

TASMANIA.



1902.

ANNO SECUNDO

EDWARDI VII. REGIS,

No. 19.

AN ACT to further amend "The Local Courts Act, 1896." A.D. 1902.
[5 December, 1902.]

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 come into operation on the First day of *January*, Commencement. One thousand nine hundred and three.

2 This Act may be cited as "The Local Courts Amendment Act, Short title. 1902."

3 In this Act, "the said Act" shall mean "The Local Courts Act, Interpretation. 1896." 60 Vict. No. 48.

4 Schedule (3.) to the said Act is hereby repealed, and in lieu thereof the Schedule (1.) hereto shall be and be deemed to be and may be cited as Schedule (3.) to the said Act. Repeal and re-enactment of Schedule (3.) to the said Act.
6d.]

Local Courts Amendment.

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Fees in Schedule substituted for fees under 64 Vict. No. 31.

Penalty on judgment debtor neglecting order to appear.

Repeal and re-enactment of Sects. 85 and 86 of 60 Vict. No. 48.

Registrar may order an attachment of debts. Forms 72, 73.

Order for attachment to bind debts.

New Form. Schedule (2.).

5 In lieu of the scale of Court fees set forth in the Rules of Practice made by the Judges of the Supreme Court under "The Local Courts Amendment Act, 1900," the Court fees set forth in the Schedule (1.) hereto shall be the Court fees in all proceedings under that Act.

6 If any judgment debtor, who has been ordered to attend before the Court or a Judge as provided by Section Eighty-four of the said Act, shall refuse or neglect, without sufficient cause—

- i. To appear at the time and place stated in such order ; or
- ii. To produce any books or documents which he has been thereby ordered to produce ; or
- iii. To be sworn or to make an affirmation ; or
- iv. To give any evidence,

he shall forfeit and pay such fine, not exceeding Ten Pounds, as the Court or a Judge may impose on him ; and in default of payment of any such fine the Court or Judge may commit the judgment debtor to any gaol for any period not exceeding One month.

7 Sections Eighty-five and Eighty-six of the said Act are hereby repealed, and in lieu thereof the following shall be and be deemed to be and may be cited as Sections Eighty-five and Eighty-six respectively of the said Act ; that is to say :—

"**85** Upon the *ex parte* application of any creditor who has obtained a judgment in any Court held under this Act, and upon affidavit by himself or his attorney, stating—

- i. That judgment has been recovered and that it is still unsatisfied ; and
- ii. To what amount ; and
- iii. That any other person is indebted to the judgment debtor, and is within the jurisdiction of the Court ;

the Registrar may order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt, and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Judge of the Court to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt : Provided always, that the Registrar 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 will in his opinion be worthless or vexatious."

"**86** Service of an order that debts due or accruing to the judgment debtor shall be attached or notice thereof to the garnishee in such manner as the Registrar shall direct, shall bind such debts in the garnishee's hands."

8 The form in the Schedule (2.) hereto shall be substituted for Form Seventy-three in the Schedule (7.) to the said Act.

33C.L.R. 452.

33C.L.R. 452.



Local Courts Amendment.

- 9** Notwithstanding anything contained in "The Married Women's Property Act, 1890," every Court held under the said Act shall have full power and jurisdiction to decide an interpleader summons in any case in which a married woman claims any personal property taken in execution at the suit of a judgment creditor of her husband by a Bailiff of any Court held under the said Act. A.D. 1902.
54 Vict. No. 14.
Court may decide interpleader where married woman claims property.
- 10** The Rules of Practice set forth in the Schedule (3.) hereto shall be substituted for the Rules of Practice numbered 76, 77, 78, and 79 respectively set forth in the Schedule (6.) to the said Act. Rules of Practice in Schedule (3.) substituted for Rules 76, 77, 78, and 79.
- 11** All the words in Section Sixty-two of the said Act after the word "Pounds" in the fourth line thereof, and Section Sixty-four of the said Act, are hereby repealed. Repeal of part of Sect. 62, and Sect. 64, of 60 Vict. No. 48.
- 12** In all actions brought in a Court held under the said Act before a Commissioner such Commissioner shall alone determine all questions as well of fact as of law, and his decision shall be the judgment of the Court, unless a Jury be required as hereinafter provided. Commissioner to try actions brought before him.
- 13** In any such action as last aforesaid it shall be lawful for the plaintiff or defendant to require a Jury to try the action, and when the plaintiff requires a Jury to try the action he shall insert in the plaint and summons the words "For trial by Jury," and no further notice shall be necessary; and when the defendant requires a Jury to try the action he shall insert in the notice of defence the words "For trial by Jury," and no further notice shall be necessary. Such actions may be tried by Jury when parties require it.
- 14** In any such action as last aforesaid, the Commissioner may, at any time before the return day of the summons, by Order in writing, direct that the action shall be tried by Jury, although no demand of a Jury has been made by either of the parties thereto, and the action shall be tried by a Jury accordingly. Commissioner may order action to be tried by a Jury.
- 15** This Act and the said Act and every Act amending the same shall, save as altered or amended by this Act, be read and construed together as one and the same Act. Acts to be read together.
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Local Courts Amendment

A.D. 1902.

SCHEDULE.

(1.)

