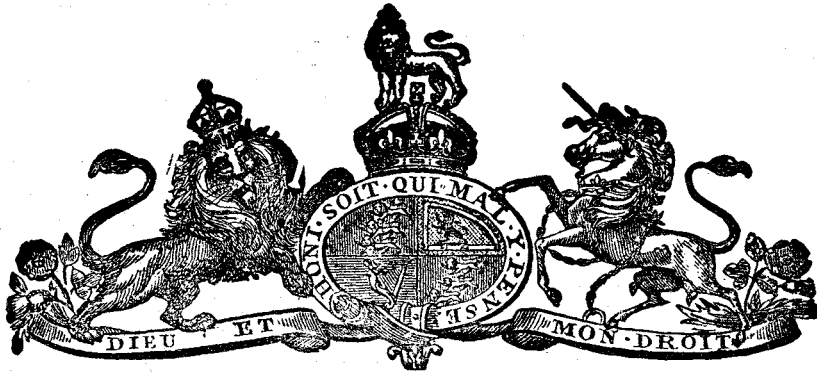


T A S M A N I A.



1934.

ANNO VICESIMO QUINTO

GEORGII V. REGIS.

No. 60.

ANALYSIS.

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|---|--|--|
| <p>1. Short title.</p> <p>2. Amendment of 23 Geo. V. No. 58.</p> <p style="padding-left: 2em;">Section 2.</p> <p style="padding-left: 2em;">Section 3 (1).</p> <p style="padding-left: 2em;">Section 6.</p> <p style="padding-left: 2em;">Section 8.</p> <p style="padding-left: 2em;">Section 9.</p> <p style="padding-left: 2em;">Section 11.</p> <p style="padding-left: 2em;">Section 16.</p> <p style="padding-left: 2em;">Section 35.</p> <p style="padding-left: 2em;">Section 44.</p> <p style="padding-left: 2em;">Section 47.</p> <p style="padding-left: 2em;">Section 54.</p> <p style="padding-left: 2em;">Section 56.</p> <p style="padding-left: 2em;">Section 57.</p> <p style="padding-left: 2em;">Section 61.</p> | <p>Section 64.</p> <p>Section 71.</p> <p>Section 74.</p> <p>Section 75.</p> <p>Section 76.</p> <p>Section 79.</p> <p>Section 80.</p> <p>Section 82.</p> <p>Section 85.</p> <p>Section 86.</p> <p>Section 91.</p> <p>Section 183.</p> <p>Section 193.</p> <p>Section 200.</p> | <p>3. Retrospective effect of certain amendment.</p> |
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AN ACT to amend the *Supreme Court Civil Procedure Act 1932.* [13 December, 1934.]

A. D.
1934.
—

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 This Act may be cited as the *Supreme Court Civil Procedure Act 1934.*

Short title,

Supreme Court Civil Procedure.

A.D. 1934.

Amend-
ment of 23
Geo V No.
58.

Section 2.

2 The Principal Act is hereby amended—

I. By expunging subsection (4) of section two and substituting therefor the following new subsection (4) :—

“(4) Except so far as is expressly enacted by any part of this Act, other than subsection (1) of this section and the first schedule, nothing in this Act (including subsection (1) of this section and the first schedule) shall—

- i. Take away, lessen, or impair any jurisdiction, power, or authority (judicial or ministerial) which, immediately before the commencement of this Act, was vested in or capable of being exercised by the Supreme Court or by any one or more of the judges thereof, whether sitting in court or in chambers or elsewhere : or
- ii Affect any principle or rule of law or equity established or confirmed by or under any enactment repealed by subsection (1) of this section.”:

Section 3
(1).

