



ANNO SEXTO

# VICTORIÆ REGINÆ,

No. 9.

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*By His Excellency SIR JOHN FRANKLIN, Knight Commander of the Royal Hanoverian Guelphic Order, Knight of the Greek Order of the Redeemer, and a Captain in Her Majesty's Royal Navy, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies, with the advice of the Legislative Council.*

***AN ACT to institute Courts of Requests with a more extended Jurisdiction than those at present existing in this Island.***

**W**HEREAS in pursuance of the Act of this Island passed in the Tenth year of the Reign of His late Majesty King George the Fourth intituled *An Act to institute Courts of Requests* Courts of Civil Jurisdiction called Courts of Requests were instituted and now exist in the Police Districts of Hobart Town Launceston New Norfolk Oatlands Campbell Town Richmond and Norfolk Plains in cases not exceeding Ten Pounds sterling—AND WHEREAS it is expedient that the said Act should be repealed and that provision should be made for the institution of Courts of Requests with a like jurisdiction and also other Courts of Requests with a more extensive jurisdiction in such parts of this Island as occasion may require—BE IT THEREFORE ENACTED by His Excellency SIR JOHN FRANKLIN Knight Commander of the Royal Hanoverian Guelphic Order Knight of the Greek Order of the Redeemer and a Captain in Her Majesty's Royal Navy Lieutenant-Governor of the

PREAMBLE.

10 Geo 4 N. 3.

Existing Act repealed from the 1st day of January, 1843.

Courts to be appointed by proclamation.

May be adjourned by the Commissioner to another day in the same month.

Commissioners and Officers of Courts.

Commissioners to be appointed by Letters Patent.

Officers as Lieutenant-Governor shall direct.

Jurisdiction of the Courts when held by a Deputy or Assistant Commissioner to be confined to cases not exceeding 10l.

When held by a Commissioner not exceeding 30l.

Exceptions to jurisdictions in each case.

Island of Van Diemen's Land and its Dependencies by and with the advice of the Legislative Council that on and from the First day of January next the said Act intituled *An Act to institute Courts of Requests* shall be and the same is hereby repealed.

II. AND BE IT ENACTED that after the passing of this Act Courts of Requests shall be holden in and for such Districts or parts of this Island and its Dependencies for hearing and determining any debt or demand for such amounts not exceeding Thirty Pounds and at such places and on such days respectively as the Lieutenant-Governor for the time being shall by proclamation for that purpose from time to time appoint—PROVIDED ALWAYS that it shall be lawful for the Commissioner of every such Court to adjourn the holding thereof from the day so appointed to any other day in the same month that he may from time to time deem necessary.

III. AND BE IT ENACTED that every such Court shall be holden by a Commissioner or in his absence by a Deputy Commissioner or where there shall be no Commissioner appointed by an Assistant Commissioner and shall have a Registrar and such other ministerial Officers for the execution of the judgments orders and process thereof as the Lieutenant-Governor shall deem necessary.

IV. AND BE IT ENACTED that every such Commissioner Deputy Commissioner and Assistant Commissioner shall be appointed by Letters Patent under the Seal of this Colony and shall hold his office during the pleasure of Her Majesty Her heirs and successors and every Ministerial Officer of such Courts shall be appointed to and removed from his office in such manner as the Lieutenant-Governor for the time being shall direct.

V. AND BE IT ENACTED that every such Court when held by a Deputy or Assistant Commissioner shall have power and authority to hear and determine in a summary way all actions whatsoever in the nature of actions for the recovery of any debt or demand for work or labour done and all actions for goods sold and delivered and all actions for rent or use and occupation or money had and received or paid laid out or expended and all actions upon any bill of exchange or promissory note and all actions for any assessment or award of arbitration and all actions of trespass or trover for taking goods and chattels to an amount in any such case not exceeding Ten Pounds and to award costs to the prevailing party in all such actions whether he be plaintiff or defendant and every such Court when held by a Commissioner shall have like power and authority to hear and determine in a like summary way all such actions as aforesaid to an amount in any such case not exceeding Thirty Pounds and in like manner to award costs therein as aforesaid—PROVIDED HOWEVER that the said Courts shall not have power to hear or determine any action brought to recover the disputed balance of an unsettled account originally exceeding the sums of Ten Pounds or Thirty Pounds according to the jurisdiction of the said several Courts nor to hear or determine any action for the recovery of any money or thing won or alleged to have been won at or by means of any horse-race cock match wager or any kind of play or for the recovery of any debt for which there hath not been a contract acknowledgment undertaking or promise to pay within three years before the taking out of the summons although the same respectively shall not exceed the sum of

