear to the satisfaction of the Court by affidavit or affidavits before the making of such decree that such person had been in that part of Great Britain called England within two years next before the subpœna in such suit issued against such person.

Not to affect persons beyond the seas unless in certain cases.

10. Provided always and be it further enacted That the provisions hereinbefore contained shall not extend or be construed to extend to warrant or make good any proceeding against any person in any Court of Equity having a limited jurisdiction unless it shall appear to the satisfaction of such Court by affidavit before the making of such decree that such person had resided within the jurisdiction of such Court within one year next before the subpœna in such suit issued against such person.

As to Courts having a limited jurisdiction.

11. And be it further enacted That from and after the passing of this Act if any defendant by virtue of any writ of *habeas corpus* or other process issuing out of any Court of Equity shall be brought into Court and shall refuse or neglect or being within the walls of any prison in England under or charged with an attachment or other process of contempt shall after fourteen days previous notice in writing requiring him to enter an appearance refuse or neglect to enter his appearance according to the rules or method required by the said Court or to appoint a Clerk in Court or Attorney of such Court to act on his behalf such Court may appoint a Clerk in Court or Attorney of such Court to enter an appearance for such defendant and such proceedings may thereupon be had in the cause as if the party had actually appeared.

Defendants brought into Court by *habeas corpus* or in custody and refusing to enter appearance Court may enter it for them.

12. “ And whereas in many cases persons having privilege of Parliament are named as defendants in suits instituted in Courts of Equity against them either alone or jointly with other persons for enforcing against them demands and duties cognizable in Courts of Equity and in some cases such defendants having privileges of Parliament have stood out to the return of process of sequestration issued against them for enforcing appearance and such process of sequestration hath not been found sufficient to enforce such appearance ” Be it therefore enacted That from and after the passing of this Act in case any defendant having privilege of Parliament shall upon a return of process of sequestration issued against him for not putting in an appearance to any original or other bill of complaint instituted against him in a Court of Equity for enforcing discovery and relief or discovery alone (as the case may be) neglect to appear that then and in such case such Court upon producing the return of such sequestration in Court may on the motion or other application of the plaintiff in such cause appoint a Clerk in Court to enter an appearance for such defendant so having privilege of Parliament and such proceedings may be thereupon had in the cause as if the party had actually appeared.

Appearances may be put in for defendants having privilege of Parliament in Court of Equity on return of process of sequestration.

13. “ And whereas in many cases it is necessary on the part of the persons having legal rights against persons having privilege of Parliament to proceed by bill in Equity against such persons so having privilege of Parliament to obtain from them discovery on oath of facts intended to be used or given in evidence in Courts of Law against the persons making such discovery and in cases where such persons having such privilege as aforesaid shall stand out

In default of answer to bill in Equity against persons having privilege of Parliament bill shall be taken *pro confesso*.

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“ process of contempt parties entitled to such discovery against them
 “ have not sufficient means of compelling or obtaining the same in all
 “ cases ” Be it therefore enacted That from and after the passing of
 this Act when any defendant having privilege of Parliament shall
 have appeared to any bill filed against him seeking a discovery upon
 oath or when an appearance shall have been entered for such defend-
 ant according to the provisions aforesaid and such person shall refuse
 or neglect to put in his answer to such bill within the time for that
 purpose allowed by the rules and orders of such Court that then it
 shall and may be lawful for the plaintiff in such suit to apply to the
 Court for an order that such bill shall be taken *pro confesso* against
 such defendant and upon such application such Court of Equity shall
 make an order that such bill shall be taken *pro confesso* unless the
 defendant shall within eight days after being served with such order
 shew good cause to the contrary.

Such bill shall be
 read in evidence as
 an answer admitting
 the facts.

14. And be it further enacted That when and so soon as any
 such order shall have been pronounced by any such Court of Equity
 for taking such bill *pro confesso* such bill in Equity or an examined
 copy thereof so taken *pro confesso* shall be taken and read in any Court
 of Law or Equity as evidence of the facts and matters and things
 therein contained in the same manner as if such facts matters and
 things had been admitted to be true by the answer of the defendant
 put in to such bill and such bill so taken *pro confesso* shall be received
 and taken in evidence of such and the same facts and on behalf of
 such and so many persons as the answer of the defendant to the said
 bill could and might have been read and received in evidence of in
 case such answer had been put in by the defendant thereto and had
 admitted the same facts matters and circumstances as in such bill
 stated and set forth and in like manner every other bill of discovery
 taken *pro confesso* under any of the provisions of this Act shall or
 may be taken and read as evidence of the facts and matters and things
 therein contained to the extent aforesaid.

Rules for Courts of
 Equity.

15. And for remedying the practice of Courts of Equity in
 regard to process of contempt and the taking of bills *pro confesso* be
 it further enacted That the Rules and Regulations hereinafter provided
 and contained shall be adopted by the High Court of Chancery and
 shall from henceforth become Orders and Rules of the said Court of
 Chancery and be observed and enforced in and by the said Court (that
 is to say)

1. That when a writ of attachment shall have duly issued against
 any defendant for contempt in not answering the bill and such
 defendant shall not have been taken under such writ and the
 Sheriff of the County into which such writ shall have issued shall
 make a return of *non est inventus* to the same the Court shall
 upon motion by or on behalf of the plaintiff (notice of which
 shall not be required) order that the Serjeant at Arms attending
 the Court to apprehend such defendant and bring him to the bar
 of the Court to answer his contempt and the same proceedings
 may thereupon be had as if such order had been made in the
 manner heretofore in use provided that before such order shall in
 any such case be made the plaintiff applying for the same shall
 be required to satisfy the Court by the affidavit of the Solicitor of
 the plaintiff or of his town agent if the writ of attachment was
 issued by such town agent that due diligence was used to ascertain
 the place where such defendant was at the time of issuing such
 writ and in endeavouring to apprehend such defendant under the
 same and that the person suing forth such writ verily believed at
 the time of suing forth the same that such defendant was in the
 county into which such writ was issued.

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2. That if any defendant being in contempt for not answering the bill shall have been brought to the bar of the Court under process for such contempt and shall have been committed or remanded back to the prison of the Fleet the plaintiff may sue forth the writ of *habeas corpus* in the manner and form heretofore in use in the like cases provided that there shall be at least twenty-eight days between the day on which such defendant was so committed or remanded back and the return of such writ of *habeas corpus* and upon or after the return of such writ of *habeas corpus* in case such defendant shall not have put in his answer the Court shall order the bill to be taken *pro confesso* against such defendant in the same manner as is now usual in the like cases upon the return of a writ of *alias pluries habeas corpus* and such decree shall thereupon be made as shall be thought just but in regard to any defendant in custody before and at the time of the passing of this Act there shall be at least thirty days between the time of passing this Act and the return of such last-mentioned writ of *habeas corpus* and it shall not be necessary in the case of any defendant now in custody as aforesaid who shall have been brought to the bar of the Court as aforesaid to sue forth more than one writ of *habeas corpus* in order to take the bill *pro confesso*.
3. That the party prosecuting any contempt shall be at liberty without order to sue forth the several writs in process of contempt returnable immediately in case the party in contempt resides or is in London or within twenty miles thereof and that in other cases the party prosecuting a contempt shall be at liberty without order to sue forth such several writs returnable in vacation provided that there be fifteen days between the teste and the return of each of such writs.
4. That where a defendant is confined for a misdemeanor and has been brought before the Court upon an *habeas corpus* and thereupon has been turned over to the Fleet *pro formâ* but has been carried back to the prison from whence he came with his cause another writ of *habeas corpus* may issue directed to the gaoler or keeper of the prison to which he has been carried back and thereupon the defendant shall be brought into Court and remanded to the prison from whence he came with his cause without being turned over again to the Fleet prison and the bill may be taken *pro confesso* in the same manner in all respects as if the defendant had been all along in the custody of the Warden of the Fleet.
5. That if the defendant under process of contempt for not appearing or not answering be in actual custody and shall not have been sooner brought to the bar of the Court under process to answer his contempt the plaintiff if the contempt be not sooner cleared shall bring the defendant by an *habeas corpus* to the bar of the Court within thirty days from the time of his being actually in custody or detained (being already in custody) upon process of contempt and if the last day of such thirty days shall happen out of term then within the first four days of the ensuing term and where the defendant is in custody of the Serjeant at Arms or of the Messenger upon an attachment or other process the plaintiff shall within ten days after his being taken into such custody or if the last of such ten days shall happen out of term then within the first four days of the next ensuing term cause the defendant to be brought to the bar of the Court and in case any such defendant shall not be brought to the bar of the Court within the respective times aforesaid the Sheriff Gaoler or Keeper Serjeant at Arms or Messenger in whose custody he shall be shall thereupon

English Chancery Contempts Act Adopted, 11 G. 4 & 1 Wm. 4, c. 36.

upon discharge him out of custody without payment by him of the costs of contempt which shall be payable by the party on whose behalf the process issued and this rule shall apply to every defendant in custody before and at the time of passing of this Act who shall not have been brought to the bar of the Court but the thirty days allowed in the first above-mentioned case and the ten days allowed in the second above-mentioned case shall be reckoned from the first day of next term.

6. That if a defendant upon being brought before the Court upon an *habeas corpus* shall make oath (which shall be administered to him by the Registrar and he shall be examined in open Court) that he is unable by reason of poverty to employ a Solicitor to put in his answer the Court shall thereupon refer it to a Master in rotation to enquire into the truth of that allegation and to report thereon to the Court forthwith and thereupon the Court may make such order as upon other reports of the like nature under the provisions hereinafter contained.
7. That on the thirtieth day of January the thirtieth day of April the thirtieth day of July and the thirtieth day of October in every year or if any of those days happen on a Sunday then on the following day one of the Masters of the Court of Chancery to be named by the Court shall visit the Fleet prison and examine the prisoners confined there for contempt and shall report their opinion on their respective cases to the Court and thereupon it shall be lawful for the Court to order if it shall see fit that the costs of the contempt of any such prisoner shall be paid out of the interest and dividends arising from the several Government or Parliamentary securities standing in the name of the Accountant General of the said Court of Chancery intituled "*Account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery*" and "*Account of securities purchased with surplus interest arising from securities carried to an account of monies placed out for the benefit and better security of the suitors of the High Court of Chancery*" or out of any cash standing to either of such accounts or to any other account which is now or hereafter may be standing to the credit of the suitors of the said Court of Chancery (after and subject to the payment of all charges which by any Act heretofore passed are directed to be paid thereout) and to assign a Solicitor and Counsel to such prisoner for putting in his answer and defending him *in forma pauperis* and to direct any such prisoner having previously done such acts as the Court shall direct to be discharged out of custody Provided that if any such defendant become entitled to any funds out of such cause the same shall be applied under the direction of the said Court in the first instance to the re-imbursement of the suitor's fund.
8. That it shall be lawful for the Master visiting the Fleet or to whom the case of a prisoner shall be referred by the Court itself to examine the prisoner and all other persons whom he may think it proper to examine upon oath and to administer an oath or oaths to any such prisoner and other persons accordingly and to cause any Officers Clerks and Ministers of any Court of Law or Equity to bring and produce upon oath before him any records orders books papers or other writings belonging to the said Courts or to any of the Officers within the same as such Officers.
9. That if it shall appear to the satisfaction of the Court that any such prisoner is an idiot lunatic or of unsound mind although no commission has issued the Court shall appoint a guardian to put in his answer and discharge the defendant providing for
the

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the costs in any of the ways pointed out by this Act as shall seem just and if the Court shall see fit the defence may be made by such guardian *in formâ pauperis*.

10. That where the defendant has been brought to the bar of the Court for his contempt in not answering and refuses or neglects to answer (not being idiot lunatic or of unsound mind) the Court may upon motion or petition of which due notice shall be given personally to the defendant authorize the plaintiff to amend his bill without such amendment operating as a discharge of the contempt or rendering it necessary to proceed with the process of contempt *de novo* but after such amendment the plaintiff may proceed to take the amended bill *pro confesso* in the same manner as if it had not been amended provided nevertheless that if the defendant shall be desirous to answer such amended bill the Court shall allow him such time as shall seem just for that purpose but if he shall not within the time allowed by the Court put in a sufficient answer to the amended bill the process for taking the bill *pro confesso* may be resumed and carried on.
11. That in every case where the defendant has been brought to the bar of the Court to answer his contempt for not answering and shall refuse or neglect to answer within the next twenty-one days the plaintiff shall be at liberty with the leave of the Court upon ten days previous notice to the defendant after the expiration of such twenty-one days unless good cause be shewn to the contrary instead of proceeding to have the bill taken *pro confesso* to put in such an answer to the bill as hereinafter is mentioned in the name of the defendant without oath or signature and thereupon the suit shall proceed in the same manner as if such answer were really the answer of the defendant with which the plaintiff was satisfied and the costs of the contempt and of putting in such answer may be provided for in like manner as if the defendant himself had put in such answer and such answer besides the formal parts thereof shall be to the following effect that the defendant leaves the plaintiff to make such proofs of the several matters in the bill alleged as he shall be able or be advised and submits his interests to the Court.
12. That in any case where upon the application of the plaintiff the Court shall be satisfied that justice cannot be done to the plaintiff without an answer to the bill or to the interrogatories from the defendant himself it shall be lawful for the Court to order the defendant to remain in custody until answer or further order but without prejudice to the plaintiff's availing himself of any of the provisions of this Act.
13. That where the defendant is in contempt for not appearing or not answering and in actual custody under process for such contempt or being already in custody shall be detained by an attachment for such contempt and shall not where the contempt is for not appearing enter an appearance within twenty-one days after he is lodged in gaol or prison or the attachment is lodged against him (he being already in prison) as the case may be or where the contempt is for not answering put in an answer within two calendar months after he is lodged in gaol or prison or the attachment is lodged against him he being already in prison the plaintiff shall (as the case may be) within fourteen days after the period computed from the expiration of such twenty-one days within which he may by the provisions of this Act be able to enter such appearance cause an appearance to be entered for the defendant under the powers of this Act and shall at the expiration of such two calendar months proceed to take the
bill

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bill *pro confesso* and shall accordingly obtain an order for taking the same *pro confesso* within six weeks after the period computed from the expiration of such two calendar months within which he may be able to take the same *pro confesso* or in default of so doing in either of such cases the defendant shall upon application to the Court be entitled to be discharged out of custody without paying any of the costs of the contempt unless the Court shall under the power hereinbefore contained see good cause to remand and detain the defendant in custody and this rule shall apply to every defendant in custody before and at the time of passing of this Act who shall not have entered his appearance and for whom an appearance shall not have been entered or shall not have answered the bill and the bill shall not have been taken *pro confesso* but the twenty-one days and two calendar months respectively to be reckoned from the first day of next term and the other periods to be altered accordingly in computation but nothing in this Act shall prevent any plaintiff from proceeding to take his bill *pro confesso* according to the practice existing before the passing of this Act where at the time of passing of this Act his proceedings shall be so far advanced that the powers of this Act would not enable him to accelerate the period for taking his bill *pro confesso*.

