

ANNO PRIMO

GULIELMI IV. REGIS.

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CAP. XXI.

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

WHEREAS the filing a Suggestion of Record on Application for a Writ of Prohibition is productive of unnecessary Expence, 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

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.

Judgment. Costs. Damages.

may not issue; and Judgment shall be given, that the Writ of 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.

So much of 2 & 3 Ed. 6. c. 13. as relates to Prohibition repealed.

II. 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.

The Enactments of 9 Ann. c. 20. relating to Returns to Writs of Mandamus therein mentioned, and the Proceedings thereon, extended to all other Writs of Mandamus.

III. 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 the 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.

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

IV. 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 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.

Proceedings not to abate by Removal of Officer.

V. 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.

VI. 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.

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