

No. 4.—1848.

1st March.

*AN ORDINANCE to provide for the better administration of Justice in civil cases, and to extend and define the jurisdiction and powers of the Supreme Civil Court.

(L. S.), HARRIS.

Preamble,—
recites Ordinances of the 25th January, 1845, the 3rd July, 1845, and the 18th August, 1845, and repeals them.

WHEREAS on the twenty-fifth day of January, one thousand eight hundred and forty-five, an Ordinance was passed in Council, entitled "An Ordinance for the better administration of justice, and for extending the benefit of trial by jury to certain civil cases, and for assimilating the mode of proceeding in civil actions to that of the Courts of Common Law at Westminster:" And whereas on the third day of July, one thousand eight hundred and forty-five, another Ordinance was passed in Council, entitled "An Ordinance to regulate the fees to be taken in the Supreme Civil Court and in the Court for the trial of Criminal Prosecutions:" And whereas on the eighteenth day of August, one thousand eight hundred and forty-five, another Ordinance was passed in Council, entitled "An Ordinance for giving force and effect to certain Rules and Orders made by the Judges of the Court of First Instance of Civil Jurisdiction, for regulating the form and manner of proceeding in actions, suits, and other matters before the Supreme Civil Court:" And whereas it is expedient to make further provision for the better administration of justice in civil cases, and to extend and define the jurisdiction and powers of the Supreme Civil Court of the Colony, and to repeal the said recited Ordinances and to amend and consolidate the provisions thereof into one Ordinance: Be it therefore enacted, by his Excellency the Governor, by and with the advice and consent of the Council of Government.

59/1845

16/1845

27/1845

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* Such sections of the Ordinance as are omitted have been repealed by Ord. 15, 1881.

3. And be it enacted, That the law of Spain so far as the same relates to actions and rights of action and the forms of actions, and the form and mode of procedure in the same, and to costs, shall be and the same is hereby repealed, except as hereinafter provided; but every person shall be entitled to and have the like relief in Equity, or the like remedy by action at law, as he would be entitled to and have in the like case in England: Provided always, that nothing herein contained shall extend to repeal or diminish any remedy of any plaintiff in any action or suit now depending before the said Supreme Civil Court.

Repeals law of Spain relating to actions, forms of procedure, and costs.

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5. Provided also and be it enacted, That suits for the establishment and enforcement of any dotal claims and suits of Terceria whereby preference of payment shall be claimed out of any real property sold under the orders of the said Supreme Civil Court, or by any officer of the said Court, shall be maintainable, and all such suits shall be brought on the Equity side of the said Court.

Also saves Tercerias and suits for doto.

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7. And be it enacted, That the Registrar of the said Court shall continue to bear the same style and title, and shall have the charge and custody of the seal of the said Court, and of all records, documents and papers thereof, and shall perform the same duties as have been hitherto performed by him.

Regulates duties of the Registrar of the Court.

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18. And be it enacted, That in all cases in which an information or proceeding by quo warranto or mandamus would be maintainable according to the law of England the like remedy shall or may be had by information or writ on the plea side of the said Supreme Civil Court.

Proceedings by quo warranto and mandamus.

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Right of action to survive to and against any surviving contractor ;— saves right of contribution.

20. And be it enacted, That in all contracts where there shall be two or more joint-contractors, the right of action shall survive to and against the survivors and survivor, and the representative of the last survivor of such joint-contractors in the same manner as the same would survive according to the law of Eng'and, and it shall not be necessary to join the representative of any deceased joint-contractor as a plaintiff or defendant in any such action : Provided always, that nothing herein contained shall take away or diminish the rights or remedies of any person against the estate of any deceased joint-contractor, or the right to contribution between any surviving joint-contractor and the representatives of any deceased joint-contractor.

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Questions of law or of practice to be governed by the law of England.

23. And be it enacted, That where in any action or other proceeding on the plea side of the said Court any question shall arise touching the form, sufficiency, or effect of any declaration, information, demurrer, or other pleading, or touching the non-joinder or mis-joinder of any party as plaintiff or defendant, or touching the mis-joinder of several causes of action, or several counts in the same declaration, or the consequence or effect of such non-joinder or mis-joinder, or touching the admissibility of any defence, or of any evidence, or touching the competency or obligation to give evidence of any witness or the admissibility of any question put to any witness, or of any document, paper, matter, or thing tendered in evidence, or the right of any party to receive costs, or the liability of any party to pay costs, such question shall be decided according to the law of England in the like cases.

The jury may allow interest on sums certain in certain cases.

