

## TASMANIA.



1942.

ANNO SEXTO

GEORGII VI. REGIS.

No. 40.

## ANALYSIS.

<p>1. Short title.</p> <p>2. Amendment of 60 Vict. No. 48.</p> <p style="padding-left: 2em;">Section 85.</p> <p style="padding-left: 2em;">New section 85A.</p> <p style="padding-left: 4em;">Attachment of salary, wages, &amp;c.</p> <p style="padding-left: 2em;">Section 86.</p> <p style="padding-left: 2em;">Section 87.</p> <p style="padding-left: 2em;">Section 89.</p>	<p>Section 95.</p> <p>Section 134.</p> <p>Section 135.</p> <p>Section 136.</p> <p style="padding-left: 2em;">No taxation in certain cases.</p> <p>Second schedule.</p> <p>Third schedule.</p> <p>Fifth schedule.</p> <p>Sixth schedule.</p>
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AN ACT to amend the *Local Courts Act 1896.*

[28 October, 1942.]

A.D.

1942

**B**E 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** This Act may be cited as the *Local Courts Act 1942.* Short title.

**2** The Principal Act is hereby amended—

I. As to section eighty-five—

(a) By inserting “ (1) ” at the commencement:

(b) By deleting the words “ by himself or his attorney ” before the word “ stating ” and substituting therefor the words “ made and sworn as provided in subsection (2) hereof ”:

Amendment  
of 60 Vict.  
No. 48.  
Section 85.

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(c) By expunging paragraph III. of subsection (1) and substituting therefor the following new paragraph III.—

“ III. That any other person is—

(a) Indebted to the judgment debtor: or

(b) The employer of, or otherwise responsible for the payment to, the judgment debtor of any salary (if the application is made under section eighty-five A)—

and is within the jurisdiction of the court”: and

(d) By adding at the end thereof the following new subsections (2) and (3)—

“(2) Every affidavit under subsection (1) hereof shall be made and sworn by the judgment creditor in person, or, if the judgment creditor is a corporation aggregate or a company registered under the *Companies Act 1920*, by the manager, secretary, or public officer thereof.

(3) An order under this section or section eighty-five A shall be filed in triplicate and served in duplicate on the garnishee; and the garnishee shall forthwith deliver, or send by post, to the judgment debtor, a copy of such order.”:

II. By inserting after section eighty-five thereof the following new section eighty-five A—

“ **85A**—(1) Where any such application as aforesaid is made in respect of salary as herein defined the Registrar, subject to the provisions of section three of the *Wages Attachment Act 1900*, may make an order that the garnishee, when, and so often as, any payment of salary is, or becomes, payable by him to the judgment debtor, shall deduct therefrom such sum as the Registrar shall think just and reasonable, and shall specify in such order.

(2) An order under this section shall be in lieu of the order prescribed by subsection (1) of section eighty-five and shall—

1. Have effect, unless sooner discharged or varied, until the amount of the judgment debt and the costs of the garnishee proceedings have been paid or satisfied: and

New section  
85A.

Attachment  
of salary,  
wages, &c.

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II. Require the garnishee to appear before the court on a specified date to show cause why the order should not be made absolute. A.D. 1942

(3) An order may be made under this section although—

I. No salary is due and payable to the judgment debtor at the date of the application or of the order: or

II. The amount due or accruing due to the judgment debtor is uncertain or dependent upon some contingency.

(4) The court at any time upon—

I. Application by the judgment creditor or judgment debtor:

II. Such notice, if any, being given to the persons to be thereby affected as the court may direct: and

III. Sufficient cause being shown to the satisfaction of the court—

may vary or discharge any order made under this section, and, upon any such application, may increase or diminish the deductions to be made under such order.

(5) Where the garnishee does not enter a defence as provided by section eighty-seven the fees and charges to be paid to practitioners in respect of proceedings under this section shall be in accordance with the scale set forth in Part II. of the third schedule.

(6) No court fees shall be payable in respect of any proceedings under this section.

(7) For the purposes of this section and of any proceedings thereunder 'salary' includes wages or any sum of money payable periodically.”:

III. As to section eighty-six thereof by inserting—

Section 86.

(a) “(1)” at the commencement: and

(b) “(2) Every garnishee upon whom an order under section eighty-five A has been served shall deduct from the salary of the judgment debtor the periodical sums specified in such order so long as the order remains in force; and shall pay into court forthwith all sums so deducted as and when the deductions are made respectively.” (at the end):

IV. As to section eighty-seven thereof by inserting—

Section 87.

(a) “(1)” at the commencement: and

(b) “(2) Where the proceedings are taken under section eighty-five A the garnishee by such notice of defence as aforesaid may dispute his liability to pay salary to

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the judgment debtor; or may aver that such salary belongs to some other person who has a lien or charge upon it." (at the end):

Section 89.

