

No. XXVII.

An Act for the Amendment of the Law as to
Claims against the Crown. [*Reserved*—10th
May, 1861.]

CLAIMS AGAINST
CROWN.
—

WHEREAS it is expedient to adopt the Law of England relating Preamble.
to Petitions of Right and to adapt the same as nearly as may
be to the circumstances of this Colony Be it therefore enacted by the
Queen's Most Excellent Majesty by and with the advice and consent
of the Legislative Council and Legislative Assembly of New South
Wales in Parliament assembled and by the authority of the same as
follows :—

1. A Petition of Right may if the suppliant think fit be intituled Petition of Right
in the Supreme Court of New South Wales in that jurisdiction thereof presentable to
in which the subject matter of such petition or any material part Supreme Court for
thereof would have been cognizable if the same had been a matter in like matters as
dispute between subject and subject and if intituled in the Common cognizable between
Law Jurisdiction of the said Court shall state in the margin the venue subjects.
for the trial of such petition and such petition shall be addressed to
Her Majesty in the form or to the effect in the first Schedule hereto
and shall state the Christian and Surname and usual place of abode of
the suppliant and of his Attorney if any and shall set forth with
convenient certainty the facts entitling the suppliant to relief and
shall be signed by such suppliant his Counsel or Attorney.

Claims against Crown.

Governor may grant fiat that right be done.

2. The said petition shall be left with the Colonial Secretary by whom it shall forthwith be submitted to the Governor for his consideration and in order that he may if he shall think fit in the name and on behalf of Her Majesty grant his fiat that right be done and no fee shall be payable on so leaving or receiving back such petition.

Time to plead.

3. Upon the Governor's fiat being obtained to such petition a copy of such petition and fiat shall be left at the office of the Crown Solicitor with an indorsement thereon in the form or to the effect in the second Schedule hereto praying for a plea or answer on behalf of Her Majesty within twenty-eight days and the same shall be prosecuted in the Supreme Court in the jurisdiction thereof in which the same shall be intituled.

Time may be enlarged or venue changed by Court.

4. The time for answering pleading or demurring to such petition on behalf of Her Majesty shall be the said period of twenty-eight days after the same with such prayer of a plea or answer as aforesaid shall have been left at the office of the Crown Solicitor or such further time as shall be allowed by the Court or a Judge thereof Provided always that it shall be lawful for the Court or a Judge thereof on the application of the Attorney General or of the suppliant to change the venue for the trial of such petition.

Third parties affected to have notice and may plead &c.

5. In case any such Petition of Right shall be presented for the recovery of any real or personal property or any right in or to the same which shall have been granted away or disposed of by or on behalf of Her Majesty or her predecessors a copy of such petition and fiat shall be served upon or left at the last or usual or last known place of abode of the person in the possession occupation or enjoyment of such property or right indorsed with a notice in the form set forth in the third Schedule hereto requiring such person to appear thereto within eight days and to plead or answer thereto within fourteen days after the same shall have been so served or left as aforesaid and it shall not be necessary to issue any *scire facias* or other process to such person for the purpose of requiring him to appear and plead or answer to such petition but he shall within the time so limited if he intends to contest such petition enter an appearance to the same in or to the effect of the form set forth in the fourth Schedule hereto and shall plead answer or demur to the said petition within the time specified in such notice or such further time as shall be allowed by the Court or a Judge thereof.

Like pleas &c. as in like matters at Law or in Equity.

6. Such petition may be answered by way of answer plea or demurrer in Equity or at Common Law by way of plea or demurrer or by both plea and demurrer by or in the name of Her Majesty's Attorney General on behalf of Her Majesty and by or on behalf of any other person who may in pursuance hereof be called upon to plead or answer thereto in the same manner as if such petition in Equity were a bill filed therein or if such petition at Common Law were a declaration in a personal action and without the necessity for any inquisition finding the truth of such petition or the right of the suppliant and such and the same matter as would be sufficient ground of answer or defence in point of law or fact to such petition on the behalf of Her Majesty may be alleged on behalf of any such other person as aforesaid called on to plead or answer thereto.

All like proceedings &c. as between subjects.

