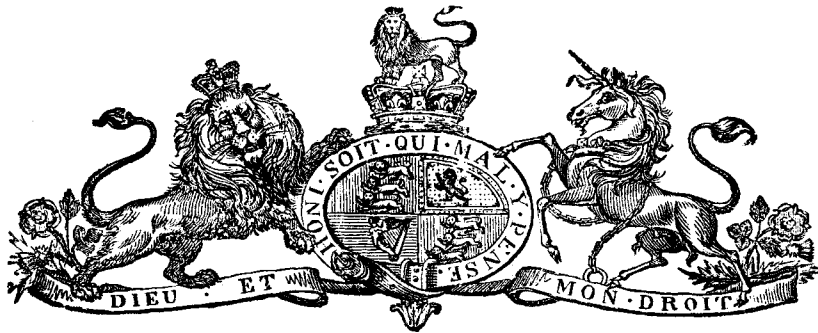


T A S M A N I A.



1860.

ANNO VICESIMO-QUARTO

VICTORIÆ REGINÆ,

No. 6.



AN ACT to amend the Law relating to Courts of Requests. [4 October, 1860.]

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

1 The Governor in Council is hereby empowered, from time to time, to appoint Courts of Requests, to be held before a Commissioner or Deputy Commissioner, for the recovery of debts and demands, to such an amount not exceeding Thirty Pounds, and at such places and times, as the Governor in Council thinks fit, and every such Court of Requests shall be a Court of Record : Provided, that any such Court, when held before a Deputy Commissioner, shall not have authority to hear and determine any action cognizable by such Court where the debt or damage claimed exceeds Ten Pounds.

Governor in Council empowered to appoint Courts of Requests.

2 The Governor in Council is hereby empowered, from time to time, to appoint as many fit persons as are needed to be Commissioners and Deputy Commissioners of such Courts; and, from time to time, to remove any such Commissioner or Deputy Commissioner; and the same person may be appointed Commissioner or Deputy Commissioner of Two or more such Courts.

Governor in Council may appoint Commissioners and Deputy Commissioners.

Courts may be adjourned.

3 It shall be lawful for the Commissioner or Deputy Commissioner of every such Court to adjourn the holding thereof from the day appointed for that purpose to any other day as he may, from time to time, deem necessary.

Governor in Council may appoint Courts of General Sessions to be Courts for the recovery of debts.

4 The Governor in Council is also hereby empowered to appoint that any Court of General Sessions of the Peace now or hereafter established shall be a Court for the recovery of debts and demands to such an amount, not exceeding Thirty Pounds, as the Governor in Council thinks fit; and upon the publication of any such appointment the Court of General Sessions so appointed shall be held as a Court for the recovery of such debts and demands, and for that purpose shall have the jurisdiction of a Court of Requests.

Ministerial Officers of Courts.

5 Every such Court of Requests and Court of General Sessions as aforesaid shall have a Registrar and such other Ministerial Officers for the execution of the judgments, orders, and process thereof as the Governor, from time to time, deems necessary.

In Rural Municipalities, Corporate Officers to be Officers of Court.

6 Where any Court of General Sessions of the Peace held within any Rural Municipality is appointed by virtue of this Act to be a Court for the recovery of debts and demands, the Council Clerk of such Rural Municipality shall be the Registrar, and the Superintendent of Police thereof shall be the Summoning Officer, of such Court as respects its jurisdiction as a Court for the recovery of debts and demands, and shall respectively perform the duties of such respective offices.

Justices in Courts of General Sessions to be sole judges, and decision of majority to be the judgment of the Court.

7 In all actions brought in any such Court of General Sessions so appointed as aforesaid to be held for the recovery of debts and demands the Justices before whom the Court is held shall be the sole Judges, and shall determine all questions as well of fact as of law; and all questions arising in any proceeding in any such Court shall be decided by the majority of Justices present; and the decision of the majority shall be the judgment of the Court; and in case the Justices present should be equally divided in opinion, the Chairman shall have a casting vote.

Provisions of 6 Vict. No. 9, applicable to Courts of Requests.

8 Every Court of Requests constituted under this Act shall be a Court of Requests within the meaning of the Act of Council of the 6th *Victoria*, No. 9; and the provisions of the said Act shall be applicable to every such Court, and to the Officers thereof.

Provisions of 6 Vict. No. 9, applicable to Courts of General Sessions.

