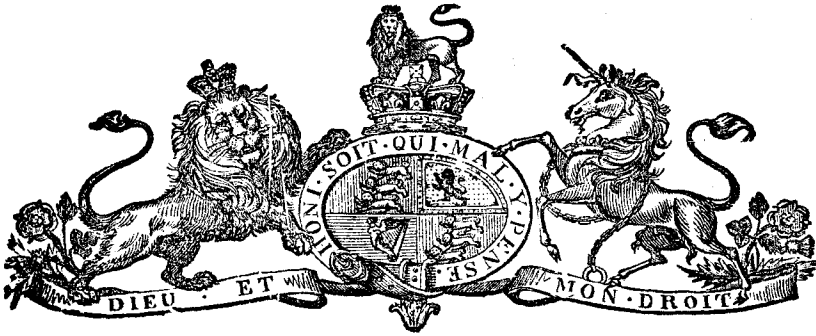


T A S M A N I A.



1867.

ANNO TRICESIMO-PRIMO

VICTORIÆ REGINÆ,

No. 15.



AN ACT for the more easy Recovery of small Debts and Demands. [11 October, 1867.]

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 :—

*Interpretation.*

1 In construing this Act the following terms shall have the respective meanings hereunder assigned to them, unless in any case inconsistent with or repugnant to the context :—

- “ Person ” shall mean a Body Politic or Corporate as well as an individual : “ Person.”
- “ Court ” shall mean any Court held under this Act, or the Supreme Court sitting to hear cases in accordance with the provisions of this Act : “ Court.”
- “ Nearest Court ” shall mean any Court held under this Act having jurisdiction in the case nearer by not less than Five Miles to the place in question than any other Court : “ Nearest Court.”
- “ Commissioner ” shall mean a Commissioner appointed to hold any Court under this Act : “ Commissioner.”
- “ Chairman ” shall mean the Chairman of any Court of General Sessions of the Peace held before Justices of the Peace of the Colony appointed a Court for the recovery of debts and demands under this Act : “ Chairman.”

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“ Judge.”

“ Judge ” shall mean and include any Judge of the Supreme Court, any Commissioner appointed under this Act, and the Chairman of any Court of General Sessions of the Peace appointed a Court for the recovery of debts and demands under this Act.

“ Justice.”

“ Justice ” shall mean Justice of the Peace for the Colony.

*Constitution of Courts under this Act.*

Governor in Council empowered to appoint Courts to be held before a Commissioner.

**2** The Governor in Council is hereby empowered, from time to time, to appoint Courts to be held before a Commissioner for the recovery of debts and demands under this Act, to such an amount not exceeding Thirty Pounds, and at such places and times, as the Governor in Council thinks fit.

To be called Courts of Requests.

**3** Every Court held under this Act before a Commissioner shall be called a Court of Requests.

Governor in Council may appoint Commissioners.

**4** The Governor in Council is hereby empowered, from time to time, to appoint as many fit persons as are needed to be Commissioners of such Courts; and from time to time to remove any such Commissioner; and the same person may be appointed Commissioner of two or more such Courts.

Governor in Council may appoint Courts of General Sessions to be Courts under this Act.

**5** The Governor in Council is also hereby empowered to appoint any Court of General Sessions of the Peace now or hereafter established and held before Justices of the Peace of the Colony to be a Court for the recovery of debts and demands under this Act to such an amount, not exceeding Thirty Pounds, as the Governor in Council thinks fit; and upon the publication of any such appointment in the *Gazette* the Court of General Sessions so appointed shall be held as a Court for the recovery of such debts and demands, and for that purpose shall have the jurisdiction of, and be deemed to be, a Court held under this Act.

Courts to be of Record.

**6** Every Court held under this Act shall be a Court of Record.

Governor in Council may alter place of holding, or discontinue Court.

**7** The Governor in Council is hereby empowered, from time to time, to alter the time and place of holding, and the amount to which the jurisdiction extends, of any Court held under this Act, or to discontinue the holding of any such Court.

Proceedings pending in discontinued Courts.

**8** Upon the discontinuance by the Governor in Council of any Court held under this Act, any proceeding depending or judgment recovered in such Court may be continued or enforced in and by the Court held under this Act having competent jurisdiction which is at or nearest to the place where the Court so discontinued was held.

Supreme Court at *Hobart Town* to entertain cases under this Act.

**9** Sittings of the Supreme Court shall, at such times as the said Court may appoint, be held at *Hobart Town* before a Judge of such Court, for hearing and determining cases in accordance with the provisions of this Act, for the recovery of debts and demands to an amount exceeding Ten Pounds and not exceeding Fifty Pounds, and in every such case the proceedings and process shall be as nearly as may be the same as if such case had been brought in a Court of Requests established under this Act.

*Officers.*

Registrar and Bailiff to be appointed.

**10** For every Court held under this Act there shall be a Registrar and a Bailiff, who shall be appointed and removable by the Governor at pleasure; and in case of the illness or absence of any such Registrar

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a Deputy may be appointed by the Court, who shall have and exercise all the powers of such Registrar, and such Deputy may continue to act notwithstanding the death of his principal till a new Registrar or Bailiff, as the case may be, is appointed: Provided that any Officer or Officers of the Supreme Court who may be directed by the said Court, or a Judge thereof, to act as Registrar shall be deemed to be Registrar for the purposes of this Act, and any Officer of the Sheriff of *Tasmania* shall be deemed to be a Bailiff of the Supreme Court under this Act.

**11** In every case where a Court of General Sessions of the Peace held within any Rural Municipality before Justices is appointed a Court for the recovery of debts and demands under the provisions of this Act, the Council Clerk of such Rural Municipality shall be the Registrar, and the Superintendent of Police shall be the Bailiff of such Court as respects its jurisdiction as a Court for the recovery of debts and demands, if they are respectively appointed by the Governor such Registrar and Bailiff, but not otherwise, and shall respectively perform the duties of such respective offices: Provided that the Municipal Council of any Rural Municipality may with the consent of the Governor appoint some other person to be Registrar and Summoning Officer respectively.

In Municipalities corporate officers to be officers of the Court.

**12** The Registrar shall sign and issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments of the Court; and keep an account of all proceedings of the Court; and shall receive and keep an account of all Court fees and fines payable or paid into Court, and of all moneys paid into or out of Court, and shall enter an account of all such fees, fines, and moneys in a book belonging to the Court to be kept for that purpose; and such entries in the said book, or a copy thereof purporting to be signed and certified as a true copy by the Registrar of the Court, shall at all times be admitted in all Courts and places whatsoever as evidence of such entries, and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding, without any further proof; and the Registrar shall submit his accounts to be audited at such times and in such manner as the Court may direct.

Duties of Registrar.

Minutes of proceedings to be kept.

**13** Every Bailiff may, subject to the restrictions hereinafter contained, by writing under his hand, appoint a sufficient number of fit persons, not exceeding such number as may be from time to time allowed by the Judge, to be Assistants to the said Bailiff, and at his pleasure to dismiss all or any of them, and to appoint others in their stead; and every Assistant so appointed may also be suspended or dismissed by the Judge.

Bailiffs may appoint Assistants.

**14** The Bailiff shall attend every sitting of the Court, for such time as may be required by the Court, unless when his absence is allowed for reasonable cause by the Court, and shall, by himself or by his Assistants appointed as aforesaid, serve all the summonses and orders, and execute all the warrants, precepts, and writs issued out of the Court; and the said Bailiffs and Assistants shall in the execution of their duties conform to all such general Rules as are from time to time made for regulating the proceedings of the Court, as hereinafter provided, and, subject thereunto, to the order and direction of the Court; and every such Bailiff shall be responsible for all the acts and defaults of himself and of his Assistants, in like manner as the Sheriff is responsible for the acts and defaults of himself and his Officers.

Duties of Bailiffs, &c.

**15** In case any Bailiff who is employed to levy any execution against Goods and Chattels or Lands by neglect, or connivance or omission, loses the opportunity of levying any such execution, then upon complaint

Bailiffs made answerable for escapes, and

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neglect to levy execution.

of the party aggrieved by reason of such neglect, connivance, or omission, and the fact alleged being proved to the satisfaction of the Court on the oath of any credible witness, the Court shall order such Bailiff to pay such damages as it appears that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the Bailiff shall be liable thereto; and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such means as are herein provided for enforcing a judgment recovered in the said Court.

Remedies against, and penalties on, Registrars, Bailiffs and other Officers for misconduct.

**16** If any Registrar, Bailiff, or Officer of the Court, acting under colour or pretence of the process of the Court, is charged with extortion or misconduct, or with not duly paying or accounting for any money received or levied by him under the authority of this Act, it shall be lawful for the Court to enquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so received or levied as aforesaid, and for the payment of such damages and costs as the Court thinks just; and also, if the Court thinks fit, to impose such fine upon the Registrar, Bailiff, or Officer, not exceeding Ten Pounds for each offence, as the Court deems adequate; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such means as are herein provided for enforcing a judgment recovered in the said Court.

Penalty on Officers taking fees besides those allowed.

**17** Every Registrar, Bailiff, or other Officer employed in putting this Act or any of the powers thereof in execution, who wilfully and corruptly exacts, takes, or accepts any fee or reward whatsoever, other than and except such fees as are for the time being appointed and allowed respectively as aforesaid, for or on account of any thing done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall, upon proof thereof before the said Court, be liable to a fine not exceeding Twenty Pounds, to be recovered by order of the Court.