Ten Pounds or Thirty Pounds as aforesaid—PROVIDED that any period for which the Defendant may have been absent from the Colony after the making of such contract acknowledgment undertaking or promise as aforesaid shall not be considered as any portion of time included in such limitation—PROVIDED ALSO that the said Courts shall not have power to hear or determine any action where the matter in question relates to the title to any lands tenements or hereditaments or (unless by the consent of the Attorney-General) to the taking or demanding of any duty payable to Her Majesty or any fee of office or to any annual rent due to Her Majesty or other such matter where rights in future may be bound or to any general right or duty.

VI. AND BE IT ENACTED that no debt or demand shall be divided so as to bring the same within the jurisdiction of any such Court ~~nevertheless if any person shall commence and prosecute any action in any such Court whose original debt or demand shall exceed the sum of Ten Pounds or Thirty Pounds as the case may be the Court may nevertheless at its discretion proceed therein but in such case verdict or judgment shall not be given for more than Ten Pounds or Thirty Pounds as the case may be and the sum so recovered shall be received in full satisfaction of the whole of the original debt or demand and be a bar to any action or suit which may be brought in the same or any other Court in respect thereof and in case the Court shall not think proper to proceed therein the Commissioner Deputy Commissioner or Assistant Commissioner is hereby empowered to award costs to the Defendant.~~ Actions beyond the jurisdiction as to amount may be decided upon certain terms.

VII. AND BE IT ENACTED that where the debt damages or matter sued for shall exceed the sum of Ten Pounds such action shall (unless the parties shall consent to have the same tried and settled by the Commissioner solely) be tried before such Commissioner by a Jury consisting of four persons for which purpose the Registrar of the Court shall summon by regular rotation eight persons to attend the said Court at its then Sitting whereupon each party shall in the same manner as on the trial of actions in the Supreme Court so far as circumstances will permit reduce the number so summoned to four persons who shall constitute such Jury accordingly from a list of Special Jurors made by the Commissioner of such Court for that purpose from the Sheriff's list of Special Jurors as soon as conveniently may be after the said Court is constituted and in case there shall be no appearance for the defendant in any action or assessment of damages to be tried by a Jury under the provisions of this Act or either party shall refuse or neglect to reduce the same it shall and may be lawful for the Registrar of the Court to reduce the number so summoned to four persons who shall constitute such Jury accordingly in like manner as the same is done where there is no appearance for a Defendant in trials in the Supreme Court and in case of the non-attendance of any Juror so summoned the Plaintiff and Defendant shall if they mutually agree thereto nominate Jurors in their stead from amongst the bye-standers and in the event of their not so agreeing the full number of Jurors shall be completed by the appointment of the Registrar if the Commissioner shall so direct from amongst the bye-standers—PROVIDED that where upon any trial or assessment of damages either of the parties by whom the list of Jurors is required to be reduced shall not be present or shall refuse or neglect to reduce such list the same may be reduced by the Registrar of the said Court—PROVIDED ALWAYS that every Jury shall be sworn to give a true verdict in all cases of trials or assessments of damages depending before such

Before the Commissioner by a Jury of four persons to be taken from the list of Special Jurors. Mode of trial in cases exceeding £10.

Court according to the evidence as in cases tried by the Supreme Court of this Island.

Discharge of the Jury in case of their disagreeing.

As to a new trial.

Attendance of Jurors and Witnesses.

Production of books and writings.

Contempts.

Service and execution of process and orders.

Defendant failing to appear on trial Court to proceed to hear and determine the plaint.