14. That where a defendant is in custody for contempt in not answering and shall be able to put in his answer by borrowing or obtaining a copy of the bill without taking an office copy of the bill he shall not be compellable to take any such copy but the Clerk in Court may (if he think the defendant is of sufficient ability to pay for an office copy) require him before the answer is filed to make an affidavit denying his ability in consequence of poverty to pay for an office copy of the bill.
15. That when any person shall have been directed by any decree or order to execute any deed or other instrument or make a surrender or transfer or to levy a fine or suffer a recovery and shall have refused or neglected to execute make or transfer or levy or suffer the same and shall have been committed to prison under process for such contempt or being confined in prison for any other cause shall have been charged with or detained under process for such contempt and shall remain in such prison the Court may upon motion or petition and upon affidavit that such person has after the expiration of two calendar months from the time of his being committed under or charged with or detained under such process again refuse to execute such deed or instrument or make such surrender or transfer or levy or suffer such fine or recovery order or appoint one of the Masters in ordinary or if the act is to be done out of London then if necessary one of the Masters extraordinary to execute such deed or other instrument or to made such surrender or transfer for and in the name of such person and to levy such fine or suffer such recovery in his name and to do all acts necessary to give validity and operation to such fine or recovery and to lead or declare the uses thereof and the execution of the said deed or other instrument and the surrender or transfer made by the said Master and the fine and recovery levied or suffered by him shall in all respects have the same force and validity as if the same had been executed or made levied or suffered by the party himself and within ten days after the execution or making of any such deed or other instrument or surrender or transfer or levying or suffering such fine or recovery notice thereof shall be given by the adverse Solicitor to the party in whose name the same is executed or made and such party as soon

English Chancery Contempts Act Adopted, 11 G. 4 & 1 Wm. 4, c. 36.

soon as the deed or other instrument or surrender transfer fine or recovery shall be executed made levied or suffered shall be considered as having cleared his contempt except as far as regards the payment of the costs of the contempt and shall be entitled to be discharged therefrom under any of the provisions of this Act applicable to his case and the Court shall make such order as shall be just touching the payment of the costs of or attending any such deed surrender instrument transfer fine or recovery.

16. That where a person shall be committed for a contempt in not delivering to any person or persons or depositing in Court or elsewhere as by any order may be directed books papers or any other articles or things any sequestrator or sequestrators appointed under any commission of sequestration shall have the same power to seize and take such books papers writings or other articles or things being in the custody or power of the person against whom the sequestration issues as they would have over his own property and thereupon such articles or things so seized and taken shall be dealt with by the Court as shall be just and after such seizure it shall be lawful for the Court upon the application of the prisoner or of any other person in the cause or matter or upon any report to be made in pursuance of this Act to make such order for the discharge of the prisoner upon such terms and if it shall see fit making any costs in the cause as to the Court shall seem proper.
17. That in any other case of a commitment for contempt not herein specially provided for the Court may upon any such application as last aforesaid or upon any such report as aforesaid make such order for the discharge of the prisoner upon any such terms and making if the Court shall see fit any costs in the cause as to the Costs. Court shall seem proper.
18. That where any person committed for a contempt shall be entitled to his discharge upon applying to the Court but shall omit to make such application the Court may upon any such report as aforesaid compulsorily discharge such person from the contempt and from custody and pay the costs of the contempt out of any funds belonging to him over which the Court may have power or make them costs in the cause as against him or may discharge him from the contempt but leave him in custody for the costs which may be cleared if he be insolvent under the provisions hereinafter contained in that behalf.
19. That where any party obstinately retains possession of lands or other real property after a writ of execution of a decree or an order for delivery of possession has been duly served and demand of possession made and upon an affidavit of such service of the writ of execution and of such demand made thereunder and a refusal to comply therewith on the part of the person against whom the writ issued the party issuing it shall be at liberty upon an affidavit of service of the writ of execution and demand of possession and refusal to obtain the usual order of course for the writ of assistance to issue and that the intermediate writs of attachment and injunction further commanding the party to deliver possession or any other writ shall be unnecessary.
20. That in order to relieve persons in prison from the expense of a Master's attendance to take affidavits or answers the Lord High Chancellor do by one or more commission or commissions under the Great Seal upon or in respect of which no fee shall be payable nominate and appoint the Warden Keeper or other Chief Officer of every prison within the City of London or the

English Chancery Contempts Act Adopted, 11 G. 4 & 1 Wm. 4, c. 36.

Bills of Mortality and their Deputies to be Master extraordinary of the High Court of Chancery for the purpose of taking and receiving such affidavits and answers as any person or persons within any such prison shall be willing or desirous to make and for no other purpose and the person so taking such affidavit or answer shall in respect thereof be entitled to receive a fee of one shilling and no more and the Court of Exchequer shall in like manner appoint such persons as aforesaid a Commissioner or Commissioners of the said Court for the purposes aforesaid and no others and with the right to the like fee and no more and in every case of an answer being sworn in prison a Clerk of a Master or Baron (as the case may require) shall attend to take and carry back to and from the prison the answer and shall in respect thereof be entitled to a fee of three shillings and no more.

Discharge may extend to process for contempt in non-payment of money and to costs incurred by creditor but subject to taxation.

16. And be it enacted That the discharge of any prisoner adjudicated upon under the authority of an Act passed in the seventh year of His present Majesty's reign intituled "*An Act to amend and consolidate the Laws for the relief of Insolvent Debtors in England*" or any other Act which may hereafter be passed for the relief of Insolvent Debtors shall and may extend to all process issuing from any Court of Equity for any contempt of such Court for non-payment of money or of costs charges or expenses in any such Court and that in such case the said discharge shall be deemed to extend to all costs which such prisoner shall be liable to pay in consequence or by reason of such contempt or on purging the same and that every discharge so adjudicated as aforesaid as to any debt or damages of any creditor of such prisoner shall be deemed to extend also to all costs incurred by such creditor before the filing of such prisoner's schedule in any action or suit brought by such creditor against such prisoner for the purpose for the recovery of the same and that all persons as to whose demands for any such costs money or expenses any such persons shall be so adjudged to be discharged shall be deemed and taken to be creditors of such prisoner in respect thereof and entitled to the benefits of all the provisions made for creditors by the said Act or any future Act subject nevertheless to such ascertaining of the amount of the said demands as may be had by taxation or otherwise and to such examination thereof as is in the said last-mentioned Act or as shall be in any future Act provided in respect of all claim to a dividend of such insolvent's estate and effects.

When process of contempt is for non-performance of an act.

17. And be it further enacted That where the process of contempt is for the non-performance of an act for example the not answering the plaintiff's bill and the bill in Equity to which the insolvent is a party is taken *pro confesso* and he has not paid the costs of the contempt or the insolvent has fully answered the plaintiff's bill or interrogatories or otherwise cleared his contempt except as far as regards the payment of the costs or it has become in event unnecessary for him to do the act for the non-performance of which he was committed or attached the Court of Equity in which the suit is depending shall upon the application of the party in contempt discharge him from the same except as to the costs thereof for which he shall remain in custody and such costs shall be deemed within the provision lastly hereinbefore contained and he shall be dischargeable therefrom and from the process of contempt in like manner as if the process of contempt were for non-payment of money or costs provided that this order or regulation shall not weaken any of the other powers by this Act given nor shall any thing herein contained lessen the operation of the said Act for the relief of insolvent debtors.

English Testators' Residues Act Adopted, 11 G. 4 & 1 W. 4, c. 40.

18. And be it enacted That the powers and authorities given by this Act to the Court of Chancery or to the Lord Chancellor of Great Britain shall and may be exercised as well by such Lord Chancellor as by (and they are hereby given to) the Lord Keeper or Commissioners of the Great Seal of Great Britain for the time-being and to the Master of the Rolls and Vice-Chancellor respectively but the reports of the Warden of the Fleet and of the Masters visiting there shall be made to the Lord Chancellor Lord Keeper or Lords Commissioners only who alone are to make orders thereupon for discharge or relief of prisoners.

Powers given by this Act to the Court of Chancery to extend to the Lord Keeper.

19. And be it further enacted That such of the Rules hereinbefore directed to be adopted by the Court of Chancery as are numbered from five to twenty both inclusive shall be adopted by the Court of Exchequer which Court shall for the purposes of this Act draw upon the suitor's fund of that Court.

Certain Rules to be adopted by Court of Exchequer.

20. And be it further enacted That the powers and authorities contained in such last-mentioned Rules and given by this Act to the Lord Chancellor shall and may be exercised in like manner by and are hereby given to His Majesty's Court of Exchequer and may be exercised by the said Court or by the Lord Chief Baron thereof but such periodical visits only to be made to the Fleet prison in regard to prisoners for contempt of the said Court as the Lord Chief Baron shall direct and by such Officer or Officers of the Court as he shall nominate.

Powers contained in such last-mentioned Rules extended to the Court of Exchequer.

21. And be it further enacted That wherever this Act in describing or referring to any person or any conveyance transfer matter or thing uses the word importing the singular number or the masculine gender only the same shall be understood to include and shall be applied to several persons as well as one person and females as well as males and bodies corporate as well as individuals and several conveyances transfers matters or things respectively as well as one conveyance transfer matter or thing respectively unless there be something in the subject or context repugnant to such construction.

Rule for the interpretation of this Act.

ANNO UNDECIMO GEORGII IV. REGIS. ET ANNO
PRIMO GULIELMI IV. REGIS.

CAP. XL.

An Act for making better provision for the Disposal of the undisposed of Residues of the Effects of Testators. [16th July, 1830.]

ENGLISH TESTATORS'
RESIDUES ACT
ADOPTED.

“WHEREAS testators by their wills frequently appoint executors without making any express disposition of the residue of their personal estate And whereas executors so appointed become by law entitled to the whole residue of such personal estate and Courts of Equity have so far followed the law as to hold such executors to be entitled to retain such residue for their own use unless it appears to have been their testators intention to exclude them from the beneficial interest therein in which case they are held to be trustees for the person or persons (if any) who would be entitled to such estate under the Statute of Distributions if the testator has died intestate And whereas it is desirable that the Law should be extended in that respect” Be it therefore enacted by the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same That when

English Illusory Appointments Act Adopted, 11 G. 4 & 1 W. 4, c. 46.

After 1st September 1830 executors deemed to be trustees for persons entitled to any residue under the Statute of Distributions unless otherwise directed by will.

any person shall die after the first day of September next after the passing of this Act having by his or her will or any codicil or codicils thereto appointed any person or persons to be his or her executor or executors such executor or executors shall be deemed by Courts of Equity to be a trustee or trustees for the person or persons (if any) who would be entitled to the estate under the Statute of Distributions in respect of any residue not expressly disposed of unless it shall appear by the will or any codicil thereto the person or persons so appointed executor or executors was or were intended to take such residue beneficially.

Not to affect rights of executors where no person entitled to the residue.

2. Provided also and be it further enacted That nothing herein contained shall affect or prejudice any right to which any executor if this Act had not been passed would have been entitled in cases where there is not any person who would be entitled to the testator's estate under the Statute of Distributions in respect of any residue not expressly disposed of.

Not to extend to Scotland.

3. Provided always and be it further enacted That nothing herein contained shall extend to that part of the United Kingdom called Scotland.

ANNO UNDECIMO GEORGII IV. REGIS. ET ANNO
PRIMO GULIELMI IV. REGIS.

CAP. XLVI.

ENGLISH ILLUSORY
APPOINTMENTS ACT
ADOPTED.

An Act to alter and amend the Law relating to illusory Appointments. [16th July, 1830.]

Illusory appointments shall be valid in Equity as well as at Law.

“ **W**HEREAS by deeds wills and other instruments powers are frequently given to appoint real and personal property amongst several objects in such manner that none of the objects can be excluded by the donee of the power from a share of such property And whereas appointments in exercise of such powers whereby an unsubstantial illusory or nominal share of the property affected thereby is appointed to or left unappointed to devolve upon any one or more of the objects thereof are invalid in Equity although the like appointments are good and binding at Law” Be it therefore enacted by the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same That no appointment which from and after the passing of this Act shall be made in exercise of any power or authority to appoint any property real or personal amongst several objects shall be invalid or impeached in Equity on the ground that an unsubstantial illusory or nominal share only shall be thereby appointed to or left unappointed to devolve upon any one or more of the objects of such power but that every such appointment shall be valid and effectual in Equity as well as at Law notwithstanding that any one or more of the objects shall not thereunder or in default of such appointment take more than an unsubstantial illusory or nominal share of the property subjected to such power.

Not to affect any deed which declares the amount of the share

2. Provided always and be it further enacted That nothing in this Act contained shall prejudice or affect any provision in any deed will or other instrument creating any such power as aforesaid which shall declare the amount of the share or shares from which no object of the power shall be excluded.

English Payment of Debts out of Realty Act, 11 G. 4 & 1 W. 4, c. 47.

3. Provided also and be it further enacted and declared That nothing in this Act contained shall be construed deemed or taken at Law or in Equity to give any other validity force or effect to any appointment than such appointment would have had if a substantial share of the property affected by the power had been thereby appointed to or left unappointed to devolve upon any object of such power.

nor to give any other force to any appointment than the same would have had.

ANNO UNDECIMO GEORGII IV. REGIS. ET ANNO
PRIMO GULIELMI IV. REGIS.

CAP. XLVII.

An Act for consolidating and amending the Laws for facilitating the Payment of Debts out of Real Estate. [16th July, 1830.]

ENGLISH
PAYMENT OF DEBTS
OUT OF REALTY
ACT ADOPTED.

WHEREAS an Act was passed in the third and fourth years of King William and Queen Mary intituled “*An Act for the relief of Creditors against fraudulent Devises*” which was made perpetual by an Act passed in the sixth and seventh years of King William the Third intituled “*An Act for continuing several Laws therein mentioned*” and whereas an Act was passed by the Parliament of Ireland in the fourth year of Queen Anne intituled “*An Act for relief of Creditors against fraudulent Devises*” and whereas an Act was passed in the forty-seventh year of His late Majesty King George the Third intituled “*An Act for more effectually securing the Payment of Debts of Traders*” and whereas it is expedient that the provisions of the said recited Acts should be enlarged and that the said recited Acts should be repealed in order that all the provisions relating to this matter should be consolidated in one Act Be it therefore enacted by the King’s Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same That the said several recited Acts shall be and the same are hereby repealed but so as not to affect any of the provisions and remedies of the said Acts or any of them to the benefit of which any persons are entitled as against any estate or interest in any lands tenements hereditaments or other real estate of any person or persons who died before the passing of this Act.

3 & 4 W. and M. c. 11.

6 & 7 W. III. c. 14.

4 Anne c. 5 (1.)

47 G. III. c. 74.

Recited Acts repealed.