*Jurisdiction.*

Actions cognizable under this Act.

Exceptions.

**18** The following shall be the Actions cognizable under this Act: All personal Actions where the debt or damage claimed is not more than the amount to which the jurisdiction of the Court in which the action is brought is limited, excepting Actions of Ejectment or Replevin, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise is in question, or in which the validity of any devise or bequest, or limitation under any will or settlement may be disputed, or for the infringement of Letters Patent, or Copyright, or for the recovery of any money or thing won or alleged to have been won at or by means of a race, match, wager, or any kind of play, or for any arrest or false imprisonment, or malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or breach of promise of marriage, or upon any charter-party of affreightment, or policy of assurance.

Actions to be brought without writ, and determined in a summary way.

**19** Every Court held under this Act shall have cognizance, to the amount limited by this Act or by the Governor in Council as to such Court, of all Actions cognizable under this Act; and such Actions may be brought in the Court without Writ, and shall be heard and determined in a summary way in such Court according to the provisions of this Act.

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**20** In order to avoid technical difficulties arising from local jurisdiction, every Court held under this Act shall have jurisdiction throughout the Colony; but the plaintiff is hereby directed to bring his action in the Court having jurisdiction to the amount claimed nearest to the place of abode or business of the defendant, or to the place where the cause of action arose; and if on the trial of any action it appears to the Court that at the time of the commencement of the action the places of abode and business of the defendant, and the place where the cause of action arose, were nearer by not less than Five miles to some other Court of competent jurisdiction appointed under this Act, the plaintiff shall be nonsuit, unless the defendant foregoes his right to such nonsuit: Provided that nothing in this Section shall prevent the holder of any dishonored bill of exchange, promissory note, or cheque for a sum of not less than Ten Pounds from bringing an Action for the recovery hereof in the Supreme Court.

Courts to have jurisdiction throughout Colony; but Actions to be brought in nearest Court.

*Plaint and Summons, &c.*

**21** Any person desirous to bring a suit under this Act shall file with the Registrar a plaint in writing, stating the names and the usual or last known places of abode of the parties, and the substance of the action intended to be brought, and full and explicit particulars of the claim for which the action is brought, 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; and thereupon a summons, stating the substance of the action, and bearing the number of the plaint on the margin thereof, shall, on being presented to the Registrar for signature, be issued under his hand according to such form, and be served on the defendant so many days before the day on which the Court is held at which the cause is to be tried, as may be directed by the Rules of Practice made as hereinafter provided; and delivery of such summons to the defendant, or in such other manner as may be specified in the Rules of Practice, shall be deemed good service; and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known.

Suits to be by Plaintiff.

**22** The Registrar shall upon demand of the defendant, and on payment of the proper fee, which shall be costs in the cause, deliver to the defendant a copy of the particulars of the plaintiff's claim.

Particulars of Claim.

**23** Any summons or other process which under this Act is required to be served or executed at a place nearer to another Court than to the Court from which the same has issued may be served by the Bailiff of such other Court, and such service or execution shall be as valid as if the same had been made by the Bailiff of the Court out of which such process issued; and the Bailiff of every Court is hereby required in any such case to serve or execute all lawful process issuing out of any other Court upon the same being transmitted to him by the Registrar or Bailiff of the Court out of which it issued.

Process out of Court may be served by Bailiff of any other Court.

**24** Service of any process of the Court which is required to be served by the Bailiff of another Court may be proved by affidavit, purporting to be sworn before any person now authorised by Law to take affidavits, or before any Commissioner, or before any Justice; and the fee for taking such affidavit shall be costs in the cause; and in every case of the unavoidable absence of the Bailiff of the Court out of which

Proof of service of process by Bailiff of another Court or in the absence of the Bailiff.

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such process issued, by whom any process of the Court has been served, the service of such process may be proved, if the Court thinks fit, in the same manner, by affidavit, but without additional charge to either of the parties to the suit.

Demands not to be divided for the purpose of bringing Two or more suits.

**25** It shall not be lawful for the plaintiff to divide any cause of action for the purpose of bringing Two or more suits under this Act, but any plaintiff having cause of action for more than the sum to which the jurisdiction of the Court is limited, for which a plaint might be filed under this Act if not for more than such sum, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding such sum; and the judgment of the Court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

Minors may sue for wages.

**26** It shall be lawful for any person under the age of Twenty-one years to prosecute a suit in any Court held under this Act for any sum of money, not greater than the sum to which the jurisdiction of the Court is limited, which may be due to him for wages or piecework, or for work as a servant, in the same manner as if he were of full age.

Cases of partnership and intestacy.

**27** The jurisdiction of the Courts held under this Act shall extend to the recovery of any demand, not exceeding the sum to which the jurisdiction of the Court is limited, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will.

Executors may sue and be sued.

**28** It shall be lawful for any executor or administrator to sue and be sued in any Court held under this Act in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like case would be given or issued in the Supreme Court in its ordinary jurisdiction.

One of several persons liable may be sued.

**29** Where any plaintiff has any demand recoverable under this Act against Two or more persons jointly answerable, it shall be sufficient if any of such persons is served with process, and judgment may be obtained and execution issued against the person so served, notwithstanding that others jointly liable may not have been served or sued; and every such person against whom judgment has been obtained under this Act, and who has satisfied such judgment, shall be entitled to demand and recover in a Court held under this Act contribution from any other person jointly liable with him.

*Special Defence.*

Notices to be given to the Registrar of special defences, who shall communicate the same to the plaintiff.

**30** No defendant in any Court held under this Act shall be allowed to set up any defence save and except the General Issue in any action, or such other defence as may be allowed by any Rule made in accordance with the provisions of this Act, without the consent of the plaintiff, unless such notice thereof as may be directed by the Rules of Practice has been given to the Registrar; and in every case in which the Practice of the Court requires such notice to be given, the Registrar shall, as soon as conveniently may be, after receiving such notice, communicate the same to the plaintiff by the post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the Registrar.

*Recovery of Small Debts.**Confession of Debt.*

**31** Any person against whom a plaint is filed may, if he thinks fit, whether summoned upon such plaint or not, in the presence of the Registrar of the Court in which such plaint has been filed, or in the presence of an Attorney of the Supreme Court, or of a Justice, sign a statement confessing and admitting the amount of the debt or demand or part of the amount of the debt or demand for which such plaint has been entered; and such Registrar shall, as soon as conveniently may be after receiving such statement, send notice thereof to the plaintiff, by the post or by causing the same to be delivered at his usual place of abode or business, and thereupon it shall not be necessary for the plaintiff to prove the debt or demand so confessed and admitted as aforesaid, but the Court, at its next sitting, whether the parties or either of them attend or not, shall, upon proof by oath or affidavit of the signature of the party, if such statement were not made in the presence of the Registrar, proceed to give judgment for the debt or demand so confessed and admitted in the same manner, and subject to the same conditions, as if the Court had tried the cause, and given judgment thereupon.

Confession of debts or parts of debts, &c., and judgment thereupon.

**32** If the person against whom a plaint is filed can agree with the person on whose behalf such plaint has been filed upon the amount of the debt or demand in respect of which such plaint has been filed, and upon the terms and conditions upon which the same shall be paid or satisfied, it shall be lawful for such persons respectively, in the presence of the Registrar of the Court in which such plaint has been entered, or in the presence of an Attorney of the Supreme Court or of a Justice, to sign a statement of the amount of the debt or demand so agreed upon between such persons respectively, and of the terms and conditions upon which the same shall be paid or satisfied, such Registrar shall receive such statement, and shall thereupon, upon proof by affidavit of the signature of the party, if such statement were not made in the presence of the Registrar, enter up judgment for the plaintiff for the amount of the debt or demand so agreed on, and upon the terms and conditions mentioned in such statement; and such judgment shall to all intents and purposes be the same, and have the same effect, and shall be enforced and enforceable in the same manner, as if it had been a judgment of the Court.

Agreement as to the amount of debt, &c., and conditions of payment.

*Judgment by Default.*

**33** In any action in a Court held under this Act for a debt or liquidated money demand exceeding Twenty Pounds the plaintiff may, at his option, cause to be issued either a summons as hereinbefore provided, or a summons in the form or to the effect given in the Schedule (1.): Provided that if such last-mentioned summons be issued, and it shall be personally served on the defendant Twelve clear days before the return day thereof, and then if the defendant shall not at least Six clear days before such return day give notice in writing signed by himself, his Attorney or Agent, to the Registrar of his intention to defend, the plaintiff may on or within Seven days after such return day, without giving any proof of his claim, have judgment entered up against the defendant for the amount of his claim and costs, such costs to be taxed by the Registrar; and the order upon such Judgment shall be for payment forthwith, or at such time or times and by such instalments, if any, as the plaintiff, or his Attorney or Agent, shall in writing have consented to take at the time of the filing of the plaint.

If liquidated demand exceed £20, plaintiff may require defendant to give notice of intention to defend on pain of judgment by Default.

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If notice to defend be given action shall be tried. Registrar to inform plaintiff if notice has or has not been given.

**34** If the defendant shall give such notice as in the last preceding Section is specified, the action shall be heard in the ordinary course ; but in any event the Registrar shall, immediately after the last day for giving such notice, send a letter to the plaintiff by post, or cause the same to be delivered to him, stating therein whether the defendant has or has not been served with such summons, and whether he has or has not given notice of his intention to defend.