VIII. AND BE IT FURTHER ENACTED that if in any such case the whole of such Jury after having remained three hours or upwards in deliberation shall not agree as to the decision to be given the verdict of three of them shall be taken and entered as the verdict of all and if after having remained six hours or upwards in deliberation three of such Jurors shall not concur in the verdict to be given then such Jury shall be discharged and the plaint shall or may without any new proceeding except in reference to a new Jury be again tried when the Commissioner may think fit to order—PROVIDED that in the event of the verdict of three of them being taken and entered as aforesaid it shall be lawful for either party to apply to the Commissioner for a new trial who shall grant or refuse the same at his discretion and upon such terms as to the payment of costs or otherwise as to him shall seem meet.

IX. AND BE IT ENACTED that the Commissioner Deputy Commissioner or Assistant Commissioner of each of the said Courts shall have the same powers of directing and compelling the attendance of Jurors and Witnesses before such Court and of fining them for non-attendance and of requiring and compelling the production of books and writings as are now possessed by the Supreme Court or the Judges thereof respectively in respect of the attendance of Jurors and Witnesses and the production of books and writings in that Court and shall and may by any order in writing under his hand cause any prisoner who may be confined in any gaol of this Island and who shall be a material witness in any matter pending in such Court to be brought before such Court or the Commissioner Deputy Commissioner or Assistant Commissioner thereof without a Writ of *habeas corpus* and also it shall be lawful for the Commissioner Deputy Commissioner or Assistant Commissioner of each of the said Courts to punish in a summary way by fine or imprisonment any person guilty of contempt.

X. AND BE IT ENACTED that all process issued and orders made by any such Court or the Commissioner Deputy Commissioner or Assistant Commissioner thereof shall be served and executed by the summoning Officer of the said Court or of any other Court of Requests in any part of this Island or its Dependencies in the same manner in all respects as process or orders of a similar nature issuing out of the said Supreme Court may be or might have been served or executed by the Sheriff of Van Diemen's Land and its Dependencies and every such summoning Officer shall as to the service of summonses and orders and the execution of process issuing from another Court be and he is accordingly hereby constituted the summoning Officer of such other Court to which Court and the Commissioner thereof he shall be amenable and every summoning Officer shall for the purpose of enabling him to perform the duties of his office have the same powers and authorities and shall in the exercise of the duties of his office be subject to the same liabilities as a Sheriff.

XI. AND BE IT ENACTED that if on the trial of any action in any of the said Courts of Requests a Defendant shall fail to appear upon proof of the service upon such Defendant of the summons hereinafter directed to be given it shall be lawful for every such Court to hear and determine such action and to award costs to the party in whose

favour judgment shall be given by the said Court in the absence of the said Defendant.

XII. AND BE IT ENACTED that it shall be lawful for the Commissioner of the Court to be holden at Hobart Town at any time after the passing of this Act and so from time to time as he may deem expedient to settle such forms of Process and establish such rules of Practice and Proceedings for the conduct of business in the said several Courts and to appoint such reasonable Costs and Fees to be taken therein respectively including (where the same shall be deemed proper) Fees for the employment of a Barrister Attorney or Agent and sums to be allowed for the expenses of witnesses as to such Commissioner shall seem proper—PROVIDED ALWAYS that it shall not be lawful for any person whomsoever to practise as an Agent in any of the said Courts in any action wherein the demand exceeds Ten Pounds—AND PROVIDED ALSO that it shall not be lawful for any person to practice in any of the said Courts as an Agent in any action brought for the recovery of an amount not exceeding Ten Pounds unless such person shall at the time of the passing of this Act have been in actual practice as such Agent in and before some or one of the Courts of Requests now existing in this Island nor unless such person shall after examination before a Deputy Commissioner or Assistant Commissioner in whose Court such person shall be desirous to practise as such Agent have received from such Deputy Commissioner or Assistant Commissioner a certificate under his hand which certificate such Commissioners respectively are hereby empowered to give to the effect that the party so examined is in the opinion of such Commissioners respectively qualified both as respects his character and ability to practise as such Agent—PROVIDED ALWAYS that it shall be lawful for any Deputy Commissioner or Assistant Commissioner to prevent any person from practising as such Agent in his or their Courts respectively by reason of any neglect or misconduct which would render an Attorney or Solicitor of the Supreme Court liable to be struck off the Rolls—PROVIDED ALSO that before any such Form or Rule or the appointment of any such Costs or Fees shall be binding the same shall be submitted to and approved by His Excellency the Lieutenant-Governor for the time being with the assistance and approval of one or both of the Judges of the Supreme Court and be published in the Hobart Town Gazette by the Colonial Secretary by command of the Lieutenant-Governor which Forms and Rules with all directions given in regard thereto when approved and published as last mentioned shall be of the same force and effect as if they had been inserted in the present Act.