2. And whereas it is not reasonable or just that by the practice or contrivance of any debtors their creditors should be defrauded of their just debts and nevertheless it hath often so happened that where several persons having by bonds covenants or other specialties bound themselves and their heirs and have afterwards died seised in fee simple of and in manors messuages lands tenements and hereditaments or had power or authority to dispose of or charge the same by their wills or testaments have to the defrauding of such their creditors by their wills or testaments devised the same or disposed thereof in such manner as such creditors have lost their said debts for remedying of which and for the maintenance of just and upright dealing be it therefore further enacted That all wills and testamentary limitations dispositions or appointments already made by persons now in being or hereafter to be made by any person or persons whomsoever of or concerning any manors messuages lands tenements or hereditaments or any rent profit term or charge out of the same whereof any person or persons at the time of his her or their decease shall be seised in fee simple in possession reversion or remainder or have power to dispose of the same by his her or their last wills or testaments shall be deemed

For remedying frauds committed on creditors by wills.

deemed

English Payment of Debts out of Realty Act, 11 G. 4 & 1 W. 4, c. 47.

deemed or taken (only as against such person or persons bodies politic or corporate and his and their heirs successors executors administrators and assigns and every of them with whom the person or persons making any such wills or testaments limitations dispositions or appointments shall have entered into any bond covenant or other specialty binding his her or their heirs) to be fraudulent and clearly absolutely and utterly void frustrate and of none effect any pretence colour feigned or presumed consideration or any other matter or thing to the contrary notwithstanding.

Enabling creditors to recover upon bonds &c.

3. And for the means that such creditors may be enabled to recover upon such bonds covenants and other specialties be it further enacted That in the cases before mentioned every such creditor shall and may have and maintain his her and their action and actions of debt or covenant upon the said bonds covenants and specialties against the heir and heirs at law of such obligor or obligors covenantor or covenantors and such devisee and devisees or the devisee or devisees of such first mentioned devisee or devisees jointly by virtue of this Act and such devisee and devisees shall be liable and chargeable for a false plea by him or them pleaded in the same manner as any heir should have been for any false plea by him pleaded or for not confessing the lands or tenements to him descended.

If there is no heir at law actions may be maintained against the devisee.

4. And be it further enacted That if in any case there shall not be any heir at law against whom jointly with the devisee or devisees a remedy is hereby given in every such case every creditor to whom by this Act relief is so given shall and may have and maintain his her and their action and actions of debt or covenant as the case may be against such devisee or devisees solely and such devisee or devisees shall be liable for false plea as aforesaid.

Not to affect limitations for just debts or portions for children.

5. Provided always and be it further enacted That where there hath been or shall be any limitation or appointment devise or disposition of or concerning any manors messuages lands tenements or hereditaments for the raising or payment of any real and just debt or debts or any portion or portions sum or sums of money for any child or children of any person according to or in pursuance of any marriage contract or agreement in writing *bonâ fide* made before such marriage the same and every of them shall be in full force and the same manors messuages lands tenements and hereditaments shall and may be holden and enjoyed by every such person or persons his her and their heirs executors administrators and assigns for whom the said limitation appointment devise or disposition was made and by his her and their trustee or trustees his her and their heirs executors administrators and assigns for such estate or interest as shall be so limited or appointed devised or disposed until such debt or debts portion or portions shall be raised paid and satisfied any thing in this Act contained to the contrary notwithstanding.

Heir at law to be answerable for debts although he may sell estate before action brought.

6. And be it further enacted That in all cases where any heir at law shall be liable to pay the debts or perform the covenants of his ancestors in regard of any lands tenements or hereditaments descended to him and shall sell alien or make over the same before any action brought or process sued out against him such heir at law shall be answerable for such debt or debts or covenants in an action or actions of debt or covenant to the value of the said lands so by him sold aliened or made over in which cases all creditors shall be preferred as in actions against executors and administrators and such execution shall be taken out upon any judgment or judgments so obtained against such heir to the value of the said land as if the same were his own proper debt or debts saving that the lands tenements and hereditaments *bonâ fide* aliened before the action brought shall not be liable to such execution.

English Payment of Debts out of Realty Act, 11 G. 4 & 1 W. 4, c. 47.

7. Provided always and be it further enacted That where any action of debt or covenant upon any specialty is brought against the heir he may plead riens per descent at the time of the original writ brought or the bill filed against him any thing herein contained to the contrary notwithstanding and the plaintiff in such action may reply that he had lands tenements or hereditaments from his ancestor before the original writ brought or bill filed and if upon the issue joined thereupon it be found for the plaintiff the jury shall enquire of the value of the lands tenements or hereditaments so descended and thereupon judgment shall be given and execution shall be awarded as aforesaid but if judgment be given against such heir by confession of the action without confessing the assets descended or upon demurrer or *nihil dicit* it shall be for the debt and damage without any writ to inquire of the lands tenements or hereditaments so descended.

Where an action of debt is brought against the heir he may plead riens per descent.

8. Provided always and be it further enacted That all and every the devisee and devisees made liable by this Act shall be liable and chargeable in the same manner as the heir at law by force of this Act notwithstanding the lands tenements and hereditaments to him or them devised shall be aliened before the action brought.

Devisees to be liable the same as heirs at law.

9. And be it further enacted That from and after the passing of this Act where any person being at the time of his death a trader within the true intent and meaning of the laws relating to bankrupts shall die seised of or entitled to any estate or interest in lands tenements or hereditaments or other real estate which he shall not by his last will have charged with or devised subject to or for the payment of his debts and which would be assets for the payment of his debts due on any specialty in which the heirs were bound the same shall be assets to be administered in Courts of Equity for the payment of all the just debts of such person as well debts due on simple contract as on specialty and that the heir or heirs at law devisee or devisees of such debtor and the devisee or devisees of such first-mentioned devisee or devisees shall be liable to all the same suits in Equity at the suit of any of the creditors of such debtor whether creditors by simple contract or by specialty as they are liable to at the suit of creditors by specialty in which the heirs were bound provided always that in the the administration of assets by Courts of Equity under and by virtue of this provision all creditors by specialty in which the heirs are bound shall be paid the full amount of the debts due to them before any of the creditors by simple contract or by specialty in which the heirs are not bound shall be paid any part of their demands.

Traders' estates shall be assets to be administered in Courts of Equity.

Creditors by specialty to be paid first.

10. And be it further enacted That from and after the passing of this Act where any action suit or other proceeding for the payment of debts or any other purpose shall be commenced or prosecuted by or against any infant under the age of twenty-one years either alone or together with any other person or persons the parol shall not demur but such action suit or other proceeding shall be prosecuted and carried on in the same manner and as effectually as any action or suit could before the passing of this Act be carried on or prosecuted by or against any infant where according to law the parol did not demur.

Parol shall not demur by or against infants.

11. And be it further enacted That where any suit hath been or shall be instituted in any Court of Equity for the payment of any debts of any person or persons deceased to which their heir or heirs devisee or devisees may be subject or liable and such Court of Equity shall decree the estates liable to such debts or any of them to be sold for satisfaction of such debt or debts and by reason of the infancy of any such heir or heirs devisee or devisees an immediate conveyance thereof cannot as the law at present stands be compelled in every such case such Court shall direct and if necessary compel such infant or infants to convey such estates so to be sold (by all proper assurances

Infants to make conveyances under order of the Court.

in

English Trustees & Mortgagees Conveyances Act, 11 G. 4 & 1 W. 4, c. 60.

in the law) to the purchaser or purchasers thereof and in such manner as the said Court shall think proper and direct and every such infant shall make such conveyance accordingly and every such conveyance shall be as valid and effectual to all intents and purposes as if such person or persons being an infant or infants was or were at the time of executing the same of the full age of twenty-one years.

Persons having a life interest may convey the fee if the estate is ordered to be sold.

12. And be it further enacted That where any lands tenements or hereditaments hath been or shall be devised in settlement by any person or persons whose estate under this Act or by law or by his or their will or wills shall be liable to the payment of any of his or their debts and by such devise shall be vested in any person or persons for life or other limited interest with any remainder limitation or gift over which may not be vested or may be vested in some person or persons from whom a conveyance or other assurance of the same cannot be obtained or by way of executory devise and a decree shall be made for the sale thereof for the payment of such debts or any of them it shall be lawful for the Court by whom such decree shall be made to direct any such tenant for life or other person having a limited interest or the first executory devisee thereof to convey release assign surrender or otherwise assure the fee simple or other the whole interest or interests so to be sold to the purchaser or purchasers or in such manner as the said Court shall think proper and every such conveyance release surrender assignment or other assurance shall be as effectual as if the person who shall make and execute the same were seised or possessed of the fee simple or other whole estate so to be sold.

Not to repeal Act 33 Geo. I. (I.) relating to debts due to bankers.

13. And be it further enacted That nothing in this Act shall extend or be deemed or construed to extend to repeal or alter an Act made by the Parliament of Ireland in the thirty-third year of the reign of King George the First intituled "*An Act for the better securing the payment of Bankers' Notes and for providing a more effectual remedy for the security and payment of the Debts due by Bankers.*"

ANNO UNDECIMO GEORGII IV. REGIS. ET ANNO
PRIMO GULIELMI IV. REGIS.

CAP. LX.

ENGLISH TRUSTEES
AND MORTGAGEES
CONVEYANCES
ACT ADOPTED.

An Act for amending the Laws respecting Conveyances and Transfers of Estates and Funds vested in Trustees and Mortgagees and for enabling Courts of Equity to give effect to their Decrees and Orders in certain cases. [23rd July, 1830.]

6 Geo. IV. c. 74.

WHEREAS an Act was passed in the sixth year of the reign of His late Majesty King George the Fourth intituled "*An Act for consolidating and amending the Laws relating to Conveyances and Transfers of Estates and Funds vested in Trustees who are Infants Idiots Lunatics or Trustees of unsound mind or who cannot be compelled or refuse to act and also the Laws relating to Stocks and Securities belonging to Infants Idiots Lunatics and Persons of unsound mind*" And whereas an Act was passed in the Parliament of Ireland in the second year of the reign of King George the First intituled "*An Act to enable Infants who are seised or possessed of Estates in Fee in Trust or by way of Mortgage to make conveyances of such Estates*" And whereas an Act was passed in the Parliament

2 Geo. I. (I.)

English Trustees & Mortgagees Conveyances Act, 11 G. 4 & 1 W. 4, c. 60.

Parliament of Ireland in the fifth year of the reign of King George the Second intituled “*An Act to enable Idiots and Lunatics who* ^{5 Geo. II. (I.)} “*are seised or possessed of Estates in Fee or for Lives or Terms of* “*Years in Trust or by way of Mortgage to make Conveyances Sur-* “*renders or Assignments of Estates and to prevent delay in Suits in* “*Equity where Trustees are not found*” And whereas an Act was passed in the seventh year of the reign of His late Majesty King George the Fourth intituled “*An Act to amend the Laws in force in* ^{7 Geo. IV. c. 43.} “*Ireland relating to Conveyances and Transfers of Estates and Funds* “*vested in Trustees*” And whereas it is expedient that the provisions of the said Acts should be consolidated and enlarged Be it therefore enacted by the King’s Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same That the said recited Acts shall be and the same are hereby repealed except so far as the same relate to stock belonging beneficially to infants or lunatics and also except as to such proceedings of any description under the same Acts respectively as shall have been commenced before the passing of this Act and which may be proceeded in according to the provisions of the said recited Acts respectively or according to the provisions of this Act as shall be thought expedient Provided always that the several Acts repealed by the said first-recited Act shall not be revived.

Recited Acts repealed except as herein mentioned.

2. “And inasmuch as in order to avoid unnecessary repetition ^{Rules for the interpretation of this Act.} “certain words are used in this Act as describing subjects some of “which according to their usual sense such words would not embrace” for the understanding of the sense attached to them in this Act Be it further enacted That the provisions of this Act shall extend to and include the several other estates and persons matters and things hereinafter mentioned (that is to say) those relating to land to any manor messuage tenement hereditament or real property of whatever tenure and to property of every description transferable otherwise than in books kept by any company or society or any share thereof or interest therein those relating to stock to any fund annuity or security transferable in books kept by any company or society established or to be established or to any money payable for the discharge or redemption thereof or any share or interest therein those relating to dividends to interest or other annual produce those relating to a conveyance to any fine recovery release surrender assignment or other assurance including all acts deeds and things necessary for making and perfecting the same those relating to a transfer to any assignment payment or other disposition those relating to a lunatic to any idiot or person of unsound mind or incapable of managing his affairs those relating to an heir to any devisee or other real representative by the common law or by custom or otherwise and those relating to an executor to any administrator or other personal representative unless there be something in the subject or context repugnant to such construction and whenever this Act in describing or referring to any trustee or other person or any trust land conveyance matter or thing uses the word importing the singular number or the masculine gender only the same shall be understood to include and shall be applied to several persons as well as one person and females as well as males and bodies corporate as well as individuals and several trust lands stocks conveyances matters or things respectively as well as one trust land stock conveyance matter or thing respectively unless there be something in the subject or context repugnant to such construction.

3. And be it further enacted That where any person seised or possessed of any land upon any trust or by way of mortgage shall be lunatic it shall be lawful for the committee of the estate of such ^{Where trustees or mortgagees of land are lunatic the Lord Chancellor may} person

direct the committees
of such persons to
convey land

person by the direction of the Lord Chancellor of Great Britain being intrusted by virtue of the King's Sign Manual with the care and commitment of the custody of the persons and estates of persons found idiot lunatic or of unsound mind to convey such land in the place of such trustee or mortgagee to such person and in such manner as the said Lord Chancellor shall think proper and every such conveyance shall be as effectual as if the trustee or mortgagee being lunatic had been of sane mind memory and understanding and had made and executed the same.

or may direct the
committee or other
person to transfer
stocks or funds
standing in the name
of a lunatic trustee
and receive the divi-
dends.

4. And be it further enacted That where any stock shall be standing in the name of any person who shall be a lunatic as a trustee or executor alone or jointly with any other person or shall continue to be standing in the name of a deceased person whose executor shall be lunatic or shall be otherwise vested in or transferable by any person who shall be lunatic for the benefit of some other person it shall be lawful for the Lord Chancellor intrusted as aforesaid to direct the committee of the estate of any such lunatic to transfer or join in transferring such stock to or into the name of such person and in such manner as the said Lord Chancellor shall think proper and also to order such person appointed as aforesaid to receive and pay over or join in receiving and paying over the dividends of such stock in such manner as the said Lord Chancellor shall direct and every such transfer receipt and payment shall be as effectual as if the person being lunatic had been of sane mind memory and understanding and had transferred received and paid or joined in transferring receiving and paying such stock or dividends.

Lord Chancellor
before inquisition
may appoint a person
to convey or transfer.

5. And be it further enacted That where any such person as aforesaid being lunatic shall not have been found such by inquisition it shall be lawful for the Lord Chancellor intrusted as aforesaid to direct any person whom the said Lord Chancellor may think proper to appoint for that purpose in the place of such last-mentioned lunatic to convey or join in conveying such land or to transfer or join in transferring such stock and receive and pay over the dividends thereof as hereinbefore is mentioned and every such conveyance transfer receipt or payment shall be as effectual as if the said person being lunatic had been of sane mind memory and understanding and had made done or executed the same but where any sum of money shall be payable to such lunatic no such last-mentioned order shall be made if such sum of money shall exceed seven hundred pounds and where any sum not exceeding seven hundred pounds shall be payable to such lunatic and any such order shall be made the Lord Chancellor intrusted as aforesaid shall direct to whom and in what manner the money so payable shall be paid and every payment made in pursuance of such direction shall effectually discharge the person paying the same from the money which he shall so pay.

