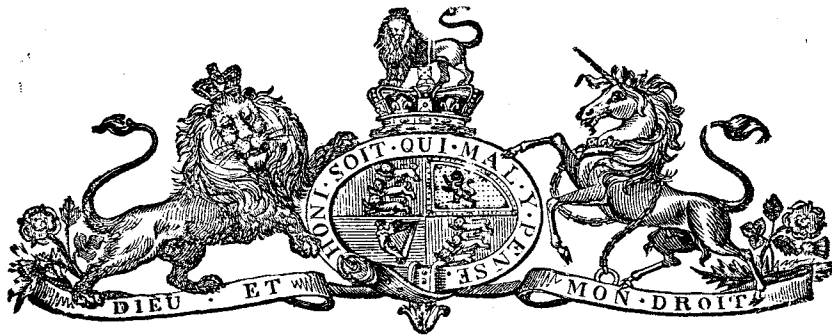


T A S M A N I A.



1869.

ANNO TRICESIMO-TERTIO

VICTORIÆ REGINÆ,

No. 9.



AN ACT to amend "The Small Debts Act."  
[22 October, 1869.]

**W**HEREAS it is expedient to amend "The Small Debts Act" in certain particulars: 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  
31 Vict. No. 15.

**1** It shall be lawful for the Registrar of every Court, except of the Courts held at *Hobart Town* and of the Court held at *Launceston*, to prepare complaints, summonses, defences, and other process and documents under the said Act; and in respect of every such complaint, summons, defence, process, or document so prepared by the Registrar there shall be paid a fee of One Shilling.

Registrars may fill in complaints, &c.

**2** No defence shall be set up in any action unless notice thereof has been given to the Registrar.

Notice of defence to be given in all cases.

**3** In any action in a Court held under the said Act for a debt or liquidated money demand, where the summons has been personally served upon the defendant, if no notice of defence has been given to the Registrar, the plaintiff shall, on the return day of such summons, without giving any proof of his claim, have judgment entered up against the defendant for the amount of his claim and costs to be taxed by the Registrar, and the order upon such judgment shall be for payment forthwith; Provided that the Judge may, upon the application of the defendant, order such claim and costs to be paid at such times and by such instalments as he thinks fit.

Plaintiff entitled to judgment in certain cases if no notice of defence given.

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- Repeal.      **4** Sections Thirty-three and Thirty-four of "The Small Debts Act," and so much of the said Act as requires proof of the plaintiff's claim in cases coming within the last preceding Section of this Act, are hereby repealed.
- Appeal.      **5** In all cases decided under the Seventieth and Seventy-first Sections of "The Small Debts Act," any person interested who may be dissatisfied with the decision or direction of the Judge may appeal from such decision in the manner provided by the Eighty-fifth and Eighty-sixth Sections of the said Act.
- Supreme Court to entertain cases under this Act at *Launceston*.      **6** At any time after this Act comes into operation it shall be lawful for the Governor in Council, by Proclamation to be published in the *Gazette*, to declare that after a day to be therein named the Supreme Court and the Judges thereof shall have and exercise at *Launceston* the same powers, jurisdiction, and authority as such Court and the Judges thereof now have and exercise at *Hobart Town* under the provisions of "The Small Debts Act," and after such day all the provisions of the said Act which apply to the recovery in the Supreme Court of debts and demands at *Hobart Town* shall apply to the recovery of debts and demands at *Launceston*.
- A Court at *Launceston* for debts not exceeding £10.      **7** The power conferred upon the Governor to appoint a Court under the said Act to be held at *Hobart Town* before the Stipendiary Magistrate, or any Two Justices, for the recovery of debts and demands not exceeding Ten Pounds, shall extend to the appointment of a similar Court at *Launceston*.
- Jurors at *Hobart Town* or *Launceston*.      **8** No person who is resident more than Three miles from *Hobart Town* or *Launceston* shall be summoned to attend as a Juror at the Court held at either of such places.
- Special Jurymen may be empannelled.      **9** Jurors may, notwithstanding anything hereinbefore contained, be selected, empannelled, and sworn from any special Jurymen who may be in attendance on the Supreme Court.
- Execution of Process of Supreme Court.      **10** So much of Section Sixty-six of the said Act as relates to the Execution of Process issuing out of the Supreme Court is hereby repealed; and when any Writ of *feri facias* or other Writ of Execution for a sum not exceeding Fifty Pounds for debt and costs is issued out of the Supreme Court in any action or other proceeding brought or taken in the said Court otherwise than under the provisions of the said Act, and the lands or chattels of the person against whom such Writ is issued are nearer to the place at which a Court is held under the said Act than to either *Hobart Town* or *Launceston*, the Sheriff may forward his Warrant to the Bailiff of such last-mentioned Court, and such Warrant shall thereupon be executed in the same manner as a Warrant of Execution is now executed by the Sheriff's Bailiff, and all moneys received in pursuance of such Warrant shall be paid to the Sheriff, and the Sheriff shall not be answerable for the neglect or wrongful act of any such Bailiff.
- Bail.      **11** When any person is arrested in pursuance of Section Seventy-two of the said Act, Bail shall be put in by bond to secure the personal appearance of such person, in case judgment is given against him, to such judgment summons or summonses as may within One month after judgment be obtained in accordance with the provisions of "The Imprisonment for Debt Abolition Act" directed to such person; and