II. As to subsection (1) of section three—

(a) By inserting after the definition of “ Action ” the following definition :—

“ ‘ Administration ’ includes all letters of administration of the effects of deceased persons, whether with or without a will annexed and whether granted for general, special, or limited purposes : ”;

(b) By substituting the words “ immediately before ” for the word “ at ” in the definition of “ Existing ”;

(c) By inserting after the definition of “ Matter ” the following definition :—

“ ‘ Non-contentious proceedings in any probate or administration matter ’ means the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administrations through the Supreme Court in contentious cases where the contest has been terminated, and all business of a non-contentious nature in matters of testacy and intestacy, not being proceedings in any action, and also the business of lodging caveats against the grant of probate or administration : and the expression ‘ common form business ’ in the Rules of Court shall, unless the Rules of Court otherwise provide, have the same meaning : ’ ; and

Supreme Court Civil Procedure.

A.D.1934.

(d) By inserting after the definition of "Supreme Court" the following definition:—

" 'Testamentary cause or matter' includes all causes or matters relating to the grant or revocation of probate or administration' :

III. As to section six—

Section 6.

(a) By deleting the words "(notwithstanding that the same was conferred by an Imperial Act or an Act of the Parliament of Tasmania which is repealed by this Act)" in the eighth, ninth, and tenth lines of subsection (1); and

(b) By inserting after the word "all" in the fourth line of subsection (6) the words "judicial and":

IV. By deleting the word "such" at the beginning of the eleventh line of subsection (3) of section eight: Section 8.

V. As to section nine—

Section 9.

(a) By expunging paragraph vi. of subsection (1); and

(b) By inserting after subsection (1) the following new subsection:—

"(1A) Nothing in this Act shall affect the procedure or practice of the Court in non-contentious proceedings in any probate or administration matter, but the procedure and practice in such non-contentious proceedings may be regulated by the Rules of Court.":

VI. As to section eleven—

Section 11.

(a) By substituting the word "the" for the word "any" in the fifteenth line of subsection (9); and by deleting the words "and that it contains nothing impeaching his own case," in the sixteenth line of the same subsection;

(b) By inserting the words "at common law" after the word "liability" in the second line, and after the word "owner" in the seventh line, respectively of paragraph (e) of division 1. of subsection (11):

VII. As to subsection (4) of section sixteen, by deleting the word Section 16.

"properly" in the third line, and by inserting after the word "him" in the same line the words "in accordance with the provisions of this section":

VIII. As to section thirty-five—

Section 35.

(a) By inserting the words "in the nature of interest" after the word "damages" in paragraphs 1. and 11. of subsection (1) respectively; and

(b) By deleting the word "contained" in the first line of subsection (2) and substituting therefor the words "or in section thirty-four".

Supreme Court Civil Procedure.

A.D. 1934. Section 44.

IX. By substituting the word "has" for the word "had" in the tenth line of subsection (1) of section forty-four :

Section 47.

X. By deleting all the words from and after the word "on" in the eighth line of subsection (2) of section forty-seven to the end of that subsection, and substituting therefor the words "in any substantial degree on the credibility of any witness who has been examined before the trial judge, a Full Court shall accept the finding of such judge on such question unless, after giving full weight to the fact that the trial judge has seen the witness and heard his evidence, it is satisfied that there is some sufficiently cogent reason why it should not do so.":

Section 54.

XI As to subsection (7) of section fifty-four—

(a) By inserting the words "on a writ of *scire facias*" after the word "execution" in paragraph i.;

(b) By deleting the words "(other than a judgment debt)" in paragraph ii.; and

(c) By inserting after the word "Act" in the twelfth line the words "or where some special provision is made by some other statute, whether passed before or after the commencement of this Act,":

Section 56.