Infant trustees or
mortgagees em-
powered to convey by
the direction of the
Court of Chancery.

6. And be it further enacted That where any person seised or possessed of any land upon any trust or by way of mortgage shall be under the age of twenty-one years it shall be lawful for such infant by the direction of the Court of Chancery to convey the same to such person and in such manner as the said Court shall think proper and every such conveyance shall be as effectual as if the infant trustee or mortgagee had been at the time of making or executing the same of the age of twenty-one years.

Infant trustees or
mortgagees of land
within the juris-
diction of the Courts
of Lancaster Chester
Durham and Wales.

7. And be it further enacted That where any person seised or possessed upon any trust or by way of mortgage of any land situated within the Duchy of Lancaster or the Counties Palatine of Chester Lancaster and Durham respectively or the Principality of Wales shall be under the age of twenty-one years it shall be lawful for such infant by the direction of the Court of the Duchy Chamber of Lancaster the Court

English Trustees & Mortgagees Conveyances Act, 11 G. 4 & 1 W. 4, c. 60.

Court of Exchequer in the County Palatine of Chester the Court of Chancery in the County Palatine of Lancaster the Court of Chancery in the County Palatine of Durham and the several Courts of Great Session in Wales respectively as to premises within the jurisdiction of the same Courts respectively to convey such lands to such person and in such manner as the said Courts respectively shall think proper in like manner as such infant is hereinbefore empowered to convey the same by the direction of the Court of Chancery.

8. And be it further enacted That where any person seised of any land upon any trust shall be out of the jurisdiction of or not amenable to the process of the Court of Chancery or it shall be uncertain where there were several trustees which of them was the survivor or it shall be uncertain whether the trustee last known to have been seised as aforesaid be living or dead or if known to be dead it shall not be known who is his heir or if any trustee seised as aforesaid or the heir of any such trustee shall neglect or refuse to convey such land for the space of twenty-eight days next after a proper deed for making such conveyance shall have been tendered for his execution by or by an agent duly authorized by any person entitled to require the same then and in every or any such case it shall be lawful for the said Court of Chancery to direct any person whom such Court may think proper to appoint for that purpose in the place of the trustee or heir to convey such land to such person and in such manner as the said Court shall think proper and every such conveyance shall be as effectual as if the trustees seised as aforesaid or his heir had made and executed the same.

When trustees of real estates are out of the jurisdiction or it is uncertain whether they be alive or who may be the heir the Court of Chancery may appoint a person to convey.

9. And be it further enacted That where any person possessed of any land for any term of years upon any trust shall be out of the jurisdiction of or not amenable to the process of the Court of Chancery or it shall be uncertain whether the trustee last known to have been possessed as aforesaid be living or dead or if any trustee possessed as aforesaid or the executor of any such trustee shall neglect or refuse to assign or surrender such land for the space of twenty-eight days next after a proper deed for making such assignment or surrender shall have been tendered for his execution by or by an agent duly authorized by any person entitled to require the same then and in every or any such case it shall be lawful for the said Court of Chancery to direct any person whom such Court may think proper to appoint for that purpose in the place of the trustee or executor to assign or surrender such land to such person and in such manner as the Court shall think proper and every such assignment or surrender shall be as effectual as if the trustee possessed as aforesaid or his executor had made and executed the same.

When trustees of leasehold estates are out of the jurisdiction &c.

10. And be it further enacted that where any person in whose name as a trustee or executor (either alone or together with the name of any other person) or in the name of whose testator (whether as a trustee or beneficially) any stock shall be standing or any other person who shall otherwise have power to transfer or join with any other person in transferring any stock to which some other person shall be beneficially entitled shall be out of the jurisdiction of or not amenable to the process of the Court of Chancery or it shall be uncertain whether such person be living or dead or if any such trustee or executor or other person shall neglect or refuse to transfer such stock or receive and pay over the dividends thereof to the person entitled thereto or to any part thereof respectively or as he shall direct for the space of thirty-one days next after a request in writing for that purpose shall have been made to any such trustee or executor or other person by the person entitled as aforesaid then and in every or any such case it shall be lawful for the Court of Chancery to direct such person as

Transfer of stocks or funds.

English Trustees & Mortgagees Conveyances Act, 11 G. 4 & 1 W. 4, c. 60.

the said Court shall think proper to appoint for that purpose in the place of such trustee or executor or other person to transfer or join in transferring such stock to or into the name of such person and in such manner as such Court shall direct and also to order any person appointed as aforesaid to receive and pay over or join in receiving and paying over the dividends of such stock in such manner as the said Court shall direct and every such transfer receipt and payment shall be as effectual as if the said trustee or executor or other person had transferred or joined in transferring such stock or had received and paid or joined in receiving and paying the said dividends.

Directions or orders of the Court of Chancery or by the Lord Chancellor &c. under the authority of this Act to be made upon petition.

11. And be it further enacted That every direction or order to be made in pursuance of this Act by the Lord Chancellor intrusted as aforesaid or by the Court of Chancery or by any other Court hereinbefore mentioned shall be signified by an order to be made in any cause depending in such Court respectively or upon petition in the lunacy or matter and such person as hereinafter is mentioned shall be the petitioner whether such person be or be not under any legal disability (that is to say) if the same shall relate to a conveyance transfer receipt or payment to or in such manner as may be directed by any person beneficially entitled then upon the petition of the person or some or one of the persons beneficially entitled to the land stock or dividends to be conveyed transferred received or paid and if the same shall relate to a conveyance in order to vest any land or stock in a new trustee duly appointed by virtue of some power or authority in some instrument creating or declaring the trusts of such land or stock or by the Court of Chancery either alone or together with any continuing trustee then upon the petition either of the trustee or some or one of the trustees in whom the same shall be proposed to be vested or of any person having an interest therein and if the same shall relate to the conveyance of an estate in mortgage then upon the petition of the person or some or one of the persons entitled to the equity of redemption thereof or of the person or some or one of the persons entitled to the monies thereby secured or the guardian or committee or some or one of the guardians or committees of the person entitled to such monies if an infant or lunatic.

Lord Chancellor or Court may direct a bill to be filed to establish the right.

12. Provided always nevertheless and be it further enacted That where on account of the length of time which shall have elapsed since the creation or last declaration of a trust the title of the person claiming a conveyance or transfer may appear to require deliberate investigation in the presence of all parties interested in order to prevent the vesting of the legal estate in a person who may not really be entitled to the benefit thereof or if under other circumstances it shall appear to the Lord Chancellor intrusted as aforesaid or the Court of Chancery or any other Court hereinbefore mentioned not proper to make an order upon petition it shall be lawful for such Lord Chancellor or any such Court to direct a bill to be filed to establish the right of the party seeking the conveyance or transfer and upon the establishment by a decree of such right by the same decree or any order in the cause or in the lunacy or both to direct a conveyance or transfer to be made according to the intent of this Act.

Committees infants &c. may be compelled to convey transfer &c.

13. And be it further enacted That any committee infant or other person directed by virtue of this Act to make or join in making any conveyance or transfer or receipt or payment shall and may be compelled by the order to be obtained as hereinbefore is mentioned to make and execute the same in like manner as trustees of full age and of sane mind memory and understanding are compellable to convey transfer or receive and pay over the trust estates or funds vested in them respectively.

English Trustees & Mortgagees Conveyances Act, 11 G. 4 & 1 W. 4, c. 60.

14. And be it further enacted That where the person or any of the persons to whom any money shall be payable in or towards the redemption or discharge of any mortgage or incumbrance of which a release or conveyance shall be obtained under the powers of this Act shall be an infant it shall be lawful for the person by whom such money shall be payable to pay the same into the Bank of England in the name and with the privity of the Accountant General of the Court of Chancery or of the Court of Exchequer to be placed to his account in trust in any cause then depending in the said Court concerning such money or if there shall be no such cause to the credit of such infant subject to the order and disposition of the said Court respectively or to such person or persons or in such other manner as the said Court respectively shall direct and the said Court shall and is hereby empowered to order any money which shall so be paid into Court to be invested in the public funds and to order distribution thereof or payment of the dividends thereof as to the said Court shall seem reasonable and every cashier of the Bank of England who shall receive any such money is hereby required to give to the person paying the same a receipt for such money and such receipt shall be an effectual discharge for the money therein respectively expressed to have been received.

Mortgage money belonging to infants to be paid into the bank or as the Court shall direct.

15. And be it further enacted That every person being in other respects within the meaning of this Act shall be and be deemed to be a trustee within the meaning of this Act notwithstanding he may have some beneficial estate or interest in the same subject or may have some duty as trustee to perform but in every such case and in every case of a mortgagee (not being a naked trustee) it shall be in the discretion of the said Lord Chancellor intrusted as aforesaid or the said Court of Chancery if under the circumstances it shall seem requisite to direct a bill to be filed to establish the right of the party seeking the conveyance or transfer and not to make the order for such conveyance or transfer unless by the decree to be made in such cause or until after such decree shall have been made.

Act to extend to trustees having an interest or having duty to perform.

16. And be it further enacted That where any land shall have been contracted to be sold and the vendor or any of the vendors shall have departed this life either having received the purchase money for the same or some part thereof or not having received any part thereof and a specific performance of such contract either wholly or as far as the same remains to be executed or as far as the same by reason of the infancy can be executed shall have been decreed by the Court of Chancery in the life time of such vendor or after his decease and where one person shall have purchased an estate in the name of another but the nominal purchaser shall on the face of the conveyance appear to be the real purchaser and there shall be no declaration of trust from him and a decree of the said Court either before or after the death of such nominal purchaser shall have declared such nominal purchaser to be a trustee for the real purchaser then and in every such case the heir of such vendor or such nominal purchaser or his heir in whom the premises shall be vested shall be and be deemed to be a trustee for the purchaser within the meaning of this Act.

Representatives of vendors to be trustees within this Act after a decree for specific performance and persons in whose names purchases are made to be such trustees.

17. And be it further enacted That where any land shall have been contracted to be sold and the vendor or any of the vendors shall have departed this life having devised the same in settlement so as to be vested in any person for life or other limited interest with any remainder limitation or gift over which may not be vested or may be vested in some person from whom a conveyance of the same cannot be obtained or by way of executory devise and a specific performance of such contract either wholly or so far as the same remained to be executed shall have been decreed by the Court of Chancery it shall be lawful

Tenants for life &c. of estates devised in settlement and contracted to be sold may be directed to convey after a decree for specific performance.

English Trustees & Mortgagees Conveyances Act, 11 G. 4 & 1 W. 4, c. 60.

lawful for the Court by whom such decree shall be made by the same or any other decree or any decretal order or upon petition in the cause to direct any such tenant for life or other person having a limited interest or the first executory devisee thereof to convey the fee simple or other the whole estate contracted to be sold to the purchaser or in such manner as the said Court shall think proper and every such conveyance shall be as effectual as if the person who shall make the same were seised of the fee simple or other the whole estate contracted to be sold.

Act to extend to other constructive and resulting trusts when declared by decree.

18. And be it further enacted That the several provisions hereinbefore contained shall extend to every other case of a constructive trust or trust arising or resulting by implication of law but in every such case where the alleged trustee has or claims a beneficial interest adversely to the party seeking a conveyance or transfer no order shall be made for the execution of a conveyance or transfer by such alleged trustee until after it has been declared by the Court of Chancery in a suit regularly instituted in such Court that such person is a trustee for the person so seeking a conveyance or transfer but this Act shall not extend to cases upon partition or cases arising out of the doctrine of election in Equity or to a vendor except in any case hereinbefore expressly provided for.

Husbands of female trustees to be deemed trustees within the Act.

19. And be it further enacted That where any feme covert would be a trustee mortgagee heir or executor within the provisions of this Act if she were an infant or lunatic or out of the jurisdiction or not amenable to the process of the Court of Chancery or Exchequer or had refused or neglected as aforesaid to execute or make such conveyance transfer receipt or payment as hereinbefore is mentioned and the concurrence of her husband shall be necessary in any conveyance transfer receipt or payment which ought to be made or executed by her as such trustee mortgagee heir or executor then and in any such case such husband whether under any disability or not shall be and be deemed to be a trustee within the meaning of this Act.

Provisions as to lunacy to extend to all persons compellable to convey.

20. And be it further enacted That the provisions hereinbefore contained for obtaining conveyances from any person being lunatic shall extend to and include all persons being lunatic who by force of any Law for payment of debts out of real estate would or hereafter may be compellable to convey any land if of sound mind.

Act to extend to petitions in cases of Charity and Friendly Societies.

21. And be it further enacted That the provisions hereinbefore contained shall extend and be construed to extend to all cases of petitions in which the Lord Chancellor intrusted as aforesaid or the Court of Chancery or any of the Judges thereof is by Law authorized and empowered to grant relief and make summary orders without suit either in matters of charity or relative to or for the better security or for the application receipt payment or transfer of any of the funds thereof or in matters relative to any Benefit or Friendly Societies or for the better security or for the application receipt payment or transfer of any of the funds thereof.

In certain cases the Lord Chancellor or Court of Chancery may appoint new trustees upon petition.

22. "And whereas cases may occur upon applications by
" petition under this Act for a conveyance or transfer where the
" recent creation or declaration of the trust or other circumstances
" may render it safe and expedient for the Lord Chancellor intrusted
" as aforesaid or the Court of Chancery (as the case may require) to
" direct by an order upon such petition a conveyance or transfer to
" be made to a new trustee or trustees without compelling the parties
" seeking such appointment to file a bill for that purpose although
" there is no power in any deed or instrument creating or declaring
" the trusts of such land or stock to appoint new trustees" Be it
therefore further enacted That in any such case it shall be lawful
for the Lord Chancellor intrusted as aforesaid or the said Court of
Chancery

English Trustees & Mortgagees Conveyances Act, 11 G. 4 & 1 W. 4, c. 60.

Chancery to appoint any person to be a new trustee by an order to be made on a petition to be presented for a conveyance or transfer under this Act after hearing all such parties as the said Court shall think necessary and thereupon a conveyance or transfer shall and may be made and executed according to the provisions hereinbefore contained to or so as to vest such land or stock in such new trustee either alone or jointly with any surviving or continuing trustee as effectually and in the same manner as if such new trustee had been appointed under a power in any instrument creating or declaring the trusts of such land or stock or in a suit regularly instituted.

23. And be it further enacted That where all the persons in whom any land may have been vested in trust for any charity or charitable or public purpose shall be dead it shall be lawful for the Court of Chancery on the petition of the persons or body administering such charity or superintending such public purpose or of any person on behalf thereof to direct any Master or other Officer of the said Court to cause two successive advertisements to be inserted in the *London Gazette* and in one or more of the newspapers circulated in the county city or place where such land shall be situated giving notice that the representative of the last surviving trustee do within twenty-eight days appear or give notice of his title to such Master or other Officer and prove his pedigree or other title as trustee and if no person shall appear to give such notice within such twenty-eight days or the person who may appear or give such notice shall not within thirty-one days after such appearance or notice prove his title to the satisfaction of such Master or other Officer then and in such case it shall be lawful for the said Court to appoint any new trustees for such charity or charitable or public purpose and such land may be conveyed to such new trustees by any person whom the said Court respectively may direct for that purpose by virtue of the provisions in this Act without the necessity of any decree.