*Payment into Court.*

Defendant may pay money into Court.

Notice of such payment to be given to plaintiff.

**35** It shall be lawful for the defendant in any action brought under this Act, within such time as may be directed by the Rules of Practice, to pay into Court such sum of money as he thinks a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment ; and notice of such payment shall be communicated by the Registrar to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business ; and the said sum of money shall be paid to the plaintiff ; but if he elects to proceed, and recovers no further sum in the action than has been so paid into Court, he shall pay to the defendant the costs incurred by him in the said action after such payment ; and such costs shall be settled by the Court, and an order shall thereupon be made by the Court for the payment of such costs by the plaintiff.

*Witnesses.*

Summonses to witnesses.

**36** Either of the parties to the suit or any other proceeding under this Act may obtain, at the office of the Registrar of the Court, summonses to witnesses, under the hand of such Registrar, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control, and in any such summons any number of names may be inserted.

Penalty on witnesses neglecting summons.

**37** Every person on whom any such summons has been served, either personally or in such other manner as may be directed by the general Rules of Practice of the Court, and to whom at the same time payment or a tender of payment of his expenses has been made on such scale of Allowance as may be from time to time settled by the general Rules of Practice of the Court, and who refuses or neglects, without sufficient cause, to appear, or to produce any books, papers, or writings required by such summons to be produced, and also every person present in Court who is required to give evidence, and who refuses to be sworn and give evidence, shall forfeit and pay such fine, not exceeding Ten Pounds, as the Court may impose on him ; and the whole or any part of such fine, in the discretion of the Court, after deducting the costs, shall be applicable towards indemnifying the party injured by such refusal or neglect, and the payment of such fine may be enforced in the same manner as money ordered to be paid by such Court.

Persons giving false evidence guilty of Perjury.

**38** Every person who in any examination upon oath or solemn affirmation before any Court held under this Act wilfully and corruptly gives false evidence shall be deemed guilty of Perjury.

*Hearing.*

Judge, &c. alone to determine all questions unless a

**39** The Judge, Commissioner, or Justices, as the case may be, before whom any Court is held under this Act shall be the sole Judge or Judges of questions of law, and such Justices and such Commissioner



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shall also decide all questions of fact in actions before a Commissioner where the debt or damage claimed does not exceed Ten Pounds. In any case the Judge or Commissioner may, with the consent of both parties, try questions of law and fact. Jury be summoned.

**40** In any proceeding under this Act in a Court of General Sessions of the Peace, all questions shall be decided by the majority of the Justices present; and the decision of the majority shall be the judgment of the Court; and in case the Justices present should be equally divided in opinion, the Chairman shall have a casting vote. Decision of majority of Justices in General Sessions to be the judgment of the Court.

**41** On the day in that behalf named in the summons the plaintiff shall appear, and thereupon the defendant shall be required to appear to answer such plaint; and on answer being made in Court the Court shall proceed in a summary way to try the cause, and give judgment, without further pleading or formal joinder of issue. Proceedings on hearing the plaint.

**42** No evidence shall be given by the plaintiff on the trial of any such cause as aforesaid of any demand or cause of action except such as is stated in the summons hereby directed to be issued. No evidence to be given that is not in summons.

**43** If upon the day of the return of any summons, or at any continuation or adjournment of the Court, or of the cause for which the said summons has been issued, the plaintiff does not appear, either by himself or his attorney, the cause shall be struck out; and if he does appear, either by himself or his attorney, but does not make proof of his demand to the satisfaction of the Court, it shall be lawful for the Court to nonsuit the plaintiff, or to give judgment for the defendant; and in either case, where the defendant appears, either by himself or his attorney, and does not admit the demand, to award to the defendant, or to his attorney, by way of costs and satisfaction for his trouble and attendance, such sum when the defendant appears in person as the Court in its discretion thinks fit, and when he appears by attorney such sum as may be taxed by the Registrar, and every such sum shall be recoverable from the plaintiff by such means as any debt or damage ordered to be paid by the same Court can be recovered: Provided always, that if the plaintiff does not appear when called upon, either by himself or his attorney, and the defendant, or some one duly authorised on his behalf, appears and admits the cause of action to the full amount claimed, and pays the fees payable in the first instance by the plaintiff, the Court, if it thinks fit, may proceed to give judgment as if the plaintiff had appeared. Proceedings if plaintiff does not appear or prove his case.

**44** If on the day so named in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant does not appear, or sufficiently excuse his absence, or neglects to answer when called in Court, the Court, upon due proof of service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended: Provided always, that the Court in any such case, at the same or any subsequent Court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial of the cause, upon such terms, if any, as to payment of costs, giving security for debt or costs, or such other terms as the Court may think fit, on sufficient cause shown for that purpose. Proceedings if the defendant does not appear.

**45** In any action under this Act where the defendant's set-off exceeds the plaintiff's claim, the defendant shall, whether the plaintiff is nonsuit Where defendant's set-off

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exceeds plaintiff's claim, defendant to have judgment for the excess. or has judgment given against him, be entitled to recover the amount by which such set-off exceeds the plaintiff's claim, and shall have judgment and execution accordingly.

Court may grant time or adjourn.

**46** The Court, or a Judge, may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit; and also may from time to time adjourn any Court, or the hearing or further hearing of any cause, in such manner as the Court or a Judge may think fit.

*Amendments.*

As to amendment of defects and errors in proceedings, &c.

**47** The Judge may at all times amend all defects and errors in any proceeding in such Court, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made with or without costs, and upon such terms as to the Judge may seem fit; and all such amendments as may be necessary for the purpose of determining in the existing Suit the real question in controversy between the parties shall be so made, if duly applied for.

*Affidavits.*

Before whom affidavits may be sworn.

**48** Any affidavit to be used in a Court held under this Act may be sworn before the Registrar of any such Court without the payment of any fee, or before a Commissioner of the Supreme Court, or before a Justice.

*Arbitrator.*

Suits may be settled by arbitration.

**49** The Court may in any case, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the Court in dispute between such parties, to be referred to arbitration, to such person or persons, and in such manner, and on such terms as the Court thinks reasonable and just; and such reference shall not be revocable by either party, except by consent of the Court; and the Award of the Arbitrator or Arbitrators or Umpire shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the Court: Provided that the Court may, on application made at the first Court held after the expiration of One week after the entry of such Award, set aside any such Award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid.

*Trial by Jury.*

Actions may be tried by a Jury when parties require it.

**50** In all actions brought in a Court held under this Act before a Judge of the Supreme Court, and in all actions before a Commissioner where the amount claimed exceeds Ten Pounds, a Jury shall be summoned to try the action, except where the Judge or Commissioner with the consent of the parties tries such action.

Jurors at *Hobart Town* and *Launceston*.

**51** The Jurors included in the Special Jury Lists and resident within Fifteen miles of a Court held at *Hobart Town* or *Launceston* shall be the Jurors who may be summoned to attend such Court.

Jurors in actions tried by Commissioners.

**52** The Commissioner of every Court held before a Commissioner (except at *Launceston*) shall in every year select a sufficient number of persons resident within Fifteen miles of such Court, and whose names appear upon any Valuation or Assessment Roll as being qualified in that

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behalf to serve as Jurors under this Act, and shall make out a List of the Jurors so selected, and deliver a copy thereof to the Registrar.

**53** Whenever a Jury is required, the Registrar shall cause so many as in the opinion of the Judge or Commissioner, as the case may be, are needed, not less than Seven of the persons named in such Commissioner's List, or in the case of a Jury being required at *Hobart Town* or *Launceston*, then not less than Seven of the persons named in either of the Special Jury Lists, and liable to serve under this Act, to be summoned to attend the Court at a time and place to be mentioned in the summons, and shall administer or cause to be administered to such of them as are impanelled to try any cause or causes an oath to give true Verdicts according to the evidence; and the persons so summoned shall attend at the Court at the time mentioned in the summons, and in default of attendance shall forfeit such sum of money as the Court directs, not being more than Five Pounds for each default; and the delivery of such summons to the person whose attendance is required on such Jury or delivery thereof to his wife or servant, or any inmate at his usual place of abode, trading, or dealing, shall be deemed good service: Provided that no objection shall be raised to any person being summoned or acting as a Juror if he is qualified as a Juror. Registrar to summon Jurors.

**54** Whenever there are any Jury trials Three Jurymen shall be impanelled and sworn, as occasion may require, to give their Verdicts in the causes which are brought before them in the said Court, and being once sworn shall not need to be re-sworn in each trial; and either of the parties to any such cause shall be entitled to his lawful challenge for cause against all or any of the said Jurors in like manner as he would be entitled in the Supreme Court, and to a peremptory challenge against one Juror; and the Verdict of such Three Jurymen, if they agree, shall be the judgment of the Court, and if after being One hour in deliberation they cannot agree, then the Verdict of Two of them shall be the judgment of the Court; and if after deliberation for Three hours Two cannot agree, the Jury shall be discharged, and the action may be tried again when the Court may think fit to order. Number of the Jury.

*Judgment and New Trial.*

**55** Every order and judgment of any Court held under this Act, except as herein provided, shall be final and conclusive between the parties, but the Court shall have power to nonsuit the plaintiff in every case in which satisfactory proof is not given entitling either the plaintiff or defendant to the judgment of the Court; and shall also in every case whatever have the power, if the Court thinks fit, to order a new trial to be had upon such terms as the Court thinks reasonable, and in the meantime to stay the proceedings; and in actions brought in the Supreme Court under this Act a Judge shall, for the purposes of this Section, have co-ordinate jurisdiction with the Supreme Court. Judgments how far final. New trial.

