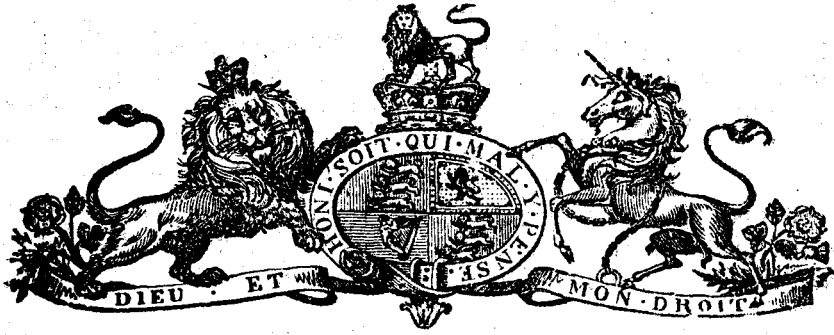


T A S M A N I A.



1870.

ANNO TRICESIMO-QUARTO

VICTORIÆ REGINÆ,

No. 17.



AN ACT for better regulating the Execution of Civil Process by the Sheriff. [18 October, 1870.]

WHEREAS it is expedient to amend the Laws relating to the execution of Civil Process by the Sheriff, and also to provide a summary remedy against such Officers and others as extort or receive other or greater Fees than by Law they are entitled to: And whereas divers enactments touching the Sheriff and his Officers contained in certain ancient Statutes have become inconvenient and ought no longer to be deemed to extend to this Colony or to be of any force within the same: 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 On and after the day on which this Act commences and takes effect the Acts set forth in the Schedule, to the extent therein specified, shall not be deemed to extend to this Colony or to be of any force within the same.

Acts in Schedule not to extend to Colony.

2 The Judges of the Supreme Court may and they are hereby required, from time to time, to make Tables of Fees to be paid to the Sheriff and his Officers and Ministers concerned in the execution of Civil Process, and the Judges shall also make General Rules declaring what Fees named and specified in such Tables of Fees the Sheriff and his Officers and Ministers may receive and retain for their own use.

Judges to make Tables of Fees.

*Execution of Civil Process.*

Sheriff to take only such Fees as are allowed by the Judges.

**3** It shall be lawful for the Sheriff, or his Officers concerned in the execution of Civil Process directed to the Sheriff, to demand, take, and receive such Fees, and no more, as from time to time are allowed by the Judges of the Supreme Court.

Poundage to be paid into Colonial Treasury.

**4** All Fees and Poundage received by the Sheriff or his Officers concerned in the execution of Civil Process by virtue of this Act shall be paid into the Colonial Treasury and form part of the General Revenue.

Writs of *Fi. Fa.* to be advertised by the Sheriff.

**5** Within Twenty days next after the receipt by him of any Writ or Execution against property, the Sheriff or his Deputy shall (unless such Writ is in the meantime withdrawn), cause the fact of the receipt of such Writ and the date of such receipt to be advertised in some public newspaper or newspapers; and he shall also cause a notice of every levy made under such Writ to be in like manner advertised within Fourteen days after every such levy, stating therein when the same was made, and the time and place of the intended sale, which time shall, if the amount for which the Writ of Execution is issued is *One hundred Pounds* or upwards, be not less than Twenty nor more than Sixty days after the date of such levy; and no property taken under any such Writ of the value of *Twenty Pounds* or upwards shall in any case be delivered over to the Plaintiff, or disposed of by private valuation or contract, but by public sale or competition only.

As to Poundage and Expenses.

**6** It shall be lawful for the Sheriff, or any Deputy-Sheriff, Bailiff, or other Officer or Minister of the Sheriff, to levy, over and above the sum levied by him by virtue of any Writ of Extent or any Writ of Execution against the lands, goods, and chattels of any person, the sum of *Twelve Pence* of and for every *Twenty Shillings* where the sum levied does not exceed *One hundred Pounds*, and *Sixpence* of and for every *Twenty Shillings* being over and above the said sum of *One hundred Pounds*, provided that in no case shall the Poundage exceed *Twenty-five Pounds*, and also the sum of *Sixpence* for every mile he may travel beyond Five in going to and returning from any place to which he may be compelled to travel in executing any such Writ of Extent or Writ of Execution as aforesaid; and may also, in giving possession or seizin of any messuage, tenement, or hereditament under any Writ of *Habere facias Possessionem aut Seisinam*, demand, ask, and receive the sum of *Twelve Pence* for every *Twenty Shillings* of the yearly value of the messuage, tenement, or hereditament whereof possession or seizin is given, whereof the yearly value does not exceed *One hundred Pounds*, and the sum of *Sixpence* only for every *Twenty Shillings* per annum over and above the said yearly value of *One hundred Pounds*, and also the same sum for travelling expenses as if such writ had been a Writ of Extent or Writ of Execution as aforesaid.

Penalty for levying excessive Poundage and expenses.

