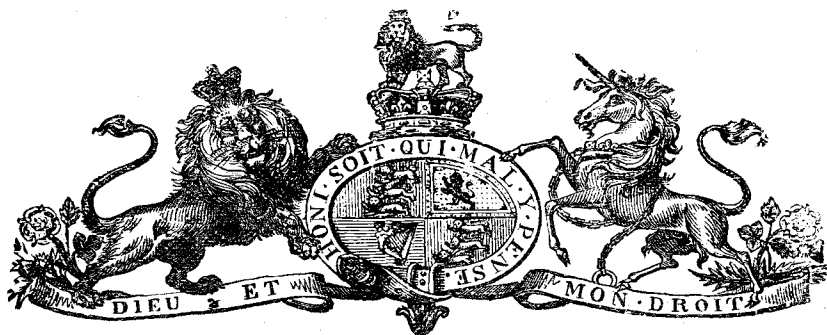


T A S M A N I A .

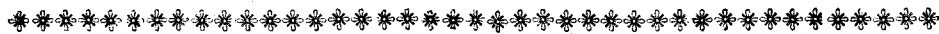


1891.

ANNO QUINQUAGESIMO-QUINTO

VICTORIÆ REGINÆ,

No. 25.



AN ACT to provide for the Protection and Recovery of Crown Property and the Enforcement of Crown Rights and Claims. [26 October, 1891.]

A.D. 1891.

WHEREAS it is expedient to make further provision for the protection and recovery of Crown Property and the enforcement of Crown Rights and Claims within this Colony :

PREAMBLE.

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 shall come into operation on the First day of *January*, One thousand eight hundred and ninety-two, and may be cited as "The Crown Remedies Act, 1891."

Commencement and Short title.

2 From and after the date of this Act coming into operation, all debts, damages, duties, sums of money, land, goods, or liabilities due, payable, or belonging or from time to time to become due, payable, or belonging to Her Majesty, or to which she may lawfully lay claim within the Colony of *Tasmania*, and which are not hereinafter exempted from the operation of this Act, shall be sued for and recovered by the means or process and in the manner hereafter mentioned in that behalf, and not otherwise.

Mode of recovering Crown debts, &c.

Crown Remedies.

A.D. 1891.

Fines to be
recoverable by
Judgment.

Schedule (1.)

3—(1.) Whenever any fine shall be imposed upon any person otherwise than by a judgment or conviction of a Court or a Justice of the Peace, and such fine shall not be immediately paid, a Judge of the Court by which, or the Justice by whom such fine shall be imposed, shall, by writing under his hand, in the form contained in the Schedule (1.) to this Act, or to the like effect, certify that such fine has been imposed and has not been paid, together with the name and place of abode or business of the person on whom such fine shall have been so imposed, and the cause and amount of such fine, and shall deliver or send by the post such writing to the Attorney-General.

(2.) Upon receipt of such writing the Attorney-General shall cause a final Judgment to be signed in the Supreme Court for the amount of such fine and costs not exceeding Five Pounds.

Schedule (2.)

(3.) Every such Judgment may be in the form contained in the Schedule (2.) to this Act, or to the like effect; and no writ of error or appeal shall lie or be had therefrom.

Debts due by
recognisance to
be recovered by
Judgment.

Schedule (3.)

4—(1.) When any person shall have entered into any recognisances to Her Majesty which is not hereinafter exempted from the operation of this Act, and such recognisance shall be forfeited, it shall be lawful for any Judge of the Court before which, or the Justice before whom, the same shall be forfeited, to cause such recognisance to be estreated.

(2.) Every such estreat shall be effected as follows (that is to say):—Such Judge or Justice shall by writing under his hand, in the form contained in the Schedule (3.) to this Act, or to the like effect, certify that such forfeiture has taken place, and shall deliver or send by post the said recognisance and writing to the Attorney-General.

(3.) Upon receipt of the said recognisance and writing, the Attorney-General shall cause a final Judgment to be signed in the Supreme Court for the amount of such recognisance and Five Pounds for costs.

Schedule (4.)

(4.) Every such Judgment may be in the form contained in the Schedule (4.) to this Act, or to the like effect; and no writ of error or appeal shall lie or be had therefrom.

Such Judgments
may be vacated
by Court or
Judge.

5 When any final Judgment shall have been signed under the provisions hereinbefore contained, it shall be lawful for the Supreme Court, or any Judge thereof, whether execution shall have been issued upon such Judgment or not, to order satisfaction to be entered upon such Judgment.

