

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and having this day passed as now printed is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

House of Representatives, 7th August, 1882.

[AS AMENDED BY THE LEGISLATIVE COUNCIL.]

[JUDICIAL COMMISSION.]

LAW AMENDMENT.

ANALYSIS.

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| <p>Title.</p> <p>1. Short Title.</p> <p style="text-align: center;">AMENDED RULES OF LAW.</p> <p>2. Administration suits.</p> <p>3. Statute of limitations inapplicable to express trusts.</p> <p>4. Equitable waste.</p> <p>5. Merger.</p> <p>6. Suits for possession of land by mortgagors.</p> <p>7. Assignment of debts and choses in action.</p> | <p>8. Stipulations not of the essence of contracts.</p> <p>9. Infants.</p> <p>10. Damages by collision at sea.</p> <p>11. Cases of conflict not enumerated.</p> <p style="text-align: center;">IN REGARD TO THE CUSTODY OF INFANTS.</p> <p>12. Supreme Court may make orders as to custody of infants and the access to them of their mother.</p> <p>13. Agreements in separation deeds as to custody of infants not invalid.</p> <p>14. Parties to partition suits.</p> |
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A BILL INTITULED

AN Act for the Amendment of the Law.

Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

5 1. The Short Title of this Act is "The Law Amendment Act, 1882." Short Title.

AMENDED RULES OF LAW.

10 2. In the administration by any Court of the assets of any person who may die after the coming into operation of this section, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding-up of any company under "The Joint-Stock Companies Act, 1860," and Acts amending the same, or "The Mining Companies Act, 1872," whose assets may prove insufficient for the payment of its debts and liabilities and the cost of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding-up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

Administration suits. 42 Vict., No. 27, s. 5.

15 3. No claim of a *cestui que* trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations.

Statute of limitations inapplicable to express trusts. Ib.

25 4. An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Equitable waste. Ib.

Merger.

42 Vict., No. 27, s. 5.

5. There shall not, after the commencement of this Act, be any merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Suits for possession of land by mortgagors.  
Ib.

6. A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession, or to enter into the receipt of the rents and profits thereof, shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person. 5 10

Assignment of debts and choses in action.  
Ib.

7. In lieu of that part of section nine of an Ordinance of the Governor and Legislative Council of New Zealand, Session II., number ten, commonly known as "the Conveyancing Ordinance," which enacts that every chose in action may be assigned by law, be it enacted as follows: Any absolute assignment by writing under the hands of the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action of which express notice, in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same without the concurrence of the assignor: Provided always that, if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor, or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the Supreme Court under and in conformity with the provisions of the Acts for the relief of trustees. 15 20 25 30

Stipulations not of the essence of contracts.  
Ib.

8. Stipulations in contracts as to time or otherwise which would not, before the coming into operation of this section, have been deemed to be or to have become the essence of such contracts in a Court of equity, shall receive in all Courts the same construction and effect as they would have heretofore received in equity. 35

Infants.  
Ib.

9. In questions relating to the custody and education of infants the rules of equity shall prevail.

Damages by collision at sea.  
Ib.

10. In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Vice-Admiralty, so far as they have been at variance with rules in force in the Supreme Court, shall prevail. 40

Cases of conflict not enumerated.  
Ib.

11. Generally, in all matters not hereinbefore particularly mentioned in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail. 54

#### IN REGARD TO THE CUSTODY OF INFANTS.

Supreme Court may make orders as to custody of infants and the access to them of their mother.

12. From and after the passing of this Act, it shall be lawful for the Supreme Court, upon hearing the petition by her next friend of the mother of any infant or infants under sixteen years of age, to order that the petitioner shall have access to such infant or infants at such times and subject to such 50

regulations as the Court shall deem proper, or to order that such infant or infants shall be delivered to the mother and remain in or under her custody or control, or shall, if already in her custody or under her control, remain therein until such infant or infants shall attain such age not exceeding sixteen as the

5 Court shall direct; and further to order that such custody or control shall be subject to such regulations as regards access by the father or guardian of such infant or infants, and otherwise, as the said Court shall deem proper.

10 13. No agreement contained in any separation deed made between the father and mother of an infant or infants shall be held to be invalid by reason only of its providing that the father of such infant or infants shall give up the custody or control thereof to the mother:

Agreements in separation deeds as to custody of infants not invalid.

Provided always that no Court shall enforce any such agreement if the Court shall be of opinion that it will not be for the benefit of the infant or infants to give effect thereto.

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*New Clause.*

AS TO PARTIES TO PARTITION SUITS.

14. Any person who, if "The Partition Act, 1870," had not been passed, might have maintained a suit for partition, may maintain such suit against any one or more of the parties interested without serving the other or others (if any)

20 of those parties, and it shall not be competent to any defendant in the suit to object for want of parties; and at the hearing of the cause the Court may direct such inquiries as to the nature of the property and the persons interested therein and other matters as it thinks necessary or proper, with a view to an order for partition or sale being made on further consideration; but all persons

25 who, if the said Act as amended hereby had not been passed, would have been necessary parties to the suit, shall be served with notice of the decree or order on the hearing, and, after such notice, shall be bound by the proceedings as if they had been originally parties to the suit, and shall be deemed parties to the suit, and all such persons may have liberty to attend the proceedings, and any

30 such person may, within a time limited by general orders, apply to the Court to add to the decree or order.

Parties to partition suits.