**7** If the Sheriff, or any Deputy Sheriff, Bailiff, or other Officer or Minister of the Sheriff, levies any greater sum than he is hereinbefore authorised to levy, he shall pay to the party grieved three times the amount of such excess, which shall be recovered by Action in the Supreme Court, and shall also forfeit and pay the sum of *Fifty Pounds* for every time he so offends, One moiety whereof shall go to Her Majesty, and the other moiety thereof to the party who sues for the same, and the same may be recovered by Action of Debt in the Supreme Court.

*Execution of Civil Process.*

**8** Whenever the Sheriff or his Officers are unable without default on their part to recover under any Civil Process the Fees and expenses necessarily and properly incurred and payable in respect thereof from the person against whom such Process has issued, such Fees and expenses, or any part thereof, shall be paid to the Sheriff by the party at whose suit the Execution issued; and on non-payment of the same by such last-mentioned party on demand, a Judge of the Supreme Court shall, in a summary way, ascertain the amount of such expenses, and enforce payment thereof by such last-mentioned party to the Sheriff by the same means as are by law provided for enforcing a judgment of the Supreme Court; and such amount shall be recoverable by such last-mentioned party against the opposite party as costs in the cause.

Sheriff may in certain cases recover Fees and expenses by Action.

**9** If the Sheriff, or any other Officer or Minister acting in the execution of Civil Process directed to the Sheriff, or engaged or concerned therein, extorts, demands, takes, accepts, or receives from any person any Fee or Fees, Gratuity or Reward, not allowed by Law, or greater in amount than is allowed by Law, he shall, upon complaint thereof made against him to the Supreme Court, on proof being made thereof upon oath, either by the examination of witnesses *viva voce*, or on Affidavits, or on Interrogatories, to the satisfaction of the Court, that such Sheriff, Officer, or Minister, as the case may be, has offended therein as aforesaid, be adjudged guilty of a Contempt of the said Court, and be punished accordingly; and if any person, not being such Officer or Minister as aforesaid, assumes or pretends to act as such, and extorts, demands, takes, accepts, or receives any Fee or Fees, Gratuity or Reward, under colour or pretext of such office, he shall, on like complaint and proof, be in that respect dealt with by the Court in like manner.

Punishment of Officers taking Fees not allowed, or greater Fees than are allowed:

And other persons taking any Fees.

**10** In all cases of summary complaint as aforesaid the Supreme Court may, at its discretion, award the Costs of or occasioned by such complaint to be paid by either party to the other, such Costs to be taxed by the Taxing Officer of the Court: Provided always, that no such complaint shall be entertained unless made before the last day of the Term next following the act whereof complaint is made.

Court may award Costs.

**11** In every case in which under "The Bankruptcy Act, 1870," the Sheriff gives up possession of goods or lands which have been taken by him in Execution to the Trustee of the Estate and Effects of any Defendant adjudged a Bankrupt, the Sheriff shall be entitled to receive from the Registrar of the Supreme Court, and the Registrar shall grant to him, a Certificate under his hand setting forth therein how much money (if any) might lawfully have been levied and made of such goods and lands for the expenses of Execution if the same goods and lands had been sold thereunder; and such Registrar shall include in such Certificate the cost of suing out such Writ of Execution as part of the expenses of the Execution; and upon production of the said Certificate to the Trustee of the Estate of the Defendant so adjudged a Bankrupt, such Trustee shall, out of the moneys then in his hands or which shall first come to his hands out of such Estate, pay to the Sheriff the amount of moneys specified in such Certificate, and what shall be so paid by every such Trustee shall be allowed in his accounts.

Sheriff on giving up property when Defendant adjudged Bankrupt to obtain Certificate from Registrar of Supreme Court of amount due for Expenses.

The Trustee on the production of such Certificate to pay the amount therein specified.

**12** This Act may be cited as "The Execution of Civil Process Act." Short Title.

*Execution of Civil Process.*

## SCHEDULE.

*ACTS referred to in Section One.*

<i>Number of Act.</i>	<i>Title of Act.</i>	<i>Extent of Act not applicable.</i>
42 Ed. 3. Cap. 9.	Estreats shall be showed to the Party indebted, and that which is paid shall be totted. No Sheriff, &c. shall continue in Office above a Year.	So much as relates to the time during which Under-Sheriffs and Sheriff's Clerks may abide in their respective offices.
1 Hen. 5. Cap. 4.	Sheriff's Bailiffs shall not be in the same Office in three Years after. Sheriff's Officers shall not be Attorneys.	The whole Act.
23 Hen. 6. Cap. 9.	No Sheriff shall let to farm his County or any Bailiwick. The Sheriff's and Bailiff's Fees and Duties in several Cases.	So much as relates to the Fees to be taken by the Sheriff, Under-Sheriffs, Sheriff's Clerks, and other Officers and Ministers of Sheriffs.
29 Eliz. Cap. 4.	An Act to prevent Extortion in Sheriffs, Under-Sheriffs, and Bailiffs of Franchises or Liberties, in cases of Execution.	The whole Act.
3 Geo. 1. Cap. 15.	An Act for the better regulating the Office of Sheriffs, and for ascertaining their Fees, and the Fees for suing out their Patents, and passing their Accounts.	Section Sixteen.