ANNO NONO & DECIMO

VICTORIÆ REGINÆ.

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C A P CXIII.

An Act to improve the Proceedings in Prohibition and on Writs of Mandamus in *Ireland*.

[28th *August* 1846.]

WHEREAS by an Act passed in the First Year of the Reign of His late Majesty King *William* the Fourth, intituled *An Act to improve the Proceedings in Prohibition and on Writs of Mandamus*, certain Provisions were made relating to Applications for Writs of Prohibition, and to the Proceedings thereon, and to Damages and Costs of such Applications and Proceedings; and it is expedient that the said Provisions should be extended to and be in force in *Ireland*: Be it therefore enacted by the Queen'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 several Enactments contained in the said Statute relating to Applications for Writs of Prohibition, and to Declarations and other Pleadings and Proceedings thereon, and to the Recovery of Costs and Damages therein, shall be and the same are hereby extended to and shall be in force in *Ireland*.

1 W.4. c.21.

Provisions of Act 1 W. 4. c. 21. as to Writs of Prohibition extended to Ireland.

II. And whereas the Provisions contained in an Act passed in the Parliament of *Ireland* in the Nineteenth Year of the Reign of His late Majesty

Provisions of the Act 19 G. 2. (I.)

as to Writs of Mandamus extended to other Cases of Writs of Mandamus.

Majesty King *George* the Second, intituled *An Act for the better Regulation of Corporations*, relating to the Writs of Mandamus, therein mentioned, have been found useful and convenient, and the same ought to be extended to the Proceedings on other such Writs; be it therefore enacted, That the several Enactments contained in the said last-mentioned Statute relating to the Returns 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.

For Protection of certain Officers to whom Writs of Mandamus are directed.

III. 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 Nineteenth Year of the Reign of King *George* the Second, 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 in *Ireland* 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 King *George* the Second), 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 show 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 be permitted to frame the Return, and to conduct the subsequent Proceedings at his own Expence; 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.

Proviso as to Returns of Writs and Issues joined.

Proceedings not to abate by Death, &c. of the Officer having made the Return.

IV. And be it 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.

The Costs of Application for a Mandamus to be in the Discretion of the Court.

V. And for making some further Provision for the Payment of Costs on Application for Mandamus, be it enacted, That in all Cases of Applications for any Writ of Mandamus whatsoever in *Ireland* 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.

Where Prosecutor intends to object to the Validity of a Return to a Mandamus, he must do so by way of Demurrer.

VI. And whereas it is expedient that Parties interested in the issuing of or in the Proceedings upon Writs of Mandamus shall be enabled in certain Cases to have the Judgments and Decisions of the Court of Queen's Bench in *Ireland* in respect of the said Writs, and of the Proceedings thereon, reviewed by a Court of Error, if they shall so think fit, and that a certain Mode of effecting the same shall be ordained and established: And whereas there is not any Power or Authority given by the said recited Act of the Reign of His Majesty King *George* the Second to the Person prosecuting a Writ of Mandamus to demur to the Return made to any such Writ, so that the Decision of the said Court of Queen's Bench as to the Validity of such Return could be reviewed by a Court of Error; for Remedy whereof, therefore, be it enacted, That in all Cases in which the Person prosecuting any Writ of Mandamus heretofore issued or hereafter to be issued shall wish or intend to object to the Validity of any Return heretofore made or hereafter to be made to the same, he shall do so by way of Demurrer to the same, in such and the like Manner as is now practised and used in the said Court in personal Actions, and thereupon the said Writ and Return and the said Demurrer shall be entered on Record in the said Court, and such and the like further Proceedings shall be thereupon had and taken as upon a Demurrer to Pleadings in personal Actions in the said Court; and the said Court shall thereupon adjudge either that the said Return is valid in Law, or that it is not valid in Law, or that the Writ of Mandamus is not valid in Law; and if the Court adjudge that the said Writ is valid in Law, but that the Return thereto is not valid in Law, then and in every such Case the Court shall also by the said Judgment award that a peremptory Mandamus shall issue in that Behalf; and thereupon such peremptory Writ of Mandamus may be sued out and issued accordingly at any Time after Four Days from the signing of the said Judgment; and it shall be lawful for the said Court and they are hereby required, in and by their said Judgment, to award Costs to be paid to the Party in whose Favour they shall thereby decide, by the other Party or Parties.

Proceedings thereupon.

VII. And

Party aggrieved by Judgment may sue out a Writ of Error to reverse the same.

VII. And be it enacted, That whenever any such Judgment as is herein-before mentioned shall be given, or whenever Issue in Fact or in Law shall be joined upon any Pleadings, in pursuance of the said recited Act of the Reign of His Majesty King *George* the Second and of this Act, or of either of them, and Judgment shall be given thereon by the said Court, it shall be lawful for any Party to the Record in any of such Cases, who shall think himself aggrieved by such Judgment, to sue out and prosecute a Writ of Error for the Purpose of reversing the same, in such Manner and to such Court or Courts as a Party to any personal Action in the said Court of Queen's Bench in *Ireland* may now sue out and prosecute a Writ of Error upon the Judgment in such Action, and such and the like Proceedings shall thereupon be had and taken, and such Costs awarded, as in ordinary Cases of Writs of Error upon Judgments of the said Court in personal Actions; and if the Judgment of the said Court be reversed by the Court of Error the said Court of Error shall thereupon, by their Judgment, not only reverse the same, but shall also, in addition thereto, give the same Judgment which the Court whose Judgment is so reversed ought to have given in that Behalf; and if by their said Judgment they shall award that a peremptory Writ of Mandamus shall issue, the same shall and may accordingly be issued by the proper Officer in the Office from which such Writs issue, upon Production to him of an Office Copy of the said Judgment of the Court of Error, which shall be his Authority and Warrant for so doing: Provided always, that Bail in Error to the Amount of Fifty Pounds, or such other Sum as may by any Rule of Practice be appointed as herein-after provided, shall be duly put in within Four Days after the Allowance of the said Writ of Error, and the same shall afterwards be duly perfected according to the Practice of the Court wherein the said original Judgment was given, otherwise the Plaintiff in Error shall be deemed to have abandoned his Writ of Error, and the same shall not be further prosecuted.

Bail in Error shall be duly put in within Four Days after Allowance of Writ.

No Action, &c. by reason of any thing done in obedience to any peremptory Writ.

VIII. And be it enacted, That no Action, Suit, or any other Proceeding shall be commenced or prosecuted in *Ireland* against any Person or Persons whatsoever for or by reason of any thing done in obedience to any peremptory Writ of Mandamus issued by any Court having Authority to issue Writs of Mandamus.

Court of Error may make Rules of Practice, &c.

IX. And be it enacted, That the said Court or Courts of Error which are hereby empowered to take cognizance of the Matters aforesaid may make and they are hereby directed to make, from Time to Time and as often as they shall see Occasion, such Rules of Practice in reference to the said Application and the Proceedings thereon, and in reference to the Writs of Error herein-before mentioned, and the Proceedings thereon, and the Amount of Bail to be taken, as the said Courts respectively may deem necessary to effectuate the Intention of this Act in relation to the same respectively.

Act may be amended, &c.

X. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present Session of Parliament.

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