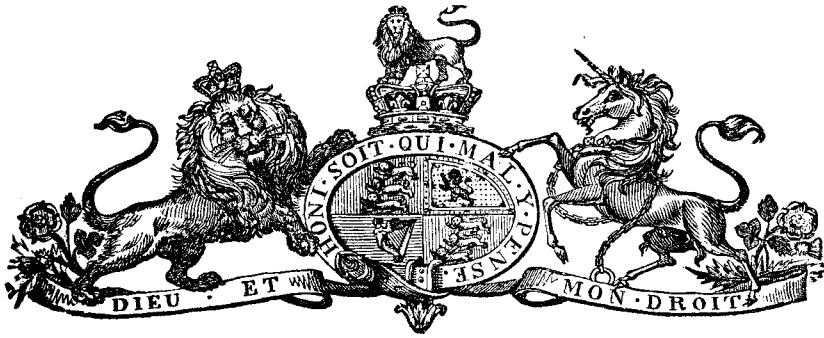


T A S M A N I A.



1862.

ANNO VICESIMO-SEXTO

VICTORIÆ REGINÆ,

No. 2.



AN ACT for the further Amendment of the Process, Practice, and Mode of Pleading in the Supreme Court of *Tasmania*, in its Common Law Jurisdiction, and for enlarging such Jurisdiction. [25 September, 1862.]

WHEREAS it is desirable further to improve the Process, Practice, and Mode of Pleading in, and, in some respects, to enlarge the Common Law Jurisdiction of the Supreme Court of *Tasmania*: Be it therefore 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:—

PREAMBLE.

1 In the case of any ejectment for a forfeiture brought for non-payment of rent, the Supreme Court, or a Judge thereof, shall have power, upon rule or summons, to give relief in a summary manner, up to and within the like time after execution executed, and subject to the same terms and conditions in all respects, as to payment of rent, costs, and otherwise, as in the equitable jurisdiction of such Court; and if the lessee, his executors, administrators, or assigns, shall, upon such proceeding, be relieved, he and they shall hold the demised lands according to the lease thereof made, without any new lease.

Relief against forfeiture for non-payment of rent.

Relief against forfeiture for non-insuring.

24 Vict. No. 2.

Minute of relief granted.

Appeal to the Court from Order of Judge.

Notice of Appeal.

Bail.

2 In the case of any ejection for a forfeiture for breach of a covenant or condition to insure against loss or damage by fire, the Court, or a Judge thereof, shall have power, upon rule or summons, to give relief in a summary manner, in all cases in which such relief may now be obtained in the Supreme Court in its equitable jurisdiction under the provisions of an Act, intituled *An Act to further amend the Law of Property, and to relieve Trustees*, and upon such terms as would be imposed in the said Court in its equitable jurisdiction.

3 Where such relief is granted, the Court, or a Judge thereof, shall direct a minute thereof to be made by indorsement on the lease or otherwise.

4 Any Order made by a Judge upon an application for relief under the provisions of this Act shall be subject to an appeal to the Court, and may be discharged, varied, or set aside by the Court, upon such terms as the Court thinks fit, on application made thereto by any party dissatisfied with such Order.

5 No Appeal shall be allowed unless notice thereof be given in writing to the opposite party, or his Attorney, and to the Clerk of the Court, within Fourteen days after the decision complained of, or such further time as may be allowed by the Court or a Judge thereof.

6 Notice of Appeal shall be a stay of execution, provided bail to pay the sum demanded and costs be given in such manner as a Judge of the Court may direct, within Sixteen days after the decision complained of, or before execution delivered to the Sheriff.

Interpleader Proceedings.

Interpleader may be granted, though Titles have not a common origin.

1 & 2 W. 4, cap. 58.

