

AMENDMENT.

V. ' And whereas great expense is often incurred, and delay or failure of justice takes place at trials by reason of variances as to some particular or particulars between the proof and the record, or setting forth on the record or document on which the trial is had, of writings, contracts, customs, prescriptions, names, and other matters or circumstances not material to the merits of the case, and by the mis-statement of which the opposite party cannot have been prejudiced : And whereas it is expedient to allow amendments, as hereinafter mentioned, to be made on the trial of the cause ;' Be it therefore enacted, That it shall be lawful for any Court of Record in this Province, or any Judge thereof, on the trial of the cause, if such Court or Judge shall see fit so to do, to cause the record, writ or document on which any trial may be pending before any such Court or Judge in any civil action, or in any information in the nature of a quo warranto or proceeding on a mandamus in the Supreme Court, when any variance shall appear between the proof and the recital or setting forth on the record, writ or document on which the trial is proceeding, of any writing, contract, custom, prescription, name, or other matter, in any particular or particulars, in the judgment of such Court or Judge not material to the merits of the case, and by which the opposite party cannot have been prejudiced in the conduct of his action, prosecution or defence, to be forthwith amended by some officer of the Court or otherwise, both in the part of the pleadings where such variance occurs, and in every other part of the pleadings which it may become necessary to amend, on such terms as to payment of costs to the other party, or postponing the trial to be had before the same or another Jury, or both payment of costs and postponement, as such Court or Judge shall think reasonable ; and in case such variance shall be in some particular or particulars, in the judgment of such Court or Judge, not material to the merits of the case, but such as that the opposite party may have been prejudiced thereby in the conduct of his action, prosecution, or defence, then such Court or Judge shall have power to cause the same to be amended, upon payment of cost to the other party, and withdrawing the record or postponing the trial as aforesaid, as such Court or Judge shall think reasonable ; and after any such amendment the trial shall proceed, in case the same shall be proceeded with, in the same manner in all respects, both with respect to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance had appeared ; and in case such trial shall be had at Nisi Prius, the order for the amendment shall be endorsed on the postea or the writ, as the case may be, and returned together with the record or writ, and thereupon such papers, rolls and other records as it may be necessary to amend, shall be amended accordingly ; provided that it shall be lawful for any party who is dissatisfied with the decision of any Judge of the Supreme Court at Nisi Prius, respecting his allowance of any such amendment, to apply to the Court in banc for a new trial upon that ground ; and in case such Court shall think such amendment improper, a new trial shall be granted accordingly, on such terms as the Court shall think fit, or the Court shall make such other order as to them may seem meet.

Amendments may be made by order of Court or Judge, in the record or document in which a trial is pending, in certain cases.

VI. And be it enacted, That the said Court or Judge shall and may, if they or he think fit, in all such cases of variance, instead of causing the record or document to be amended as aforesaid, direct the Jury to find the fact or 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 said Court, or the Court from which the record has issued, shall, if they shall think the said variance immaterial to the merits of the case, and the mis-statements such as could not have prejudiced the opposite party in the conduct of the action or defence, give judgment according to the very right and justice of the case.

Court or Judge may direct the Jury to find the facts according to the evidence, and may afterwards give judgment according to justice.

ARBITRATION.

VII. ' And whereas it is expedient to render references to arbitration in actions depending in the Supreme Court more effectual ;' Be it enacted, That the power and authority of any arbitrator or arbitrators appointed by or in pursuance of any Rule of Court or Order of Nisi Prius, in any action now brought or which shall be hereafter brought in the said Supreme Court, shall not be revocable by any party to such reference without the leave of the Court or by leave of a Judge, upon good cause shewn therefor, and the arbitrator or arbitrators shall and may and are hereby required to proceed with the reference notwithstanding any such revocation, and to make such award although the person making such revocation shall not afterwards attend the reference.

Submission to arbitration by Rule of Court, &c., not to be revoked without leave.