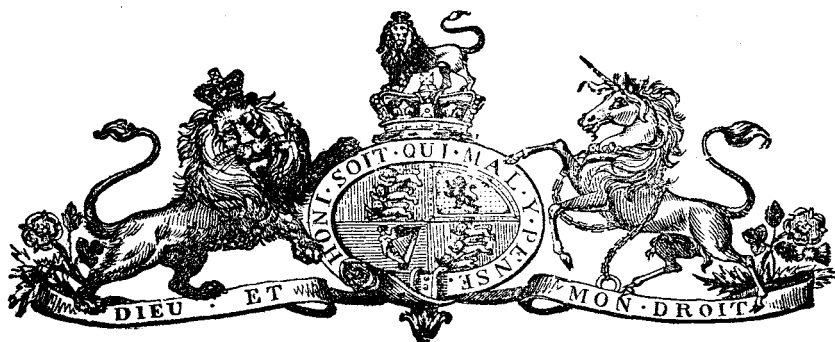


TASMANIA.



1880.

ANNO QUADRAGESIMO-QUARTO

VICTORIÆ REGINÆ,

No. 7.



AN ACT to further amend "The Small Debts Act." A.D. 1880.
[20 October, 1880.]

WHEREAS it is expedient to further amend "The Small Debts Act" in certain particulars: PREAMBLE.

Be it therefore enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Jurisdiction.

1 In order to avoid technical difficulties arising from local Courts to have jurisdiction every Court held under the said Act shall have jurisdiction throughout the Colony, but the plaintiff in any action brought under the said Act shall file his plaint in the Court having jurisdiction to the amount claimed nearest to the place where the defendant or one of the defendants dwelt or carried on business at any time within Six calendar months next before the day on which such plaint shall be filed as aforesaid, or in the Court having jurisdiction to the amount claimed nearest to the place where the cause of action, either wholly or in part, arose: Provided always, that in every action in which the plaintiff sues for the value of any work or labour performed or services rendered, the plaintiff shall be at liberty to file his plaint either in the Court having jurisdiction to the amount claimed nearest to the place where the work or labour was performed or the services rendered, or in the Court having jurisdiction to the amount claimed nearest to the place where the agreement for the performance of such work or labour or services as aforesaid was made.

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Plaintiff to be nonsuited in certain cases.

2 If on the trial of any action brought under the said Act it shall appear to the Court that at the time of the commencement of the action another Court of competent jurisdiction appointed under the said Act was nearer by not less than Five miles to the place where the defendant, or if there are several defendants then to all the places where the several defendants respectively at any time within Six calendar months next before the day on which the plaint in such action was filed, dwelt or carried on business, and also to the place where the cause of action wholly arose, the plaintiff shall be nonsuited unless the defendant or defendants forego his or their right to such nonsuit: Provided that nothing contained in this Section shall interfere with the right hereinbefore conferred on the plaintiff in any action for work or labour performed or for services rendered to file his plaint in the Court having jurisdiction to the amount claimed nearest to the place where the agreement for such work or labour or services was made, or prevent the holder of any dishonored bill of exchange or promissory note or cheque for a sum of not less then Ten Pounds from bringing an action for the recovery thereof in the Supreme Court.

Attachment of Debts.

Examination of judgment debtor as to debts due to him.

3 It shall be lawful for any creditor who has obtained a judgment in any Court held under the said Act to apply to the Court or a Judge for an order asking that the judgment debtor should be orally examined before the Court or a Judge, or such other person as the Court or Judge shall appoint, as to any and what debts are owing to him; and the Court or Judge may make such order for the examination of such judgment debtor, and for the production of any books or documents; and the examination shall be conducted in the same manner as in the case of an oral examination of an opposite party under the said Act.

Judge may order an attachment of debts.

4 It shall be lawful for a Judge, upon the *ex parte* application of such judgment creditor as aforesaid, either before or after such oral examination as aforesaid, and upon affidavit by himself or his attorney, stating that judgment has been recovered and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction to order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor, shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Judge to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt: Provided always, that the Judge may in his discretion refuse to interfere where from the smallness of the amount to be recovered, or of the debt sought to be attached or otherwise, the remedy sought will be worthless or vexatious.

Order for attachment to bind debts.

5 Service of an order that debts due or accruing to the judgment debtor shall be attached or notice thereof to the garnishee in such manner as the Judge shall direct, shall bind such debts in the garnishee's hands.

Proceedings to levy amount due from garnishee to judgment debtor.

6 If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon

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summons then the Judge may order execution to issue, and it may be sued forth accordingly without any further process to levy the amount due from such garnishee towards satisfaction of the judgment debt.

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7 If the garnishee disputes his liability the Court or Judge, instead of making an order that execution shall issue, may order that the judgment creditor shall be at liberty to proceed against the garnishee by plaint in the nature of a *scire facias* calling upon him to show cause why there should not be execution issued against him for the alleged debt, or for the amount due to the judgment debtor if less than the judgment debt, and for costs of suit.