V. As to section eighty-nine thereof by inserting—

- (a) "(1)" at the commencement: and
- (b) "(2) Where the proceedings are taken under section eighty-five A execution may be ordered as provided by subsection (1) hereof in respect of any sum ordered to be paid by the garnishee in the deduction or payment into court of which he has made default." (at the end):

Section 95.

VI. As to section ninety-five thereof by inserting—

- (a) "(1)" at the commencement: and
- (b) "(2) Where the moneys sought to be attached comprise salary as defined by section eighty-five A the order under subsection (1) hereof shall be in accordance with the provisions of that section." (at the end):

Section 134.

VII. As to section one hundred and thirty-four—

- (a) By inserting "(1)" at the commencement: and
- (b) By adding at the end thereof the following new subsection (2)—  
 "(2) Where, on the hearing of any action, any fees or charges payable under the third schedule, in the opinion of the court or commissioner, are, in the circumstances, inadequate, the court or commissioner, as the case may be, may order that higher fees or charges shall be payable in respect thereof.":

Section 135.

VIII. By inserting at the commencement of section one hundred and thirty-five the words "Except as provided by section one hundred and thirty-six,":

Section 136.

IX. By substituting for repealed section one hundred and thirty-six the following new section one hundred and thirty-six—

No taxation in certain cases.

"**136** The provisions of section one hundred and thirty-five shall not apply to any proceedings—

- I. For recovery of a liquidated demand: or
- II. Under section eighty-five A—

where no defence has been entered, and it shall not be necessary for the costs incurred in respect of such proceedings to be taxed as provided in that section.":

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- X. By expunging the scale of fees and charges set forth at the commencement of the second schedule and substituting therefor as part of that schedule the scale set forth in the first schedule to this Act: A.D. 1942.  
Second  
schedule.
- XI. As to the third schedule— Third  
schedule.
- (a) By inserting in the heading thereto beneath the words “the third schedule” the following new sub-heading—  
*“Part I.—Fees and Charges Payable to Practitioners Generally.”*:  
 and
- (b) By adding at the end of that schedule the sub-heading and scale set forth in the second schedule to this Act:
- XII. As to the Rules of Practice set forth in the fifth schedule— Fifth  
schedule.
- (a) By adding at the end of rule 72 the words “and every such warrant shall be filed in duplicate.”:
- (b) By deleting from rule 74 the words—
- (i) “Prepare” in line 3 to “schedule” in line 4 and substituting “deliver to the bailiff the original warrant and a copy thereof”: and
- (ii) “Notice” in line 4 and substituting “copy.”:
- XIII. As to the sixth schedule— Sixth  
schedule.
- (a) By expunging form 14:
- (b) By inserting at the foot of the order contained in form 73 (after “Registrar of the Court”) the following note—  
*“NOTE.—On receipt of this order the garnishee must forthwith deliver or send to the judgment debtor a copy of the order.”*:
- (c) By adding after form 73 the following new form 73A—  
*“73A—Order ex parte for Attachment of Salary.*  
 In the [title of court, as in form 1.]  
*A.B., Judgment Creditor,*  
 against  
*C.D., Judgment Debtor.*  
*E.F., Garnishee.*

UPON hearing \_\_\_\_\_, and upon  
 reading the affidavit of \_\_\_\_\_  
 filed the \_\_\_\_\_ day of \_\_\_\_\_,  
 19\_\_\_\_, it is ordered that the abovenamed

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garnishee shall, from time to time, as often as any salary shall become due and payable to the abovenamed judgment debtor from the abovenamed garnishee, deduct therefrom and pay into court the sum of \_\_\_\_\_ per week or a sum equivalent to the amount by which such salary shall exceed three pounds per week (whichever is the less) until the judgment recovered by the abovenamed judgment creditor against the abovenamed judgment debtor in the court of \_\_\_\_\_ on the day of, 19 \_\_\_\_\_, amounting to the sum of \_\_\_\_\_, together with the sum of \_\_\_\_\_ for costs (including the costs of the garnishee proceedings) has been paid or satisfied.

And it is further ordered that the abovenamed garnishee, his attorney or agent, shall attend before the \_\_\_\_\_ of the court of \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_ the day of \_\_\_\_\_, 19 \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon to show cause why he should not deduct from such salary and pay to the abovenamed judgment creditor the said sum hereinbefore ordered to be so deducted and paid or such other sum as may be ordered.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

.....  
Registrar of the Court.

NOTE.—On receipt of this order the garnishee must forthwith deliver or send to the judgment debtor a copy of the order.

NOTE.—Salary includes wages or any sum payable periodically.

See memorandum on back hereof.

