

TASMANIA.



1903.

ANNO TERTIO

EDWARDI VII. REGIS,

No. 19.



AN ACT to amend the Administration and Practice of the Law in the Supreme Court and other Courts, and for other purposes. [23 December, 1903.]

A.D. 1903.

WHEREAS it is expedient to amend the Administration and Practice of the Law in the Supreme Court and other Courts, as hereinafter provided:

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 may be cited as "The Legal Procedure Act, 1903." Short title.

2 The expression "the Common Law Procedure Acts" means and includes The Common Law Procedure Act and every amendment thereof.

Interpretation. 18 Vict. No. 9.

4d.]

Legal Procedure.

A.D. 1903.

Law and equity to
be concurrently
administered.

60 Vict. No. 48.

Equitable rights
appearing
incidentally.

Equitable estate
or rights, &c.,
claimed by
Defendant.

Prohibition
injunction.

Legal, customary,
and statutory
rights.

3 In every Civil cause or matter commenced in the Supreme Court under the provisions of any of the Common Law Procedure Acts or under "The Local Courts Act, 1896," Law and Equity shall be administered by the Court according to the following rules :—

(1.) The said Court and every Judge thereof shall recognise and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court would have recognised and taken notice of the same in any suit or proceedings in Equity duly instituted therein before the passing of this Act: and if any Defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground, against any deed, instrument, or contract, or against any right title, or claim asserted by any Plaintiff in such cause or matter, or alleges any ground of equitable defence to any claim of the Plaintiff in such cause or matter, the Court and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such Plaintiff as the Court ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding in Equity which might have been instituted for the same or the like purpose before the passing of this Act.

(2.) No cause or matter at any time pending in the Court shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or matter might have been obtained, if this Act had not passed, either unconditionally or on any terms or condition, may be relied on by way of defence thereto. Provided always, that nothing in this Act contained shall disable the Court from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to the Court to restrain the prosecution thereof, or who may be entitled to enforce by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the Court, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such order as shall be just.

(3.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Court and every Judge thereof shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the common law or by any custom, or created by any statute, in the same manner as the same would have been recognised and given effect to if this Act had not passed.

Legal Procedure.

(4.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or anyone claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same or he may, if he think fit, pay the same into Court, under, and in conformity with the provisions of the Acts for the relief of trustees.

A.D. 1903.

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Assignment of
debts and choses
in action.

(5.) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

Conflict between
Law and Equity.

(6.) Every application for a new trial shall be by notice of motion, which shall be served upon the opposite party or parties four clear days before the application is made, and no rule nisi or order, to show cause, or formal proceeding other than such notice of motion, shall be made or taken. The notice shall state the grounds of the application, and whether all or part only of the verdict or findings is complained of.

Mode of appli-
cation for new
trial.

(7.) The notice may be amended at any time by leave of the Court, or a Judge, on such terms as the Court or Judge may think just.

Amendment of
notice of motion.

(8.) A new trial shall not be granted on the grounds of misdirection, or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the Judge at the trial was not asked to leave to them, unless in the opinion of the Court to which the application is made, some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the Court may give final judgment as to part thereof, or some or one only of the parties, and direct a new trial as to the other part only or as to the other party or parties.

Ground for
granting new
trial.

(9.) A new trial may be ordered on any question whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question, and the party in whose favour the verdict has been entered may support such verdict upon any ground upon which he might have applied for a new trial, or for a non-suit, or for a verdict to be entered for him, if the verdict had been against him.

New trial ordered
on any one
question.

Legal Procedure.

A.D. 1903

Wrong rulings as to sufficiency of stamp.

Provisions of previous Acts to apply to proceedings under "The Equity Procedure Act, No. 4."

57 Vict. No. 13.

Matters of law may be referred to the Full Court.

60 Vict. No. 48.

Act to apply to other Courts.

Commissioners of Supreme Court: jurisdiction extended.

Jurisdiction of future Commissioners.

(10.) A new trial shall not be granted by reason of the ruling of any judge that the stamp upon any document is sufficient, or that the document does not require a stamp.

4 The provisions of "The Equity Procedure Act," the provisions of "The Equity Procedure Act, No. 2," and the provisions of "The Equity Procedure Act, No. 3," shall apply to all proceedings under "The Equity Procedure Act, No. 4," so far as such provisions as aforesaid are applicable to proceedings under the last mentioned Act in relation to any matter mentioned in the first section thereof.

5 Any matter of law which a Judge of the Supreme Court may be required to determine in any trial under "The Local Courts Act, 1896," may be referred by him to the Full Court for its determination thereof.

6 The provisions of this Act, so far as they are applicable to actions brought under the Local Courts Act, in any Court other than the Supreme Court, shall apply to all such actions.

7 Any law Statute or Ordinance to the contrary notwithstanding, all Commissioners of the Supreme Court of *Tasmania* holding and exercising that office on the date on which this Act shall come into operation at or for any place or district within the Island of *Tasmania* or its Dependencies, shall be deemed to have been appointed for the Island of *Tasmania* and its Dependencies, and shall have jurisdiction within the whole territory.

8 All Commissioners of the Supreme Court of *Tasmania* hereafter to be appointed, shall be appointed for the Island of *Tasmania* and its Dependencies, and shall have jurisdiction within the whole territory.