

## HONGKONG.

## ANNO VICESIMO OCTAVO VICTORIÆ REGINÆ.

No. 12 of 1864.

By His Excellency SIR HERCULES GEORGE ROBERT ROBINSON, Knight, Governor and Commander-in-Chief of the Colony of Hongkong and its Dependencies, and Vice-Admiral of the same, with the Advice of the Legislative Council of Hongkong.

HERCULES G. R. ROBINSON.

Title. *An Ordinance to facilitate the Remedies on Bills of Exchange and Promissory Notes by the Prevention of frivolous or fictitious Defences to Actions thereon.*

[13th September, 1864.]

Preamble. Whereas it is expedient that the several Matters embraced by Ordinance No. 5 of 1856 should be provided for by separate and distinct Ordinances: Be it enacted by His Excellency the Governor of Hongkong, with the Advice of the Legislative Council thereof, as follows:

Part of Sec. 2 of Ordinance No. 5 of 1856, repealed. I. So much of Section 2 of Ordinance No. 5 of 1856, as relates to the Imperial Enactment entitled "The Summary Procedure on Bills of Exchange Act, 1855," shall be repealed, except as to the Proceedings in any Action upon a Bill of Exchange or Promissory Note commenced before the passing of this Ordinance.

All Actions upon Bills of Exchange, &c., may be by Writ of Summons as Form in Schedule (A.) II. All Actions upon Bills of Exchange or Promissory Notes commenced within Six Months after the same shall have become due and payable may be by Writ of Summons in the Special Form contained in Schedule (A) to this Ordinance annexed and indorsed as therein mentioned, and it shall be lawful for the Plaintiff, on filing an Affidavit of Personal Service of such Writ within the Jurisdiction of the Court, or an Order for leave to proceed and a Copy of the Writ of Summons and the Indorsements thereon, in case the Defendant shall not have obtained leave to appear and have appeared to such Writ according to the exigency thereof at once to sign final Judgment in the Form contained in Schedule (B) to this Ordinance annexed, for any Sum not exceeding the Sum indorsed on the Writ, together with Interest, at the rate specified (if any) to the Date of the Judgment, and a Sum for Costs to be fixed by the Registrar subject to the approval of the Chief Justice, unless the Plaintiff claim more than such fixed Sum, in which case the Costs shall be taxed in the ordinary way, and the Plaintiff may upon such Judgment issue Execution forthwith.

Plaintiff on filing Affidavit of Personal Service may at once sign final Judgment as Form in Schedule (B.)

Defendant shewing a Defence upon the Merits to have leave to appear. III. The Chief Justice shall upon application within the Period of Twelve Days from such Service, give leave to appear to such Writ, and to defend the Action, on the Defendant paying into Court the Sum indorsed on the Writ, or upon Affidavits satisfactory to the Chief Justice which disclose a legal or equitable Defence, or such Facts as would make it incumbent on the Holder to prove Consideration, or such other Facts as the Chief Justice may deem sufficient to support the Application, and on such Terms, as to Security or otherwise, as to the Chief Justice may seem fit.

Chief Justice may under special circumstances set aside Judgment. IV. After Judgment the Chief Justice may under special Circumstances set aside the Judgment, and, if necessary stay or set aside Execution, and may give leave to appear to the Writ and to defend the Action, if it shall appear to be reasonable to him so to do, and on such Terms as to him may seem just.

Chief Justice may order Bill to be deposited with Registrar. V. In any Proceedings under this Ordinance it shall be competent to the Chief Justice to order the Bill or Note sought to be proceeded upon, to be forthwith deposited with the Registrar, and further to order that all Proceedings shall be stayed until the Plaintiff shall have given Security for the Costs thereof.

Remedy for recovery of expenses of noting Non-acceptance. VI. The Holder of every dishonoured Bill of Exchange or Promissory Note shall have the same Remedies for the Recovery of the Expenses incurred in noting the same for Non-acceptance or Non-payment, or otherwise by reason of such Dishonour, as he has under this Ordinance for the Recovery of the Amount of such Bill or Note.

Holder may issue One Summons against all or any of the Parties to Bill. VII. The Holder of any Bill of Exchange or Promissory Note may, if he think fit, issue One Writ of Summons according to this Ordinance against all or any number of the Parties to such Bill or Note, and such Writ of Summons shall be the commencement of an Action or Actions against the Parties therein named respectively, and all subsequent Proceedings against such respective Parties shall be in like manner, so far as may be, as if separate Writs of Summons had been issued.

VIII. The Provisions of "The Common Law Procedure Act, 1852," and of "The Common Law Procedure Act, 1854," and all Rules made under or by virtue of either of the said Acts shall, so far as the same are by other Ordinances extended to this Colony and may be made applicable, extend and apply to all Proceedings to be had or taken under this Ordinance. Incorporation of  
Common Law Procedure  
Acts and Rules.

IX. In citing this Ordinance in any Instrument, Document or Proceeding, it shall be sufficient to use the expression "The Summary Procedure on Bills of Exchange Ordinance, 1864." Short Title.

Passed the Legislative Council of Hongkong, this 13<sup>th</sup> Day of September, 1864.

L. D'ALMADA E CASTRO,  
*Clerk of Councils.*

SCHEDULES REFERRED TO IN THE FOREGOING ORDINANCE.

(A.)

VICTORIA, BY THE GRACE OF GOD, &c.

To C. D. of

We warn you, that unless within Twelve Days after the Service of this Writ on you, inclusive of the Day of such Service, you obtain leave from the Chief Justice to appear, and do within that Time appear in the Supreme Court in an Action at the Suit of A. B. The said A. B. may proceed to Judgment and Execution.