Provided always, that no such Order shall be so made except upon a rule *nisi* or summons calling upon the Attorney-General to show cause, nor unless it shall be proved by affidavit to the satisfaction of such Court or Judge either that the said Judgment has been satisfied, or that, according to equity and good conscience and the real merits and justice of the case, the defendant ought not to be required to satisfy the same.

Other debts and
duties to be
recovered by
Crown suit.

Schedule (5.)

6 When any debt, duty, or sum of money shall be due to Her Majesty otherwise than upon or by virtue of any recognisance, it shall be lawful for Her Majesty to cause to be sued out of the Supreme Court a certain writ, to be called a Writ of *Capias ad respondendum*.

Every such writ may be in the form contained in the Schedule (5.) to this Act, or to the like effect, and shall be executed by the Sheriff or other officer or person to whom the same may be directed, and shall be deemed and taken to be the commencement of a Crown suit:

Crown Remedies.

Provided always, that it shall be lawful for Her Majesty to order the Sheriff or other officer or person to whom such writ may be directed not to arrest any one or more of the defendants, but to serve a copy thereof only on such defendant or defendants, which order shall be duly obeyed by such Sheriff or other officer or person; and such service shall be of the same force and effect as the service of a Writ of Summons in any personal action between subject and subject. A.D. 1891.

No such writ shall be issued except upon a fiat under the hand of the Attorney-General in the form contained in the Schedule (6.) to this Act, or to the like effect, stating the mode in which the same (so far as regards the execution or service thereof) is to be indorsed, and before signing any such fiat the said Attorney-General shall by due enquiry in that behalf satisfy himself that such indorsement is reasonable and proper under the circumstances of the case. Schedule (6.)

7 If any person shall be arrested under or by virtue of any such writ as last aforesaid, and the Sheriff or other officer or person to whom the same may be directed shall take bail from such person, such Sheriff or other officer, or person, at the request of the Attorney-General, shall assign to Her Majesty the bail bond taken from such person by indorsing and attesting the same under his hand and seal in the presence of a witness; and if such bail bond be forfeited, such process shall thereupon issue as on bonds originally made to Her Majesty. Bail bonds in Crown suits assignable.

8 All such steps and proceedings as are mentioned in or upon any writ issued under this Act, or in any notice issued according to the course and practice for the time being of the Supreme Court, shall and may, *mutatis mutandis*, be had and taken in the same manner as if the same were expressly directed by this Act. Proceedings indorsed on Writ may be taken.

9 In lieu of the declaration in a Civil suit between subject and subject, an Information shall be filed or delivered, as the case may be, by the Attorney-General for and on behalf of Her Majesty, and in such Information the cause of complaint shall be set forth in the same manner and form as nearly as may be as in any such declaration as aforesaid; and every such Information shall commence and conclude in the form contained in the Schedule (7.) to this Act, or to the like effect. Form of Information. Schedule (7.)

10 Except where it is herein otherwise provided, the forms and proceedings in any Crown suit under this Act shall be the same as nearly as may be as by any law or rule of practice or pleading now or hereafter to be in force in the Supreme Court are or shall be directed to be followed in any Civil action between subject and subject, and the costs of the suit shall follow on either side as in ordinary cases between subject and subject, any law or practice to the contrary notwithstanding. Proceedings to be the same as in actions.

11 When any person against whom any proceedings under this Act shall be instituted in the Supreme Court shall be disabled by poverty from making defence thereto, it shall be competent for such person to petition the Court on affidavit verifying such disability, and the Court, or any Judge thereof, on being satisfied of the truth of the facts alleged in such affidavit, may assign counsel and attorney to such person; and the counsel and attorney so assigned are hereby required to act for such person without fee. Persons may defend *in forma pauperis*.

Crown Remedies.

A.D. 1891.

New trial.

12 A motion for a new trial, or to enter a verdict, or in arrest of Judgment, or for Judgment *non obstante veredicto*, shall be allowed and be made and granted in the same and upon the same terms in all respects as by any law or rule of practice now or hereafter to be in force is or shall be directed in any civil action between subject and subject.

Suits relating to land or goods.

13 The possession of land belonging to Her Majesty shall and may be recovered and obtained by proceedings in ejectment in the same form as nearly as may be as in an action of ejectment between subject and subject; and the possession of goods or damages for detaining, taking, damaging, or converting them, or for trespassing upon land, shall and may be recovered in the same manner as hereinbefore directed with respect to any debt, duty, or sum of money due to Her Majesty otherwise than upon or by virtue of a recognisance.

