Anno quarto & quinto
ANNÆ REGINÆ.

An Act for the Amendment of the Law, and the better Advancement of Justice.

FOR the Amendment of the Law in several particulars, and for the Easier, Speedier, and Better Advancement of Justice, Be it Enacted by the Queens 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 from and after the First Day of Trinity Term, which shall be in the Year of our Lord, One thousand seven hundred and six, where any Demurrer shall be joyned, and entred in any Action or Suit in any Court of Record within this Realm, the Judges shall proceed and give Judgment, according as the very Right of the Cause and Matter in Law shall appear unto them, without regarding any Imperfection, Omission or Defect in any Writ, Return, Plaint, Declaration, or other Pleading, Process or Course of Proceeding whatsoever, except those only which the Party Demurring shall specially and particularly set down and express, together with his Demurrer, as Causes of the same, notwithstanding that such Imperfection, Omission or Defect might have heretofore been taken to be matter of Substance, and not Aided by the Statute made in the Twenty seventh Year of Queen Elizabeth, Intituled, An Act for the Furtherance of Justice in case of Demurrer and Pleadings, so as Sufficient Matter appear in the said Pleadings, upon which the Court may give Judgment according to the very Right of the Cause; And therefore from and after the said First Day of Trinity Term, no Advantage or Exception shall be taken of or for an immaterial Travers, or of or for the Default of Entring Pledges upon any Bill or Declaration; Or of or for the Default of Alledging the bringing into Court any Bond, Bill, Indenture or other Deed whatsoever mentioned in the Declaration or other Pleading; Or of or for the Default of Alledging of the bringing into Court Letters Testamentary, or Letters of Administration; Or of or for the Omission of Vi & Armis & contra pacem, or either of them; Or of or for the want of Averment of Hoc paratus est verificare, or, Hoc paratus est verificare per Recordum; Or of or for not Alledging prout patet per Recordum, but the Court shall give Judgment according to the very Right of the Cause, as aforesaid, without regarding any such Imperfections, Omissions and Defects or any other Matter of like nature, Except the same shall be specially and particularly set down and shewn for Cause of Demurrer.

And be it further Enacted by the Authority aforesaid, That from and after the said First Day of Trinity Term, all the Statutes of Jeofails shall be extended to Judgments which shall at any time afterwards

terwards be Entred upon Confeſſion nihil dicit, or non ſum informatus in any Court of Record; And no ſuch Judgment ſhall be Reverſed, nor any Judgment upon any Writ of Enquiry of Damages Executed thereon, be Staid or Reverſed for or by reaſon of any Imperfection, Omiſſion, Defect, Matter or Thing whatſoever, which would have been Aided and Cured by any of the ſaid Statutes of Jeofails in caſe a Verdict of Twelve Men had been given in the ſaid Action or Suit, ſo as there be an Original Writ or Bill, and Warrants of Attorney duly Filed according to the Law as is now uſed.

Provided always, and be it Enacted by the Authority aforeſaid, That the Attorney for the Plaintiff, or Demandant in any Action or Suit, ſhall File his Warrant of Attorney with the proper Officer of the Court where the Cauſe is depending the ſame Term he Declares; And the Attorney for the Defendant or Tenant ſhall File his Warrant of Attorney, as aforeſaid, the ſame Term he Appears, under the Penalties inflicted upon Attornies by any former Law for Default of Filing their Warrants of Attorney.

And be it further Enacted by the Authority aforeſaid, That from and after the ſaid Firſt Day of Trinity Term it ſhall and may be lawful for any Defendant or Tenant in any Action or Suit, or for any Plaintiff in Replevin in any Court of Record, with the leave of the ſame Court, to Plead as many ſeveral Matters thereto, as he ſhall think neceſſary for his Defence.

Provided nevertheleſs, That if any ſuch Matter ſhall upon a Demurrer joyned, be judged inſufficient, Coſts ſhall be given at the Diſcretion of the Court; Or if a Verdict ſhall be found upon any Iſſue in the ſaid Cauſe for the Plaintiff or Demandant, Coſts ſhall be alſo given in like manner, unleſs the Judge, who Tried the ſaid Iſſue, ſhall Certifie, That the ſaid Defendant, or Tenant, or Plaintiff in Replevin, had a probable Cauſe to Plead ſuch Matter which upon the ſaid Iſſue ſhall be found againſt him.

And whereas great delays do frequently happen in Trials, by reaſon of Challenges to the Arrays of Panels of Jurors, and to the Polls, for default of Hundredors: For prevention thereof for the future, Be it Enacted by the Authority aforeſaid, That from and after the ſaid firſt Day of Trinity Term, every Venire facias for the Trial of any Iſſue, in any Action or Suit in any of Her Majeſties Courts of Record at Weſtminſter, ſhall be Awarded of the Body of the proper County, where ſuch Iſſue is Triable.