Judge may allow creditor to proceed against garnishee.

8 Whenever it is suggested by the garnishee that the debt sought to be attached belongs to some third person who has a lien or charge upon it, the Court or Judge may order such third person to appear and state the nature of his claim upon such debt; and after hearing the allegation of such third person under such order, and of any other person whom by the same or any subsequent order the Court or Judge may think fit to order to appear, or in case of such third person not appearing upon summons, the Court or Judge may order execution to levy the amount due from the garnishee, or may order the judgment creditor to proceed against the garnishee by plaint in the nature of a *scire facias* as hereinbefore provided for in cases in which the garnishee disputes his liability; and the Court or Judge may bar the claim of such third person, or make such other order as it or he may think fit, upon such terms in all cases with respect to the lien or charge of such third person, and to costs, as it or he shall think just and reasonable.

Proceedings where third person has a lien on debt.

9 Every plaint in the nature of a *scire facias* directed to be filed against a garnishee by the Court or a Judge as aforesaid shall be accompanied by an affidavit by the plaintiff stating that he has recovered judgment against the defendant, and to what amount, and that the same is still wholly unsatisfied or unsatisfied to an amount to be mentioned therein; and that the garnishee is indebted to the judgment debtor, and to what amount; and such affidavit may be sworn before a Commissioner of the Supreme Court or any Justice of the Peace; and every such plaint as aforesaid may be filed in any Court in which the judgment debtor could have filed a plaint to recover the debt sought to be attached.

Plaint against garnishee to be accompanied by affidavit.

10 The summons on such plaint as aforesaid shall be personally served on the garnishee, and when served shall attach in the hands of the garnishee all debts due, owing, or accruing from him to the judgment debtor.

Summons on plaint against garnishee to be served personally.

11 Upon the return day the Court shall determine as to the liability of the garnishee, and as to the party by whom the costs of proceeding by plaint shall be paid, and make an order or orders in accordance with such determination; and the costs of any application for an attachment of debt under this Act, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or Judge.

Courts to determine as to the liability of garnishee, &c.

12 Payment made by or execution levied upon the garnishee under any such proceedings as aforesaid shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although such proceeding may be set aside or the judgment reversed.

Garnishee discharged by payment.

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Plaintiff may lodge with Registrar statement of debts owing to the defendant.

13 Where a plaintiff is desirous that the defendant, if the defendant shall have judgment given against him, shall be orally examined forthwith after the judgment shall have been given as to what debts are due and owing to him, the plaintiff shall, before the cause is called on, lodge with the Registrar a statement in writing of the name, address, and description of the person or persons within the ordinary jurisdiction of the Court whom he considers are debtors to the defendant.

Garnishee may be examined immediately after judgment if present.

14 Where such a statement has been lodged by a plaintiff, the defendant, if he shall have had judgment given against him, may be examined before the Court at the request of the plaintiff as to any debts due and owing or accruing from any person mentioned in the statement to the defendant, and if such person be then present he may be required forthwith to show cause why he should not be ordered to pay into Court for the benefit of the judgment creditor such debts or so much thereof as will satisfy the judgment debt, and the Court may make an order for the payment of such debts or so much thereof as will satisfy the judgment debt; and such order may be enforced in like manner as any order made in any suit in the Court, and where the garnishee pays the money as ordered he shall not be liable for any costs; and an entry of the payment shall be made in the debt attachment book mentioned in the immediately succeeding Section.

Debt attachment book to be kept by Registrar.

15 A debt attachment book shall be kept by the Registrar of every Court held under the said Act, and in such book entry shall be made of the attachment and proceedings thereon with the names, dates, and statements of the amount recovered and otherwise, and copies of any entries made therein may be taken by any person upon application to the Registrar.

Interpleader.

Proceedings on interpleader.

16 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 the said Act, or in respect of the proceeds or value thereof by any person not being the party against whom such process has issued, it shall be lawful for the Court or a Judge upon the application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to order the person making such claim to appear before such Court or Judge and to state the nature and particulars of his claim, and to maintain or relinquish the same, and upon such order to hear the allegations, as well of the person making such claim as of the plaintiff, and in the meantime to stay the proceedings in the action in respect of which such goods have been taken in execution as aforesaid, and finally to adjudicate in a summary manner upon such claims, 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, 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 a Judge thereof, on proof of the fact that such claim has been adjudicated upon in manner aforesaid, may order the party bringing such action to pay the costs of all proceedings taken therein after the service on him of the order calling upon him to appear before the Court or Judge and state the nature and particulars of his claim as aforesaid.

