

## LOCAL COURTS.

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No. 35 of 1965.

### AN ACT to amend the *Local Courts Act 1896*. [10 November 1965.]

**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**—(1) This Act may be cited as the *Local Courts Act 1965*. Short title, citation, and commencement.

(2) The *Local Courts Act 1896*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) The provisions of this Act shall commence on such dates respectively as may be fixed by proclamation in relation to each of those provisions.

**2** Section eight of the Principal Act is repealed and the following section is substituted therefor:—

“8 The Governor may appoint courts to be held before a commissioner at such places as he thinks fit for the recovery of debts and demands under this Act in accordance with the jurisdiction conferred on those courts by this Act.” Appointment of courts to be held before a commissioner.

**3** Section twelve of the Principal Act is amended—

(a) by omitting subsections (1) and (2) and substituting therefor the following subsection:— Courts of general sessions.

“(1) Courts of general sessions with such jurisdiction as is conferred on those courts by this Act shall be established at such places as the Governor may appoint.”; and

(b) by omitting subsection (7).

**4** Section thirteen of the Principal Act is amended—

(a) by omitting subsection (1) and substituting therefor the following subsection:— Jurisdiction of courts.

“(1) The amount to which the jurisdiction of a court is limited is—

(a) in the case of a court that is held before a commissioner who is a practitioner—

(i) seven hundred and fifty pounds in respect of a claim for a debt or liquidated sum; and

(ii) five hundred pounds in any other case; and

(b) in the case of any other court, fifty pounds,  
and references in this Act to the amount to which the jurisdiction of a court is limited shall, in relation to any action or other proceeding in that court, be construed as references to the amount specified in this section as the amount to which the jurisdiction of the court is limited in respect of that action or other proceeding.”; and

(b) by omitting from subsection (2) the words “in which the subject matter exceeds one hundred and fifty pounds in amount or value,” and substituting therefor the words “wherein the plaintiff claims a debt or liquidated sum of not less than four hundred and fifty pounds or an unliquidated sum of not less than three hundred pounds.”.

**5** Section fifteen of the Principal Act is repealed and the following section is substituted therefor:—

Discontinu-  
ance of  
courts.

“15 The Governor may discontinue the holding of any court of requests or any court of general sessions.”.

**6** After section sixteen of the Principal Act the following section is inserted:—

Sittings  
of courts.

“17 The Attorney-General may, by notice in the *Gazette*, fix the times at which any court shall sit and that court shall sit at those times and at such other times as the commissioner of that court considers necessary or desirable.”.

**7** Section twenty-one of the Principal Act is repealed and the following section is substituted therefor:—

Registrars  
and deputy  
registrars.

“21—(1) For each court there shall be a registrar who—

- (a) if his remuneration is charged to the Consolidated Revenue, shall be a person appointed by the Governor; and
- (b) in any other case, shall be the clerk of the municipality in which the sittings of the court are held.

“(2) A deputy registrar may be appointed for any court by—

- (a) if the remuneration of the registrar of that court is charged to the Consolidated Revenue, the Governor; and
- (b) in any other case, the mayor or warden of the municipality in which the sittings of the court are held.

“(3) Where there is no registrar or deputy registrar of a court, or, for any reason, the registrar or deputy registrar is unable to act, the commissioner of the court may appoint a suitable person to act as registrar of the court.

“(4) A deputy registrar of a court or a person appointed under this section to act as registrar of a court may exercise any of the functions conferred by this Act or otherwise on the registrar of that court, and any act or other thing done by or before the deputy registrar or the person so appointed has the same force and effect as if it were done by or before the registrar.”.

**8** Section twenty-two of the Principal Act is amended by inserting, after subsection (1), the following subsection:—

*Bailiffs.*

“(1A) Where there is no bailiff for any court, or where, for any reason there is no bailiff capable of acting for that court, the commissioner of that court may appoint a suitable person to be a bailiff of the court.”.

**9** After section twenty-two of the Principal Act the following section is inserted:—

“23 The appointment, promotion, or transfer of any person under the *Public Service Act 1923* to a position of registrar, deputy registrar, or bailiff of a court shall be deemed to constitute his appointment by the Governor under this Act as registrar, deputy registrar, or bailiff of that court, as the case may be.”.