XII. As to section fifty-six—

(a) By inserting the words "by and" after the word "instituted" in the sixth line of subsection (1); and

(b) By expunging subsection (3) and substituting therefor the following subsection :—

"(3) But nothing in this section shall operate to preclude any person otherwise entitled so to do from instituting in his or its name any action or any other original proceeding, authorised by any statute or the Rules of Court, for the administration of the estate of any deceased person, or for the administration or execution of any trust, or for the determination of any question or matter arising in the administration of the estate of a deceased person, or in the administration or execution of any trust, notwithstanding that such action or other original proceeding seeks or involves the determination of the question whether the object or purpose of any disposition is charitable, or of the question whether any property which is a subject of the action or other original proceeding is or is not subject to any trust for charity, or seeks or involves the administration or execution of any trust for charity; but, in any case in which the action or other original proceeding seeks or

Supreme Court Civil Procedure.

involves the determination of the question whether the object or purpose of any disposition is charitable, or whether property which is a subject of the action or other original proceeding is or is not subject to a trust for, or seeks or involves the administration or execution of a trust for, charity generally, or any particular charity, which is not or cannot be represented, or properly represented, in the action or other original proceeding, the Attorney-General shall be made a defendant to the action or other original proceeding.” :

A.D.1934.

- XIII. By inserting the words “by and ” after the word “instituted ” in the eight line of subsection (2) of section fifty-seven : Section 57.
- XIV. By inserting the words “Subject to the provisions of subsection (1) of this section ” before the word “Any ” at the beginning of subsection (2) of section sixty-one; and by deleting the word “instituted ” in the first and second lines of the same subsection : Section 61.
- XV. As to section sixty-four— Section 64.
- (a) By adding at the end of division II. of subsection (1), the words :—
- “ But the jurisdiction referred to in paragraph (f) shall be dependent on the existence of the conditions mentioned in division I of subsection (5) of this section . ” ;
- (b) By deleting lines one to twenty-one of subsection (5) and substituting therefor the following :—
- “(5) I. The Government of this State shall only be liable to pay such compensation as is referred to in paragraph (f) of division II. of subsection (1) of this section if the salvage service is one in respect of which salvage reward would have been recoverable in the Admiralty Jurisdiction of the Court if—
- (a) In the case of the salvage service having been rendered to the vessel, or any apparel or other property belonging to the vessel, or to the life of any person (including a passenger) belonging to the vessel, at the time such service was rendered the vessel had been owned by and had been in the service of a subject ;
- or
- (b) In the case of the salvage service having been rendered to a wreck, at the time such service was rendered or immedi-

Supreme Court Civil Procedure.

A.D.1934.

- ately before the wreck was abandoned or lost, it had been owned by or was in the service of a subject; or
- (c) In the case of salvage service having been rendered to cargo, at the time such service was rendered the cargo had been owned by a subject:”; and by deleting the word “and” in the twenty-second line of the same subsection and by inserting at the beginning of that line the numerals “II.”:
- Section 71. XVI. By inserting after the word “execution” in the tenth line of section seventy-one the words “(including process by way of attachment of debts, salary, wages, or pay)”:
- Section 74. XVII. By inserting the words “, or purporting to have been granted, made, or issued,” after the word “issued” in the twentieth line of the definition of “Grant” in section seventy-four:
- Section 75. XVIII. As to section seventy-five—
- (a) By deleting the words “consent, or other” in the seventh line of subsection (2) and substituting therefor the words “or consent (whether expressed in writing or not) and any”, and by deleting the last four lines of the subsection, and substituting therefor the following:—
- “for the purposes of this section the expression ‘given or made’ shall be construed as including the expression ‘granted or issued’, and the expression ‘give or make’ shall have a corresponding meaning.”;
- (b) By deleting the words “or other” in the second and third lines, and in the fourteenth line of subsection (3) respectively, and by inserting—
- (i) the words “judicially and not merely ministerially” after the word “made” in the third line;
- (ii) the word “and” after the word “section” in the sixth line; and
- (iii) the word “decision” after the word “such” in the thirteenth line—
- of the same subsection;
- (c) By inserting after the word “any” in the first line of subsection (4) the words “decision, order, appointment, report, award, certificate, licence, consent,” and by substituting the word “given” for the words “granted, issued” in the second line of the same subsection;
- (d) By substituting the word “purporting” for the word “alleged” in the second, fourth, and sixth lines respectively of subsection (5);

Supreme Court Civil Procedure.