9 Subject to the provisions of this Act, the provisions of the said recited Act of Council of the 6th *Victoria*, No. 9, relating to Courts of Requests and the Officers thereof, shall be applicable to Courts of General Sessions appointed under this Act as Courts for the recovery of debts and demands, and the Officers thereof; and all powers and authorities by the said recited Act vested in a Commissioner, excepting the hearing and determination of any action, shall be exercisable by the Chairman of any such Court of General Sessions.

Rules, &c. established under 6 Vict. No. 9, applicable under this Act.

10 The Rules of Practice and proceedings for the conduct of business established, and the costs and fees appointed under the said recited Act, shall be applicable to such Courts of Requests and Courts of General Sessions as aforesaid; and all Forms of Process settled and authorised under the said recited Act shall, with such alterations as are rendered necessary by the provisions of this Act, be used in such Courts as aforesaid.

11 Every such Court of Requests and Court of General Sessions as aforesaid shall have cognizance of all personal actions where the debt or damage claimed is not more than the amount to which the jurisdiction of the Court in which the action is brought is limited, excepting actions of ejectment or replevin, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise is in question, or in which the validity of any devise or bequest, or limitation under any will or settlement may be disputed, or for the infringement of letters patent or copyright, or for the recovery of any money or thing won or alleged to have been won at or by means of a race, match, wager, or any kind of play, or for any arrest or false imprisonment, or malicious prosecution, or for any libel or slander, or for seduction, or breach of promise of marriage, or upon any charter-party of affreightment, or policy of assurance.

Actions cognizable under this Act.

Exceptions.

12 All actions cognizable by any such Court of Requests or General Sessions as aforesaid may be brought in the Court without writ, and shall be heard and determined in a summary way in such Court, according to the provisions of this Act and the said recited Act of the 6th *Victoria*, No. 9.

Actions to be determined in a summary way.

13 The enactment contained in Section 16 of the said recited Act of the 6th *Victoria*, No. 9, shall not apply to Actions brought in the Supreme Court on Bills of Exchange, Promissory Notes, or Cheques.

Sect. 16 of 6 Vict. No. 9, not to apply to Actions on Bills of Exchange, Notes, or Cheques.

14 In order to avoid technical difficulties arising from local jurisdiction, every such Court of Requests or Court of General Sessions as aforesaid shall have jurisdiction throughout the Colony; but the plaintiff is hereby directed to bring his action in the Court having jurisdiction to the amount claimed nearest to the place of abode or business of the defendant, or to the place where the cause of action arose; and if on the trial of any action it appears to the Court that at the time of the commencement of the action the places of abode and business of the defendant, and the place where the cause of action arose, were nearer by not less than Five miles to some other Court of competent jurisdiction, the plaintiff shall be nonsuit, unless the defendant foregoes his right to such nonsuit.

Courts to have jurisdiction throughout Colony; but actions to be brought in nearest Court.

15 All summonses, writs of execution, and other process issued out of any such Court of General Sessions as aforesaid shall be under the hand of the Registrar of the Court.

Process out of General Sessions to be signed by the Registrar.

16 Every such Court of Requests and Court of General Sessions as aforesaid shall have power, if the Court thinks fit, to order a new trial, to be heard upon such terms as the Court thinks reasonable, and in the meantime to stay the proceedings.

New trial.

17 Where a Summoning Officer has necessarily incurred expenses in the execution of a writ of *feri facias* or warrant of commitment, and is unable from insufficiency of goods or land of the party against whom the execution issued, or other cause, without his own default, to obtain reimbursement of such expenses, by means of such execution, within One month after the issue of the writ or warrant, such expenses or the amount thereof unpaid shall be paid to the Summoning Officer by the party at whose suit the execution issued; and on non-payment of the same by such last-mentioned party on demand, the Court shall, in a summary way, ascertain the amount of such expenses, and enforce payment thereof by such last-mentioned party to the Summoning Officer by the

Expenses of Summoning Officer in executing process, by whom payable.

same means as a judgment of the Court may be enforced ; and such amount shall be recoverable by such last-mentioned party against the opposite party as costs in the cause.

Removal of actions into Supreme Court by *certiorari*.

18 Any action commenced in any such Court of Requests or Court of General Sessions as aforesaid may be removed by *certiorari* into the Supreme Court by order of the Supreme Court or any Judge thereof, if it appears to such Court or Judge that the case is one which for any reason it is fit or desirable should be tried in the Supreme Court ; and such order may be made upon such terms as to payment of costs, giving security for the amount claimed or costs, or such other terms as the Court or Judge thinks fit.