Provided always, and be it Enacted by the Authority aforeſaid, That nothing in this Act before contained, ſhall extend to any Writ, Declaration or Suit of Appeal of Felony or Murder, or to any Indictment or Preſentment of Treaſon, Felony or Murder, or other Matter, or to any Proceſs upon any of them, or to any Writ, Bill, Action or Information upon any Penal Statute.

And be it further Enacted by the Authority aforeſaid, That from and after the ſaid Firſt Day of Trinity Term in any Actions brought in any of Her Majeſties Courts of Record at Weſtminſter, where it ſhall appear to the Court in which ſuch Actions are depending, that it will be proper and neceſſary, that the Jurors who are to try the Iſſues in any ſuch Actions, ſhould have the view of the Meſſuages, Lands or Place in Queſtion, in order to their better underſtanding the Evidence that will be given upon the Tryals of ſuch Iſſues, in every ſuch Caſe the reſpective Courts in which ſuch Actions ſhall be depending, may Order Special Writs of Diſtringas or Habeas Corpora to Iſſue, by which the Sheriff, or ſuch other Officer to whom the ſaid Writs ſhall be directed

rected, shall be commanded to have Six out of the First Twelve of the Jurors named in such Writs, or some greater Number of them, at the place in Question, some convenient time before the Trial, who then and there shall have the Matters in Question shewn to them by Two Persons in the said Writs named, to be appointed by the Court; And the said Sheriff, or other Officer, who is to Execute the said Writs, shall, by a Special Return upon the same, Certifie, That the View hath been had according to the Command of the said Writs.

And be it further Enacted by the Authority aforesaid, That from and after the said First Day of Trinity Term, all Grants or Conveyances thereafter to be made, by Fine or otherwise, of any Manors or Rents, or of the Reversion or Remainder of any Messuages or Lands, shall be Good and Effectual, to all Intents and Purposes, without any Attornment of the Tenants of any such Manors, or of the Land out of which such Rent shall be Issuing, or of the particular Tenants, upon whose particular Estates any such Reversions or Remainders shall and may be Expectant or Depending, as if their Attornment had been had and made.

Provided nevertheless, That no such Tenant shall be Prejudiced or Damaged by Payment of any Rent to any such Grantor or Conusor, or by Breach of any Condition for Non-payment of Rent, before Notice shall be given to him of such Grant by the Conusee or Grantee.

And be it further Enacted by the Authority aforesaid, That from and after the said First Day of Trinity Term, no Dilatory Plea shall be Received in any Court of Record, unless the Party Offering such Plea, do, by Affidavit, prove the Truth thereof, or shew some probable Matter to the Court to induce them to believe that the Fact of such Delatory Plea is true.

And be it further Enacted by the Authority aforesaid, That from and after the said First Day of Trinity Term, where any Action of Debt shall be brought upon any single Bill, or where Action of Debt, or Scire facias shall be brought upon any Judgment, if the Defendant hath paid the Money due upon such Bill or Judgment, such Payment shall and may be Pleaded in Bar of such Action or Suit, and where an Action of Debt is brought upon any Bond which hath a Condition or Defeazance to make Void the same upon Payment of a lesser Sum at a Day or Place certain, if the Obligor, his Heirs, Executors, or Administrators, have, before the Action brought, paid to the Obligee, his Executors or Administrators, the Principal and Interest due by the Defeazance or Condition of such Bond, though such Payment was not made strictly according to the Condition or Defeazance, yet it shall and may nevertheless be Pleaded in Bar of such Action, and shall be as Effectual a Bar thereof, as if the Money had been Paid at the Day and Place, according to the Condition or Defeazance, and had been so Pleaded.

And be it further Enacted by the Authority aforesaid, That if at any time, Pending an Action upon any such Bond with a Penalty, the Defendant shall bring into the Court where the Action shall be Depending, all the Principal-Money, and Interest due on such Bond, and also all such Costs as have been Expended in any Suit or Suits in Law or Equity upon such Bond, the said Money so brought in shall be deemed and taken to be in full Satisfaction and Discharge of the said Bond, and the Court shall and may give Judgment to Discharge every such Defendant of and from the same accordingly.

And whereas by an Act of Parliament made in the Twenty ninth Year of King Charles the Second, Intituled, An Act for Prevention of Frauds and Perjuries, It is Enacted, That no Nuncupative Will shall be good, where the Estate thereby bequeathed shall exceed the value of Thirty Pounds, that is not proved by the Oaths of Three Witnesses at the least, that were present at the making thereof; It is hereby Declared, That all such Witnesses as are and ought to be allowed to be good Witnesses upon Trials at Law, by the Laws and Customs of this Realm, shall be Deemed good Witnesses to prove any Nuncupative Will, or any thing relating thereunto.