A.D. 1934

- (e) By deleting the words "or other" in the second line of subsection (6);
- (f) By deleting the words "document or instrument whatsoever which is a" in the third and fourth lines of subsection (8), and by substituting the words "the same" for the words "such document or instrument" in the fifth line of the same subsection;
- (g) By deleting the word "they" in the tenth line of subsection (16) and substituting therefor the words "the words 'duty' and 'power'":
- XIX. As to section seventy-six— Section 76.
- (a) By deleting the words "any such person or tribunal as is mentioned in subsection (1) of this section" in the third and fourth lines of subsection (3) and substituting therefor the following words:—
 "any person or tribunal charged or invested by law, or assuming to be charged or invested by law, with any such duty or power as is mentioned in subsection (1) of this section";
 and
 by inserting the word "or" after the word "licence" in the seventh line of the same subsection;
- (b) By deleting the words "if it were made, given, granted, or issued immediately affect any right or property of, or immediately impose any liability on, any person, or does not or would not if it were made, given, granted, or issued" in the ninth to the thirteenth lines of subsection (5) and substituting therefor the words "(if it were made, given, granted, or issued) purport to immediately affect any right or property of, or to immediately impose any liability on, any person, or to";
- (c) By deleting the word "execution" in the first and second lines of paragraph II. of subsection (9) and substituting therefor the words "the issue of any execution (including any process or proceeding in the nature of execution) thereunder";
- (d) By expunging subsection (15) and substituting therefor the following subsection:—
 "(15) In this section and section seventy-seven, the words 'by law,' in the expressions 'charged by law,' 'invested by law,' and 'required by law,' and the words 'duty' and 'power' respectively, have the same meaning as is assigned to them respectively in section seventy-five, and the expression 'invested by law with a power to

Supreme Court Civil Procedure.

A.D. 1934.

- determine judicially and not merely ministerially' has the same meaning as is assigned to it in section seventy-five." :
- Section 79. XX. By deleting the words "for a *mandamus*" in the third line of subsection (5) of section seventy-nine, and by substituting the word "or" for the word "and" in the fourth line of the same subsection :
- Section 80. XXI. By adding at the end of subsection (2) of section eighty the words "and in cases within subsection (1) of section eighty-one" :
- Section 83. XXII. By deleting the word "he" in the seventh line of paragraph i. of subsection (5) of section eighty-three and substituting therefor the words "such first-mentioned person" :
- Section 85. XXIII. By deleting the word "such" in the first line of paragraph ii. of subsection (2) of section eighty-five, and inserting after the word "charter" in the same line the words "granted or issued by the Government of this State" :
- Section 86. XXIV. By deleting all the words from and after the word "as" in the second line of paragraph ii. of section eighty-six to the end of the paragraph :
- Section 91. XXV. By deleting the words "presentation of a petition" in the first line of subsection (5) of section ninety-one and substituting therefor the words "making of an application" :
- Section 183. XXVI. By inserting after the word "matter" in the second line of subsection (3) of section one hundred and eighty-three the words "which, notwithstanding the provisions of subsections (1) and (2) of this section, is", and by deleting the words "notwithstanding the provisions of this section" in the third line of the same subsection :
- Section 193. XXVII. By adding at the end of section one hundred and ninety-three the following new subsection :—
 " (4) A commissioner appointed under this section, notwithstanding the provisions of section nine but subject to the terms of the commission under which he is appointed, shall have the powers specified in subsection (1) or subsection (3) of this section, as the case may be, in relation to all jurisdictions of the Court, as well as to the jurisdiction of the Court which is subject to this Act." :
- Section 200. XXVIII. By inserting the words "such provision" after the word "for" in the sixth line of subsection (1) of section two hundred, and by substituting the words "the same" for the words "such provision" in the seventh line of the same subsection.

Retro-
 spective
 effect of
 certain
 amend-
 ment.

3 The amendment effected by paragraph i. of section two shall be deemed to have been operative as from the date of the commencement of the Principal Act.

WALTER E. SHIMMINS,
 GOVERNMENT PRINTER, TASMANIA.