*Order to pay by Instalments.*

**56** Where Judgment has been obtained in a Court held under this Act for a sum not exceeding Twenty Pounds, exclusive of Costs, the Judge may order such Sum and the Costs to be paid at such time or times, and by such Instalments if any, as he thinks fit, and all such moneys shall be paid into Court; but in all other cases he shall order the full amount for which judgment has been obtained to be paid either forthwith or within Fourteen clear days from the date of the Where Judgment does not exceed £20 Judge may order payment by Instalments; in other cases consent of Plaintiff necessary.

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Judgment, unless the plaintiff, or his counsel, attorney, or agent, will consent that the same shall be paid by Instalments, in which case the Judge shall order the same to be paid at such time or times and by such Instalments, if any, as shall be consented to, and all such moneys, whether payable in one sum or by Instalments, shall be paid into Court.

*Execution.*

**Cross judgments.** **57** If there are cross judgments between the parties, execution shall be taken out by that party only who has obtained judgment for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the remainder shall be entered, as well as satisfaction on the judgment for the smaller sum, and if both sums are equal satisfaction shall be entered upon both judgments.

**Court may award execution against goods and lands.** **58** Whenever the Court has made an order for the payment of money, the amount shall be recoverable, in case of default or failure of payment thereof forthwith, or at the time or times and in the manner thereby directed, by execution against the Goods and Chattels, and in case there are not sufficient Goods and Chattels, but not otherwise, against the Lands, of the party against whom such order has been made; and the Registrar of the Court, at the request of the party prosecuting such order, shall issue under his hand a writ of *feri facias* as a warrant of execution to the Bailiff of the Court, who by such warrant shall then be empowered to levy, or cause to be levied, by seizure and sale of the Goods and Chattels, and in case there are not Goods and Chattels sufficient then of the Lands, of such party such sum of money as is ordered, wheresoever such Goods or Chattels or Lands may be found in the Colony, and also the costs and expenses of and incident to the execution; and all Constables and other Peace Officers shall aid in the execution of every such warrant.

**Execution not to issue until after default in payment of some instalment, and then it may issue for the whole sum due.** **59** If the Court has made any order for payment of any sum of money by instalments, execution upon such order shall not issue against the party until after default in payment of some instalment according to such order, and execution or successive executions may then issue for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the Court may order, at the time of making the original Order, or as the Court or the Judge may order at any subsequent time.

**What may be taken in execution.** **60** Every Bailiff or Officer executing any process of execution issuing out of the Court against the Goods and Chattels and Lands of any person may by virtue thereof seize and take any of the Goods and Chattels of such person (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 such seizure), and may also seize and take any money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to any such person in whose hands soever any of such things may be; and in case such Goods and Chattels are not sufficient to satisfy the execution, may also seize and take in execution any real property of such person, or any interest therein, whether legal or equitable.

**Securities seized to be held by Bailiff.** **61** The Bailiff shall hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money which have been so seized or taken as aforesaid, as security for the

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Amount directed to be levied by such execution, or so much thereof as may not have been otherwise levied or raised for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sums secured or made payable thereby, when the time of payment thereof has arrived.

**62** In all cases where a warrant of execution has issued against the goods and chattels or lands of any party, and such goods and chattels or lands are or are believed to be nearer to another Court than to the Court out of which the process has issued, it shall be lawful for the Bailiff of the latter Court to send such warrant of execution to the Registrar of such other Court, and the Registrar of the Court to which the same is sent shall deliver the same to the Bailiff of his Court, and thereupon such last-mentioned Bailiff is hereby authorised and required to act in all respects as if the warrant of execution had been directed to him by the Court of which he is the Bailiff, and shall, within such time as may be specified in the Rules of Practice, return to the Bailiff of the Court from which the same issued what he has done in the execution of such process; and in case a levy has been made shall, within such time as may be specified in the Rules of Practice, pay over all moneys received in pursuance of the warrant to the Bailiff of the Court from which the same issued.

How execution may be had at a distance from the Court.

*Power to suspend Execution.*

**63** If at any time it appears to the satisfaction of the Court, or, when the Court is not sitting, of the Judge of the Court, by the oath or affirmation of any person or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for such Court or Judge, in its or his discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such action, for such time and on such terms as the Court or Judge thinks fit, and so from time to time until it appears by the like proof as aforesaid that such temporary cause of disability has ceased.

Power to Court to suspend execution in certain cases.

*Sales of Property taken in Execution.*

**64** Every sale of any personal property taken in execution shall be made not less than Five days, and of real property not less than Twenty-one days, after the levy by the Bailiff by public auction, without being licensed as an auctioneer, after having been duly advertised in such manner and for such time as may be directed by the Rules of Practice: Provided that Goods of a perishable nature may be sold immediately on seizure.

Regulating sales of property taken in execution.

**65** Section One of the Act of the Eighth year of the Reign of Queen Anne, Chapter Fourteen, shall not apply to Goods taken in execution under the Warrant of a Court held under this Act, but the Landlord of any Tenement in which any such Goods shall be so taken may claim the rent thereof at any time within Five clear days from the date of such taking, or before the removal of the Goods, by delivering to the Bailiff or Officer making the levy any writing signed by himself or his Agent, which shall state the amount of rent claimed to be in arrear, and the time for and in respect of which such rent is due; and if such claim be made, the Bailiff or Officer making the levy

When Goods seized under process of Court, landlord may claim certain rent in arrear.

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shall, in addition thereto, distrain for the rent so claimed and the costs of such Distress, and shall not within Five days next after such Distress sell any part of the Goods taken unless they be of a perishable nature, or upon the request in writing of the party whose Goods shall have been taken, and the Bailiff shall afterwards sell such of the Goods under the Execution and Distress as shall satisfy first the costs of and incident to the Sale, next the claim of such Landlord not exceeding the rent of Four weeks where the Tenement is let by the week, the rent of Two terms of payment where the Tenement is let for any other term less than a year, and the rent of One year in any other case, and lastly the amount for which the Warrant issued; and if any Replevin be made of the Goods so taken, the Bailiff shall notwithstanding sell such portion thereof as will satisfy the costs of and incident to the Sale under the Execution and the amount for which the Warrant issued; and in either event the overplus of the Sale, if any, and the residue of the Goods shall be returned to the Defendant, and the Poundage of the Bailiff and Broker for keeping Possession, Appraisalment, and Sale under such Distress shall be the same as would have been payable if the Distress had been an execution of a Court held under this Act, and no other Fees shall be demanded or taken in respect thereof.

Execution of process and writs of Courts under this Act.

**66** All process and writs issued out of any Court shall be served and executed by the Bailiff of such Court, or of any other Court, in the same manner in all respects as process or writs of a similar nature issuing out of the Supreme Court may be or might have been served or executed by the Sheriff; and every such Bailiff shall, as to the execution of process and writs issuing from another Court, be and he is accordingly hereby constituted the Bailiff of such other Court, and shall be subject to the order and direction of such Court and the Judge thereof; and every Bailiff shall, for the purpose of enabling him to perform the duties of his office, have the same powers and authorities, and shall in the exercise of the duties of his office be subject to the same liabilities, as the Sheriff.

Execution of Process of Supreme Court.

When any Writ of *feri facias* or other Writ of Execution for a sum not exceeding £50 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 this Act, and the lands or chattels of the person against whom such Writ is issued are nearer to a Court held under this Act than to either *Hobart Town* or *Launceston*, the Sheriff may forward such Writ to the Registrar of such Court, and such Writ shall thereupon be deemed to be and shall be executed in the same manner as a Warrant of Execution issued under the provisions of this Act, and all moneys received in pursuance of such Writ shall be paid to the Sheriff, and the Sheriff shall not be answerable for the neglect or wrongful act of any such Bailiff.

Land under "Real Property Act."

**67** Land held by certificate of title under "The Real Property Act" may be taken in execution, and sold under this Act, in the same manner that it may now be taken in execution and sold by the Sheriff under any writ issuing out of the Supreme Court.

*Execution superseded by Payment.*

Execution to be superseded on payment of debt and costs.

**68** In or upon every warrant of execution issued against the Goods, Chattels, or Lands of any person whomsoever the Registrar of the Court shall cause to be inserted or endorsed the sum of money and costs adjudged, with the costs for the execution of such warrant; and if

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the party against whom such execution is issued before an actual Sale of the Goods and Chattels or Land pays or causes to be paid or tendered to the Registrar of the Court out of which such warrant of execution has issued, or to the Bailiff holding the warrant of execution, such sum of money and costs as aforesaid, or such part thereof as the person entitled thereto agrees to accept in full of his debt or damages and costs, together with the costs for the execution, such execution shall be superseded, and possession of the Goods and Chattels or Lands of the said party shall immediately be given up.