Process practice proceedings costs and fees to be established.

Agents not allowed in any action above £10.

No Agent to practise under this Act save such as have heretofore practised under former Acts.

Examination of Agent as to qualification.

Certificate of Agents.

Agent how punishable for misconduct.

XIII. AND BE IT ENACTED that in case of the non-appearance of the Defendant in any action to be commenced in any of the said Courts no Plaintiff shall recover in such action unless it shall be proved on oath at the trial that the said Summoning Officer of the said Court summoned or caused to be summoned the Defendant in the said action to appear by a printed or written summons or a summons partly written and partly printed stating the cause of action personally served on the said Defendant, or at his or her usual place of residence Ten clear days previous to and exclusive of the day appointed in the said summons for the hearing of the said action when the sum sought to be recovered in the said action shall not exceed Ten Pounds and where the Defendant dwelt lodged or abided at the time of such service within fifteen miles of the Court House or other place wherein the said Court shall be

Proof of service of Summons.

stated in the said summons as having been appointed to be holden and Twenty clear days previous to and exclusive of the day so stated as aforesaid when the sum so sought to be recovered shall exceed Ten Pounds or the Defendant did not dwell lodge or abide at the time of the said service within fifteen miles of the said Court House or other place as aforesaid.

Execution of judgment.

XIV. AND BE IT ENACTED that the judgment or decision given or made in every case within the jurisdiction of the said Courts respectively shall be final and may be pleaded in bar to any subsequent action or suit brought in the same or any other Court within this Island for the same matter and such judgment or decision may be carried into execution either by levy upon and sale of the lands goods and chattels or by arrest and imprisonment of the party against whom such judgment or decision shall have been given or made which judgment or decision shall be held to be proved by the production of a certificate under the hand of the Registrar of the Court where the same shall have been given or made including therein the particulars of the Plaintiff's demand as filed with his or her plaint—PROVIDED ALWAYS that no lands tenements or hereditaments shall be taken in execution under this Act in any case where there shall be sufficient goods or chattels of the person against whom execution shall have been sued out to satisfy the same—PROVIDED that in case it shall at any time appear by the oath of any person to the satisfaction of the Commissioner Deputy Commissioner or Assistant Commissioner that any person who shall have been ordered by any decree or judgment of the said Court to pay any sum of money is unable from sickness poverty or unavoidable accident to pay or discharge the sum aforesaid then it shall be lawful for the said Commissioner Deputy Commissioner or Assistant Commissioner to stay any such execution or arrest for any stated time or from time to time and upon such terms as he may think reasonable.

Goods and chattels to be taken in execution in the first instance.

Commissioners to stay execution in certain cases.

Summons to contain substance of the cause of action.

XV. AND BE IT ENACTED that no evidence shall be permitted to be given by the Plaintiff on the trial of any action to be commenced in any of the said Courts of any demand or cause of action except such as is in substance stated in the said Summons nor shall any evidence be admitted on the behalf of the Defendant on such trial of any demand he may have upon the Plaintiff in the nature of a set-off unless notice of the substance thereof in writing shall have been given to such Plaintiff by personal service or by leaving the same at his usual place of abode Two clear days at the least previous to the day whereon such matter or cause shall be heard or tried.

Consequence of a party suing in the Supreme Court.