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such summonses may be obtained although such person is out of *Tasmania*; and if bail is not put in as aforesaid, or deposit made as required by the said Section, the person executing the Warrant under which such person is arrested shall lodge such person in any gaol, and such person shall be there detained, in accordance with and subject to the provisions of this Act or the said Act, until the Judge who tries such action orders such person to be discharged therefrom.

**12** Personal service of every such summons upon any one of the bail shall be deemed to be notice to such bail, and shall also be deemed to be personal service upon such person as aforesaid within the meaning and for the purposes of "The Imprisonment for Debt Abolition Act."

Service of Summons under 31 Vict. No. 16.

**13** No Writ of Mandamus shall henceforth issue to a Judge or an Officer of any Court held under the said Act for refusing to do any act relating to the duties of his office, but any party requiring such act to be done may apply to the Supreme Court or a Judge thereof, upon an Affidavit of the facts, for a rule or summons calling upon such Judge or Officer of the Court held under the said Act, and also the party to be affected by such act, to show cause why such act should not be done; and if after the service of such rule or summons good cause is not shown, the Supreme Court or a Judge thereof may by rule or order direct the act to be done, and the Judge or Officer of the said Court upon being served with such rule or order shall obey the same on pain of attachment; and in any event the Supreme Court or a Judge thereof may make such order with respect to costs as to such Court or Judge seems fit.

Rule or order substituted for Writ of Mandamus to a Judge or officer of the Court.

**14** It shall be lawful for the Judges of the Supreme Court from time to time by Rule to regulate the form and mode of delivery of particulars of the claim for which any action is brought, anything in the Twenty-first Section of the said Act to the contrary notwithstanding; and may also in like manner fix the Court Fees, Fees to Attorneys, Costs, and Charges which shall be allowed and charged in cases relating to the Recovery of the Possession of Small Tenements under the said Act; and also in like manner to declare the cases, if any, in which Fees for the service of summonses to witnesses may be allowed, and to fix the amount of such Fees, and also the Fees and Costs in respect of any other proceeding in the said Court.

Power to make Rules in certain cases.

**15** Sections One hundred and two, One hundred and three, and One hundred and four of the said Act are hereby repealed; and if in any action commenced in the Supreme Court otherwise than in its Small Debts jurisdiction the plaintiff recovers a sum not exceeding Fifteen Pounds if the action is founded on Contract, or Seven Pounds if founded on Tort, whether by verdict, judgment by default, or on demurrer, or otherwise, he shall not be entitled to any costs of suit unless the Judge certifies on the record that there was sufficient reason for bringing such action in the Supreme Court otherwise than in its Small Debts jurisdiction, or unless the Court or a Judge at Chambers shall by rule or order allow such costs.

Costs not recoverable in Supreme Court.

**16** The Registrar of any Court held under the said Act may, with the consent of the Governor, be appointed to perform the duties of the Bailiff of such Court, and shall have all the powers and authorities now vested in the Bailiff of a Court held under the said Act, and shall be responsible for the acts and defaults of himself and his officers, in like

Registrars may act as Bailiffs.

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manner as the Bailiff of a Court held under the said Act is now by Law responsible for the acts and defaults of himself and his officers; and where before the passing of this Act any person holding the office of Registrar has been appointed the Bailiff of the Court of which he is Registrar, he shall be deemed to have been lawfully appointed the Bailiff of such Court, anything in the said Act to the contrary notwithstanding; and where before the passing of this Act any person has performed the duties of the Bailiff of any such Court, although not appointed the Bailiff of such Court, all acts, matters, and things *bonâ fide* done, performed, and executed by such person as the Bailiff of such Court shall be deemed and taken to have been lawfully done, performed, and executed by such person.

Amendments in Sections 11 and 85 of 31 Vict. No. 15.

**17** The term "Summoning Officer" used in the Eleventh Section of the said Act shall be read and shall have the meaning given to the term "Bailiff" in the said Act, and the term "Clerk of the Court" used in the Eighty-fifth Section of the said Act shall be read and shall have the meaning given to the term "Registrar" in the said Act.

Acts to be read together.

**18** Save as altered by this Act, "The Small Debts Act" and this Act shall be read and construed together as one and the same Act.

Short Title.

**19** This Act may be cited as "The Small Debts Act Amendment Act, 1869."