7. So far as the same may be applicable and except in so far as may be inconsistent with this Act the laws and statutes in force as to pleading evidence hearing and trial security for costs amendment arbitration special cases the means of procuring and taking evidence set-off appeal and proceedings in error in suits in Equity and personal actions between subject and subject and the practice and course of procedure of the Supreme Court at Law and in Equity respectively for the

Claims against Crown.

the time being in reference to such suits and personal actions shall unless the Court shall otherwise order be applicable and apply and extend to such Petition of Right Provided that nothing in this Act shall give to the subject any remedy against the Crown in any case in which he would not have been entitled to such remedy before the passing of this Act.

8. In case of a failure on the behalf of Her Majesty or of any such other person as aforesaid called upon to answer or plead to such petition to plead answer or demur in due time either to such petition or at any subsequent stage of the proceedings thereon the suppliant shall be at liberty to apply to the Court or a Judge for an order that the petition may be taken as confessed and it shall be lawful for such Court or Judge on being satisfied that there has been such failure to plead answer or demur in due time to grant a rule to shew cause why such petition should not be taken as confessed as against Her Majesty or such other party so making default and if at the return of such rule there be no appearance on the behalf of Her Majesty or such person called upon as aforesaid or if the Court or Judge shall think fit upon hearing to make the same absolute a decree may be made or leave may be given by the Court to the suppliant to sign judgment in his favour Provided that such decree or judgment may afterwards be set aside by the Supreme Court in Banco if such Court shall see fit on such terms as to them shall seem just.

Petition may be taken *pro confesso*.

9. Upon every such Petition of Right the decree or judgment of the Court whether given upon demurrer upon the pleadings or upon a default to answer or plead in time or after hearing or verdict or in error shall be that the suppliant is or is not entitled either to the whole or to some and what portion of the relief sought by his petition or such other relief as the Court may think right and such Court may give a decree or judgment that the suppliant is entitled to such relief and upon such terms and conditions (if any) as such Court shall think just.

Nature of decree or judgment.

10. In all cases in which the judgment commonly called a judgment of *amoveas manus* has in similar cases in England heretofore been pronounced or given upon a Petition of Right a judgment that the suppliant is entitled to relief as hereinbefore provided shall be of such and the same effect as such judgment of *amoveas manus*.

Effect of *amoveas manus*.

11. Upon any such Petition of Right the Attorney General or other person appearing on behalf of Her Majesty and every such other person as aforesaid who shall appear and plead or answer to such petition shall be entitled respectively to recover costs against the suppliant in the same manner and subject to the same restrictions and discretion and under the same rules regulations and provisions so far as they are applicable as are or may be usually adopted or in force touching costs in proceedings between subject and subject And for the recovery of such costs such and the same remedies and writs of execution as are authorized for enforcing payment of costs upon judgments in personal actions or decrees rules or orders may be prosecuted sued out and executed respectively by or on behalf of Her Majesty and of such other person as aforesaid as shall appear and plead to such petition and any costs recovered on behalf of Her Majesty shall be paid to the Colonial Treasurer and shall become part of the Consolidated Revenue Fund.

Costs of Crown &c.

12. Upon any such Petition of Right the suppliant shall be entitled to costs against Her Majesty and also against any other person appearing or pleading or answering to any such Petition of Right in like manner and subject to the same rules regulations and provisions restrictions and discretion as far as they are applicable as are or may be usually adopted or in force touching the right to recover costs

Costs of suppliant.

Claims against Crown.

costs in proceedings between subject and subject and for the recovery of any such costs from any such person other than Her Majesty appearing or pleading or answering in pursuance hereof to any such Petition of Right such and the same remedies and writs of execution as are authorized for enforcement of payment of costs upon rules orders decrees or judgments in personal actions between subject and subject may be prosecuted sued out and executed on behalf of such suppliant.

Final judgment
against Crown may
be certified by Judge
to Colonial Treas-
urer.