XVI. AND BE IT ENACTED that if in any Action hereafter brought in the Supreme Court of Van Diemen's Land it shall be certified by the Judge before whom such action shall be tried that such Action is brought for the recovery of a debt or demand which by this Act may be recovered in one of the Courts of Requests the Plaintiff shall not have any costs taxed to him to an amount greater than he would have been entitled to in case he had actually sued in one of such Courts and if such Judge as aforesaid shall further certify that in his opinion the debt or demand ought to have been sued for in one of the said Courts then the Defendant (notwithstanding any verdict for the Plaintiff) shall be entitled to his Costs and to execution for the same as if the verdict had been given in his favour. *but see proviso in next Section*

*This sec does not apply to actions brought on Bills of Exchange or cheques. 24. 11. 6 5 B.*

XVII. PROVIDED ALWAYS that no Defendant shall in any case avail himself of the provisions contained in the preceding Section unless at or before the time of the filing or delivery of his plea he shall have given notice in writing to the Plaintiff or his Attorney of his intention to do so—AND that in all cases the finding of the Jury/as provided for by that Section shall have reference not to the amount of their verdict but to the amount or sum which the Plaintiff by his Action *bonâ fide* and in fact sought to recover. Proviso.

XVIII. AND BE IT ENACTED that no judgment decision or proceeding in any such Court of Requests shall be quashed or vacated for want of form only nor shall any action or proceeding therein be removed into the Supreme Court by any writ or process whatsoever. No proceedings to be quashed for want of form or be removed to the Supreme Court.

XIX. AND BE IT ENACTED that a Defendant shall unless where it is otherwise provided by this Act be summoned only to the Court holden for the County or District where he resides excepting where the cause of action has accrued in another County or District wherein the Plaintiff resides in which last-mentioned case it shall be lawful for the Plaintiff to commence and prosecute his action in the Court holden for such last-mentioned County or District—PROVIDED ALSO AND BE IT ENACTED that the judgment of every such Court may be carried into execution in any part whatever of this Colony or its Dependencies where the Defendant or his lands goods and chattels may be met with. To what Court Defendant shall be summoned.  
  
Judgment may be executed in any part of the Colony.

XX. AND BE IT ENACTED that in all cases where the person of any Defendant shall be taken in execution by the process of any such Court it shall be lawful at any time and from time to time for the Commissioner Deputy Commissioner or Assistant Commissioner of such Court or of any other Court of Requests in the Colony nearest to the place where such Defendant shall be imprisoned on application by or on behalf of such Defendant if it shall appear to be necessary for his or her support to order the creditor or creditors at whose suit he or she shall be so imprisoned to pay to him or her such weekly sum or sums in such manner and in such proportions as he the said Commissioner Deputy Commissioner or Assistant Commissioner shall direct and on failure of payment thereof as directed such Defendant shall on the order of such Commissioner Deputy Commissioner or Assistant Commissioner be forthwith discharged from custody at the suit of the creditor or creditors so failing to obey the said order. Commissioner &c. may order creditor to pay a Defendant in execution an allowance.  
  
As to failure in payment.

XXI. AND BE IT ENACTED that it shall be lawful for the Commissioner Deputy Commissioner or Assistant Commissioner of every such Court if he shall think proper so to do in any case to examine *vivâ voce* on oath either of the parties thereto or both of them touching the matter or matters in dispute and if either of the said parties or any witness or other person examined and sworn under the authority of this Act shall on any occasion wilfully forswear himself or herself he or she shall be deemed guilty of perjury and be liable to the punishment which may by law be inflicted for that offence. Parties may be examined if thought proper.

XXII. AND BE IT ENACTED that the term Lieutenant-Governor used in this Act shall be construed to intend and apply to the Governor Lieutenant-Governor or other Officer for the time being lawfully administering the Government and that the term Commissioner Explanation of terms Lieutenant-Governor &c.

Deputy Commissioner and Assistant Commissioner shall be construed to intend to apply to every person who shall for the time being by the authority of the Lieutenant-Governor actually execute the duties of those offices respectively.

Sheriff and other persons indemnified.