	Where the amount claimed in action is						
	Not above £10.	Above £10 and not above £25.	Above £25 and not above £50.	Above £50 and not above £75.	Above £75 and not above £100.	Above £100 and not above £200.	Above £200 and not above £300.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Entering every plaint, including the issuing and service of summons	0 1 0	0 5 0	0 7 6	0 10 0	0 15 0	1 0 0	1 5 0
For every copy summons (including summons to witness) issued after the first	0 1 0	0 2 0	0 3 0	0 4 0	0 5 0	0 7 6	0 10 0
Hearing fee	0 2 6	0 5 0	0 7 6	0 10 0	0 15 0	1 0 0	1 5 0
Judgment by consent or default	0 2 6	0 5 0	0 7 6	0 10 0	0 15 0	1 0 0	1 5 0
Entering defence, including defence to a garnishee order	0 2 0	0 3 0	0 3 0	0 5 0	0 5 0	0 7 6	0 10 0
Summons (any number of witnesses)	0 0 6	0 1 0	0 1 6	0 2 6	0 2 6	0 2 6	0 5 0
Copy of particulars supplied by Registrar	0 0 6	0 1 0	0 1 6	0 2 0	0 2 6	0 2 6	0 5 0
Issuing warrant of execution	0 2 6	0 4 0	0 5 0	0 7 6	0 10 0	0 15 0	1 0 0
Taking recognizance bond or security for costs.....	0 0 6	0 1 0	0 1 6	0 2 0	0 2 6	0 5 0	0 7 6
Enquiry into sufficiency of sureties	0 0 6	0 1 0	0 1 6	0 2 0	0 2 6	0 5 0	0 7 6
Taxing costs.....	0 1 0	0 1 6	0 2 0	0 2 6	0 2 6	0 5 0	0 7 6
Issuing every summons (not otherwise specified) and every order made thereon	0 1 0	0 2 6	0 5 0	0 7 6	0 10 0	0 15 0	1 0 0
For every notice of trial by jury	..	0 10 0	0 15 0	0 17 6	1 0 0	1 10 0	2 0 0
Filing every affidavit, except an affidavit by a Bailiff of service of any process	0 1 0	0 2 0	0 2 0	0 2 0	0 5 0	0 7 6	0 10 0

In cases of execution of any warrant the actual expenses necessarily incurred by the Bailiff in respect of such warrant shall be allowed by the Court as costs in the cause.

In cases of interpleader the summons to the Bailiff shall be issued gratis in the first instance, and necessary expenses incurred by the Bailiff in keeping possession of the goods shall be included in the general costs of the cause.

In actions for recovery of possession of corporeal hereditaments the fees shall be regulated by the rent or yearly value of the property, plus the amount claimed as rent or mesne profits.

(2.)

Sect. 85.

ORDER *EX PARTE* FOR THE ATTACHMENT OF DEBTS, AND SUMMONS FOR GARNISHEE TO PAY SAME.

In the [title of the Court as in Form 1].

A.B., Judgment Creditor.

against

C.D., Judgment Debtor.

E.F., Garnishee.

Upon hearing _____, and upon reading the affidavit of _____ filed the _____ day of _____ it is ordered that all debts due and owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the above-named judgment debtor on the _____ day of _____ 19____, by the above-named judgment creditor in the Court of _____ upon which judgment there is still owing the sum of £ _____

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And it is further ordered that the above-named garnishee, his attorney or agent, **A D. 1902.**
 attend before His Honour the _____ of this Court at _____ on _____
 the _____ day of _____ next, at _____ of the clock in the _____ noon
 to show cause why he should not pay the judgment creditor the debt due from him to
 the judgment debtor [*or so much thereof as may be sufficient to satisfy the said judgment debt*].

Dated this _____ day of _____ 19 .

Registrar of the Court.

[SEE MEMORANDUM ON BACK HEREOF.]

“MEMORANDUM.

“Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee in such manner as the Registrar shall direct, shall bind such debts in the garnishee’s hands.

“The garnishee may, if he disputes the debt due or claimed to be due from him to the judgment debtor, or if the debt sought to be attached belongs to some other person who has a lien or charge, give to the Registrar a notice of defence within five clear days before the date upon which he is ordered to show cause stating whether he disputes the debt as aforesaid, or whether it belongs to some other person as aforesaid; or the garnishee may, if he admits the debt due or claimed to be due as aforesaid, within a like period pay into Court the amount admitted to be due from him to the judgment debtor, or an amount equal to the judgment debt; and if the amount so paid in is less than the judgment debt, he shall file a notice of defence, at the same time stating that the amount paid into Court is the whole of the debt due by him to the judgment debtor.

“If the garnishee does not within the time mentioned in Section 87 pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not give a notice of defence to the purport mentioned in the last-mentioned section, or if he does not appear upon order (provided that he has not in the meantime received notice from the judgment creditor that he need not appear), then the Judge may order execution to issue, and it may be sued forth accordingly without any further process, to levy the amount due from such garnishee in or towards satisfaction of the judgment debt.”

(3.)

RULES OF PRACTICE.

1. Three days at least before the day appointed for the sale of any personal property under any process, a list of such personal property shall be affixed to or near to the front door of the Court House of the district where the execution has been levied, and kept so affixed until the day of sale; and where the sum to be levied amounts to **Ten Pounds** or upwards, notice of the intended sale, specifying the time and place thereof and the description of property to be sold shall, in addition, be advertised once in a newspaper generally circulating in the district where the execution has been levied, three days at least before the day of sale. **Sect. 106.**

2. Fourteen days at least before the day appointed for the sale of any land under any process, notice of such intended sale, specifying the time and place thereof, describing the property to be sold, as to situation, name, boundaries or abuttals, quantity, and nature, shall be advertised once in the *Gazette* and once in a newspaper generally circulating in the district where the execution has been levied. **Sect. 106**

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Sect. 106.

3. In the case of the sale of property seized under any warrant of execution in or upon any dependency of this State where communication with the mainland shall be uncertain, it shall not be necessary for notice of the intended sale to be advertised as directed by the two preceding rules; but in lieu of such notice by advertisement notice of such intended sale may be affixed to some building upon or nearest to the place where such property shall be seized.