Execution in detinue and ejectment.

14 In all Crown suits in the nature of ejectment or detinue, such writ of execution as by any law or rule of practice now or hereafter to be in force can be issued in any civil action of the same nature between subject and subject for the recovery of land, goods, or writing, shall and may be issued on behalf of Her Majesty, and where part of any such writ is or may be a *feri facias*, such part may in future consist of the writ next hereinafter mentioned.

Execution in other cases.

Schedule (8.).

15 All sums recovered by Her Majesty by any Judgment under this Act shall and may be levied and recovered by virtue of a writ to be called a *feri facias*, and every such last-mentioned writ may be in the form contained in the Schedule (8.) to this Act, or to the like effect; and Her Majesty may levy the poundage fees and expenses of execution over and above the sum recovered, and shall have all such rights, powers, and remedies for obtaining and compelling satisfaction of any Judgment as by any law now or hereafter to be in force are or shall be available in a civil action between subject and subject.

Property of Crown debtors bound as property of subjects' debtors.

16 Except where it is otherwise provided by this Act, Her Majesty shall not enforce a demand against a public debtor, or against any of his property, in any other manner than one subject could enforce a claim against another subject and his property, and shall have such and the same lien, claim, and rights as any subject has and can enforce, and no other.

Title of the cause.

17 In all pleadings and proceedings under this Act, and in all affidavits, notices, consents, summonses, and rules to be used therein, the Title of the cause or proceedings shall be stated to be "The Queen against," naming the person sued, and no other title whatsoever shall be necessary.

Power to make Rules.

18 It shall be lawful for the Judges of the Supreme Court to make such Rules as they may deem necessary for regulating and conducting the practice and mode of procedure under this Act in all instances in which the practice and mode of procedure in civil actions between subject and subject is or shall be inapplicable.

Provided, that such Rules shall be in accordance with and not repugnant to the spirit and meaning of this Act.

Crown Remedies.

19 The provisions of this Act shall not apply to the enforcement of payment of any sum of money due and payable by any person to Her Majesty under the provisions of "The Land Tax Act, 1888," or under the provisions of "The Real and Personal Estates Duty Act, 1880," or under the provisions of *The Rural Police Rate Act*, or of any Acts amending any of those Acts respectively, or to any recognisance mentioned in "The Criminal Law Procedure Act, 1873."

A.D. 1891.
 Act not to apply to money payable under—
 52 Vict. No. 31.
 43 Vict. No. 12.
 21 Vict. No. 35.
 37 Vict. No. 6.

SCHEDULE.

(1.)

THIS is to certify to the Attorney-General that at the this day holden at the several persons whose names and places of abode or business are specified in the Schedule below were fined the several sums set opposite to their respective names in the said Schedule, and the cause of such fine is duly and truly set forth in the same Schedule.

Sect. 3.

THE SCHEDULE.

Christian and Surname at full length.	Place of Abode or Business.	Causes of Fine.	Amount.		
			£	s.	d.
		Behaving and conducting himself in a disorderly manner in Court			
TOTAL					

Given under my hand this day of 189 .

Judge.

(2.)

TASMANIA (to wit). Be it remembered that *A.I.C.*, Esquire, Attorney-General of our Lady the Queen, for and on behalf of our said Lady the Queen, gives the Court here to understand and be informed that at the holden at on the day of , before *J.G.F.*, Esquire, and other Justices of our said Lady the Queen assigned to keep the peace, a fine of Pounds was imposed and inflicted upon *A.B.*, for that he, the said *A.B.*, [behaved and conducted himself in a disorderly manner in the said Court, or as the case may be], as by the certificate of the said *J.G.F.*, now filed of record, appears. Therefore, on the day of , it is considered by the Court here that our said Lady the Queen do recover against the said *A.B.* the said sum of and also the sum of Five Pounds for costs, making together the sum of

Sect. 3.

(3.)

This is to certify to the Attorney-General that at the this day holden at the recognisances hereunto annexed were forfeited, and were then and there caused to be estreated.

Sect. 4.

Given under my hand this day of 189 .

Judge.

Crown Remedies.

A.D. 1891.

(4.)

Sect. 4.