24. And be it enacted, That upon all debts or sums certain payable at a certain time or otherwise, the jury by whom any issue shall be tried, or damages assessed may, if they think fit, allow interest to the creditor at a rate not exceeding the rate of six pounds for every one hundred pounds by the year from the time when such debts or sums certain became payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the

time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand, until the time of payment: provided that interest shall be payable in all cases in which it is now payable by law.

25. And be it enacted, That the jury on the trial of any issue, or on any inquisition of damages before such jury, may if they shall think fit give damages in the nature of interest over and above the value of the goods at the time of the conversion or seizure in all actions of trover or trespass *de bonis asportatis*, and over and above the money recoverable in all actions on policies of insurance.

The jury may give damages in the nature of interest in certain cases.

26. And be it enacted, That on the trial of any issue or inquisition of damages by a jury, the plaintiff may if he shall see fit, at any time before the jury shall have actually delivered their verdict, elect to be nonsuited; and every judgment of nonsuit shall have the same effect as a judgment of nonsuit would have in a Court of Common Law at Westminster, and the defendant shall have judgment for and recover his reasonable costs in that behalf.

The plaintiff may elect to be nonsuited at any time before verdict.

27. And be it enacted, That every Judge of the said Court sitting for the trial of any issue, or the assessing of any damages, shall have the same power and authority to order any amendment in any case of variance, to be made in any record, writ, or document on which any trial may be pending before such Judge in any civil action or information, or proceedings in the nature of a quo warranto, or mandamus, and on such and the same terms as a Judge sitting at Nisi Prius would have in the like case in England.

The presiding Judge to have power to amend, as at Nisi Prius in England.

28. And be it enacted, That it shall be lawful for any Judge, if he shall think fit, in all such cases of variance, instead of causing the record or document to be amended, to direct the jury to find the facts according to the evidence, and thereupon such finding shall be stated on such record or document; and notwithstanding the finding on the issue joined, the Court may, if they shall think the said variance immaterial to the merits of the case, and the misstatement such as could not have pre-

The jury may find the facts, and the Court give judgment, notwithstanding any variance.

judiced the opposite party in the conduct of the action or defence, give judgment according to the very right and facts of the case.

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Marshal to have same powers and liabilities as Sheriff in England.

43. And be it enacted, That the Marshal shall have the same powers and authorities for the enforcing of any writ; and shall be subject to the like action or other proceeding for anything done by him or omitted to be done by him in the execution of any writ, as any Sheriff would have or be subject to in the like case in England.

Marshal may extend lands without a jury, and may take beasts of the plough.

44. Provided always, and be it enacted, That the Marshal may execute any writ against the lands and tenements of any defendant without first empannelling a jury, as is used by the Sheriff under a writ of *elegit* in England, and also shall and may take the oxen and beasts of the plough, as well as any other goods and chattels of any defendant.

Live and dead stock belonging to any lands to be seized and sold with the lands.

45. And be it enacted, That when the Marshal shall, by virtue of any writ, extend any plantation or lands of any defendant, it shall be lawful for the Marshal to seize and take any cattle and live or dead stock of the defendant used for the cultivation of such plantation or lands; and such cattle and live and dead stock shall be sold together with such plantation or lands, and without actually removing such cattle or stock, and the reasonable costs and charges of keeping such cattle or stock until the same shall be sold shall be allowed to the Marshal out of the monies to accrue from any such sale.

Lands, &c., to be sold in all cases by the Registrar; terms on which such sales shall be made.

46. And be it enacted, That all lands, tenements, and hereditaments, with the live and dead stock, if any, belonging thereto, which shall be sold by virtue of any decree of the Supreme Civil Court in Equity, and all lands, tenements, and hereditaments, with the live and dead stock, if any, belonging thereto, which shall be extended or taken by the Marshal by virtue of any writ shall be sold by the Registrar of the Court, and three calendar months notice at the least of every such sale shall be given in the public Gazette and some other public newspaper of the Colony, unless the Court shall in any case otherwise direct, and at every such sale such lands, tenements, or hereditaments, with the live or dead

stock, if any, belonging to the same shall be adjudicated to the highest bidder for the same: Provided always, that it shall be lawful for the Court to open the biddings on the same conditions on which the same would be admitted by the High Court of Chancery in England: and the purchase money, when the same shall not exceed five hundred pounds, shall be paid down in cash; and where the same shall exceed five hundred pounds, then a proportion thereof, not less than one moiety of the whole nor less than five hundred pounds, shall be paid down in cash, and the residue may be made payable in three equal instalments to be paid with interest on each of such instalments at the rate of six pounds per centum per annum, the first thereof within a term not exceeding twelve calendar months, the second thereof within a term not exceeding twenty-four calendar months, and the third thereof within a term not exceeding thirty-six calendar months from the day of sale.