Court of Chancery empowered to appoint new trustees of charities.

24. And be it further enacted That where in any suit commenced or to be commenced in the Court of Chancery it shall be made to appear to the Court by affidavit that diligent search and enquiry has been made after any person made a defendant who is only a trustee to serve him with the process of the Court and that he cannot be found it shall be lawful for the said Court to hear and determine such cause and to make such absolute decree therein against every person who shall appear to them to be only a trustee and not otherwise concerned in interest in the matter in question in such and the same manner as if such trustee had been duly served with the process of the Court and had appeared and filed his answer thereto and had also appeared by his Counsel and Clerk at the hearing of such cause Provided always That no such decree shall bind affect or anywise prejudice any person against whom the same shall be made without service of process upon him as aforesaid his heirs executors or administrators for or in respect of any estate right or interest which such person shall have at the time of making such decree for his own use or benefit or otherwise than as a trustee as aforesaid.

Manner of proceeding where trustees defendants in Equity cannot be found.

Proviso.

25. And be it further enacted That the Lord Chancellor intrusted as aforesaid and the Court of Chancery may order the costs and expenses of and relating to the petitions orders directions conveyances and transfers to be made in pursuance of this Act or any of them to be paid and raised out of or from the land or stock or the rents or dividends in respect of which the same respectively shall be made or in such other manner as the said Lord Chancellor or Court shall think proper.

Costs may be directed to be paid.

26. And be it further enacted That the powers and authorities given by this Act to the Lord Chancellor of Great Britain intrusted

Powers given to the Lord Chancellor of Great Britain

as

English Trustees & Mortgagees Conveyances Act, 11 G. 4 & 1 W. 4, c. 60.

as aforesaid shall extend to all land and stock within any of the Dominions Plantations and Colonies belonging to His Majesty (except Scotland and Ireland).

which may be
exercised by the Lord
Chancellor of Ireland.

27. And be it further enacted That the powers and authorities given by this Act to the Lord Chancellor of Great Britain intrusted as aforesaid shall and may be exercised in like manner by and are hereby given to the Lord Chancellor of Ireland intrusted as aforesaid with respect to all land and stock in Ireland.

Powers given to the
Lord Chancellor to
extend to the Lord
Keeper and Com-
missioners.

28. And be it further enacted That the powers and authorities given by this Act to the Lord Chancellor of Great Britain intrusted as aforesaid shall and may be exercised in like manner by and are hereby given to the Lord Keeper or Commissioners of the Great Seal of Great Britain for the time-being intrusted as aforesaid and the powers and authorities given by this Act to the Lord Chancellor of Ireland intrusted as aforesaid shall and may be exercised in like manner by and are hereby given to the Lord Keeper or Commissioners of the Great Seal of Ireland for the time-being intrusted as aforesaid.

Powers given to the
Court of Chancery
in England

29. And be it further enacted That the powers and authorities given by this Act to the Court of Chancery in England shall extend to all land and stock within any of the Dominions Plantations and Colonies belonging to His Majesty (except Scotland).

which may be exer-
cised by the Court of
Exchequer.

30. And be it further enacted That the powers and authorities given by this Act to the Court of Chancery and the provisions contained in this Act relating to the said Court shall and may be exercised in like manner by and are hereby given and extended to the Court of Exchequer.

Powers given to
Courts in England
may be exercised
by the same Courts
in Ireland.

31. And be it further enacted That the powers and authorities given by this Act to the Courts of Chancery and Exchequer in England and the provisions contained in this Act relating to the same Courts shall and may be exercised in like manner and are hereby given and extended to the several Courts of Chancery and Exchequer in Ireland with respect to all land and stock in Ireland.

Who shall be named
in the orders of the
Court for making
transfers.

32. Provided always and be it further enacted That in all cases in which orders shall be made in pursuance of this Act for the transfer of stock the person to be named in such order for making such transfer shall either be the committee of the estate of the person being lunatic in whose place such transfer shall be made or a co-trustee or co-executor of the person in whose place such person shall be directed to transfer or some officer of the company or society in whose books the same respectively shall be directed to be made and where such transfer shall be directed to be made in books kept by the Governor and Company of the Bank of England such officer shall be the Secretary or Deputy Secretary or Accountant General for the time-being of the said Governor and Company or his Deputy.

Act to be an in-
demnity to the bank
and other companies.

33. And be it further enacted That this Act shall be and is hereby declared to be a full and complete indemnity and discharge to the Governor and Company of the Bank of England and all other companies and societies and their officers and servants for all acts and things done or permitted to be done pursuant thereto and that such acts and things shall not be questioned or impeached in any Court of Law or Equity to their prejudice or detriment.

English Persons under Disability Act Adopted, 11 G. 4 & 1 W. 4, c. 65.

ANNO UNDECIMO GEORGII IV. REGIS. ET ANNO
PRIMO GULIELMI IV. REGIS.

CAP. LXV.

An Act for consolidating and amending the Law relating to
Property belonging to Infants Femes Coverts Idiots
Lunatics and Persons of unsound mind. [23rd July, 1830.]

ENGLISH PROPERTY
OF PERSON UNDER
DISABILITY ACT
ADOPTED.

WHEREAS an Act was passed in the ninth year of the reign
of King George the First intituled “*An Act to enable Lords* 9 Geo. I. c. 29.
“*of Manors more easily to recover their Fines and to exempt Infants*
“*and Femes Covert from forfeitures of their Copyhold Estates in*
“*particular cases*” And whereas an Act was passed in the twenty-
ninth year of the reign of King George the Second intituled “*An* 29 Geo. II. c. 31.
“*Act to enable Infants Lunatics and Femes Covert to surrender*
“*Leases in order to renew the same*” And whereas an Act was passed
in the eleventh year of the reign of King George the Third intituled
“*An Act to enable Lunatics entitled to renew Leases their Guardians* 11 Geo. III. c. 20.
“*and Committees to accept of surrenders of old Leases and grant new*
“*ones*” And whereas an Act was passed in the Parliament of Ireland
in the eleventh year of the reign of Queen Anne intituled “*An* 11 Anne (I) c. 3.
“*Act to enable Guardians and others to renew Leases for Lives*”
And whereas an Act was passed in the forty-third year of the reign
of King George the Third intituled “*An Act to authorize the Sale* 43 Geo. III. c. 75.
“*or Mortgage of the Estates of Persons found Lunatic by Inquisition*
“*in England or Ireland respectively and the granting of Leases of*
“*the same*” And whereas an Act was passed in the forty-seventh
year of the reign of King George the Third intituled “*An Act con-* 47 Geo. III. c. 8 § 2.
“*cerning common Recoveries suffered in Copyhold or customary Courts*
“*by Attorney*” And whereas an Act was passed in the fifty-ninth
year of the reign of King George the Third intituled “*An Act con-* 59 Geo. III. c. 80.
“*cerning common Recoveries to be suffered by Attorney in Courts of*
“*Ancient Demesne and to explain an Act of His present Majesty*
“*relative to the Sale or Mortgaging of Estates of Lunatics*” And
whereas an Act was passed in the sixth year of the reign of His late
Majesty King George the Fourth intituled “*An Act for consolidating* 6 Geo. IV. c. 74.
“*and amending the Laws relating to Conveyances and Transfers of*
“*Estates and Funds vested in Trustees who are Infants Idiots Luna-*
“*tics or Trustees of unsound mind or who cannot be compelled or*
“*refuse to act and also the Laws relating to Stocks and Securities*
“*belonging to Infants Idiots Lunatics and Persons of unsound mind*”
And whereas an Act was passed in the ninth year of the reign of His
said late Majesty intituled “*An Act for extending the Acts passed in* 9 Geo. IV. c. 78.
“*the forty-third and fifty-ninth years of the reign of His late Majesty*
“*King George the Third for the Sale and Mortgage of Estates of*
“*Persons found Lunatics by Inquisition taken in England and Ireland*
“*so as to authorize such Sale and Mortgage for other purposes and for*
“*rendering Inquisitions or Commissions of Lunacy taken in England*
“*available in Ireland and like Inquisitions taken in Ireland available*
“*in England*” And whereas it is expedient the provisions of the
said Acts should be consolidated and amended Be it therefore enacted
by the King’s Most Excellent Majesty by and with the advice and
consent of the Lords Spiritual and Temporal and Commons in this
present Parliament assembled and by the authority of the same That
the said recited Acts of the eleventh year of the reign of Queen Anne
the ninth year of the reign of King George the First the twenty-ninth
year of the reign of King George the Second the eleventh forty-third
forty-seventh and fifty-ninth years of the reign of King George the
Third

Recited Acts of 11
Anne 9 Geo. I. 29
Geo. II. 11 43 47 and
59 Geo. III. 9 Geo.
IV. and so much of
6 Geo. IV. as relates

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to funds belonging
to infants &c.
repealed.

Third and the ninth year of the reign of His late Majesty King George the Fourth and also the said recited Act of the sixth year of the reign of His present Majesty so far as the said last-mentioned Act relates to stocks funds annuities and securities belonging beneficially to persons being infants idiots lunatics or of unsound mind shall be and the same are hereby repealed (except as to such proceedings under the same as shall have been commenced before the passing of this Act and which may be proceeded in according to the provisions of the said recited Acts respectively or according to the provisions of this Act as shall be thought expedient) Provided always That the several Acts repealed by the said last recited Act shall not be revived.

Rules for the inter-
pretation of this
Act.

2. "And inasmuch as in order to avoid unnecessary repetition certain words are used in this Act as describing subjects some of which according to their usual sense such words would not embrace" For the understanding of the sense attached to them in this Act be it further enacted That the provisions of this Act shall extend and be understood to extend to and include the several other estates persons matters and things hereinafter mentioned (that is to say) those relating to land to any manor messuage tenement hereditament or real property of whatsoever tenure and to property of every description transferable otherwise than in books kept by any company or society or any share thereof or charge thereon or estate or interest therein those relating to stock to any fund annuity or security transferable in books kept by any company or society or to any money payable for the discharge or redemption thereof or any share or interest therein those relating to dividends to interest or other annual produce those relating to the Bank of England to the East India Company South Sea Company or any other company or society established or to be established those relating to a conveyance to any release surrender assignment or other assurance including all acts deeds and things necessary for making and perfecting the same those relating to a transfer to any assignment payment or other disposition and those relating to a lunatic to any idiot or person of unsound mind or incapable of managing his affairs unless there be something in the subject or context repugnant to such construction and whenever this Act in describing or referring to any person or any land stock conveyance lease recovery matter or thing uses the word importing the singular number or the masculine gender only the same shall be understood to include and shall be applied to several persons as well as one person and females as well as males and bodies corporate as well as individuals and several lands stocks conveyances leases recoveries matters or things as well as one land stock conveyance lease recovery matter or thing respectively unless there be something in the subject or context repugnant to such construction.

Infants femes covert
and lunatics may be
admitted to copyhold
estates by their
guardian committee
or attorney.

3. And be it further enacted That from and after the passing of this Act where any person being under the age of twenty-one years or being a feme covert or lunatic is or shall be entitled by descent or surrender to the use of a last will or otherwise to be admitted tenant of any copyhold lands such person in his or her own proper person or being a feme covert by her attorney or being an infant by his guardian or attorney as the case may require or being a lunatic by the committee of his estate shall come to and appear at one of the three next Courts which shall be kept (for the keeping whereof the usual notice shall be given) for the manor whereof such land shall be parcel and shall there offer himself or herself to the lord or his steward to be admitted tenant to the said land to make which appearance and to take which admittance in behalf of such infant or lunatic or feme covert such guardian committee or attorney shall be and is hereby respectively authorized and required.

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4. And be it further enacted That it shall be lawful for any feme covert or for any infant who shall have no guardian and she and he is hereby empowered by writing under her or his hand and seal respectively to appoint an attorney or attornies on her or his behalf for the purpose of appearing and taking such admittance as aforesaid.

Femes covert infants &c. may appoint attornies for that purpose.

5. And be it further enacted That in default of such appearance of any infant feme covert or lunatic in his or her own person or by his or her guardian committee or attorney in that behalf and of acceptance of such admittance as aforesaid it shall be lawful for the lord of every such manor or his steward after such three several Courts have been duly holden for such manor and proclamation in such several Courts been regularly made to appoint at any subsequent Court to be holden for such manor any fit person to be attorney for every such infant feme covert or lunatic for that purpose only and by such attorney to admit every such infant feme covert or lunatic to the said land according to such estate as such infant feme covert or lunatic shall be legally entitled to therein and upon every such admittance to impose and set such fine as might have been legally imposed and set if such infant had been of full age or if such feme covert had been sole and unmarried and if such lunatic had been of sane mind.

In default of appearance the lord may appoint an attorney.

6. And be it further enacted That upon every such admittance of any infant feme covert or lunatic as aforesaid the fine imposed and set thereupon shall and may be demanded by the bailiff or agent of the lord of such manor by a note in writing signed by the lord of such manor or by his steward to be left with the guardian of such infant or such infant if he have no guardian or with such feme covert or her husband or with the committee of the estate of such lunatic or with the tenant or occupier of the land to which such infant feme covert or lunatic shall have been admitted as aforesaid and if the fine so imposed and set be not paid or tendered to such lord or his steward within three months after such demand made then it shall be lawful for the lord of such manor to enter into and upon the copyhold land to which any such infant feme covert or lunatic shall be so admitted and to hold and enjoy the same and to receive the rents issues and profits thereof but without liberty to fell any timber standing thereon for so long time only and until by such rents issues and profits such lord shall be fully paid and satisfied such fine together with all reasonable costs and charges which such lord shall have been put unto in levying and raising the same and in obtaining the possession of such copyhold land although such infant feme covert or lunatic shall happen to die before such fine and fines and the costs and charges aforesaid shall be raised and collected of all which rents issues and profits so to be received by such lord of such manor or his steward bailiff or servant upon the occasion aforesaid such lord shall yearly and every year upon demand to be made by the person who shall be entitled to the surplus of the said rents and profits over and above what will pay and satisfy such fine and costs and charges or by the person who shall be then entitled to such copyhold land give and render a just and true account and shall pay the same surplus if any to such person as shall be entitled to the same.

Fines—in what manner demandable.

If not paid &c. the lord may enter and receive the profits of the copyhold till he is satisfied &c.

The lord to account yearly—

7. And be it further enacted That as soon as such fine and the costs charges and expenses aforesaid shall be fully paid and satisfied or if after such seizure and entry of and upon such copyhold land for the purposes aforesaid such fine and the costs and charges aforesaid shall be lawfully tendered and offered to be paid and satisfied to the lord of such manor then and in any of the said cases it shall be lawful for such infant feme covert lunatic or other person entitled thereto or the guardian of such infant the husband of such feme

and to deliver up possession upon satisfaction of the fines.