TASMANIA (to wit). Be it remembered that *A.I.C.*, Esquire, Attorney-General of our Lady the Queen, for and on behalf of our said Lady the Queen, gives the Court here to understand and be informed that at the holden at on the day of before *J.G.F.*, Esquire, and others, Justices of our said Lady the Queen assigned to keep the Peace, the recognisance of one *A.B.*, by which he acknowledged to owe to our said Lady the Queen the sum of was forfeited and estreated, as by the said recognisance and the certificate of the said *J.G.F.*, now filed of record, appears: Therefore on the day of it is considered by the Court here that our said Lady the Queen do recover against the said *A.B.* the said sum of and also the sum of Five Pounds for costs, making together the sum of

(5.)

Sect. 6.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the Sheriff of the

Greeting.

We command you that you forthwith take *A.B.*, of &c.; *C.D.*, of &c.; and *E.F.*, of &c., if they shall be found in your Bailiwick and them safely keep until they shall have given you bail, or made deposit with you according to law in this suit in like manner as in actions between our subjects, or until they shall by other lawful means be discharged from your custody. And we do further command you that on execution of this Writ you deliver a copy hereof to the said *A.B.*, *C.D.*, and *E.F.* who are hereby required to take notice that within Eight days after their arrest, inclusive of the day of such arrest, they should cause an appearance to be entered and special bail to be put in for them in our Supreme Court at Hobart, at our suit in this action, and that in default of their so doing such proceedings may be had and taken as are mentioned in the warning indorsed hereon. And we do further command you that immediately after the execution hereof you do return this Writ to our said Court, together with the manner in which you shall have executed the same, and the day of the execution hereof.

Witness at the day of in the year of our Lord One thousand eight hundred and

(To be indorsed.)

A WARNING TO DEFENDANTS.

If a defendant (whether he has given bail or made deposit or not) shall omit to enter an appearance as required by the within Writ, Her Majesty may proceed to judgment and execution.

If a defendant, having given bail on the arrest, shall omit to put in special bail as required by the within Writ, Her Majesty may proceed against the Sheriff, or on the bail bond.

NOTICE TO THE SHERIFF.

Bail for £ , by order of the Attorney-General; and if that amount, together with £ for costs, be paid to the Crown Solicitor within four days from the service hereof, further proceedings will be stayed. Deliver a copy to, but do not arrest the within-named

The within-named *A.B.* was arrested by me on the day of 18 , and the within-named *E.F.* was arrested by me on the day of 18 , and the within-named *C.D.* was personally served by me on the day of 18 .

(6.)

Sect 6.

IN THE SUPREME COURT }
OF TASMANIA. }

The Queen against *A.B.*, of &c., and *C.D.*, of &c.

Let a Writ of *Capias ad Respondendum* issue in this suit to hold to bail for Pounds, with an indorsement thereon [not] to arrest the above-named *A.B.* [or as the case may be].

Dated this day of

A. I. C.
Attorney-General.

Crown Remedies.

(7.)

A.D. 1891.

IN THE SUPREME COURT }
OF TASMANIA. }

Sect. 9.

The day of in the year of our Lord

TASMANIA (to wit).

A.I.C., Esquire, Attorney-General of our Lady the Queen, for and on behalf of our said Lady the Queen, sues *E.F.* and *G.H.*, who have been arrested to answer our said Lady the Queen by a Writ issued on the day of

And also for, &c. [*proceed as usual with the second and subsequent counts, if any*].
And our said Lady the Queen claims Pounds, [*or, if the suit is to recover specific goods*] a return of the said goods, or their value, and Pounds for their detention.

(8.)

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Sect. 15.
Queen, Defender of the Faith.

To the Sheriff of . Greeting—

We command you that you take *C.D.*, if he shall be found in your Bailiwick, and him safely keep so that you may have his body before our Supreme Court at Hobart immediately after the execution hereof, to satisfy us Pounds, which lately in our said Court we recovered against the said *C.D.*, whereof the said *C.D.* is convicted, together with the sum of Pounds for interest upon the said sum at the rate of Eight Pounds for every One hundred Pounds by the year until this day. And we do further command you that of the real and personal estate of the said *C.D.* in your Bailiwick you cause to be made the said sums, and have the same before our said Court immediately after the execution hereof to be rendered to us; and in what manner you shall have executed this Writ make appear to our said Court immediately after the execution hereof, and have there then this Writ.

Witness at Hobart, this day of in the year of
our Lord One thousand eight hundred and ninety-

(To be indorsed.)

Levy [the whole or £], besides Sheriff's poundage, officer's fees, and other incidental expenses.

When the full amount is levied the defendant may be discharged without further authority, but, if the full amount is not levied, the defendant can only be discharged by the Court or a Judge, or by the written authority of the Attorney-General.

The defendant is a and resides at