47. And be it enacted, That all chattels and other personal property seized by the Marshal under any writ of *feri facias*, shall be sold by the Marshal for ready money and for the best price which can be obtained for the same at public sale as soon as conveniently may be after six clear days notice of sale in some public newspaper of the Colony.

Goods and chattels to be sold by the Marshal for cash.

48. And be it enacted, That the Registrar of the Supreme Civil Court shall have power by deed to convey any lands, tenements, or hereditaments which may be sold by him, subject always to the payment of any part of the purchase money thereof remaining unpaid with interest, which shall be a first charge on the estate and interest of the purchaser in the lands, tenements, and hereditaments so conveyed, and every such conveyance so executed by such Registrar when enregistered shall have the same force and effect as if the same had been executed by the person bound by the decree or against whom the writ shall have issued.

The Registrar to make conveyance of lands judicially sold.

49. And be it enacted, That all monies payable by any purchaser of any lands, tenements, or hereditaments which shall be sold by the Registrar of the Court for or in respect of his purchase shall be paid by such purchaser into the Colonial Treasury, there to abide the order of the Court.

Purchase money of all lands to be paid into the Treasury.

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The Court to
appoint Com-
missioners of
Affidavits.

51. And be it enacted, That it shall be lawful for the said Supreme Civil Court from time to time to appoint such persons, resident in the Island, as to the Court shall seem fit, as Commissioners of Affidavits, and the same to remove as they shall see fit, and the names of the persons so appointed shall be published in the *Royal Gazette*, and one at least of the Island newspapers; and every affidavit sworn before any such Commissioner in the course of any action, suit, or other proceeding pending in the said Court shall be as effectual to all intents and purposes as if such affidavit had been sworn before one of the Judges of the said Court: and any person who shall swear to any such affidavit before any such Commissioner, knowing such affidavit or any part of the same to be false; shall be subject to all the penalties of perjury; and every such Commissioner of Affidavits shall be entitled to charge and take a fee of Two shillings and one penny for every affidavit sworn before him, relating to any action, suit, or other proceeding in the Supreme Civil Court.

Sums to be
stated in
sterling.

52. And be it enacted, That all monies, debts and damages shall be sued for and recovered in British sterling rates of account.

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Defines term
'Infant.'

54. And be it enacted, That the term infant shall henceforth be applied to and comprise all persons of either sex under the age of twenty-one years complete.

Interpreta-
tion of terms
used in this
Ordinance.

55. And be it enacted, That in the construction of this Ordinance and of the Schedules to this Ordinance annexed, every word importing the singular number only shall extend and be applied to several persons, matters, or things, as well as one person, matter, or thing: every word importing the plural number shall extend and be applied to one person, matter or thing, as well as to several persons, matters or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male unless in any of the cases aforesaid it be otherwise

specially provided, or there be something in the subject or context repugnant to such construction.

56. And be it enacted, That so much of the Order of the Prince Regent in Council of the sixth day of April, in the year of our Lord one thousand eight hundred and eighteen, as directs that writs of execution levied on real property shall be entered and protooled in the book and Protocol of Mortgages in the office of the Secretary and Registrar of Deeds; and the Order in Council of the sixteenth day of September, in the year of our Lord one thousand eight hundred and twenty-two, establishing the Court of first instance of Civil Jurisdiction, and the Rules for the Court of first instance of Civil Jurisdiction of the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and twenty-three, and the additional rules for the Court of First Instance of Civil Jurisdiction of the nineteenth day of July, in the year of our Lord one thousand eight hundred and twenty-five, and the additional rules for the Court of First Instance of Civil Jurisdiction of the nineteenth day of July, in the year of our Lord one thousand eight hundred and twenty-five, and the additional rules for the Court of first instance of Civil Jurisdiction of the third day of September, in the year of our Lord one thousand eight hundred and thirty-two; and all other orders and rules of the Court of First Instance of Civil Jurisdiction, or of the Supreme Civil Court made at any time heretofore shall be and the same are hereby repealed.

Repeals various Orders in Council and Rules of Court.

57. And be it enacted, That this Ordinance shall commence and take effect upon and from and after the thirteenth day of March, in this present year of our Lord one thousand eight hundred and forty-eight.

Commencement of the Ordinance.

Passed in Council this first day of March, one thousand eight hundred and forty-eight.

THOMAS F. JOHNSTON,

Clerk of Council.

Marshal's Office, 10th March, 1848.

The foregoing Ordinance was duly proclaimed in Port of Spain on this tenth day of March, one thousand eight hundred and forty-eight.

A. CLOGSTOUN, *Marshal.*