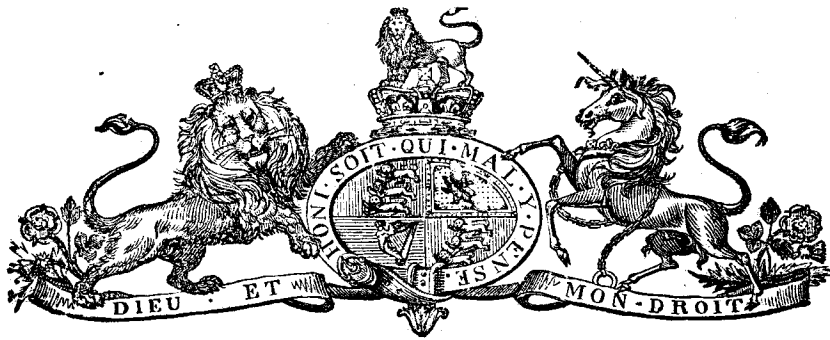


T A S M A N I A.



1863.

ANNO VICESIMO-SEPTIMO

VICTORIÆ REGINÆ,

No. 21.



AN ACT to further amend the Course of Proceeding in Equity in the Supreme Court of *Tasmania*. [3 September, 1863.]

WHEREAS it is expedient to amend further the Practice and Course of Proceeding in the Supreme Court of *Tasmania* in its Equity Jurisdiction: 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 shall commence and take effect from and after the First day of *October*, 1863, and may be cited and referred to as *The Equity Procedure Act, No. 2.* Commencement of Act. Short Title.

2 In the construction of this Act the word "Court" shall mean the Supreme Court of *Tasmania* in its Equity Jurisdiction. Interpretation.

3 In all cases in which the Court has Jurisdiction to entertain an application for an injunction against a breach of any covenant, contract, or agreement, or against the commission or continuance of any wrongful act, or for the specific performance of any covenant, contract, or agreement, it shall be lawful for the Court, if it thinks fit, to award Power to Court to award damages in certain cases.

damages to the party injured, either in addition to or in substitution for such injunction or specific performance, and such damages may be assessed in such manner as the Court directs.

Damages may be assessed, or question of fact arising in any suit may be tried by a Jury before the Court itself.

4 It shall be lawful for the Court, if it thinks fit, to cause the amount of such damages in any case to be assessed, or any question of fact arising in any suit or proceeding to be tried by a Special Jury, consisting of seven persons, before the Court itself; and the like proceedings may be taken by the Court for procuring the attendance of a Special Jury, for such assessment of damages or the trial of such question of fact, as may be taken by the Court in its Common Law Jurisdiction, and the Court may also make any orders which to it may seem requisite; and every such Jury shall consist of persons whose names are on the Special Jury List, and shall be summoned and drawn in like manner as if such Jury were a Jury for the trial of any cause in the said Court in its Common Law Jurisdiction; and every Juryman so summoned shall be entitled to the same rights and subject to the same duties and liabilities as if he had been duly summoned for the trial of any such cause in the said Court in its Common Law Jurisdiction; and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause; and generally for all purposes of or auxiliary to the assessment of damages or the trial of questions of fact by a Jury before the Court itself, and in respect of new trials, the Court shall have the same jurisdiction, powers, and authority in all respects as belong to the Court in its Common Law Jurisdiction, or to a Judge thereof for the like purposes.

Questions ordered to be tried by Jury to be reduced into writing.

5 Any question of fact and any question as to the amount of damages which is so ordered to be tried by a Jury before the Court itself shall be reduced into writing in such form as the Court directs, and at the trial the Jury shall be sworn to try the said question, and a true verdict to give thereon according to the evidence; and upon every such trial the Court shall have the same powers, jurisdiction, and authority as belong to a Judge of the said Court sitting at *Nisi Prius*.

Damages may be assessed or questions of fact tried before the Court itself without a Jury.

6 It shall also be lawful for the Court, if it thinks fit, to cause the amount of such damages in any case to be assessed, or any question of fact arising in any suit or proceeding to be tried before the Court itself without a Jury, and to cause the evidence on the trial of that question to be taken by the oral examination of witnesses and other proofs in open Court; and any question of fact, and any question as to the amount of damages which is so ordered to be tried before the Court itself, shall be reduced into writing in such form as the Court directs; and the verdict of the Judge shall be of the same effect as the verdict of a Jury under this Act; and the proceedings upon and after such trial, as to the power of the Court, the evidence, and otherwise, shall be the same as in the case of trial by Jury under this Act: Provided that, in the case of a trial under this Section, any person may apply for a new trial, in the same manner and within the same time as applications for new trials at Common Law are authorised to be made to the Court.

Where parties are competent to make admissions, any party may call on any other party to admit documents.

7 In any case in which all parties to a suit are competent to make admissions, any party may call on any other party by notice to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, the cost of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless the Court certifies that the refusal to admit was reasonable;

and no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give the notice is, in the opinion of the Taxing Officer, a saving of expense.

8 The Judges of the Supreme Court may, and they are hereby required, from time to time to make General Rules and Orders for carrying the purposes of this Act into effect, and for regulating the times and form and mode of procedure, and generally the practice of the Court, in respect of the matters to which this Act relates, and for regulating the Fees and Allowances to all Officers of the said Court and Solicitors thereof in respect to such matters, and so far as may be found expedient for altering the course of proceeding hereinbefore prescribed in respect to the matters to which this Act relates, or any of them, and such Rules and Orders may from time to time be rescinded or altered by the like authority; and, in making such Rules and Orders, the Judges are hereby directed to have regard to the General Orders of the Court of Chancery in *England* relating to the same subject matter; and all such Rules and Orders shall take effect as General Orders of the Court.

General Rules for Procedure and for regulating Fees may be made by the Judges.