*Reimbursement of Expenses of Execution to Bailiff.*

**69** Where a Bailiff has necessarily incurred expenses in the execution of a writ of *feri facias* or warrant of commitment, and is unable from insufficiency of Goods or Land of the party against whom the execution issued, or other cause, without his own default, to obtain reimbursement of such expenses, by means of such execution, within One month after the issue of the writ or warrant, such expenses or the amount thereof unpaid shall be paid to the Bailiff by the party at whose suit the execution issued; and on non-payment of the same by such last-mentioned party on demand, the Court shall, in a summary way, ascertain the amount of such expenses, and enforce payment thereof by such last-mentioned party to the Bailiff by the same means as are herein provided for enforcing a judgment of the Court; and such amount shall be recoverable by such last-mentioned party against the opposite party as costs in the cause.

Where Bailiff put to expenses in executing writ and cannot obtain such expenses under the execution, he shall be repaid by the party at whose suit execution issued.

*Interpleader.*

**70** If any claim is made to or in respect of any Goods or Chattels taken in execution under the process of any Court held under this Act, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, it shall be lawful for the Registrar of the Court upon application of the Officer charged with the execution of such process, as well before as after any action brought against such Officer, to issue a summons calling before the said Court as well the party issuing such process as the party making such claim, and thereupon any action which may have been brought in the Supreme Court or in any Court held under this Act in respect of such claim shall be stayed, and the Court in which such action has been brought, or the Judge thereof, on proof of the issue of such summons, and that the Goods and Chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons; and the Court out of which such summons issued shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as may seem fit, and such order shall be enforced in like manner as any order or judgment made in any suit brought in such Court.

Claims as to Goods taken in execution to be adjudicated in Court.

**71** Where goods or chattels have been seized in execution by a Bailiff or other Officer under process of any Court held under this Act, and some third person claims to be entitled under a Bill of Sale or otherwise to such goods or chattels by way of security for a debt, a Judge may order a sale of the whole or part thereof, upon such terms as to payment of the whole or part of the secured debt or otherwise as such Judge thinks fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as to such Judge seems just.

Sale of goods held under Bill of Sale.

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Power to Judge to hold defendant to Bail.

Defendant in lieu of bail may make deposit.

Judge may, by consent, decide case at once.

No warrant to issue if defendant has advertised his departure.

Judge, &c. may order immediate payment, and execution may at once issue.

If judgment against plaintiff, Judge may award compensation to defendant.

Order of Chairman subject to review by full Court.

**72** Whenever it is made to appear to the satisfaction of the Judge having jurisdiction to the amount of the claim, by the affidavit of any plaintiff or his authorised agent, that he has a good cause of action against any defendant for any sum within the jurisdiction of any Court held under this Act, and that there is probable cause, the grounds of which shall be stated in such affidavit, for believing that such defendant is about to leave the Colony before the sitting of the next Court of competent jurisdiction, with intent fraudulently to evade the payment of such sum, it shall be lawful for such Judge to issue a warrant under his hand, returnable immediately, and thereupon to cause such defendant to be brought before him, and upon investigation of the case, either to discharge such defendant, or to hold him to bail for any sum not exceeding the amount sworn to in such affidavit: Provided, that it shall be lawful for any defendant against whom such Warrant has issued for any amount to deposit with the Officer executing such Warrant or with the Registrar, in lieu of bail, such amount with Three Pounds for costs; and the sum so deposited shall be paid, applied, and disposed of according to the judgment of the Court in the action in which the Deposit is made: Provided also, that it shall be lawful for any Judge before whom any Defendant is brought, under authority of any warrant to be issued as aforesaid, with the consent in writing of the defendant, to hear and finally adjudicate upon the claim of the plaintiff in such proceeding: And provided also, that when any person about to depart from the Colony has given public notice, by not less than Two advertisements on consecutive days of publication in One newspaper at least published in *Hobart Town* and *Launceston* respectively, of the time and manner of such intended departure, then no such warrants shall be issued after the expiration of Seven days from the first publication of such notice, unless in respect of a debt accrued due within Seven days prior to the issue of such warrant; and every affidavit to ground such warrant shall state whether any such notice has been given, and if so, then the date of the first publication thereof; but this proviso shall not apply to cases where it is made to appear to the satisfaction of any such Judge that any defendant is about to depart from the Colony at an earlier period than that of which he has so given notice.

**73** In any case in which the Judge hears and finally adjudicates upon the claim of any plaintiff, under the power contained in the preceding Section, and gives judgment for the plaintiff, it shall be lawful for him to make an order for the immediate payment of the amount of such judgment, with costs not exceeding Forty Shillings; and execution may be at once issued, and such other proceedings may be had thereon, as if the same were a judgment obtained in the ordinary course of procedure.

**74** If in any such proceeding judgment is given for the defendant, it shall be lawful for the Judge giving such judgment, at his discretion, to award to such defendant by way of compensation any sum not exceeding Twenty Pounds; and such award shall be deemed to be a judgment of the Court, and execution may issue thereon.

*Order of Chairman subject to Review of Court.*

**75** Any order or act of the Chairman made or done under the authority of this Act when the Court is not sitting shall be subject to be reversed or altered by the Court at a subsequent sitting of the Court,



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within such time, on such terms, and with such consequences, as may be prescribed by the Rules of Practice.

*Removal of Actions.*

**76** Any action commenced in any Court held before a Commissioner or in any Court of General Sessions under this Act may be removed by *Certiorari* into the Supreme Court by order of the Supreme Court or a Judge thereof, if it appears to such Court or Judge that the case is one which for any reason it is fit or desirable should be tried in the Supreme Court; and such order may be made upon such terms as to payment of costs, giving security for the amount claimed or costs, or such other terms as such Court or Judge thinks fit.

Removal of actions into Supreme Court by *Certiorari*.

*Recovery of Possession of Small Tenements.*

**77** In so much of this Act as relates to the *Recovery of Possession of Small Tenements*, except where the same is inconsistent with the context, the word "Tenant" shall mean and include not only any tenant but also any person who claims through or under any tenant, and also any person who came into possession of any corporeal hereditament by the licence or with the consent of the tenant thereof, and also any person who being upon any such hereditament with the consent of the tenant thereof continues thereon after the tenant vacates possession thereof or dies.

Construction of the word "Tenant."

**78** When the term and interest of the Tenant of any corporeal hereditament, where neither the value of the premises nor the rent payable in respect thereof shall have exceeded Thirty Pounds by the year, and upon which no fine or premium shall have been paid, shall have expired, or shall have been determined either by the Landlord or the Tenant by a legal notice to quit, and such Tenant neglects or refuses to deliver up possession accordingly, the Landlord may enter a Plaint, at his option, against such Tenant in the Court held under the provisions of this Act nearest to which the premises lie for the recovery of the same; and thereupon a Summons shall issue to such Tenant; and if the Defendant shall not, at the time named in the Summons, show good cause to the contrary, then, on proof of his still neglecting or refusing to deliver up possession of the premises, and of the yearly value and rent of the premises, and of the holding, and of the expiration or other determination of the tenancy, with the time and manner thereof, and of the Title of the Plaintiff if such Title has accrued since the letting of the premises, and of the service of the Summons if the Defendant shall not appear thereto, the Judge may order that possession of the premises mentioned in the Plaint be given by the Defendant to the Plaintiff, either forthwith or on or before such day as the Judge thinks fit to name; and if such Order be not obeyed, the Registrar shall, where the Defendant has appeared, whether such Order can be proved to have been served or not, and where the Defendant has not appeared, then on proof by affidavit or otherwise of the service of the Order, at the instance of the Plaintiff, issue a Warrant authorising and requiring the Bailiff of the Court to give possession of such premises to the Plaintiff.

Possession of small tenements may be recovered in Court by landlords where term has expired or been determined by notice.

**79** In any such Plaint against a Tenant as in the last preceding Section is specified the Plaintiff may add a claim for rent or mesne profits or both, down to the day appointed for the hearing or to any preceding day named in the Plaint, so as the same shall not exceed Thirty Pounds, and any misdescription in the nature of such claim may be amended at the trial.

In Plaint for recovery of possession plaintiff may claim for rent and mesne profits.

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Possession of small tenements may be recovered in Court by land lords for non-payment of rent.

**80** When the rent of any corporeal hereditament, where neither the value of the premises nor the rent payable in respect thereof exceeds Thirty Pounds by the year, shall for one half year be in arrear, and the Landlord shall have right by Law to re-enter for the non-payment thereof, he may, without any formal demand or re-entry, enter a Plaint in the Court nearest to which the premises lie for the recovery of the premises; and thereupon a Summons shall issue to the Tenant, the service whereof shall stand in lieu of a demand and re-entry; and if the Tenant shall, Five clear days before the return day of such Summons, pay into Court all the rent in arrear, and the costs, the said Action shall cease, but if he shall not make such payment, and shall not at the time named in the Summons show good cause why the premises should not be recovered, then, on proof of the yearly value and rent of the premises, and the fact that one-half year's rent was in arrear before the Plaint was entered, and that no sufficient distress was then to be found on the premises to countervail such arrear, and of the Landlord's power to re-enter, and of the rent being still in arrear, and of the Title of the Plaintiff if such Title has accrued since the letting of the premises, and of the service of the Summons if the Defendant shall not appear thereto, the Judge may order that possession of the premises mentioned in the Plaint be given by the Defendant to the Plaintiff on or before such day, not being less than Four weeks from the day of hearing, as the Judge shall think fit to name, unless within that period all the rent in arrear and the costs be paid into Court; and if such Order be not obeyed, and such rent and costs be not so paid, the Registrar shall, whether such Order can be proved to have been served or not, at the instance of the Plaintiff, issue a Warrant authorising and requiring the Bailiff of the Court to give possession of such premises to the Plaintiff; and the Plaintiff shall from the time of the execution of such Warrant hold the premises discharged of the tenancy, and the Defendant and all persons claiming by, through, or under him shall, so long as the Order of the Court remains unreversed, be barred from all relief in Equity or otherwise.