And whereas it hath been doubted, whether since the making of the said aft mentioned Act of Parliament, the Declarations, or Creations of Uses, Trusts or Confidences, of any Fines or Common Recoveries manifested by Deed made after the Levying or Suffering of such Fines or Recoveries, are good and effectual in Law: It is hereby Declared, That all Declarations, or Creations of Uses, Trusts or Confidences, of any Fines, or Common Recoveries of any Lands, Tenements or Hereditaments, manifested and proved, or which hereafter shall be manifested and proved by any Deed already made, or hereafter to be made by the Party, who is by Law enabled to Declare such Uses or Trusts, after the Levying or Suffering of any such Fines or Recoveries, are and shall be as Good and Effectual in the Law, as if the said last mentioned Act had not been made.

And be it further Enacted by the Authority aforesaid, That from and after the said First Day of Trinity Term, no Claim or Entry to be made of or upon any Lands, Tenements or Hereditaments, shall be of any Force or Effect to avoid any Fine Levied or to be Levied with Proclamations, according to the Form of the Statute in that Case made and Provided in the Queens Court of Common Pleas at Westminster, or in the Courts of Sessions in any of the Counties Palatine, or in the Courts of Grand Sessions in Wales, of any Lands, Tenements or Hereditaments, or shall be a sufficient Entry or Claim within the Statute made in the Twenty first Year of King James the First, Intituled, An Act for Limitation of Actions, and for Avoiding of Suits in Law, unless upon such Entry or Claim an Action shall be Commenced within One Year next after the making of such Entry or Claim, and Prosecuted with Effect.

And be it further Enacted by the Authority aforesaid, That all Suits and Actions in the Court of Admiralty for Seamens Wages, which shall become due after the said First Day of Trinity Term, shall be Commenced and Sued within Six Years next after the Cause of such Suits or Actions shall accrue, and not after.

Provided nevertheless, and be it further Enacted, That if any Person or Persons, who is or shall be Entitled to any such Suit or Action for Seamens Wages, be or shall be at the time of any such Cause of Suit or Action accrued, fallen or come within the Age of Twenty one Years, Feme Covert, Non Compos mentis, Imprisoned, or beyond the Seas, that then such Person or Persons shall be at Liberty to bring the same Actions, so as they take the same within Six Years next after their coming to, or being of full Age, Discovert, of Sane Memory, at large, and returned from beyond the Seas.

And be it further Enacted by the Authority aforesaid, That if any Person or Persons, against whom there is or shall be any such cause of Suit or Action for Seamens Wages, or against whom there shall be any cause of Action of Trespass, Detinue, Action Sur Trover, or Replevin for taking away Goods or Cattle, or of Action of Account,

or upon the Case, or of Debt grounded upon any Lending or Contract without Specialty or Debt for Arrearages of Rent, or Assault, Menace, Battery, Wounding, and Imprisonment, or any of them, be or shall be, at the time of any such cause of Suit or Action given or accrued, fallen, or come beyond the Seas, That then such Person or Persons, who is or shall be Entitled to any such Suit or Action, shall be at liberty to bring the said Actions against such Person and Persons, after their return from beyond the Seas, so as they take the same after their return from beyond the Seas, within such times as are respectively limited for the bringing of the said Actions before by this Act, and by the said other Act made in the One and twentieth Year of the Reign of King James the First.

And be it Enacted by the Authority aforesaid, That if any Person or Persons shall be Arrested from and after the said First Day of Trinity Term, by any Writ, Bill, or Process, Issuing out of any of Her Majesties Courts of Record at Westminster, at the Suit of any common Person, and the Sheriff or other Officer taketh Bail from such Person, against whom such Writ, Bill or Process is taken out, the Sheriff or other Officer, at the Request and Costs of the Plaintiff in such Action or Suit, or his lawful Attorney, shall Assign to the Plaintiff in such Action the Bail-Bond, or other Security taken from such Bail by Endorsing the same, and Attesting it under his Hand and Seal in the presence of Two or more credible Witnesses, which may be done without any Stamp; Provided the Assignment so Endorsed be duly Stampt before any Action be brought thereupon: And if the said Bail-Bond or Assignment, or other Security taken for Bail be forfeited, the Plaintiff in such Action, after such Assignment made, may bring an Action and Suit thereupon in his own Name, and the Court where the Action is brought, may by Rule or Rules of the same Court, give such Relief to the Plaintiff and Defendant in the Original Action, and to the Bail upon the said Bond, or other Security taken from such Bail, as is agreeable to Justice and Reason, and that such Rule or Rules of the said Court shall have the Nature and Effect of a Defeazance to such Bail-Bond, or other Security for Bail.