*Memorandum.*

Service of this order binds the garnishee to deduct and pay into court the sums specified in the order so long as the order remains in force. The garnishee not less than five days before the day on which he is required to show cause may enter a defence disputing his liability to pay salary to the judgment debtor or averring that the salary belongs to some other person who has a lien or charge upon it.

If the garnishee makes default in deducting or paying into court any sum as required by the order or if he fails to enter a defence or to appear (unless notified by the judgment creditor that he need not do so) to show cause execution may be issued against him.: and

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To the abovenamed garnishee and to judgment debtor.”

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(d) By inserting after form 74 the following new form 74A—

“74A.—*Order Absolute for Attachment of Salary.*

In the [title of court, as in form 1.]

Between A.B., Judgment Creditor,  
and  
C.D., Judgment Debtor.  
E.F., Garnishee.

Upon hearing the attorneys for the judgment creditor and the garnishee, and upon reading the affidavit of \_\_\_\_\_, filed herein and the order made herein dated the day of \_\_\_\_\_, 19\_\_\_\_, whereby it was ordered that the abovenamed garnishee, from time to time, as often as any salary should become due and payable to the abovenamed judgment debtor from the abovenamed garnishee, should deduct therefrom and pay into court the sum of \_\_\_\_\_ per week or a sum equivalent to the amount by which the said salary should exceed three pounds per week (whichever should be the less) until the judgment recovered by the abovenamed judgment creditor against the abovenamed judgment debtor in the court of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, amounting to the sum of \_\_\_\_\_, together with the sum of \_\_\_\_\_ for costs (including the costs of the garnishee proceedings), should be paid and satisfied:

It is ordered that the abovenamed garnishee shall forthwith deduct from such salary the sum of \_\_\_\_\_ per week or a sum equivalent to the amount by which such salary exceeds three pounds per week (whichever is the less) and shall pay every sum so deducted into court until the said judgment and costs amounting to \_\_\_\_\_ together with the costs of the judgment creditor of and incidental to this order is paid and satisfied, and that, in default thereof, execution may issue for the same.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
Commissioner (or Chairman).”.

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## THE FIRST SCHEDULE.

	Where Amount Claimed in Action is—					
	Under £2.	Above £2 and Not Above £10.	Above £10 and Not Above £25.	Above £25 and Not Above £50.	Above £50 and Not Above £75.	Above £75 and Not Above £100.
	s. d.	£ d.	s. d.	s. d.	s. d.	s. d.
Entering every plaint, including issuing of summons .....	1 0	1 0	3 0	5 0	7 6	10 0
For every copy summons (including summons to witness) issued after the first .....	1 0	1 0	2 0	3 0	4 0	5 0
Hearing fee .....	2 6	2 6	5 0	7 6	10 0	15 0
Judgment by consent or default .....	1 0	1 0	1 0	1 0	2 6	2 6
Entering defence including defence to a garnishee order .....	1 0	1 0	3 0	3 0	5 0	5 0
Summons (any number of witnesses) .....	0 6	0 6	1 0	1 6	2 6	2 6
Copy of particulars supplied by registrar .....	0 6	0 6	1 0	1 6	2 0	2 6
Issuing warrant of execution .....	2 6	2 6	4 0	5 0	7 6	10 0
Taking recognisance bond or security for costs .....	0 6	0 6	1 0	1 6	2 0	2 6
Inquiring into sufficiency of securities .....	0 6	0 6	1 0	1 6	2 0	2 6
Taxing costs .....	.....	1 0	1 6	2 0	2 6	2 6
Issuing every summons (not otherwise specified) and every order made thereon .....	1 0	1 0	2 6	5 0	7 6	10 0
For every notice of trial by jury .....	.....	10 0	10 0	15 0	17 6	20 0
Filing every affidavit, except an affidavit by a bailiff of service of any process .....	1 0	1 0	2 0	2 0	2 0	5 0



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## THE SECOND SCHEDULE.

PART II.—FEES AND CHARGES PAYABLE TO PRACTITIONERS IN  
RESPECT OF PROCEEDINGS FOR ATTACHMENT OF SALARY  
UNDER SECTION 85A.

	Where the Amount for which Judgment has been obtained is—			
	Above £2 and Not Above £10.	Above £10 and Not Above £25.	Above £25 and Not Above £50.	Above £50.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Instructions to have salary or wages attached; drawing and engrossing order <i>nisi</i> and affidavit in support and attending Registrar therewith for signature; attending court on return of order <i>nisi</i> ; drawing and engrossing order absolute and attending therewith for signature; attending court on application for order absolute; attending court on the hearing of any application for variation or discharge of order; and all other necessary attendances before Registrar or Commissioner incidental to proceedings for attachment of salary or wages (excluding out-of-pocket expenses).	0 10 0	0 15 0	1 0 0	1 10 0