*Application of Public Service Act 1923 to officers of court.*

**10** Section twenty-four of the Principal Act is repealed.

*Officers of courts of general sessions.*

**11** Section twenty-seven of the Principal Act is amended—

*Duties of registrars, &c.*

(a) by omitting all the words following the words “into or out of court,”; and

(b) by adding at the end thereof the following subsections:—

“(2) Any book, record, account, or other document required by this Act to be kept by an officer of a court shall be admitted as evidence of the entries therein, and a document purporting to contain a copy of such an entry purporting to be signed and certified as a true copy by the registrar of the court shall be admitted as evidence of that entry.

“(3) Where under this section, a book, record, account, or document is admissible as evidence of any such entry as is referred to in subsection (2) of this section, that book, record, account, or document is sufficient evidence, without further proof, of the proceeding to which it relates and of the regularity of that proceeding.”.

**12** Section twenty-nine of the Principal Act is amended by adding at the end thereof the following subsections:—

*Duties of bailiff, &c.*

“(3) Nothing in this section prohibits the service of process in any proceedings by a party to those proceedings where that

process is authorized or required to be so served under the rules of practice.

“(4) References in subsection (3) of this section to a party to any proceedings shall be construed as including references to a practitioner acting on behalf of that party in those proceedings, or any person acting on the directions of that party or that practitioner.”

Consent  
jurisdiction.

**13** Section thirty-three C of the Principal Act is amended by inserting after subsection (3) the following subsection:—

“(3A) An order may be made by a commissioner or chairman under subsection (2) or subsection (3) of this section whether the court is sitting or not.”

Suits by  
plaint.

**14** Section forty-one of the Principal Act is amended by omitting the words “, and the registrar shall make an entry in a book to be kept for this purpose in his office of the filing of such plaint, and every plaint shall be numbered in every year according to the order in which it is entered”.

Proof of  
service of  
process.

**15** Section forty-four of the Principal Act is amended by omitting the words “ which is required to be served by a bailiff of that or any other court”.

**16** Section forty-six of the Principal Act is repealed and the following section is substituted therefor:—

Entry of  
judgment  
where no  
defence is  
filed.

“46—(1) Where, in any action in a court for a debt or liquidated demand, no notice of defence is given within the time within which it is required to be given the plaintiff may have judgment entered by the registrar against the defendant for an amount not exceeding the amount of his claim and costs.

“(2) Where, in any action in a court for pecuniary damages, no notice of defence is given within the time within which it is required to be given the plaintiff may have interlocutory judgment entered by the registrar against the defendant, and the amount of the damages may be assessed by the court and judgment given accordingly.

“(3) Nothing in this section entitles a plaintiff to have a final or an interlocutory judgment entered after the expiration of six years from the date of the summons.

“(4) Where a final judgment or an interlocutory judgment has been entered under this section, the court may, at any time, on the application of the defendant, set aside that judgment and give leave to defend on such terms as it considers just, or, where the judgment so entered is a final judgment, make an order for the stay of execution upon payment of the amount of the judgment debt, either in one sum or by instalments, and within such time, as it thinks fit.”

**17** After section fifty of the Principal Act the following section is inserted:—

“50A—(1) On an application in writing made by the parties to an action for the giving of any judgment or the making of any order that may be made in that action the court may give that judgment or make that order unless it considers that any party, or a practitioner acting on his behalf, should appear before the court before any judgment is given or order made in relation to the matter to which the application relates.

Consent judgments and orders.

“(2) An application made by a practitioner on behalf of a party that states that it is so made shall be treated, for the purposes of this section, as an application made by that party.

“(3) The powers conferred on a court by this section may be exercised by the commissioner or chairman thereof whether the court is sitting or not.”.

**18** Sections fifty-four and fifty-five of the Principal Act are repealed.

Interrogatories and discovery of documents.

**19** Section sixty-nine is amended by omitting from subsection (1) the words “to non-suit the plaintiff, or”.

Failure of plaintiff to appear.

**20** Section seventy-two of the Principal Act is amended by omitting subsection (1) and substituting therefor the following subsections:—

Set-offs and counter-claim.

“(1) In an action in which the defendant by his defence sets off, or sets up by way of counter-claim, any right or claim, that set-off or counter-claim may be proceeded with, notwithstanding that the action is stayed, discontinued, or dismissed.

“(1A) In any such action as is referred to in subsection (1) of this section, separate judgments shall be given on the claim and on the set-off or counter-claim.”.