7 Where an Action has been commenced in respect of a common law claim for the recovery of money or goods, or where goods or chattels have been taken or are intended to be taken in execution under process issued from the Supreme Court, and the Defendant in such Action, or the Sheriff, or other Officer, has applied for relief under the provisions of an Act made and passed in the Session of Parliament, held in the first and second year of the reign of his late Majesty King William the Fourth, intituled *An Act to enable Courts of Law to give Relief against adverse Claims made upon Persons having no Interest in the Subject of such Claims*, it shall be lawful for the Court, or a Judge thereof to whom such application is made, to exercise all the powers and authorities given to them by this Act and the lastly hereinbefore mentioned Act, though the titles of the claimants to the money, goods, or chattels in question, or to the proceeds or value thereof, have not a common origin, but are adverse to, and independent of, one another.

Court or Judge may direct sale of Goods seized in execution.

8 When goods or chattels have been seized in execution by a Sheriff or other Officer under process of the Court, and some third person claims to be entitled under a bill of sale or otherwise to such goods or chattels by way of security for a debt, the Court, or a Judge thereof, may order a sale of the whole or a part thereof, upon such terms as to payment of the whole or part of the secured debt or otherwise, as they or he shall think fit; and may direct the application of the proceeds of such sale in such manner, and upon such terms as to such Court or Judge may seem just.

9 Upon the hearing of any rule or order calling upon persons to appear and state the nature and particulars of their claims, it shall be lawful for the Court or a Judge thereof, wherever, from the smallness of the amount in dispute, or of the value of the goods seized, it appears to them or him desirable and right so to do, at the request of either party, to dispose of the merits of the respective Claims of such parties, and to determine the same in a summary manner, upon such terms as they or he shall think fit to impose, and to make such other rules and orders therein as to costs and all other matters as may be just.

Power to Court or Judge to decide summarily in certain cases.

10 In all cases of Interpleader Proceedings, where the question is one of law, and the facts are not in dispute, the Judge shall be at liberty, at his discretion, to decide the question without directing an Action or Issue; and, if he thinks it desirable, to order that a special case be stated for the opinion of the Court.

Special case may be stated where facts undisputed.

11 The proceedings upon such case shall, as nearly as may be, be the same as upon a special case stated under *The Common Law Procedure Act*.

Proceedings on special case in Court below and in error.

12 Any Judgment in any such Action or Issue as may be directed by a Judge, and any decision of a Judge in any Interpleader Proceedings, and so much of any Order by a Judge for the sale of goods or chattels seized in execution by a Sheriff or other Officer under process of the Court and claimed by some third person under a Bill of Sale as relates to the payment of the whole or part of the secured debts or otherwise, and to the application of the proceeds of the sale, and any decision of a Judge in a summary manner in any Interpleader Proceedings, when the amount in dispute or the value of the goods seized does not exceed Fifty Pounds sterling, shall be subject to an Appeal to the Court, and may be set aside, discharged, or varied, upon such terms as the Court thinks fit, on application made thereto by any party dissatisfied with such Judgment, Order, or Decision: Provided, however, that if, upon the hearing of the said Appeal, such Judgment, Order, or Decision shall be confirmed, the Court shall have power to order the Appellant to pay to the Respondent such Costs as to the said Court shall appear reasonable.

Appeal against judgment or decision of a single Judge in Interpleader Proceedings allowed in certain cases.

13 No Appeal shall be allowed unless notice thereof be given in writing to the opposite party, or his Attorney, and to the Clerk of the Court, within Fourteen days after the Judgment, Decision, or Order complained of, or such further time as may be allowed by the Court or a Judge thereof.

No Appeal allowed without Notice.

14 Notice of Appeal shall be a stay of proceedings upon any such Judgment, Decision, or Order, and upon so much of any Order as does not relate to the sale of goods or chattels seized in execution by a Sheriff or other Officer under process of the Court.

Notice of Appeal stay of Proceedings.

15 All rules, orders, matters and decisions to be made and done in Interpleader Proceedings under this Act (excepting only any Affidavits) may, together with the declaration in the cause, if any, be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a Judgment in the Supreme Court.