And be it further Enacted by the Authority aforesaid, That all Warranties which shall be made after the said First Day of Trinity Term, by any Tenant for Life, of any Lands, Tenements or Hereditaments, the same Descending or Coming to any Person in Reversion or Remainder, shall be Void and of none Effect; and likewise all Collateral Warranties, which shall be made after the said First Day of Trinity Term, of any Lands, Tenements or Hereditaments by any Ancestor, who has no Estate of Inheritance in Possession in the same, shall be void against his Heir.

And be it further Enacted by the Authority aforesaid, That no Subpena, or any other Process for Appearance, do Issue out of any Court of Equity, till after the Bill is Filed with the proper Officer in the respective Courts of Equity, except in Cases of Bills for Injunctions to stay Waste, or stay Suits at Law Commenced, and a Certificate thereof brought to the Subpena-Office, or to him who usually makes out Subpenas, or other Process in the several Courts of Equity, under the Hand of the Six Clerk, or other Clerk or Officer, who usually Files Bills in Equity, for which Certificate he shall receive no Fee.

And for the better preventing vexatious Suits in Courts of Equity: Be it further Enacted, That upon the Plaintiffs Dismissing his own Bill, or the Defendants Dismissing the same for want of Prosecution, the Plaintiff in such Suits shall pay to the Defendant or Defendants, his

his or their full Costs, to be Taxed by a Master, and that no Copy, Abstract or Tenor of any Bill in Equity, do go with the Dedimus or Commission for taking the Defendants Answer; But in lieu and recompence thereof, the Sworn Clerks of the Court of Chancery shall take to their own Use, in all Causes, the whole Term Fee of Three Shillings and four Pence, and also the whole Fee or Fees of and for all small Writs made by the said Sworn Clerks.

And be it further Enacted by the Authority aforesaid, That from and after the said First Day of Trinity Term, this Act and all the Statutes of Jeofails shall extend to all Suits in any of Her Majesties Courts of Record at Westminster, for Recovery of any Debt immediately Owing, or any Revenue belonging to Her Majesty, Her Heirs or Successors; and shall also extend to all Courts of Record in the Counties-Palatine of Lancaster, Chester and Durham, and the Principality of Wales, and to all other Courts of Record within this Kingdom.

And for the preventing great Vexation from Suing out defective Writs of Error; Be it Enacted by the Authority aforesaid, That upon the Quashing any Writ of Error to be Sued out after the said First Day of Trinity Term, for Variance from the Original Record or other Defect, the Defendants in such Error shall Recover against the Plaintiff or Plaintiffs, issuing out such Writ, his Costs as he should have had, if the Judgment had been affirmed, and to be Recovered in the same manner.

And whereas great Trouble and Expence is frequently occasioned to the Widows and Orphans of Persons dying Intestate to Monies or Wages due for Work done in Her Majesties Yards and Docks, by Disputes happening about the Authority of Granting Probat of the Wills, and Letters of Administration of the Goods and Chattels of such Persons, and for preventing such unnecessary Trouble and Expence: Be it therefore Enacted by the Authority aforesaid, That the Power of Granting Probats of the Wills, and Letters of Administration of the Goods and Chattels of such Person and Persons respectively is, and is hereby Declared to be in the Ordinary of the Diocese, or such other Persons, to whom the Ordinary Power of Probat of Wills, or Granting Letters of Administration do belong, where such Person and Persons shall respectively Dye; And that the Salary, Wages or Pay due to such Person or Persons from the Queens Majesty, Her Heirs or Successors, for Work done in any of the Yards or Docks, shall not be Taken or Deemed to be Bona notabilia, whereby to found the Jurisdiction of the Prerogative Court.

And be it Enacted by the Authority aforesaid, That from and after the said First Day of Trinity Term, Actions of Account shall and may be brought and maintained against the Executors and Administrators of every Guardian, Bailiff and Receiver; And also by one Joynt Tenant and Tenant in Common, his Executors and Administrators, against the other, as Bailiff for Receiving more than comes to his just Share or Proportion, and against the Executor and Administrator of such Joynt Tenant or Tenant in Common; And the Auditors appointed by the Court, where such Action shall be depending, shall be, and are hereby Impowered to Administer an Oath, and Examine the Parties touching the Matters in Question, and for their Pains and Trouble in Auditing and Taking such Account, have such Allowance as the Court shall adjudge to be reasonable to be Paid by the Party, on whose side the Balance of the Account shall appear to be.

FINIS.