Sub-tenant served with summons to recover possession must give notice to his immediate landlord, who may come in and defend.

**81** Where any Summons for the recovery of a tenement as is hereinbefore specified shall be served on or come to the knowledge of any Sub-tenant of the Plaintiff's immediate Tenant, such Sub-tenant being an occupier of the whole or a part of the premises sought to be recovered, he shall forthwith give notice thereof to his immediate Landlord under penalty of forfeiting Three years' rack-rent of the premises held by such Sub-tenant to such Landlord, to be recovered by such Landlord by Action in the Court from which the Summons has issued; and such Landlord, on the receipt of such notice, if not originally a Defendant, may be added or substituted as a Defendant to defend possession of the premises in question.

In Plaints to recover possession of premises, how summonses &c. may be served.

**82** A Summons or other document relating to the recovery of a tenement may be served like Summonses to appear to Plaints in Courts held under the provisions of this Act; and if the Defendant cannot be found, and his place of dwelling shall either not be known or admission thereto cannot be obtained for serving any such Summons or document, a copy thereof shall be posted on some conspicuous part of the premises sought to be recovered, and such posting shall be deemed good service on the Defendant.

Warrants to Bailiffs sufficient to justify them for

**83** Any Warrant to a Bailiff to give possession of a tenement shall justify the Bailiff named therein in entering upon the premises named therein, with such Assistants as he shall deem necessary, and in giving

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possession accordingly; but no entry upon any such Warrant shall be made except between the hours of Eight in the morning and Five in the afternoon.

entering on premises.

**84** Every such Warrant shall, on whatever day it may be issued, bear date on the day next after the last day named by the Judge in his Order for the delivery of possession of the premises in question, and shall continue in force for Three months from such date and no longer, but no Order for delivery of possession need be drawn up or served in any case in which the Defendant has appeared.

Such Warrants to be in force for Three months from the day named for delivery of possession.

*Appeal.*

**85** In any action brought in any Court (except the Supreme Court) held under this Act, if either party is dissatisfied with the determination or direction of the Court in point of Law, or upon the admission or rejection of any evidence, such party may, by leave of a Judge of the Supreme Court, appeal from the same to the Supreme Court; provided that such party shall, within Ten days after such determination or direction, give notice of his intention to apply for leave to appeal to the other party or his Attorney, and also, if he obtains leave to appeal, give security within Ten days after such leave granted, to be approved by the Judge granting such leave, for the costs of the Appeal, and for the amount of the judgment, if he be the defendant and the Appeal be dismissed: Provided, that such security, so far as regards the amount of the judgment, shall not be required in any case where the Court in which the action was tried has ordered the party appearing to pay the amount of such judgment into the hands of the Clerk of the Court, and the same has been paid accordingly; and the Court of Appeal may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, and may make such order in the premises and with respect to the costs of the Appeal as such Court thinks proper, and such order shall be final.

Appeal from judgment of Courts held under this Act.

**86** Such Appeal shall be in the form of a Case agreed to by both parties or their Attorneys; and if they cannot agree, the Commissioner or Chairman of the Court in which the action was tried, upon being applied to by them or their Attorneys, or either of them, shall settle the Case and sign it; and such case shall be transmitted by the appellants to the Registrar of the Supreme Court.

Appeals to be in form of a Special Case.

*Prohibition.*

**87** It shall be lawful for any Judge of the Supreme Court, as well in Term time as in Vacation, to hear and determine applications for Writs of Prohibition directed to the Courts held under this Act, except where held before a Judge of the Supreme Court, and to make such rules or orders for the issuing of such writs as might be made by the Court, and all such rules or orders so made by any such Judge shall have the same force and effect as rules of Court for such purposes now have, and such writs shall be issued by virtue of such Rules or Orders as well in Term time as in Vacation: Provided always, that any rule or order made by any such Judge, or any writ issued by virtue thereof, may be discharged or varied or set aside by the Court, on application made thereto by any party dissatisfied with such rule or order.

Judges may hear applications for Writs of Prohibition either in Term or in Vacation.

*Recovery of Small Debts.**Court Fees.*

Fees to be taken according to Schedule, and Tables to be exhibited in conspicuous places.

**88** There shall be payable on every proceeding in the Courts held under this Act such Fees as are set down in the Schedule (2), or which may be set down in any Schedule of Fees reduced or altered under the power hereinafter contained for that purpose, and none other; and a Table of such Fees shall be put up in some conspicuous place in the Registrar's office; and the Fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, on or before such proceeding, and in default payment thereof shall be enforced by order of the Court by such means as any debt or damage ordered to be paid by the Court can be recovered; and the Fees upon executions shall be paid into Court at the time of the issue of the warrant of execution: Provided always, that it shall be lawful for the Judges of the Supreme Court to lessen the amount of the Fees to be taken in the Courts held under this Act in such manner as to them seems fit, and again to increase such Fees, so that the Scale of Fees given in the Schedule to this Act be not in any case surpassed.

Fees may be reduced.

Fees and Fines to be accounted for to Colonial Treasurer.

**89** The Registrar of every Court under this Act held elsewhere than in any Rural Municipality from time to time as often and in such form as he is required so to do by the Colonial Treasurer, shall deliver to the Colonial Treasurer a full account in writing of the Fees received in that Court under the authority of this Act, and a like account of all Fines levied by the Court, and of the expenses of levying the same, and shall pay over to the Colonial Treasurer, monthly or oftener in every year, as may from time to time be ordered by the said Treasurer, the moneys remaining in his hands over and above such balance as he may be allowed by the Colonial Treasurer to retain for the current expenditure of the Court.

Registrar's Accounts to be audited and settled by Auditor.

**90** The Colonial Auditor shall from time to time, quarterly or oftener, as he may think fit, audit and settle the accounts of the Registrar and other Officers of the Court except when such Court is held within a Rural Municipality.

*Fees to Attorneys.*

Scale of Fees to be taken by Attorneys to be framed by Judges.

**91** The Fees to be taken by Attorneys practising in the said Courts, for appearing or acting in open Court on behalf of any party, shall be fixed by the Judges of the Supreme Court by Scale in the Rules of Practice; and such Judges are also empowered and required from time to time to frame a Scale of costs and charges to be paid to Attorneys in such Courts, in respect of business transacted otherwise than in open Court, to be allowed as between Attorney and client, and as between party and party, which Scale shall be published in the same manner as the Rules of Practice, and such Scale shall, from and after a day to be named by the Judges, be in force in every Court held under this Act; and all costs between party and party, and between Attorney and client, shall be taxed by the Registrar of the Court, but his taxation may be reviewed by the Court upon the application of either party; and in no case upon the taxation of the costs between Attorney and client shall any charges be allowed not mentioned by the aforesaid Scale unless the Registrar is satisfied, by writing under the hand of the client, that he has agreed to pay such further charges, and no Attorney shall have a right to recover from his client any costs or charges not so allowed on taxation.

Also Attorneys' costs for business out of Court.

Costs to be taxed by Registrar subject to review.

No charges beyond Scale to be allowed unless Client has agreed in writing to pay them.

*Recovery of Small Debts.**Costs.*

**92** All the costs of any action or proceeding in the Court, not herein otherwise provided for, shall be paid by or apportioned between the parties in such manner as the Court thinks fit, and in default of any special direction shall abide the event of the action; and execution may issue for the recovery of any such costs in like manner as for any debt adjudged in the said Court.

Costs to abide the event of the action.

*Actions against Officers.*

**93** Where the Judge or any Officer of any Court held under this Act is a party to any action, except in respect of any claim to goods and chattels taken in execution of the process of the Court, or the proceeds or value thereof, such action may, at the election of the party suing, be brought in the Court of competent jurisdiction held under this Act which is nearest to the place of holding the Court of which such party is the Judge or Officer.

Where Judge, &c., interested in cause of action, it may be brought in nearest Court.

**94** No action shall be brought against any Bailiff, or against any person acting by the order and in aid of any Bailiff, for anything done in obedience to any warrant under the hand of the Registrar, until demand has been made or left at the office of such Bailiff by the party intending to bring such action, or by his Attorney or Agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same has been refused or neglected by the space of Six days after such demand; and in case after such demand and compliance therewith, by showing the said warrant to and permitting a copy to be taken thereof by the party demanding the same, any action is brought against such Bailiff or other person acting in his aid for any such Cause as aforesaid without making the Registrar who signed the said warrant defendant, on producing or proving such warrant at the trial of such action the Jury shall give their Verdict for the defendant, notwithstanding any defect of jurisdiction or other irregularity in the said warrant; and if such action is brought jointly against such Registrar, and also against such Bailiff, or person acting in his aid as aforesaid, then on proof of such warrant the Jury shall find for such Bailiff and for such person so acting as aforesaid, notwithstanding such defect or irregularity as aforesaid; and if the Verdict is given against the said Registrar, in such case the plaintiff shall recover his costs against him, to be taxed in such manner by the proper Officer as to include such costs as such plaintiff is liable to pay to the defendant for whom such Verdict is found as aforesaid.

No action to be brought against any Bailiff, &c. acting under order of the Court without notice; and Registrar of the Court to be made defendant in the suit.

