

venient service of Writs of scire facias; also an Act made and passed in the ninth and tenth years of the same Reign, intituled *An Act to prevent the failure of justice by reason of variances between Records and Writings produced in evidence in support thereof*; also an Act made and passed in the same years of the same Reign, intituled, *An Act to continue and amend an Act, intituled "An Act to provide for the surrender of the principal in discharge of Bail in actions pending in the Supreme Court of Judicature in this Province;"* also an Act made and passed in the fifth year of the Reign of His late Majesty William the Fourth, intituled *An Act to make perpetual the Acts of the General Assembly relating to the surrender of the principal in discharge of Bail*; also the ninth Section of an Act made and passed in the same year of the same Reign, intituled *An Act to provide for the more convenient administration of Justice in the Supreme Court*; also the sixth Section of an Act made and passed in the sixth year of the same Reign, intituled *An Act to prescribe certain general regulations in respect to Corporations*; also an Act made and passed in the seventh year of the same year, intituled *An Act for the amendment of the Law and the better advancement of Justice*; also an Act made and passed in the first year of the Reign of Her present Majesty, intituled *An Act for the further amendment of the Law*; also an Act made and passed in the fourth year of the same Reign, intituled *An Act in further amendment of the Law*; also the first Section of an Act made and passed in the sixth year of the same Reign, intituled *An Act to amend the Law relating to the practice in the Inferior Court of Common Pleas, and render the same uniform in the several Counties*; also an Act made and passed in the tenth year of the same Reign, intituled *An Act for the further amendment of the Law and the better advancement of Justice*; also an Act made and passed in the eleventh year of the same Reign, intituled *An Act in further amendment of the Law*: Provided always, that nothing in this Act contained shall extend to repeal any of the said recited Acts so far as they or any of them repeal any former Acts, or so far as respects any act, matter or thing heretofore done under and by virtue of the said recited Acts; provided also, that any Rules of Court or regulations heretofore made under and by virtue of any authority given in and by the said recited Acts, shall be and still continue valid, effectual and applicable to the provisions of this Act, so far as consistent with the same, until such rules or regulations may from time to time be altered; and provided also, that all actions commenced in the said Courts, under the provisions of the said recited Acts, before the passing of this Act, may still be proceeded with to their final termination, in the same manner as if this Act had not been made and passed.

9 & 10 G. 4, c. 1,

9 & 10 G. 4, c. 11,

5 W. 4, c. 26,

4 W. 4, c. 37, s. 9,

6 W. 4, c. 33, s. 6,

7 W. 4, c. 14,

1 V. c. 13,

4 V. c. 4,

6 V. c. 33, s. 1,

10 V. c. 60,

11 V. c. 14.

Reservations from the effect of the repeal.

ABATEMENT.

Restriction as to pleas in abatement for non-joinder of any person as a co-defendant.

Plaintiff may recover in a new action against original defendants and parties named in a plea in abatement, although defendants named in the plea be found not liable.

Misnomer not pleadable in abatement in personal actions;

Where by law pleadable, declaration may be amended, upon a Judge's summons.

II. And be it enacted, That no plea in abatement for the non-joinder of any person as a co-defendant shall be allowed in any Court of Record in this Province, unless it shall be stated in such plea that such person is resident within the Province, and unless the place of residence of such person shall be stated with convenient certainty in an affidavit verifying such plea.

III. And be it enacted, That in all cases in which after such plea in abatement the plaintiff shall, without having proceeded to trial upon an issue thereon, commence another action against the defendant in the action in which such plea in abatement shall have been pleaded, and the person named in such plea in abatement as joint contractor, if it shall appear by the pleadings in such subsequent action, or on the evidence at the trial thereof, that all the original defendants are liable, but that one or more of the persons named in such plea in abatement, or any subsequent plea in abatement, are not liable as a contracting party or parties, the plaintiff shall nevertheless be entitled to judgment, or to a verdict and judgment, as the case may be, against the other defendant or defendants who shall appear to be liable; and every defendant who is not so liable shall have judgment, and shall be entitled to his costs, as against the plaintiff, who shall be allowed the same as costs in the cause against the defendant or defendants who shall have so pleaded in abatement the non-joinder of such person; provided that any such defendant who shall have so pleaded in abatement shall be at liberty on the trial to adduce evidence of the liability of the defendants named by him in such plea in abatement.

IV. And be it enacted, That no plea in abatement for a misnomer shall be allowed in any personal action; but that in all cases in which a misnomer is by law pleadable in abatement in such actions, the defendant shall be at liberty to cause the declaration to be amended, at the cost of the plaintiff, by inserting the right name, upon a Judge's Summons, founded on an affidavit of the right name, and in case such Summons shall be discharged the cost of such application shall be paid by the party applying, if the Judge shall think fit.