*Witness, &c.*

*Memorandum to be subscribed on the Writ.*

*N.B.*—This Writ is to be served within Six Calendar Months from the Date hereof, or if renewed, from the Date of such Renewal, including the Day of such Date and not afterwards.

*Indorsement to be made on the Writ before Service thereof.*

This Writ was issued by E. F. of Attorney for the Plaintiff,  
Or this Writ was issued in Person by A. B. who resides at [*here insert an accurate description of the Plaintiff's Residence.*]

*Indorsement.*

The Plaintiff claims [ Dollars Principal and Interest] or Dollars  
Balance of Principal and Interest due to him as the Payee [or Indorsee] of a Bill of Exchange or Promissory Note of which the following is a Copy. [*Here Copy Bill of Exchange or Promissory Note, and all Indorsements upon it.*]

And if the Amount thereof be paid to the Plaintiff or his Attorney within Days  
from the Service hereof, further Proceedings will be stayed.

*Notice.*

Take Notice, that if the Defendant do not obtain leave from the Chief Justice within Twelve Days after having been served with this Writ inclusive of the day of such Service to appear thereto, and do within such time cause an appearance to be entered for him in the Supreme Court, the Plaintiff will be at liberty at any time after the expiration of such Twelve Days to sign final Judgment for any sum not exceeding the sum above claimed, and the sum of Dollars for costs and issue Execution for the same.

Leave to appear may be obtained on an Application at the Chief Justice's Chambers supported by Affidavit shewing that there is a Defence to the Action on the Merits, or that it is reasonable that the Defendant should be allowed to appear in the Action.

*Indorsement to be made on Writ after Service thereof.*

This Writ was served by X. Y. on L. M. (the Defendant the Defendants) on  
Monday the day of 186

By X. Y.

(B.)

IN THE SUPREME COURT OF HONGKONG,

On the            day of            A.D. 186

Hongkong (to wit) A. B. in his own Person [or by            his Attorney]  
sue out a writ against C. D. indorsed as follows.

[Here copy Indorsement of Plaintiff's claim]

And the said C. D. has not appeared

Therefore it is considered that the said A. B. recover against the said C. D.            Dollars  
together with            Dollars for Costs of Suit.

HONGKONG.

ANNO VICESIMO OCTAVO VICTORIÆ REGINÆ.

No. 13 of 1864.

By His Excellency SIR HERCULES GEORGE ROBERT ROBINSON, Knight, Governor and Commander-in-Chief of the Colony of Hongkong and its Dependencies, and Vice-Admiral of the same, with the Advice of the Legislative Council of Hongkong.

HERCULES G. R. ROBINSON,

Title.            *An Ordinance to amend the Laws of Trade and Commerce.*

[13th September, 1864.]

Preamble.            Whereas it is expedient that the Matters embraced by Ordinance No. 3 of 1857 should be provided for by separate and distinct Ordinances: Be it enacted by His Excellency the Governor of Hongkong, with the Advice of the Legislative Council thereof, as follows:

Part of Ordinance No. 3 of 1857 repealed.            I. So much of Ordinance No. 3 of 1857 as relates to "The Mercantile Law Amendment Act, 1856" (Imperial) shall be and the same hereby is repealed, except as to anything done before, or any Proceeding pending at, the time of the passing of this Ordinance.

Protection to Persons acquiring Title to goods before seizure, &c. under writ against seller.            II. No Writ of *Fieri Facias* or other Writ of Execution, and no Writ of Attachment against the Goods of a Debtor, shall prejudice the Title to such Goods acquired by any Person *bonâ fide* and for a valuable Consideration before the actual Seizure or Attachment thereof by virtue of such Writ, provided such Person had not at the time when he acquired such Title, Notice that such Writ or any other Writ by virtue of which the Goods of such Owner might be seized or attached, had been delivered to and remained unexecuted in the hands of the Sheriff.

Specific Delivery of goods.            III. In all Actions and Suits in either Court of Record in this Colony for Breach of Contract to deliver specific Goods for a Price in money on the application of the Plaintiff and by leave of the Judge before whom the Cause is tried, the Jury or (if the Case be tried without a Jury,) the Judge shall, if they or he find the Plaintiff entitled to recover, find by their Verdict or his Decision, as the case may be, what are the Goods in respect of the Non-delivery of which the Plaintiff is entitled to recover and which remain undelivered; what (if any) is the Sum the Plaintiff would have been liable to pay for the Delivery thereof; what Damages (if any), the Plaintiff would have sustained if the Goods should be delivered under Execution, as hereinafter mentioned, and what Damages, if not so delivered; and thereupon if Judgment shall be given for the Plaintiff, the Court at its discretion, on the application of the Plaintiff shall have power to order Execution to issue for the Delivery, on payment of such Sum, (if any) as shall have been found to be payable by the Plaintiff as aforesaid, of the said Goods without giving the Defendant the Option of retaining the same upon paying the Damages assessed; and such Writ of Execution may be for the Delivery of such Goods; and if such Goods so ordered to be delivered, or any Part thereof cannot be found, and unless the Court shall otherwise order, the Sheriff or other Officer of such Court of Record shall distrain the Defendant by all his Lands and Chattels in the Colony, till the Defendant deliver such Goods, or at the option of the Plaintiff, cause to be made of the Defendant's Goods the assessed Value or Damages, or a due Proportion thereof; provided that the Plaintiff shall, either by the same or a separate Writ of Execution, be entitled to have made of the Defendant's Goods the Damages, Costs, and Interest in such Action or Suit.