**95** No Officer of a Court in executing any Warrant of a Court, and no person at whose instance any such Warrant shall be executed, shall be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such Warrant depends, or in the form of such Warrant, or in the mode of executing it, except against the party executing it, but the party aggrieved may bring an Action for any special damage which he may have sustained by reason of such irregularity or informality against the party guilty thereof, and in such Action he shall recover no costs unless the damages awarded shall exceed Forty Shillings.

No Officer or party shall be deemed a trespasser by reason of irregularity.

**96** All actions brought against any person for anything done under or in pursuance of this Act shall be commenced within Three months after the fact committed, and not afterwards; and notice in writing of

Limitation of actions for proceedings in execution of this Act.

*Recovery of Small Debts.*

such action, and of the cause thereof, shall be given to the defendant One month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends has been made before such action brought, or if after action brought a sufficient sum of money is paid into Court, with costs, by or on behalf of the defendant.

Protection to  
Officers and others  
acting under this  
Act.

**97** In any action brought against any person for anything done under or in pursuance of this Act, the defendant may plead the general issue, and give the special matter in evidence; and the warrant under the hand of the Registrar of the Court out of which it issued produced in any such action shall be sufficient proof of the authority of such Court previous to the issuing of such warrant; and in case the Verdict in such action is found against the plaintiff, or he is nonsuit, or discontinues the action, the defendant shall in any of such cases be allowed full costs as between Attorney and client; and in any such action brought in the Supreme Court against any officer of a Court held under this Act, if the plaintiff does not recover greater damages than the sum of Twenty Pounds no costs shall be awarded to him, unless the Judge certifies in Court upon the back of the Record that the action was fit to be brought in the Supreme Court.

*General Rules of Practice.*

Forms of pro-  
cedure in Courts  
to be framed by  
the Judges of the  
Supreme Court.

**98** The Judges of the Supreme Court shall have power, and they are hereby required, to make and issue all the general Rules for regulating the Practice and Proceedings of the Courts held under this Act; and also to frame Forms for every proceeding in the said Courts for which they may think it necessary that a Form be provided; and also for keeping all Books, Entries, and Accounts to be kept by Registrars of the said Courts, and from time to time to alter any such Rule or Form; and the Rules so made, and the Forms so framed, shall be observed and used in all the Courts held under this Act; and in any case not expressly provided for herein, or by the said Rules, the general principles of practice in the Supreme Court may be adopted and applied, at the discretion of the Court, to actions and proceedings under this Act; and all such general Rules shall be published in the *Gazette* in the same manner as the general Rules of the Supreme Court are published therein.

Supreme Court  
may make Rules  
regulating Ap-  
peals.

**99** The Judges of the Supreme Court may from time to time make general Rules for regulating the proceedings on Appeals, which Rules shall be as valid as if included in this Act.

*No second Suit for same Cause.*

No second suit  
in second Court  
for the same  
cause.

**100** If any party sues another in any Court for any debt or other cause of action for which he has already sued him, and obtained judgment, in any other Court, the proof of such former suit having been brought and judgment obtained may be given, and the party so suing shall not be entitled to recover in such second suit, and shall be adjudged to pay Three times the costs of such second suit to the opposite party.

*Advocates.*

Who may appear  
for any party in

**101** It shall be lawful for the party to the cause or other proceeding, or for a Barrister or Attorney of the Supreme Court, or, by leave of

*Recovery of Small Debts.*

the Court any other person allowed by the Court to appear instead of the party, to address the Court; but no person, not being a Barrister or Attorney of the Supreme Court, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said Court.

Court held under this Act.

*Actions for Small Debts in Supreme Court.*

**102** If in any action brought in the Supreme Court, except in accordance with the provisions of this Act, for any cause for which a plaintiff might have been entered in any Court held under this Act, the plaintiff recovers a sum less than Fifteen Pounds if the said action is founded on Contract, or less than Five Pounds if it is founded on Tort, or less than Twenty Pounds if founded on both Contract and Tort the plaintiff shall have judgment to recover such sum only and no costs, and it shall not be necessary to enter any Suggestion on the Record to deprive such plaintiff of costs: Provided that nothing in this Section contained shall apply to the case of an action on a bill of exchange, promissory note, or cheque for a sum of not less than Ten Pounds, or to the case of a judgment by default in any action.

Plaintiffs deprived of costs in certain actions brought in Supreme Court.

Excepts actions on bills of exchange, &c.

**103** If the plaintiff in any action in which he is not entitled to recover his costs by reason of the provisions of the last preceding Section, recovers a sum less than the sum in that behalf mentioned in that Section by verdict, and the Judge before whom such verdict is obtained certifies on the back of the record that it appeared to him at the trial that there was sufficient reason for bringing the said action in the Supreme Court, the plaintiff in such case shall have judgment to recover his costs according to the practice of the Supreme Court, anything in this Act to the contrary notwithstanding.

Judge who tries case may certify to entitle plaintiff to costs.

**104** In any action in the Supreme Court in which the plaintiff is not entitled to recover his costs by reason of the provisions of this Act, whether there is a verdict in such action or not, if the plaintiff makes it appear to the satisfaction of the Supreme Court or a Judge at Chambers upon summons that such action was brought for a cause in which concurrent jurisdiction is given to the Supreme Court by this Act, or that such action was removed from a Court held under this Act by *Certiorari*, or that there was sufficient reason for bringing such action in the Supreme Court, then and in any of such cases such Court or Judge shall thereupon, by Rule or Order, direct that the plaintiff shall recover his costs according to the practice of the Supreme Court, anything in this Act to the contrary notwithstanding.

Court or Judge may make order entitling plaintiff to costs in certain cases.

*Contempts.*

**105** In a Court held under this Act before a Commissioner or Justices, if any person wilfully insults such Commissioner or any such Justice, or any Juror, or any Registrar, Bailiff, or Officer of the said Court for the time being during his sitting or attendance in Court, or in going to or returning from the Court, or wilfully interrupts the proceedings of the Court, or otherwise misbehaves in Court, it shall be lawful for any Bailiff or Officer of the Court, with or without the assistance of any other person, by the order of the Court, to take such offender into custody, and detain him until the rising of the Court; and the Court is hereby empowered, if it thinks fit, by a warrant under the hand of the Registrar, reciting generally the grounds of committal without showing the particulars thereof or the jurisdiction, to commit any such offender to any

Power of committal for Contempt.

*Recovery of Small Debts.*

Gaol or House of Correction for any time not exceeding Seven days, or to impose upon any such offender a Fine not exceeding Five Pounds for every such offence, and in default of payment thereof to commit the offender to any Gaol or House of Correction for any time not exceeding Seven days unless the said Fine be sooner paid.

*Assaults on Bailiffs.*

Penalty for assaulting Bailiffs, or rescuing Goods taken in execution.

**106** If any Officer or Bailiff of a Court held under this Act is assaulted while in the execution of his duty, or if any rescue is made or attempted to be made of any Goods, or if any such Officer or Bailiff is turned out of possession of any Lands levied under process of the Court, the person so offending shall be liable to a Fine not exceeding Ten Pounds, to be recovered by order of the Court, or in a summary way before a Justice ; and it shall be lawful for the Bailiff of the Court or any Peace Officer in any such case to take the offender into custody (with or without Warrant), and bring him before such Court or Justice accordingly.

*Recovery and Appropriation of Fines and Fees.*

Fines how to be enforced and accounted for.

**107** Payment of any Fine imposed by any Court under the authority of this Act may be enforced upon the Order of the Court in like manner as payment of any debt adjudged in the said Court, and shall be accounted for as herein provided.

Appropriation of Fees, Fines, and Penalties.

**108** All Fees received under this Act by any Officer of the Court, and all Fines and Penalties imposed by this Act, shall, unless hereinbefore otherwise specifically appropriated, be paid into the Colonial Treasury, and shall form part of the General Revenue, except where such Fees, Fines, and Penalties are received or imposed in a Rural Municipality, and then the same shall form part of the Municipal Fund.

Recovery of penalties.

**109** All fines and penalties imposed or made payable by this Act shall, where no other mode of recovery is provided, be recovered in a summary way by and before any two Justices, in the mode prescribed by *The Magistrates' Summary Procedure Act*.

19 Vict. No. 8.

*Appointment of Substitute for Commissioner.*

Governor may appoint Substitute for Commissioner, when necessary.

**110** It shall be lawful for the Governor, from time to time as occasion may in his opinion require, to nominate a fit person as a Substitute to do and execute the duty of any Commissioner in holding any Court under this Act, for such time as the Governor may deem necessary ; and such Substitute shall, during the continuance of his appointment, have all the powers and jurisdiction under this Act of the Commissioner for whom he is appointed Substitute, and notwithstanding the death of the Commissioner for whom he was appointed Substitute.

*False Process.*

Penalty for using false process, &c.

**111** Every person who delivers or causes to be delivered to any person any paper falsely purporting to be any process or a copy of any process of any Court held under this Act knowing the same to be false, or who acts or professes to act under any false colour or pretence of the process of any such Court, shall be guilty of felony, and be liable on conviction to be kept in Penal Servitude for any term not exceeding Five years.



*Recovery of Small Debts.**Appointments published in Gazette.*

**112** All Orders and Appointments made by the Governor in Council, and all Appointments made by the Governor alone, as the case may be, for the purposes of this Act, shall be published in the *Gazette*, and the production of a copy thereof containing any such Order or Appointment shall be conclusive evidence of such Order or Appointment.

