

## No. VI.

ABSENT  
DEFENDANTS.

An Act to revive the Absent Defendants Act and  
to amend the same. [29th July, 1854.]

Preamble.

4 Vic. No. 6.

WHEREAS it hath been held that "The Common Law Procedure Act of 1853" has rendered the Act of Council passed in the fourth year of Her present Majesty's reign intituled "*An Act to consolidate and amend the Laws relating to Actions against persons absent from the Colony and against persons sued as joint contractors*" inoperative so far as the same relates to proceedings by foreign attachment by reason of the alteration made by the first-mentioned Act in the mode of serving and returning writs of summons and of other provisions therein contained And whereas it is expedient to revive the  
said

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*Felon Law of England Adoption.*

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said last-mentioned Act and to amend the same in the particulars hereinafter mentioned Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof as follows:—

1. The provisions in the said secondly recited Act shall after the passing of this Act be in full force and effect anything in the said Common Law Procedure Act contained to the contrary notwithstanding. 4 Vic. No. 6 to be in force.

2. An indorsement upon the writ of summons issued in any action brought in the Supreme Court made by the officer or person who shall be charged or intrusted with the service thereof upon any defendant in such action to the effect that he has made diligent search for such defendant and has been unable to find him is and shall be of the same force and effect within the meaning of the said secondly recited Act as a return of *non est inventus* by the Sheriff or his Deputy to a writ of summons or of *capias* according to the practice at the time of passing that Act. Certain indorsement on writ of summons to have the same effect as a return of *non est inventus* by the Sheriff.

3. The provisions of the said secondly recited Act shall apply to any defendant who shall be absent from the Colony at the time of proceeding thereunder notwithstanding that he may have been within the Colony at the time of issuing the writ of summons against him. Provided that it shall appear by affidavit that reasonable efforts were made and with due diligence to serve such summons on him but without effect. If defendant shall be absent at the commencement of proceedings to be sufficient.

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