13. Whenever upon any such Petition of Right a judgment order or decree shall be given or made that the suppliant is entitled to relief and there shall be no re-hearing appeal or writ of error or in case of any appeal or proceedings in error a judgment order or decree shall have been affirmed given or made that the suppliant is entitled to relief or upon any rule or order being made entitling the suppliant to costs any Judge of the Supreme Court may upon application in behalf of the suppliant after the lapse of fourteen days from the making giving or affirming of such judgment or decree rule or order certify to the Colonial Treasurer the tenor and purport of the same in or to the effect of the form in the fifth Schedule hereto and such certificate shall be left at the office of the Colonial Treasurer.

Colonial Treasurer
to satisfy judgment.

14. The Colonial Treasurer shall pay the amount of any moneys and costs as to which a judgment or decree rule or order shall be given or made that the suppliant in any such Petition of Right is entitled and of which judgment or decree rule or order the tenor and purport shall have been so certified to him as aforesaid out of any moneys in his hands for the time being legally applicable thereto or which may be hereafter voted by Parliament for that purpose.

Rules and orders for
effectuating Act.

15. The Judges of the said Court or any two of them of whom the Chief Justice shall be one may make general rules and orders in the respective jurisdictions of Law and Equity for regulating the pleading and practice on such Petitions of Right and for the effectual execution of this Act according to the intention and object hereof and for fixing the costs to be allowed for and in respect of the several matters herein contained and the performance thereof and for the government and conduct of the officers of the Court in and relating to the distribution and performance of the duties and business to be done or performed in execution of this Act and may frame writs and forms of proceedings for the purposes aforesaid and all such rules orders and forms shall be laid before both Houses of Parliament if then sitting immediately upon the making of the same or if Parliament be not sitting then within five days after the next meeting thereof Provided that no such rule order or form shall have effect until three months after the same shall have been so laid before both Houses of Parliament after which time every such rule order and form shall be binding and obligatory on the Supreme Court and have the full force of law Provided that it shall be lawful for the Governor by any Proclamation inserted in the *Gazette* or for either House of Parliament by any Resolution passed at any time within three months next after any such rules orders or forms shall have been laid before Parliament to suspend or annul the whole or any part thereof.

Interpretation.

16. In the construction of this Act the word "relief" shall comprehend every species of relief claimed or prayed for in any such Petition of Right whether a restitution of any incorporeal right or a return of lands or chattels or a payment of money or damages or otherwise.

Saving of existing
remedies.

17. Nothing in this Act contained shall prevent any suppliant from proceeding as before the passing hereof.

Short title.

18. This Act shall be styled and may be cited as "The Amendment of the Law as to Claims against the Crown Act 1861."

Claims against Crown.

FIRST SCHEDULE.

In the Supreme Court of }
 New South Wales. } (at Common Law or in Equity.)

To the Queen's Most Excellent Majesty—

Sydney }
 to wit. }

The humble Petition of A. B. of } by his Attorney E. F.
 of } sheweth that [*state the facts*]

Conclusion

Your suppliant therefore humbly prays that &c.

Dated the

day of

A.D. 18

(Signed)

A. B.

or C. D. Counsel for A. B.

or E. F. Attorney for A. B.

SECOND SCHEDULE.

The suppliant prays for a plea or answer on behalf of Her Majesty within twenty-eight days after the date hereof or otherwise that the petition may be taken as confessed.

THIRD SCHEDULE.

To A. B.

You are hereby required to appear to the within Petition in the Supreme Court of New South Wales within } days and to plead or answer thereto
 within } after the date hereof.

Take Notice that if you fail to appear or plead or answer in due time the said Petition may as against you be ordered to be taken as confessed.

Dated &c.

FOURTH SCHEDULE.

In the Supreme Court of }
 New South Wales. } (at Common Law or in Equity.)

Petition of Right.

A. B. Suppliant } C. D. appears in person.
 v. }
 The Queen. } E. F. Attorney for C. D. appears for him.

If the appearance be in person the address of the party appearing to be given.

Entered the

day of

18

FIFTH SCHEDULE.

To the Colonial Treasurer of New South Wales—

Petition of Right of A. B. in the Supreme Court of New South Wales (at Law or in Equity.)

I humbly certify that on the } day of } 18 } it was by the
 said Supreme Court of New South Wales adjudged (or decreed or ordered) that the above-named suppliant was entitled to &c.

(Judge's Signature.)