XXIII. AND BE IT ENACTED that every Sheriff and Keeper of any prison and every person whatsoever who shall do any thing in obedience to any legal order of any such Court or of the Commissioner Deputy Commissioner or Assistant Commissioner thereof shall be and they are hereby severally indemnified for whatsoever shall be done by them respectively in obedience thereto and if any action whatever shall be brought against any such Sheriff Keeper or person or against the Commissioner Deputy Commissioner or Assistant Commissioner or any Officer of any such Court for performing any duty of his office in pursuance of this Act such Commissioner Deputy Commissioner or Assistant Commissioner Sheriff Keeper Officer or other person may plead the general issue and give this Act and the special matter in evidence—AND if the Plaintiff be nonsuited or shall discontinue his action or a verdict shall pass against him or judgment be had for the Defendant upon demurrer such Defendant shall have double costs.

Exemptions of Jurors.

XXIV. AND BE IT ENACTED that it shall be lawful for the Lieutenant-Governor to exempt from service as a Juror under this Act (either generally or for a limited period) any Public Officer or Officers whose attendance may appear to be incompatible with the performance of his other duties.

Application of Office Fees.

XXV. AND BE IT ENACTED that all Fees which may hereafter be payable in the offices of the said Courts respectively under this Act shall from time to time as the Lieutenant-Governor may direct be paid by the Officer receiving the same into the Colonial Treasury to be applied towards the maintenance of the Courts of Requests of this Island.

Indemnity to Commissioners of Courts for past Acts.

XXVI. AND BE IT ENACTED that after the commencement of this Act no action at law or suit in equity shall be commenced by any person against any other person acting as Commissioner for any act heretofore judicially performed or decree judicially pronounced by him in discharge of his duty as such Commissioner by reason of any allegation or pretence that his appointment to the office of such Commissioner was invalid or illegal but all such judicial acts and every thing done under them shall have the like force and effect in law as the same would hereafter have if pronounced by any Commissioner Deputy Commissioner or Assistant Commissioner to be appointed under this Act.

Affidavits &c. made before a Commissioner &c. valid.

XXVII. AND BE IT ENACTED that every affidavit or affirmation made before a Commissioner of the Supreme Court or a Justice of the Peace of this Island shall be as valid and effectual as it would have been if made in either of the Courts of Requests or before a Commissioner Deputy Commissioner or Assistant Commissioner thereof.

Trial of actions in adjoining Districts where a Commissioner &c. may be Plaintiff or Defendant.

XXVIII. AND BE IT ENACTED that if an action shall arise in which any Commissioner Deputy Commissioner or Assistant Commissioner or Registrar or summoning Officer shall be Plaintiff or Defendant then such action may be lawfully brought tried and adjudged in the Court of the adjoining District and every process or order may be



served and executed by the Officer of the Court of the said last-mentioned District and all additional reasonable expenses incurred thereby respectively shall abide the event.

XXIX. AND BE IT ENACTED that it shall be lawful for the Commissioner Deputy Commissioner or Assistant Commissioner and Officers of every Court constituted under the provisions of this Act to continue the process and proceedings in every action that may have been brought in any Court existing under the authority of the Act hereby repealed.

Actions brought in now existing Courts may be continued.

XXX. AND WHEREAS it may sometimes happen that such Commissioner Deputy Commissioner or Assistant Commissioner may by reason of sickness leave or other sufficient cause of absence be unable to attend and hold the said Court—BE IT THEREFORE ENACTED that it shall and may be lawful for the Lieutenant-Governor of the said Colony for the time being to nominate a fit and proper substitute or *locum tenens* to do and execute the duty of such Commissioner Deputy Commissioner or Assistant Commissioner as well in holding such Court as in all other business which such Commissioner Deputy Commissioner or Assistant Commissioner is by this Act authorised and empowered to do for such time as such illness or leave or other sufficient cause for the absence of such Commissioner Deputy Commissioner or Assistant Commissioner shall continue.

Power for Lieutenant-Governor to appoint a substitute for any Commissioner &c. when absent &c.

JOHN FRANKLIN.

Passed the Legislative Council this seventeenth day of October, one thousand eight hundred and forty-two,

FR. HARTWELL HENSLOWE, *Clerk of the Council.*