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covert or the committee of such lunatic to enter upon and take possession of and hold the said copyhold land according to the estate or interest such infant feme covert or lunatic shall be lawfully entitled to therein and the lord of such manor shall and is hereby required in any of the said cases to deliver possession thereof accordingly and if such lord after such fine and the costs and charges aforesaid shall be fully paid and satisfied or after the same shall have been tendered or offered to be paid as aforesaid shall refuse to deliver the possession of the said copyhold land as aforesaid he or they shall be liable to and shall make satisfaction to the person or persons so kept out of possession for all the damages that he or she shall thereby sustain and all the costs and charges that he or she shall be put unto for the recovery thereof.

Guardians or husbands or committees paying fines may reimburse themselves out of the rents of the copyhold.

8. And be it further enacted That where any infant feme covert or lunatic shall be admitted to any copyhold land if the guardian of such infant or husband of such feme covert or committee of such lunatic shall pay to the lord of any manor the fine legally imposed and set upon such admittance and the costs and charges which such lord of such manor shall have been put unto as aforesaid then it shall be lawful for every guardian of such infant or husband of such feme covert or committee of such lunatic his executors and administrators to enter into and to hold and enjoy the said land to which such infant feme covert or lunatic shall have been so admitted and receive and take the rents issues and profits thereof to his and their own use until thereby such guardian of such infant or husband of such feme covert or committee of such lunatic his executors and administrators shall be fully satisfied and paid all and every such sum and sums of money as he shall respectively pay and disburse upon the account aforesaid notwithstanding the death of such infants femes covert or lunatic shall happen before such sum or sums of money so expended shall or may be so raised and reimbursed.

No forfeiture to be incurred by infants &c. for not appearing or refusing to pay fines.

9. Provided always and be it further enacted That from and after the passing of this Act no infant feme covert or lunatic shall forfeit any copyhold land for his or her neglect or refusal to come to any Court to be kept for any manor whereof such land is parcel and to be admitted thereto nor for the omission denial or refusal of any such infant feme covert or lunatic to pay any fine imposed or set upon his or her admittance to any such land.

Fines not warranted by custom &c. may be controverted.

10. Provided nevertheless and be it further enacted That if the fine imposed in any of the cases hereinbefore mentioned shall not be warranted by the custom of the manor or shall be unlawful then such infant feme covert or lunatic shall be at liberty to controvert the legality of such fine in such manner as he or she might have done if this Act had not been made.

Persons may appoint attornies &c. for surrendering lands of which common recoveries are intended to be suffered &c.

11. And be it further enacted That it shall be lawful for any person not being under coverture and for every feme covert (such feme covert being solely and secretly examined by the lord of the manor whereof the land of which a common recovery is proposed to be suffered shall be holden by copy of court roll or in ancient demesne or otherwise or by his steward or by the deputy of such steward) to appoint any person to be his or her attorney for the purpose of surrendering the land of which a common recovery shall be proposed to be suffered to the use of any person to make him tenant to the plaint and also to appoint any other person to appear for the person so appointing as vouchee and to enter into the usual warranty and to do all other lawful and necessary acts for the suffering and perfecting of such common recovery respectively and to direct the demandant in such common recovery respectively to surrender the tenements so recovered when or after such recovery shall be suffered

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suffered and perfected to such uses as shall be declared in the instrument by which such attorney shall be respectively appointed and that the surrender and common recovery which shall be had acknowledged and suffered as aforesaid shall have the like effect but no other as such surrender and common recovery would have had if the party who shall acknowledge such surrender and suffer such common recovery by attorney and give such directions as aforesaid had appeared in Court in his or her person and acknowledged the said surrender and suffered the same recovery and had joined in the surrender to be made by such defendant.

12. And be it further enacted That in all cases where any person being under the age of twenty-one years or a feme covert is or shall become entitled to any lease or leases made or granted or to be made or granted for the life or lives of one or more person or persons or for any term of years either absolute or determinable upon the death of one or more person or persons or otherwise it shall be lawful for such person under the age of twenty-one years or for his or her guardian or other person on his behalf and for such feme covert or any person on her behalf to apply to the Court of Chancery in England the Courts of Equity of the Counties Palatine of Chester Lancaster and Durham or the Courts of Great Session of the Principality of Wales respectively as to land within their respective jurisdiction by petition or motion in a summary way and by the order and direction of the said Courts respectively such infant or feme covert or his guardian or any person appointed in the place of such infant or feme covert by the said Courts respectively shall and may be enabled from time to time by deed or deeds to surrender such lease or leases and accept and take in the place and for the benefit of such person under the age of twenty-one years or feme covert one or more new lease or leases of the premises comprised in such lease surrendered by virtue of this Act for and during such number of lives or for such term or terms of years determinable upon such number of lives or for such term or terms of years absolute as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively or otherwise as the said Courts shall respectively direct.

Guardians of minors &c. in order to the surrender and renewal of leases may apply to the Court of Chancery &c. and by order may surrender such leases and renew the same &c.

13. And be it further enacted That in all cases where any person being lunatic shall become entitled to any lease or leases made or granted or to be made or granted for the life or lives of one or more person or persons or for any term of years either absolute or determinable upon the death of one or more person or persons or otherwise it shall be lawful for the committee of the estate of such person to apply to the Lord Chancellor of Great Britain being intrusted by virtue of the King's Sign Manual with the care and commitment of the custody of the persons and estates of persons found idiot lunatic or of unsound mind by petition or motion in a summary way and by the order and direction of the said Lord Chancellor intrusted as aforesaid such committee shall and may be enabled from time to time by deed or deeds in the place of such lunatic to surrender such lease or leases and accept and take in the name and for the benefit of such lunatic one or more new lease or leases of the premises comprised in such lease or leases surrendered by virtue of this Act for and during such number of lives or for such term or terms of years absolute or determinable as aforesaid as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively or otherwise as the said Lord Chancellor intrusted as aforesaid shall direct.

Committees of lunatics may in like manner surrender leases and renew the same &c.

14. And be it further enacted That every sum of money and other consideration paid by any guardian trustee committee or other person

Charges attending renewal to be charged on estates as the Court shall direct.

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person as a fine premium or income or in the nature of a fine premium or income for the renewal of any such lease and all reasonable charges incident thereto shall be paid out of the estate or effects of the infant or lunatic for whose benefit the lease shall be renewed or shall be a charge upon the leasehold premises together with interest for the same as the said Courts and Lord Chancellor intrusted as aforesaid respectively shall direct and determine and as to leases to be made upon surrenders by femmes covert unless the fine or consideration of such lease and the reasonable charges shall be otherwise paid or secured the same together with interest shall be a charge upon such leasehold premises for the benefit of the person who shall advance the same.

New leases shall be to the same uses.

15. And be it further enacted That every lease to be renewed as aforesaid shall operate and be to the same uses and be liable to the same trusts charges incumbrances dispositions devices and conditions as the lease to be from time to time surrendered as aforesaid was or would have been subject to in case such surrender had not been made.

Infants empowered to grant renewals of leases.

16. And be it further enacted That where any person being under the age of twenty-one years or a feme covert might in pursuance of any covenant or agreement if not under disability be compelled to renew any lease made or to be made for the life or lives of one or more person or persons or for any term or number of years absolute or determinable on the death of one or more person or persons it shall be lawful to and for such infant or his guardian in the name of such infant or such feme covert by the direction of the Court of Chancery to be signified by an order to be made in a summary way upon the petition of such infant or his guardian or of such feme covert or of any person entitled to such renewal from time to time to accept of a surrender of such lease and to make and execute a new lease of the premises comprised in such lease for and during such number of lives or for such term or terms determinable upon such number of lives or for such term or terms of years absolute as was or were mentioned in the lease so surrendered at the making thereof or otherwise as the Court by such order shall direct.

Court of Chancery may authorize leases to be made of lands belonging to infants when it is to the benefit of the estate.

17. And be it further enacted That where any person being an infant under the age of twenty-one years is or shall be seised or possessed of or entitled to any land in fee or in tail or to any leasehold land for an absolute interest and it shall appear to the Court of Chancery to be for the benefit of such person that a lease or underlease should be made of such estates for terms of years for encouraging the erection of buildings thereon or for repairing buildings actually being thereon or the working of mines or otherwise improving the same or for farming or other purposes it shall be lawful for such infant or his guardian in the name of such infant by the direction of the Court of Chancery to be signified by an order to be made in a summary way upon the petition of such infant or his guardian to make such lease of the land of such persons respectively or any part thereof according to his or her interest therein respectively and to the nature of the tenure of such estates respectively for such term or terms of years and subject to such rents and covenants as the said Court of Chancery shall direct but in no such case shall any fine or premium be taken and in every such case the best rent that can be obtained regard being had to the nature of the lease shall be reserved upon such lease and the leases and covenants and provisions therein shall be settled and approved of by a Master of the said Court and a counterpart of every such lease shall be executed by the lessee or lessees therein to be named and such counterparts shall be deposited for safe custody in the Master's Office until such infant shall attain twenty-one

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twenty-one but with liberty to proper parties to have the use thereof if required in the meantime for the purpose of enforcing any of the covenants therein contained provided that no lease be made of the capital mansion-house and the park and grounds respectively held therewith for any period exceeding the minority of any such infant.

18. And be it enacted That where any person who in pursuance of any covenant or agreement in writing might if within the jurisdiction and amenable to the process of the Court of Chancery be compelled to execute any lease by way of renewal shall not be within the jurisdiction or not amenable to the process of the said Court it shall be lawful to and for the said Court of Chancery by an order to be made upon the petition of any person or any of the persons entitled to such renewal (whether such person be or be not under any disability) to direct such person as the said Court shall think proper to appoint for that purpose to accept a surrender of the subsisting lease and make and execute a new lease in the name of the person who ought to have renewed the same and such deed executed by the person to be appointed as aforesaid shall be as valid as if the person in whose name the same shall be made had executed the same and had been alive and not under any disability but in every such case it shall be in the discretion of the said Court of Chancery if under the circumstances it shall seem requisite to direct a bill to be filed to establish the right of the party seeking the renewal and not to make the order for such new lease unless by the decree to be made in such cause or until after such decree shall have been made.

If persons bound to renew are out of the jurisdiction of the Court the renewals may be made by a person appointed by the Court of Chancery in the name of the person who ought to have renewed.

19. And be it further enacted That where any person being lunatic is or shall be entitled or has a right or in pursuance of any covenant or agreement might if not under disability be compelled to renew any lease made or to be made for the life or lives of one or more person or persons or for any term or number of years absolute or determinable on the death of one or more person or persons or otherwise it shall be lawful to and for the committee of the estate of such lunatic in the name of such lunatic by the direction of the Lord Chancellor intrusted as aforesaid to be signified by an order to be made in a summary way upon the petition of such committee or of any person entitled to such renewal from time to time to accept of a surrender of such lease and to make and execute to any person a new lease of the premises comprised in such lease to be surrendered by virtue of this Act for and during such number of lives or for such term or terms of years determinable upon such number of lives or for such term or terms of years absolute as were mentioned or contained in such lease so surrendered at the making thereof or otherwise as the Lord Chancellor intrusted as aforesaid by such order shall direct and this provision shall extend as well to cases where the lunatic shall not be compellable to renew but it shall be for his benefit to do so as to cases where a renewal might be effectually enforced against the lunatic if of sound mind.

Committees of lunatics by the direction of the Lord Chancellor may accept of surrenders and make new leases.

20. Provided always and be it further enacted That no renewed lease shall be executed by virtue of this Act in pursuance of any covenant or agreement unless the fine (if any) or such other sum or sums of money (if any) as ought to be paid on such renewal and such things (if any) as ought to be performed in pursuance of such covenant or agreement by the lessee or tenant be first paid and performed and counterparts of every renewed lease to be executed by virtue of this Act shall be duly executed by the lessee.

Fines to be paid before renewals and counterparts are executed.

21. And be it further enacted That all fines premiums and sums of money which shall be had received or paid for or on account of the renewal of any lease after a deduction of all necessary incidental charges and expenses shall be paid if such renewal shall be made

Premiums how to be paid.

by

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On death of lunatic money arising by such fines to be considered real estate.

The Irish Act 11 Anne c. 3 continued unaltered.

by or in the name of an infant to his guardian and be applied and disposed of for the benefit of such infant in such manner as the said Court shall direct if such renewal shall be made by a feme covert to such person or in such manner as the Court shall direct for her benefit if such renewal shall be made in the name of any person out of jurisdiction or not amenable as aforesaid to such person or in such manner or into the Court of Chancery to such account and to be applied and disposed of as the said Court shall direct and if such renewal should be made in the name of a lunatic to the committee of the estate of such lunatic and be applied and disposed of for the benefit of such lunatic in such manner as the Lord Chancellor intrusted as aforesaid shall direct but upon the death of such lunatic all such sum and sums of money as shall arise by such fines or premiums or so much thereof as shall remain unapplied for the benefit of such lunatic at his death shall as between the representatives of the real and personal estates of such lunatic be considered as real estate unless such lunatic shall be tenant for life only and then the same shall be considered as personal estate.