Rules, Orders, &c. made in interpleader proceedings may be entered of record and made evidence.

Misjoinder of Plaintiffs.

Joinder as Plaintiffs of all persons supposed to be legally entitled.

16 The Joinder of too many Plaintiffs shall not be fatal, but every Action may be brought in the name of all the persons in whom the legal right may be supposed to exist; and judgment may be given in favour of the Plaintiffs by whom the Action is brought, or of one or more of them, or in case of any question of Misjoinder being raised, then in favour of such one or more of them as shall be adjudged by the Court to be entitled to recover: Provided always, that the Defendant, though unsuccessful, shall be entitled to his Costs occasioned by joining any person or persons in whose favour judgment is not given, unless otherwise ordered by the Court or a Judge thereof.

Defendant to have benefit of set-off though some Plaintiffs improperly joined.

17 Upon the trial of such cause a Defendant who has therein pleaded a set-off may obtain the benefit of a set-off by proving either that all the parties named as Plaintiffs are indebted to him, notwithstanding that one or more of such Plaintiffs was or were improperly joined, or on proving that the Plaintiff or Plaintiffs who establish their right to maintain the cause is or are indebted to him.

No other Action for same claim to be brought.

18 No other Action shall be brought against the Defendant by any person so joined as Plaintiff in respect of the same cause of Action.

Replevin.

Payment into Court in replevin.

19 The Plaintiff in replevin may in answer to an avowry pay money into Court in satisfaction, in like manner and subject to the same proceedings as to costs and otherwise as upon a payment into Court by a Defendant in other Actions.

Effect of such payment.

20 Such payment into Court in replevin shall not, nor shall the acceptance thereof by the Defendant in satisfaction, work a forfeiture of the replevin bond.

Payment into Court upon Bonds and in Detinue.

Payment into Court in Action on Money Bonds, and for Detainer.

21 In any Action brought upon a Bond which has a condition or defeasance to make void the same upon payment of a lesser sum at a day or place certain, with a penalty, and in any Action for detaining the goods of the Plaintiff, it shall be lawful for the Defendant, by leave of the Court or a Judge thereof, and upon such terms as they or he shall think fit, to pay into Court a sum of money to answer the claim of the Plaintiff in respect of such Bond in the former case, and in the latter case to the value of the goods alleged to be detained; and such payment into Court shall be made and pleaded in like manner, and according to the provisions of *The Common Law Procedure Act*, and the like proceedings may be had and taken thereupon as to costs and otherwise.

Real Actions.

Dower, Writ of right of dower, and *quare impedit* abolished as real Actions, and to be commenced by Writ of Summons.

22 No Writ of right of dower, or Writ of dower *unde nihil habet*, and no plaint for free bench or dower in the nature of any such Writ, and no *quare impedit* shall be brought after the commencement of this Act in any Court whatsoever; but where any such Writ, Action, or Plaint would now lie, an Action may be commenced by Writ of Summons issuing out of the Court in the same manner and form as the Writ of Summons in an ordinary Action; and upon such Writ shall be indorsed a notice that the Plaintiff intends to declare in dower, or for free bench, or in *quare impedit*, as the case may be.

23 The service of the Writ, appearance of the Defendant, proceedings in default of appearance, pleadings, judgment, execution, and all other proceedings and costs upon such Writ, shall be subject to the same rules and practice, as nearly as may be, as the proceedings in an ordinary Action commenced by Writ of Summons; and the provisions of *The Common Law Procedure Act*, and of *The Common Law Procedure Act, No. 2*, shall apply to the Writ and pleadings, and proceedings thereupon.

Writ and all proceedings thereupon to be same as in ordinary Actions.

Attachment of Debts.

24 In proceedings to obtain an Attachment of Debts under *The Common Law Procedure Act, No. 2*, the Judge may, in his discretion, refuse to interfere where, from the smallness of the amount to be recovered, or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious.