Orders in Council and Appointments under this Act to be published in the *Gazette*.

*Recovery of Claims not exceeding Ten Pounds at Hobart Town.*

**113** The Governor may appoint a Court under this Act to be held at *Hobart Town* before the Stipendiary Magistrate or any Two Justices, for the recovery of debts and demands to an amount not exceeding Ten Pounds, and such Court shall be deemed to be a Court of Requests held before a Commissioner; and such Magistrate or Justices shall have and exercise all the powers by this Act, or by any other Act passed or to be passed, conferred on a Commissioner; and the Clerk of Petty Sessions shall act as Registrar of such Court unless some person be appointed by the Governor, and any Constable may act as Bailiff of such Court.

A Court at *Hobart Town* for recovery of debts, &c. not exceeding £10.

*Commencement of Act.*

**114** This Act shall come into force and take effect on and after the First day of *January*, 1868.

Commencement of Act.

*Repeal.*

**115** On and after the day on which this Act commences and takes effect the Acts set forth in the Schedule (3), to the extent to which such Acts are therein expressed to be repealed, shall be hereby repealed: Provided that such repeal shall not affect—

Repeal of existing Acts.

- (1.) Anything duly done before, or any case pending when, this Act commences and takes effect:
- (2.) Any liability accruing before this Act commences and takes effect:
- (3.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before this Act commences and takes effect:
- (4.) The institution of any legal proceeding or any other remedy for enforcing or recovering any such liability, penalty, forfeiture, or punishment as aforesaid.

*Existing Courts, &c., continued.*

**116** All Courts existing at the time of the commencement of this Act by virtue of any Act hereby repealed shall continue to be Courts and shall be holden as if this Act had not been passed, and shall be deemed to be Courts within the meaning and for the purposes of this Act, and shall be subject to its provisions; and all proceedings commenced in any such Court may be continued, executed, and enforced against all persons liable thereunto in the same manner as if they had been commenced under the authority of this Act.

Existing Courts continued.

**117** All Commissioners, Registrars, and Summoning Officers of Courts at the time of the commencement of this Act by virtue of any Act hereby repealed shall continue in office notwithstanding such repeal,

Existing Officers continued.

*Recovery of Small Debts.*

and shall be deemed to have been appointed Commissioners, Registrars, and Bailiffs under this Act and shall be subject to its provisions.

*Short Title.*

Short Title.

**118** This Act may be cited as "The Small Debts Act."

**SCHEDULE.**

(1.)

Sect. 33.

**SUMMONS TO OBTAIN JUDGMENT BY DEFAULT ON PERSONAL SERVICE.**

No. [of *Plaint*].

In the [*Title of Court issuing Summons*].

Between *A.B.*, Plaintiff,  
and  
*C.D.*, Defendant.

[*Name, Description, and Address of Defendant*].

TAKE NOTICE, That, unless at least Six clear days before the [*Day of Appearance to Summons*] you return to the Registrar of this Court at [*Place of Office*] the Notice given below, dated and signed by yourself, or your Attorney or your Agent, you will not afterwards be allowed to make any Defence to the Claim which [*Name, Description, and Address of Plaintiff*] makes on you, as per margin, the particulars of which are hereunto annexed; but the Plaintiff may, without giving any proof in support of such Claim, proceed to Judgment and Execution. If you return such Notice to the Registrar within the time specified, you must appear at a Court to be holden at

	£	s.	d.
Claim . . . . .	..	..	..
Fee for Plaintiff . . . . .	..	..	..
Attorney's Costs . . . . .	..	..	..
Total Amount of } Debt and Costs }	..	..	..

on the \_\_\_\_\_ day of \_\_\_\_\_ 186 , at the hour of \_\_\_\_\_ noon, to answer the above Claim, which will be heard on that day.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 186 .  
\_\_\_\_\_ Registrar of the Court.

See Back.

**NOTICE OF INTENTION TO DEFEND.**

No. [of *Plaint*]

In the [*Title of Court*].

*A.B. v. C.D.*

I intend to defend this Cause.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 186 .  
\_\_\_\_\_ (a) Defendant.

(a) Here must be signed the Name of Defendant, or of his Attorney or Agent, and in either of the last two cases the words "Attorney for," or "Agent for," must be added.

[*To be endorsed on the Summons.*]

If you pay the Debt and Costs, as per margin on the other side, into the Registrar's Office, before the Day of Hearing, and without returning the Notice of Intention to defend, you will avoid further costs.

If you do not return the Notice of Intention to defend, but allow Judgment against you by default, you will save *Half the Hearing Fee*, and the Order upon such Judgment will be to pay the Debt and Costs forthwith [or by Instalments, to be specified, as in *Plaintiff's written Consent*].

If you admit a Part only of the Claim, you must return the Notice of Intention to defend within the specified time; and you may, by paying into the Registrar's Office the Amount so admitted, together with costs proportionate to the amount you pay in, Six clear days before the Day of Hearing, avoid further costs, unless the Plaintiff at the Hearing shall prove a Claim against you exceeding the sum so paid.

*Recovery of Small Debts.*

If you intend to rely on a Set-off, Infancy, Coverture, a Statute of Limitations, or a Discharge under any Law relating to Insolvency, as a Defence, you must, in addition to the Notice of Intention to defend, give to the Registrar Notice of such special Defence Six clear days before the Day of Hearing; and such last-mentioned Notice must contain the particulars required by the Rules of the Court; and you must deliver to the Registrar as many Copies of such Notice as there are Plaintiffs, and an additional copy for the use of the Court. If your Defence be a Set-off, you must, with the Notice thereof, also deliver to the Registrar a Statement of the Particulars thereof. If your Defence be a Tender, you must pay into Court, before or at the Hearing, the amount tendered.

If you give such Notice of Intention to defend within the time specified, you may have the Case tried by a Jury, on giving Notice in Writing at the Registrar's Office Two clear days before the Hearing, and on payment of One Pound for the use of such Jury.

Summonses for Witnesses and the Production of Documents may be obtained gratis at the Office of the Registrar of this Court.

This Summons must be served *personally* on the Defendant Twelve clear days before the day appointed for the Hearing.

(2.)

SCHEDULE OF FEES.

Section 88.

Entering Plaintiff (including the issuing and serving of Summons) .....	} Sixpence in the Pound.
Hearing .....	} Sixpence in the Pound.
Judgment by Consent or in default ....	} Three Pence in the Pound.
Adjournment of a Cause .....	} Three Pence in the Pound.
Issuing <i>Fieri Facias</i> .....	} Sixpence in the Pound.
Subpcena .....	} One Shilling in all Cases.
Special Defence.....	} One Shilling and Sixpence in all Cases.
Copy of Particulars .....	} One Shilling where the Amount claimed does not exceed Ten Pounds.
	} Two Shillings in all other Cases.
Taking Recognizance, Bond, or Security for Costs .....	} Three Pence in the Pound.
Enquiry into Sufficiency of Sureties ...	} Three Pence in the Pound.
	} One Shilling where the Amount claimed does not exceed Ten Pounds.
	} Two Shillings where such Amount exceeds Ten Pounds and does not exceed Twenty Pounds.
	} Three Shillings where such Amount exceeds Twenty Pounds.
Poundage, except where otherwise specified in this Schedule, shall be estimated on the Amount of the Claim.	
All Fractions of a Pound, for the purpose of calculating Poundage, shall be treated as an entire Pound.	
Where the Plaintiff recovers less than the Amount of his Claim so as to reduce the Scale of Costs, he shall pay the difference, unless the reduction is caused by a Set-off.	
In Cases of Execution of Writs of <i>Fieri Facias</i> , the actual expenses necessarily incurred by the Bailiff in respect of such Execution 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,—the Poundage for Hearing be estimated on the Value of the Goods claimed, which, in Case of Dispute, shall be assessed by the Court,—and the Costs of the Summons, estimated on the above-mentioned value, and actual expenses incurred by the Bailiff in keeping possession of the Goods, be included in the general Costs which may be awarded by the Court at the Hearing.	
No Increase of Fees shall be made by reason of there being more than one Plaintiff or Defendant.	

*Recovery of Small Debts.*

(3.)

Sect. 115.

## ACTS TO BE REPEALED.

<i>Number of Act.</i>	<i>Title of Act.</i>	<i>Extent of Repeal.</i>
4 Vict. No. 20.	An Act to facilitate the Recovery of Possession of Tenements after due Determination of the Tenancy within this Island and its Dependencies.	The whole.
6 Vict. No. 9.	An Act to institute Courts of Requests with a more extended Jurisdiction than those at present existing in this Island.	The whole
20 Vict. No. 5.	An Act to restore the Jurisdiction of the Court of Requests holden in and for the District of <i>Hobart Town</i> .	The whole.
22 Vict. No. 2.	An Act to amend the Law relating to Imprisonment for Debt.	The whole.
24 Vict. No. 6.	An Act to amend the Law relating to Courts of Requests.	The whole.
27 Vict. No. 18.	An Act to make further provision for holding Courts of Requests in <i>Hobart Town</i> and <i>Launceston</i> .	The whole.
30 Vict. No. 7.	An Act to abolish the Court of Requests appointed to be held at <i>Hobart Town</i> , and to make provision for the Recovery of Debts and Damages of small Amount.	The whole.