22. " And whereas by the said Act passed in the Parliament of Ireland in the eleventh year of the reign of Queen Anne after reciting that several persons had theretofore made and thereafter might make leases for one or more life or lives of several lands tenements and hereditaments in the said then Kingdom of Ireland with covenants and agreements in such leases for renewing the same from time to time on the tender and payment of some fine certain on the death of any life or lives in such lease or leases mentioned by adding such one or more life or lives on failure of the life or lives in being within the respective times of such agreements and covenants mentioned as the several lessee or lessees in such lease or leases should nominate and also reciting that through one pretence or other on the fall or failure of any life or lives in being the lessee or lessees were greatly delayed before he or they could obtain any renewal according to the covenants and agreements in their leases to their very great discouragement for remedy whereof it was enacted that if it should so happen that any person or persons who in pursuance of such agreements for renewal in such leases contained or to be contained ought to make such new lease or leases as had been or should be agreed to be made should be under any disability so to do by reason of infancy coverture or *non compos mentis* that then and in every such case (that is to say) in case of disability by reason of infancy or being under age by the direction of the High Court of Chancery or the Court of Exchequer signified by an order made upon hearing all parties concerned on the petition of such lessee or lessees it should and might be lawful to and for the guardian or guardians of such infant or person under age upon such lessee or lessees tendering the fine or fines agreed on in such lease and performing all such matters and things as by the said covenants and agreements ought to be performed on his or their part and behalf previous to such renewal in such manner as should by such order be directed to renew such lease or leases by adding such new life or lives as should be named by the said lessee or lessees according to the said covenants and agreements and such guardian or guardians were thereby required to renew such lease or leases by putting in such new life or lives as should be so named unto them as aforesaid while the infant or minor of such guardian or guardians should be under such disability of infancy or under age and it was further enacted that in all cases where the person or persons who by covenant or agreement were obliged to make such renewals were or should be disabled to renew by reason of being under coverture beyond the seas or *non compos mentis* it should and might be lawful

to

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“ to and for the Lord Chancellor or Commissioner or Commissioners
 “ of the Great Seal of the said then Kingdom of Ireland for the time-
 “ being upon petition or complaint made to him or them in the High
 “ Court of Chancery upon payment of the fine and such other sum or
 “ sums of money as ought to be paid upon such renewal for the use
 “ of the person or persons entitled to the same and upon the lessee
 “ or lessees doing and performing all and every such matters and
 “ things as by the said covenants or agreements in the said lease or
 “ leases ought to be done or performed by him or them previous to
 “ such renewal to order or appoint such renewal or renewals to be
 “ made by one of the Masters of the said Court of Chancery to be
 “ nominated and appointed by the said Lord Chancellor or Commis-
 “ sioner or Commissioners of the Great Seal for the time-being and
 “ such Master so nominated and appointed and also such guardian
 “ and guardians as aforesaid should make and execute such deed of
 “ renewal in the name of the person or persons who ought to have
 “ renewed the same which deed or deeds of renewal so made and
 “ executed by the said guardian or guardians Master or Masters
 “ counterparts thereof being duly perfected by the lessee or
 “ lessees for the use and benefit of the person or persons having the
 “ reversion and inheritance of such lands tenements or hereditaments
 “ comprised in such deed or deeds should be as good and effectual in
 “ Law and Equity to all intents and purposes as if the person or persons
 “ under age had been of full age and had executed the same or as if the
 “ other person or persons under such disability had not been so dis-
 “ abled and had executed the same Provided such person or persons
 “ under age or under such disability as aforesaid were at the time of
 “ the renewal of such lease compellable in Law or Equity to make such
 “ renewal And whereas it is expedient that the provisions of the said
 “ recited Act which have been so long in force in Ireland should
 “ remain unaltered” Be it therefore further enacted That the clauses and
 provisions contained in the said Act shall be and continue in force in
 the same manner to all intents and purposes as if the said clauses and
 provisions and every part thereof had been repeated and re-enacted in
 this Act and none of the other provisions in this Act contained for
 authorizing any surrenders to be accepted or any new lease to be made
 or executed for or on the behalf of any person who in pursuance of any
 covenant or agreement for renewal in any lease contained or to be
 contained ought to make such new lease or leases shall extend or be
 construed to land in Ireland.

23. And be it further enacted That where any person being lunatic is or shall be seised or possessed of any land either for life or for some other estate with power of granting leases and taking fines reserving small rents on such leases for one two or three lives in possession or reversion or for some number of years determinable upon lives or for any term of years absolutely such power of leasing which is or shall be vested in such person being lunatic and having a limited estate only shall and may be executed by the committee of the estate of such person under the direction and order of the Lord Chancellor intrusted as aforesaid.

The power of leasing lands &c. of lunatics having a limited estate may be executed by the committee.

24. And be it further enacted That where any person being lunatic is or shall be seised or possessed of or entitled to any land in fee or in tail or to any leasehold land for an absolute interest and it shall appear to the Lord Chancellor intrusted as aforesaid to be for the benefit of such person that a lease or under-lease should be made of such estates for terms of years for encouraging the erection of buildings therein or for repairing buildings actually being thereon or otherwise improving the same or for farming or other purposes it shall be lawful for the Lord Chancellor intrusted as aforesaid to order and direct the committee

Where lunatics are seised of estates in fee or in tail or an absolute interest in leasehold estates the Chancellor may direct leases to be made.

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committee of the estate of such lunatic to make such lease of the land of such persons respectively or any part thereof according to his or her interest therein respectively and to the nature of the tenure of such estates respectively for such term or terms of years and subject to such rents and covenants as the Lord Chancellor intrusted as aforesaid shall direct.

So much of 1 Geo. I. c. 10 s. 9 as enacts that agreements of guardians shall bind infants repealed.

25. "And whereas by an Act passed in the first year of the reign of King George the First intituled '*An Act for making more effectual Her late Majesty's gracious intentions for augmenting the maintenance of the Poor Clergy*' it was enacted That the agreements of guardians for and on behalf of infants or idiots under their guardianship should be as good and effectual to all intents and purposes as if the said infants or idiots had been of full age and of sound mind and had themselves entered into such agreements And whereas it is desirable that the said powers should be exercised under proper control and that the same should be extended to all persons against whom a commission of lunacy shall have issued" Be it further enacted That so much of the said Act of the first year of the reign of King George the First as is hereinbefore recited shall be and the same is hereby repealed.

Such agreements may be made by guardians with the approbation of the Court and by committees with the approbation of the Lord Chancellor.

26. And be it further enacted That the guardian of any infant with the approbation of the Court of Chancery to be signified by an order to be made on the petition of such guardian in a summary way may enter into any agreement for or on behalf of such infant which such guardian might have entered into by virtue of the said last-recited Act if the same had not been repealed and the committee of the estate of any lunatic with the approbation of the Lord Chancellor intrusted as aforesaid to be signified by an order to be made in the petition of such committee in a summary way may enter into any agreement for or on the behalf of such lunatic which the guardian of an infant might have entered into for or on the behalf of such infant by virtue of the said last-recited Act if the same had not been repealed.

Committee of lunatics by direction of the Lord Chancellor may convey land in performance of contracts.

27. And be it further enacted That when any person who shall have contracted to sell mortgage let divide exchange or otherwise dispose of any land shall afterwards become lunatic and a specific performance of such contract either wholly or so far as the same shall remain to be performed shall have been decreed by the Court of Chancery either before or after such lunacy it shall be lawful for the committee of the estate of such lunatic in the place of such lunatic by the direction of the Lord Chancellor intrusted as aforesaid to be signified by an order to be made on the petition of the plaintiff or any of the plaintiffs in such suit to convey such land in pursuance of such decree to such person and in such manner as the said Lord Chancellor intrusted as aforesaid shall direct and the purchase money or so much thereof as remains unpaid shall be paid to the committee of such lunatic.

The Lord Chancellor may order the estates of lunatics to be sold or charged by mortgage for raising money for the payment of debts &c.

28. And be it further enacted That it shall be lawful for the Lord Chancellor intrusted as aforesaid to order any land of or to which any person being lunatic shall be seised or possessed or entitled to be sold or charged and incumbered by way of mortgage or otherwise disposed of as shall be deemed most expedient for the purpose of raising money for payment of the debts or engagements of such lunatic the discharge of any incumbrances on his estates the costs of applying for and obtaining the commission of lunacy and in opposition thereto and all proceedings under the said commission and the costs of such sales mortgages charges and incumbrances and other dispositions or for any of such purposes as aforesaid as such Lord Chancellor intrusted as aforesaid shall respectively direct and that the monies arising from any such sale mortgage charge incumbrance or other disposition

English Persons under Disability Act Adopted, 11 G. 4 & 1 W. 4, c. 65.

disposition may be paid laid out and applied in payment of the debts and engagements of such lunatic the discharge of any incumbrances on his estates the costs of applying for and obtaining the commission of lunacy and in opposition thereto and all proceedings under the same commission or incurred under the order of such Lord Chancellor intrusted as aforesaid and the costs of such sales mortgages charges and incumbrances and other dispositions in such manner as the said Lord Chancellor intrusted as aforesaid shall direct and to direct the committee of the estate of such person to execute in the place of such person respectively conveyances of the estates so to be sold mortgaged incumbered or disposed of and to do all such acts as shall be necessary to effectuate the same in such manner as such Lord Chancellor intrusted as aforesaid shall direct.

29. Provided always and be it further enacted That on any sale mortgage charge incumbrance or other disposition which shall be made in pursuance of this Act the person whose estate shall be sold mortgaged charged incumbered or otherwise disposed of and his or her heirs next of kin devisees legatees executors administrators and assigns shall have such and the like interest in the surplus which shall remain after answering the purposes aforesaid of the money raised by such sale mortgage charge incumbrance or other disposition as he she or they would have had in the estate by the sale mortgage charge incumbrance or other disposition of which such monies shall be raised if no such sale mortgage charge incumbrance or other disposition had been made and such monies shall be of the same nature and character as the estate so sold mortgaged charged incumbered or disposed of and it shall be lawful for the said Lord Chancellor intrusted as aforesaid to make such orders and to direct such acts and deeds to be done and executed as shall be necessary for carrying the aforesaid objects into effect and for the due application of such surplus monies.

Surplus of monies to be of the same nature as the estate.

30. Provided nevertheless and be it enacted That nothing in this Act contained shall extend to subject any part of the estates of any person being lunatic to the debts or demands of his creditors otherwise than as the same are now subject and liable by due course of law but only to authorize the Lord Chancellor intrusted as aforesaid to make order in such cases as are hereinbefore mentioned when the same shall be deemed just and reasonable or for the benefit or advantage of such lunatic.

Act shall not subject estates of lunatics to debts otherwise than they are now subject.

31. And be it further enacted That every surrender and lease agreement conveyance mortgage or other disposition respectively granted and accepted executed and made by virtue of this Act shall be and be deemed as valid and legal to all intents and purposes as if the person by whom or in whose place or on whose behalf the same respectively shall be granted or accepted executed and made had been of full age unmarried or of sane mind and had granted accepted made and executed the same and every such surrender and lease respectively made and accepted by or on behalf of a feme covert shall be valid without any fine being levied by her.

Surrender and leases deemed valid.

32. And be it further enacted That it shall be lawful for the Court of Chancery by an order to be made on the petition of the guardian of any infant in whose name any stock shall be standing or any sum of money by virtue of any Act for paying off any stock and who shall be beneficially entitled thereto or if there shall be no guardian by an order to be made in any cause depending in the said Court to direct all or any part of the dividends due or to become due in respect of such stocks or any such sum of money to be paid to any guardian of such infant or to any other person according to the discretion of such Court for the maintenance and education or otherwise

Court of Chancery or Exchequer may order dividends of stock belonging to infants to be applied for maintenance.

English Persons under Disability Act Adopted, 11 G. 4 & 1 W. 4, c. 65.

for the benefit of such infant such guardian or other person to whom such payment shall be directed to be made being named in the order directing such payment and the receipt of such guardian or other person for such dividends or sum of money or any part thereof shall be as effectual as if such infant had attained the age of twenty-one years and had signed and given the same.

Stock belonging to lunatics may be ordered by the Lord Chancellor to be transferred.

33. And be it further enacted That where any stock shall be standing in the name of or shall be vested in any person being lunatic who shall be beneficially entitled thereto or shall be standing in the name of or vested in any person being committee of the estate of a person found lunatic in trust for or as part of his property and such committee shall have died intestate or shall himself become lunatic or shall be out of the jurisdiction of or not amenable to the process of the Court of Chancery or it shall be uncertain whether such committee be living or dead or such committee shall neglect or refuse to transfer such stock and to receive and pay over the dividends thereof to a new committee or as he shall direct for the space of fourteen days next after a request in writing for that purpose shall have been made by any new committee then and in every or any such case it shall be lawful for the Lord Chancellor intrusted as aforesaid upon the petition of the committee of the estates of the person being lunatic or of the person reported by the Master to whom the matter is referred as a proper person to be such committee although such report shall not have been confirmed to direct such person as such Lord Chancellor shall think proper to appoint for that purpose to transfer such stock to or into the name of any new committee or in the name of the Accountant General of the said Court or otherwise and also to receive and pay over the dividends thereof or such sum or sums of money in such manner as such Lord Chancellor shall think proper and such transfers and payments shall be valid and effectual to all intents and purposes whatsoever.

Where stock shall be standing in the names of lunatics residing out of England the Lord Chancellor may direct the transfer.

34. And be it further enacted That where any stock shall be standing in the name of or vested in any person residing out of England it shall be lawful for the Lord Chancellor intrusted as aforesaid upon petition and proof being made to his or their satisfaction that such person has been declared lunatic and that his personal estate has been vested in a curator or other person appointed for the management thereof according to the Laws of the place where such person shall reside to direct any person whom such Lord Chancellor shall think proper to appoint for that purpose to transfer such stock or any part or parts thereof into the name of any such curator or other such person as aforesaid or otherwise and also to receive and pay over the dividends thereof as such Lord Chancellor shall think fit and that such transfers and payments shall be valid and effectual to all intents and purposes whatsoever.

Costs may be directed to be paid.

35. And be it further enacted That the Court of Chancery or Lord Chancellor intrusted as aforesaid may order the costs and expenses of and relating to the petitions orders directions conveyances and transfers to be made in pursuance of this Act or any of them to be paid and raised out of or from the lands or stock or the rents or dividends in respect of which the same respectively shall be made in such manner as the said Court or Lord Chancellor shall think proper.

Powers given to the Court of Chancery in England

36. And be it further enacted That the powers and authorities given by this Act to the Court of Chancery in England shall extend to all land and stock within any of the Dominions Plantations and Colonies belonging to His Majesty except Scotland.

which may be exercised by the Court of Exchequer.

37. And be it further enacted That the powers and authorities given by this Act to the Court of Chancery shall and may be exercised in like manner by and are hereby given to the Court of Exchequer.

English Persons under Disability Act Adopted, 11 G. 4 & 1 W. 4, c. 65.

38. And be it further enacted That the powers and authorities given by this Act to the Courts of Chancery and Exchequer in England shall and may be exercised in like manner and are hereby given to the Courts of Chancery and Exchequer in Ireland with respect to land and stock in Ireland.

Powers given to Courts may be exercised in England and Ireland.

39. And be it further enacted That the powers and authorities given by this Act to the Lord Chancellor of Great Britain intrusted as aforesaid shall extend to all land and stock wheresoever within any of the Dominions Plantations and Colonies belonging to His Majesty (except Scotland and Ireland).

Powers given to the Lord Chancellor of Great Britain

40. And be it further enacted That the powers and authorities given by this Act to the Lord Chancellor of Great Britain intrusted as aforesaid shall and may be exercised in like manner by and are hereby given to the Lord Chancellor of Ireland intrusted as aforesaid with respect to all land and stock in Ireland but not further or otherwise.

which may be exercised by the Lord Chancellor of Ireland.

41. “ And whereas it is desirable that in some cases inquisitions taken in England on a commission in the nature of a writ *De lunatico inquirendo* and writs of supersedeas of any such commission should be acted upon in Ireland in the same manner as the same may be acted upon in England and for that purpose shall be placed on record in Ireland and that inquisitions on a like commission executed in Ireland and writs of supersedeas of any such commission shall be acted on in England and for that purpose shall be placed on record there” Be it therefore enacted That in all cases where any person has been or shall be found lunatic or of unsound mind and incapable of managing his or her affairs by any inquisition on a commission in the nature of a writ *De lunatico inquirendo* under the Great Seal of Great Britain it shall be lawful for the proper officer by order of the Lord Chancellor of Great Britain intrusted as aforesaid to transmit a transcript of the record of such inquisition to the Chancery of Ireland and such transcript shall thereupon be entered of record and be as of record there and in case a writ of supersedeas of any such commission shall issue the issue of such writ shall be certified and transmitted and recorded in like manner and the copies of the record of any such inquisition or supersedeas so transmitted and entered as of record in the Chancery of Ireland shall if the Lord Chancellor of Ireland intrusted as aforesaid shall see fit and so long only as he or they shall so see fit be acted upon by him or them respectively and be of the same force and validity and have the same effect to all intents and purposes in Ireland as if such inquisition had been taken on a commission under the Great Seal of Ireland and such writ of supersedeas had been issued under the Great Seal of Ireland and that in all cases where any person has been or shall be found lunatic or of unsound mind and incapable of managing his or her affairs by any inquisition on a commission in the nature of a writ *De lunatico inquirendo* under the Great Seal of Ireland it shall be lawful for the proper officer by order of the Lord Chancellor of Ireland intrusted as aforesaid to transmit a transcript thereof in like manner to the Chancery of England and such transcript shall thereupon be entered as of record there and in case a writ of supersedeas of any such commission shall issue a transcript thereof shall be certified and transmitted to the Chancery of England and recorded in like manner and such entry of record of any such inquisition or supersedeas shall if the Lord Chancellor of Great Britain intrusted as aforesaid shall see fit and so long as he or they shall so see fit be acted upon by him or them respectively and be of the same force and validity and have the same force and effect as if such inquisition had been taken on a commission under the Great Seal of Great Britain

Inquisitions on commissions under the Great Seal of Great Britain to be transmitted and entered of record in Ireland and acted on there and vice versa.