Appeal from judgment of Courts held under this Act.

19 In any action brought in any such Court of Requests or General Sessions, if either party is dissatisfied with the determination or direction of the Court in point of law, or upon the admission or rejection of any evidence, such party may, by leave of a Judge of the Supreme Court, appeal from the same to the Supreme Court ; provided that such party shall, within Ten days after such determination or direction, give notice of his intention to apply for leave to appeal to the other party or his Attorney, and also, if he obtains leave to appeal, give security within Ten days after such leave granted, to be approved by the Judge granting such leave, for the costs of the appeal, and for the amount of the judgment, if he be the defendant and the appeal be dismissed : Provided, that such security, so far as regards the amount of the judgment, shall not be required in any case where the Court in which the action was tried has ordered the party appearing to pay the amount of such judgment into the hands of the Registrar of the Court, and the same has been paid accordingly ; and the Court of Appeal may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, and may make such order with respect to the costs of the appeal as such Court thinks proper, and such order shall be final.

Appeals to be in form of a special Case.

20 Such appeal shall be in the form of a Case agreed to by both parties, or their Attorneys ; and if they cannot agree, the Commissioner, Deputy Commissioner, or Chairman of the Court in which the action was tried, upon being applied to by them or their Attorneys, or either of them, shall settle the Case and sign it ; and such Case shall be transmitted by the appellant to the Registrar of the Supreme Court.

Judges may hear applications for Writs of Prohibition in Term or Vacation.

21 It shall be lawful for any Judge of the Supreme Court, as well in Term time as in Vacation, to hear and determine applications for Writs of Prohibition directed to such Courts of Requests or General Sessions as aforesaid, and to make such Rules or Orders for the issuing of such Writs as might be made by the Court, and all such Rules or Orders so made by any such Judge shall have the same force and effect as Rules of Court for such purposes now have, and such Writs shall be issued by virtue of such Rules or Orders as well in Term time as in Vacation : Provided always, that any Rule or Order made by any such Judge, or any Writ issued by virtue thereof, may be discharged or varied or set aside by the Court, on application made thereto by any party dissatisfied with such Rule or Order.

Governor in Council may alter time, place of holding, or jurisdiction of Court, or discontinue Court.

22 The Governor in Council is hereby empowered, from time to time, to alter the time and place of holding, and the amount to which the jurisdiction extends, of any such Court of Requests or Court of General Sessions so appointed as aforesaid to be held for the recovery of debts and demands, or to discontinue the holding of any such Court.

23 Upon the discontinuance by the Governor in Council of any such Court of Requests or General Sessions, any proceeding depending or judgment recovered in such Court may be continued or enforced in and by the Court of Requests or General Sessions, as the case may be, having competent jurisdiction which is at or nearest to the place where the Court so discontinued was held.

Proceedings pending in discontinued Court.

24 All Orders and Appointments made by the Governor in Council, and all Appointments made by the Governor alone, as the case may be, for the purposes of this Act, shall be published in the *Gazette*, and the production of a copy thereof containing any such Order or Appointment shall be conclusive evidence of such Order or Appointment.

Orders in Council and Appointments under this Act to be published in *Gazette*.

25 So much of this Act as authorises the making of any Order or Appointment by the Governor in Council, or by the Governor, shall commence and take effect immediately on the passing thereof; and the residue of this Act shall commence and take effect at such time as shall be fixed for that purpose by an Order of the Governor in Council; and at the time so fixed Sections 2, 3, and 4 of the Act of Council of the 6th *Victoria*, No. 9, and the Act of Council of the 16th *Victoria*, No. 10, and the Act of the Parliament of *Tasmania* of the 20th *Victoria*. No. 5, shall be repealed, and the several Courts constituted under the first-mentioned Act shall be abolished; but no proceeding depending, or judgment recovered, in any such Court shall be invalidated or affected by such repeal or abolition, but notwithstanding anything contained in this Act such proceeding may be continued, or judgment enforced, as if the proceeding or judgment had been commenced or recovered in and by the Court appointed under this Act, having competent jurisdiction, which is at or nearest to the place where the Court in which the proceeding was depending, or judgment was recovered, was held.

When this Act to take effect.

Repeal of 6 Vict. No. 9, ss. 2, 3, 4, and 16 Vict. No. 10 (*Courts of Requests Acts*), and 20 Vict. No. 5.

Pending proceedings to be continued in Courts held under this Act.