Judge may refuse to interfere in proceedings to attach Debt.

25 Whenever, in proceedings to obtain an Attachment of Debts under the Act last mentioned, it is suggested by the garnishee that the debt sought to be attached belongs to some third person who has a lien or charge upon it, the Judge may order such third person to appear before him and state the nature and particulars of his Claim upon such debt.

Proceedings where third person has a lien on the Debt.

26 After hearing the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the Judge may think fit to call before him, or in case of such third person not appearing before him upon such Summons, the Judge may order execution to issue to levy the amount due from such garnishee, or the judgment creditor, to proceed against the garnishee, according to the provisions of *The Common Law Procedure Act, No. 2*, and he may bar the claim of such third person, or make such other order as he thinks fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs as he thinks just and reasonable.

Judge may bar claim of third person and make orders.

27 The provisions of *The Common Law Procedure Act, No. 2*, so far as they are applicable, shall apply to any order, and the proceedings thereon, made and taken in pursuance of the herein next beforementioned powers under this Act.

Provisions of 19 Vict. No. 16 to apply to orders.

Mandamus and Injunction.

28 In all cases in which a Writ of Mandamus, or of Injunction is issued under the provisions of *The Common Law Procedure Act, No. 2*, such Writ shall, unless otherwise ordered by the Court or a Judge thereof, in addition to the matter directed to be inserted therein, command the Defendant to pay to the Plaintiff the costs of preparing, issuing, and serving such Writ; and payment of such costs may be enforced in the same manner as costs payable under a rule of Court are now by law enforceable.

Costs of Writ of Mandamus and Injunction may be included in Writs.

29 Writs of Injunction against a Corporation may be enforced either by attachment against the Directors, or other Officers thereof, as in the case of a Mandamus, or by Writ of Sequestration against their property and effects, to be issued in such form and tested and returnable in like manner as Writs of Execution, and to be proceeded upon and executed in like manner as Writs of Sequestration issuing out of the Equitable Jurisdiction of the Supreme Court.

Mode of enforcing Writs of Injunction against Corporations.

Amendments.

Amendments.

30 It shall be lawful for the Court and any Judge thereof sitting at *Nisi Prius*, at all times to amend all defects and errors in any proceedings under the provisions of this Act, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such Amendments may be made with or without costs, and upon such terms as to the Court or a Judge thereof may seem fit, and all such Amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made, if duly applied for.

New Rules and Forms.

General Rules may be made by the Judges.

31 It shall be lawful for the Judges of the Court, from time to time, to make all such general Rules and Orders for the effectual execution of this Act, and of the intention and object thereof, and for fixing the costs to be allowed for and in respect of the matters herein contained, and the performance thereof, as in their judgment shall be necessary or proper: Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said Court or of the Judges thereof to make rules or orders, or otherwise to regulate and dispense of the business therein.

New forms of Writs and other proceedings.

32 Such new or altered writs and forms of proceedings may be issued, entered, and taken as may by the Judges of the said Court be deemed necessary or expedient for giving effect to the provisions hereinbefore contained, and in such forms as the said Judges from time to time think fit to order; and such writs and proceedings shall be acted upon and enforced in such and the same manner as writs and proceedings of the said Court are now acted upon and enforced, or as near thereto as the circumstances of the case will admit; and any existing writ or proceeding, the form of which shall be in any manner altered in pursuance of this Act, shall nevertheless be of the same force and virtue as if no alteration had been made therein, except as far as the effect thereof may be varied by this Act.

Interpretation of Terms.

Interpretation of terms.

33 In the construction of this Act the word "Court" shall be understood to mean the Supreme Court of *Tasmania* in its Common Law Jurisdiction.

Short Title.

Short Title.

34 In citing this Act in any Instrument, Document, or Proceeding, it shall be sufficient to use the expression, *The Common Law Procedure Act, No. 3.*