English Prohibition and Mandamus Act Adopted, 1 G. 4, c. 21.

Britain and such writ of supersedeas had been issued under the Great Seal of Great Britain.

Powers given to the Lord Chancellor to extend to the Lord Keeper and Commissioners.

42. And be it further enacted That the powers and authorities given by this Act to the Lord Chancellor of Great Britain intrusted as aforesaid shall and may be exercised in like manner by and are hereby given to the Lord Keeper or Commissioners of the Great Seal of Great Britain for the time-being intrusted as aforesaid and the powers and authorities given by this Act to the Lord Chancellor of Ireland intrusted as aforesaid shall and may be exercised in like manner by and are hereby given to the Lord Keeper or Commissioners of the Great Seal of Ireland for the time-being intrusted as aforesaid.

Who shall be named in the orders of the Court for making transfers.

43. Provided always and be it further enacted That in all cases in which orders shall be made in pursuance of this Act for the transfer of stock the person to be named in such order for making such transfer shall be some officer of such company or society in whose books such transfer shall be made and where such transfer shall be directed to be made in books kept by the Governor and Company of the Bank of England such officer shall be the Secretary or Deputy Secretary or Accountant General or Deputy Accountant General for the time-being of the said Governor and Company.

Act to be an indemnity to the bank and other companies.

44. And be it further enacted That this Act shall be and is hereby declared to be a full and complete indemnity and discharge to the Governor and Company of the Bank of England and all other companies and societies and their officers and servants for all acts and things done or permitted to be done pursuant thereto and that such acts and things shall not be questioned or impeached in any Court of Law or Equity to their prejudice or detriment.

ANNO PRIMO GULIELMI IV. REGIS.

CAP. XXI.

ENGLISH PROHIBITION AND MANDAMUS ACT ADOPTED.

An Act to improve the proceedings in Prohibition and on Writs of Mandamus. [30th March, 1831.]

Applications for writs of prohibitions may be made on affidavit only.

Contents of declaration in case the party is directed to declare in prohibition.

Defendant may demur to declaration.

“ **W** HEREAS the filing a suggestion of record on application for a writ of prohibition is productive of unnecessary expense and the allegation of contempt in a declaration in prohibition filed before writ issued is an unnecessary form and it is expedient to make some better provision for payment of costs in cases of prohibition” Be it enacted by the King’s Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same That it shall not be necessary to file a suggestion on any application for a writ of prohibition but such application may be made on affidavits only and in case the party applying shall be directed to declare in prohibition before writ issued such declaration shall be expressed to be on behalf of such party only and not as heretofore on the behalf of the party and of His Majesty and shall contain and set forth in a concise manner so much only of the proceeding in the Court below as may be necessary to shew the ground of the application without alleging the delivery of a writ or any contempt and shall conclude by praying that a writ of prohibition may issue to which declaration the party defendant may demur or plead such matters by way of traverse or otherwise as may be proper to shew that the writ ought not to issue and conclude by praying that such writ may not issue and judgment shall be given that the writ of prohibition

English Prohibition and Mandamus Act Adopted, 1 G. 4, c. 21.

prohibition do or do not issue as justice may require and the party in whose favour judgment shall be given whether on nonsuit verdict demurrer or otherwise shall be entitled to the costs attending the application and subsequent proceedings and have judgment to recover the same and in case a verdict shall be given for the party plaintiff in such declaration it shall be lawful for the jury to assess damages for which judgment shall also be given but such assessment shall not be necessary to entitle the plaintiff to costs.

2. And be it further enacted That so much of an Act passed in the second and third years of the reign of King Edward the Sixth intituled "*An Act for payment of Tithes*" as relates to prohibition shall be and the same is hereby repealed.

3. "And whereas the provisions contained in a certain Act of Parliament passed in the ninth year of the reign of Queen Anne intituled '*An Act for rendering the proceedings upon Writs of Mandamus and Informations in the nature of a quo warranto more speedy and effectual and for the more easy trying and determining rights of Offices and Franchises in Corporations and Boroughs*' relating to the writs of mandamus therein mentioned have been found useful and convenient and the same ought to be extended to the proceeding on other such writs" Be it therefore enacted That the several enactments contained in the said Statute relating to the return to writs of mandamus and the proceedings on such returns and to the recovery of damages and costs shall be and the same are hereby extended and made applicable to all other writs of mandamus and the proceedings thereon except so far only as the same may be varied or altered by this Act.

4. "And whereas writs of mandamus other than such as relate to the offices and franchises mentioned in or provided for by the said Act made in the ninth year of the reign of Queen Anne are sometimes issued to officers and other persons commanding them to admit to offices or do or perform other matters in respect whereof the persons to whom such writs are directed claim no right or interest or whose functions are merely ministerial in relation to such offices or matters and it may be proper that such officers and persons should in certain cases be protected against the payment of damages or costs to which they may otherwise become liable" Be it therefore enacted That it shall be lawful for the Court to which application may be made for any writ of mandamus (other than such as relate to the said offices and franchises mentioned in or provided for by the said Act made in the reign of Queen Anne) if such Court shall see fit so to do to make rules and orders calling not only upon the person to whom such writ may be required to issue but also all and every other person having or claiming any right or interest in or to the matter of such writ to shew cause against the issuing of such writ and payment of costs of the application and upon the appearance of such other person in compliance with such rules or in default of appearance after service thereof to exercise all such powers and authorities and make all such rules and orders applicable to the case as are or may be given or mentioned by or in any Act passed or to be passed during this present Session of Parliament for giving relief against adverse claims made upon persons having no interest in the subject of such claims Provided always that the return to be made to any such writ and issues joined in fact or in Law upon any traverse thereof or upon any demurrer shall be made and joined by and in the name of the person to whom such writ shall be directed but nevertheless the same shall and may if the Court shall think fit so to direct be expressed to be made and joined on the behalf of such other person as may be mentioned in such rules and in that case such other person shall

Judgment.

Damages.

Costs.

So much of 2 and 3
Edw. VI. c. 13 as
relates to prohibition
repealed.

The enactments of
9 Anne c. 20 relating
to returns to
writs of mandamus
therein mentioned
and the proceedings
thereon extended to
all other writs of
mandamus.

For protection of
certain officers to
whom writs of man-
damus are directed.

English Interpleaders Summary Relief Act Adopted, 1 & 2 W. 4, c. 58.

shall be permitted to frame the return and to conduct the subsequent proceedings at his own expense and in such case if any judgment shall be given for or against the party suing such writ such judgment shall be given against or for the person or persons on whose behalf the return shall be expressed to be made and who shall have the like remedy for the recovery of costs and enforcing the judgment as the person to whom the writ shall have been directed might and would otherwise have had.

Proceedings not to abate by removal of officer.

5. And be it further enacted That in case the return to any such writ shall in pursuance of the authority given by this Act be expressed to be made on behalf of any other person as aforesaid the further proceedings on such writ shall not abate or be discontinued by the death or resignation of or removal from office of the person having made such return but the same shall and may be continued and carried on in the name of such person and if a peremptory writ shall be awarded the same shall and may be directed to any successor in office or right to such person.

Costs to be in the discretion of the Court.

6. And for making some further provision for the payment of costs on applications for mandamus be it further enacted That in all cases of application for any writ of mandamus whatsoever the costs of such application whether the writ shall be granted or refused and also the costs of the writ if the same shall be issued and obeyed shall be in the discretion of the Court and the Court is hereby authorized to order and direct by whom and to whom the same shall be paid.

ANNO PRIMO ET SECUNDO GULIELMI IV. REGIS.

CAP. LVIII.

ENGLISH INTER-
PLEADERS SUMMARY
RELIEF ACT
ADOPTED.

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. [20th October, 1831.]

Upon application by a defendant in an action of assumpsit &c. stating that the right in the subject matter is in a third party the Court may order such third party to appear and maintain or relinquish his claim and in the meantime stay proceedings in such action.

“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 adverse 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” for remedy thereof Be it enacted by the King’s Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same That upon application made by or on the behalf of any defendant sued in any of His Majesty’s Courts of Law at Westminster or in the Court of Common Pleas of the County Palatine of Lancaster or the Court of Pleas of the County Palatine of Durham in any action of assumpsit debt detinue or trover such application being made after declaration and before plea by affidavit or otherwise shewing that such defendant does not claim any interest in the subject matter of the suit but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same and that such defendant does not in any manner collude with such third party but is ready to bring into Court or to pay or dispose of the subject matter of the action in such manner as the Court (or any Judge thereof) may order or direct it shall be lawful for the Court

or

English Interpleaders Summary Relief Act Adopted, 1 & 2 W. 4, c. 58.

or any Judge thereof to make rules and orders calling upon such third party to appear and to state the nature and particulars of his claim and maintain or relinquish his claim and upon such rule or order to hear the allegations as well of such third party as of the plaintiff and in the meantime to stay the proceedings in such action and finally to order such third party to make himself defendant in the same or some other action or to proceed to trial on one or more feigned issue or issues and also to direct which of the parties shall be plaintiff or defendant on such trial or with the consent of the plaintiff and such third party their Counsel or Attornies to dispose of the merits of their claims and determine the same in a summary manner and to make such other rules and orders therein as to costs and all other matters as may appear to be just and reasonable.

2. And be it further enacted That the judgment in any such action or issue as may be directed by the Court or Judge and the decision of the Court or Judge in a summary manner shall be final and conclusive against the parties and all persons claiming by from or under them. Judgment and decision to be final.

3. And be it further enacted That if such third party shall not appear upon such rule or order to maintain or relinquish his claim being duly served therewith or shall neglect or refuse to comply with any rule or order to be made after appearance it shall be lawful for the Court or Judge to declare such third party and all persons claiming by from or under him to be for ever barred from prosecuting his claim against the original defendant his executors or administrators saving nevertheless the right or claim of such third party against the plaintiff and thereupon to make such order between such defendant and the plaintiff as to costs and other matters as may appear just and reasonable. If such third party shall not appear &c. the Court may bar his claim against the original defendant.

4. Provided always and be it further enacted That no order shall be made in pursuance of this Act by a single Judge of the Court of Pleas of the said County Palatine of Durham who shall not also be a Judge of one of the said Courts at Westminster and that every order to be made in pursuance of this Act by a single Judge not sitting in open Court shall be liable to be rescinded or altered by the Court in like manner as other orders made by a single Judge. Proviso as to orders made by a single Judge.

5. Provided also and be it further enacted That if upon application to a Judge in the first instance or in any later stage of the proceedings he shall think the matter more fit for the decision of the Court it shall be lawful for him to refer the matter to the Court and thereupon the Court shall and may hear and dispose of the same in the same manner as if the proceeding had originally commenced by rule of Court instead of the order of a Judge. If a Judge thinks the matter more fit for the decision of the Court he may refer it.

6. “ And whereas difficulties sometimes arise in the execution of process against goods and chattels issued by or under the authority of the said Courts by reason of claims made to such goods and chattels by assignees of bankrupts and other persons not being the parties against whom such process has issued whereby Sheriffs and other officers are exposed to the hazard and expense of actions and it is reasonable to afford relief and protection in such cases to such Sheriffs and other officers” Be it therefore further enacted That when any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process or to the proceeds or value thereof it shall and may be lawful to and for the Court from which such process issued upon application of such Sheriff or other officer made before or after the return of such process and as well before as after any action brought against such Sheriff or other officer to call before them by rule of Court as well the For relief of Sheriffs and other officers in execution of process against goods and chattels.

English Interpleaders Summary Relief Act Adopted, 1 & 2 W. 4, c. 58.

the party issuing such process as the party making such claim and thereupon to exercise for the adjustment of such claims and the relief and protection of the Sheriff or other officer all or any of the powers and authorities hereinbefore contained and make such rules and decisions as shall appear to be just according to the circumstances of the case and the costs of all such proceedings shall be in the discretion of the Court.

Rules orders &c.
made in pursuance
of this Act may be
entered of record and
made evidence.

Costs.

Writs.

Sheriff's fees.

Upon any application
under 1 Wm. IV.
c. 21 and this Act
the Court to exercise
such powers and
make such rules as
are given by or
mentioned in this
Act.

7. And be it further enacted That all rules orders matters and decisions to be made and done in pursuance of this Act except only the affidavits to be filed may together with the declaration in the cause (if any) be entered of record with a note in the margin expressing the true date of such entry to the end that the same may be evidence in future times if required and to secure and enforce the payment of costs directed by any such rule or order and every such rule or order so entered shall have the force and effect of a judgment except only as to becoming a charge on any lands tenements or hereditaments and in case any costs shall not be paid within fifteen days after notice of the taxation and amount thereof given to the party ordered to pay the same his agent or attorney execution may issue for the same by *fiery facias* or *capias ad satisfaciendum* adapted to the case together with the costs of such entry and of the execution if by *fiery facias* and such writ and writs may bear test on the day of issuing the same whether in term or vacation and the Sheriff or other officer executing any such writ shall be entitled to the same fees and no more as upon any similar writ grounded upon a judgment of the Court.

8. "And whereas by a certain Act made and passed in the last Session of Parliament intituled '*An Act to improve the proceedings in Prohibition and on Writs of Mandamus*' it was among other things enacted that it should be lawful for the Court to which application may be made for any such writ of mandamus as is therein in that behalf mentioned to make rules and orders calling not only upon the person to whom such writ may be required to issue but also all and every other person having or claiming any right or interest in or to the matter of such writ to shew cause against the issuing of such writ and payment of the costs of the application and upon the appearance of such other person in compliance with such rules or in default of appearance after service thereof to exercise all such powers and authorities and make all such rules and orders applicable to the case as were or might be given or mentioned by or in any Act passed or to be passed during that present Session of Parliament for giving relief against adverse claims made upon persons having no interest in the subject of such claims And whereas no such Act was passed during the then present Session of Parliament" Be it therefore enacted That upon any such application as is in the said Act and hereinbefore mentioned it shall be lawful for the Court to exercise all such powers and authorities and make all such rules and orders applicable to the case as are given or mentioned by or in this present Act.