**21** Section eighty-three of the Principal Act is repealed and the following section is substituted therefor:—

“83 An order or judgment of a court is final and conclusive between the parties thereto, except that, on application being made in the prescribed manner, a court may order a new trial to be had on such terms as the court considers reasonable.”.

Judgment and new trial.

**22** Section eighty-five A of the Principal Act is amended by omitting subsection (6).

Attachment of salary, wages, &c.

**23** Section ninety-six of the Principal Act is repealed.

Debt attachment book.

**24** Section one hundred and two of the Principal Act is amended—

Levy of execution.

(a) by omitting from subsection (1) the word “Every” and substituting therefor the words “Subject to section one hundred and three A, every”; and

- (b) by omitting from that subsection the words “(excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of five pounds, which shall to that extent be protected from seizure)”.

**25** After section one hundred and three of the Principal Act the following section is inserted:—

Restriction on goods that may be taken in execution.

“103A—(1) There shall not be seized or taken under subsection (1) of section one hundred and two any tools or implements used by the debtor in his trade, unless there is left in his ownership tools or implements of his trade the value of which is not less than one hundred and fifty pounds, nor shall there be so seized or taken any wearing apparel or beds or bedding of the debtor or his family.

“(2) Where any household goods of a debtor are seized under subsection (1) of section one hundred and two nothing in that section authorizes, without the consent in writing of the debtor, the removal of the goods from the premises on which they are seized, or their sale or disposal, until—

- (a) where an application is made under this section in respect of the seizure, leave is given by the court for the execution against the goods to proceed; or
- (b) where no such application is made, the expiration of fourteen days from the day on which the goods were seized,

but except as is otherwise expressly provided in this subsection, nothing in this section prejudices or affects the exercise of any rights arising from the seizure.

“(3) Within a period of fourteen days from the day on which any household goods are seized under subsection (1) of section one hundred and two the debtor may apply to a court for an order in respect of the goods.

“(4) If, on an application under subsection (3) of this section, the court considers the effect of the taking in execution of any goods to which the application relates would be to deprive the debtor or any member of his family of the use of goods reasonably necessary for the essential requirements of living or for the maintenance of health, it shall order that those goods be restored, and, if it does not so order, shall, by order, give leave for the execution to proceed in respect of those goods.

“(5) Where a court, under this section orders that any goods be restored, the seizure of the goods shall cease to be of effect and, without prejudice to anything done before the order was made, any rights arising from the seizure shall determine.

“(6) References in this section to the household goods of a debtor shall be construed as references to any goods or

chattels ordinarily kept at the premises at which he or his family reside and used for the purposes of the occupation or enjoyment of those premises as a dwelling.

“(7) References in this section to the goods of a debtor shall be construed as including references to any goods in which he has any interest, and references in this section to the seizure of those goods, or their sale or disposal, shall be construed as including references, respectively, to the seizure of that interest, or its sale or disposal.

“(8) In this section, in relation to the execution of any process, ‘debtor’ means the party against whom the judgment or order in respect of which the process was issued was obtained or made.”.

**26** Section one hundred and twenty-three of the Principal Act is amended— Appeal to  
Supreme  
Court.

- (a) by omitting from subsection (3) the words “fifty pounds” and substituting therefor the words “such sum as is specified in relation thereto under subsection (3A) of this section”; and
- (b) by inserting after that subsection the following subsection:—

“(3A) The following sums are specified for the purposes of subsection (3) of this section, namely:—

- (a) In the case of an action for a debt or liquidated sum, three hundred and seventy-five pounds; and
- (b) In any other case, two hundred and fifty pounds.”.

**27** Section one hundred and thirty-two of the Principal Act is repealed. Account to  
Treasurer.

**28** Section one hundred and thirty-eight of the Principal Act is amended by inserting after subsection (1) the following subsection:— Rules of  
practice.

“(1A) Any rules of practice made under this section may make provision with respect to the functions of officers of a court and the carrying out of those functions, and with respect to the making and the keeping of records and accounts in relation to any proceedings instituted in a court or any matters arising therefrom.”.

**29** Section one hundred and forty-one of the Principal Act is repealed. Assaults on  
bailiffs.

**30**—(1) A court of requests appointed at any place before the commencement of section two that has not before that commencement been discontinued shall continue as if it had been appointed a court at that place under section eight of the Principal Act as amended by this Act. Transitory  
provisions.

(2) Any court of general sessions that is established immediately before the commencement of section three at any place shall continue as if it had been established under section twelve of the Principal Act as amended by this Act.