

T A S M A N I A



1893.

ANNO QUINQUAGESIMO-SEPTIMO

VICTORIÆ REGINÆ,

No. 13.

AN ACT to further amend the Course of A.D. 1893.
Proceeding in Equity in the Supreme
Court of Tasmania. [14 November, 1893.]

WHEREAS it is expedient to further amend the practice and PREAMBLE.
course of proceeding of the Supreme Court of Tasmania in its Equity
Jurisdiction :

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 :—

1 This Act may be cited as "The Equity Procedure Act, No. 4." Short title.

2 In this Act— Interpretation.
"The said Acts" shall mean The Equity Procedure Act and 21 Vict. No. 44.
every Act amending the same :
"Judge" shall mean a Judge of the Supreme Court of Tasmania :
"Mortgage," "Mortgagor," "Mortgagee," and "Property" shall
have the respective meanings assigned to them in the Second
Section of "The Conveyancing and Law of Property Act, 47 Vict. No. 19.
1884."

3 Any mortgagee or mortgagor may take out as of course an Mortgagee or
originating Summons returnable before a Judge sitting in Chambers mortgagor may
for such relief of any of the natures or kinds following as may by the take out Sum-
Summons be specified or as the circumstances of the case may require ; mmons for certain
that is to say— purposes.

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- A.D. 1893. Sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, or delivery of possession by the mortgagee, or account of rents and profits by the mortgagee.
- Persons to be served with Summons. **4** The persons to be served with any Summons under the last preceding Section shall be such persons as under the existing Practice for the time being of the Supreme Court in its Equity Jurisdiction would be the proper defendants to a suit or action for the like relief as that specified by the Summons.
The Judge may direct such other persons to be served with the Summons as he may think fit.
- How Summons to be supported. **5** Every application by an originating Summons under this Act shall be supported by such evidence as the Rules may prescribe or as the Judge may require, and special directions may be given as he may think just for the trial or determination of any questions arising thereout.
- Judge may pronounce judgment and make Order. **6**—(1.) It shall be lawful for a Judge, upon such Summons, to pronounce such judgment and make such Order as the nature of the case may require.
(2.) If the mortgagee has a power of sale, no Order for foreclosure shall be made under this Act unless the mortgagee shall satisfy the Judge that default has been made in the payment of the principal sum secured by the mortgage, or of any interest due thereon, or any portion of such principal or interest, for Six calendar months, and that the property mortgaged or encumbered has been offered for sale at public auction by a licensed auctioneer after notice given as provided in "The Conveyancing and Law of Property Act, 1884," or as required by any agreement between the parties to the mortgage, and that the amount of the highest bid at such offering for sale was not sufficient to satisfy the money secured by such mortgage or encumbrance together with the expenses occasioned by such offering for sale, or that upon such offering for sale there has been no bid for the property.
(3.) If the mortgagee has no power of sale, no Order for foreclosure shall be made under this Act unless notice of the mortgagee's intention to apply for such Order has been served on the mortgagor or one of several mortgagors, or has been published in one or more newspapers in *Tasmania* at least One calendar month before the date of such intended application.
- 47 Vict. No. 19. **7** The Judge may give such special direction touching the carriage or execution of the Order made upon any application by Summons under this Act or the service thereof upon such persons not parties, as he may think just.
- Judge may give special directions as to any Order. **8** A Judge of the Supreme Court may obtain the aid and assistance of a Conveyancer in the investigation of the Title to any property the subject of a summons under this Act in the same manner and under the same conditions as are mentioned in Section Sixty-three of *The Equity Procedure Act*.
- Judge may obtain aid of Conveyancer to investigate Title. **9** The Judges of the Supreme Court may from time to time make General Orders for carrying the purposes of this Act into effect, and
- Judges may make General Orders.

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such Orders may from time to time be rescinded by the like authority, A.D. 1893.
and all such Orders shall take effect as General Orders of the said
Court; and, except so far as this Act or any General Orders made here-
under may be contrary to the General Orders made under the said Acts,
the last-mentioned Orders shall be deemed to be General Orders under
this Act.

10 This Act and the said Acts, save as altered or amended by this Acts to be read
Act, shall be read and construed together as one and the same Act. together.