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17 Provided always, that any Judge before whom any person making such claim as aforesaid shall appear in answer to any order calling upon him to appear and state the nature and particulars of his claim may, in his discretion, order such person to make himself defendant in the same or other action, or to proceed to trial on one or more feigned issue or issues either in the Supreme Court in its superior jurisdiction, or in any Court held under this Act, and also to direct which of the parties shall be plaintiff or defendant on such trial.

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Judge may order trial of conflicting claims by action.

Discovery of Documents.

18 Upon the application of either party to any action brought under the said Act in the Supreme Court, upon an affidavit by such party of his belief that any document to the production of which he is entitled for the purpose of discovery or otherwise is in the possession or power of the opposite party, it shall be lawful for the Court or Judge to order that the party against whom such application is made, or if such party is a body corporate then some officer to be named of such body corporate, shall answer on affidavit stating what documents he or they has or have or had in his or their possession or power relating to the matters in dispute, or what he knows as to the custody they or any of them are in, and whether he or they objects or object (and if so on what grounds) to the production of such as are in his or their possession or power; and upon such affidavit being made the Court or Judge shall make such order thereon as shall be just.

Discovery of documents.

Interrogatories.

19 From and after the passing of this Act either party to an action brought under the said Act in the Supreme Court may by order of the Court or a Judge deliver with the plaint or notice of defence, or at any time after the filing thereof, interrogatories in writing upon any matter as to which discovery may be sought, and require the opposite party, or in the case of a body corporate any of the officers of such body corporate, to answer the questions in writing by affidavit, and to return such answers to the Registrar for filing, together with a copy thereof for service on the party interrogating, within a time to be appointed in the order authorising the delivery of such interrogatories; and the Registrar shall, within Twenty-four hours from the time of receiving the same, transmit by messenger or by post such copy of such answers as aforesaid to the party interrogating.

Power to deliver written interrogatories to opposite party.

20 Every application for an order to deliver such interrogatories as aforesaid shall be made upon the affidavit of the party proposing to interrogate, or his attorney or agent, stating that the deponent believes that the party proposing to interrogate will derive material benefit in the action from the discovery which he seeks, and that there is a good cause of action or defence upon the merits.

Affidavit by party proposing to interrogate or his attorney.

21 Where the party served with the order shall object to answer the interrogatories or any of them, he shall file an affidavit stating his grounds for objecting, and that he will be prepared to show cause to the Court at the return day against his being required to answer them.

Party interrogated may file affidavit stating grounds of objection.

22 Where a party required to answer interrogatories shall successfully show cause against an order requiring him to answer them, the Judge may direct the cause to proceed, or adjourn it, as he thinks fit; but if the party objecting shall not show sufficient cause for his

Judge may postpone or order cause to proceed.

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objection, the Judge may adjourn the cause and make an order for the answering of the interrogatories by such time and for the payment of such costs as he may think fit.

Oral examination of parties allowed in certain cases.

23 In case of omission without just cause to answer sufficiently such interrogatories, it shall be lawful for the Court or a Judge at its or his discretion to direct an oral examination upon oath of the interrogated party as to such points as it or he may direct before a Judge, Master, or Commissioner of the Supreme Court, and the Court or Judge may order the attendance of such party before the person appointed to take such examination for the purpose of being orally examined as aforesaid, or the production of any writing or other documents to be mentioned in the order commanding the attendance of such party as aforesaid, and may impose therein such terms as to such examination, and the costs of the application, and of the proceedings thereon and otherwise, as to such Court or Judge shall seem just.

Appeal.

Appeal to the Supreme Court from judgment of other Courts.

24 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 shall also, within Ten days from the delivery of such notice as aforesaid, take out a Judge's Summons calling upon the other party or his attorney or agent to show cause why leave should not be given to appeal: Provided also, that if the party applying for leave to appeal obtains such leave, he shall within Ten days after such leave being granted give security, 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 always, 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 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.

Appeals to be in the form of a special case.

25 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 appellant to the Registrar of the Supreme Court.

Power to commit Defaulting Witnesses.

Power of Court to commit defaulting witnesses.

26 From and after the passing of this Act every Court held under the said Act may commit to prison, as for contempt of Court, for a term not exceeding One month any person who shall be fined under the Thirty-seventh Section of the said Act, and shall make default in payment of the fine imposed on him thereunder.

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Repeal.

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27 Sections Twenty, Seventy, Eighty-five, and Eighty-six of the said Act are hereby repealed. Repeal.

Construction.

28 This Act and the said Act and every Act altering and amending the same shall, save as altered by this Act, be read and construed together as one Act. Construction.

Short Title.

29 This Act may be cited as "The Small Debts Act Amendment Act, 1880." Short title.

SCHEDULE.

(1.)**FORM OF PLAINT AGAINST GARNISHEE.**

No.

[*Title of Court which may be as the case may require*—In the Supreme Court of Tasmania, (Small Debts Act Jurisdiction), or in the Court of Requests, held at or in the Court of General Sessions of the Peace, held at (Small Debts Act Jurisdiction).]

Between *A.B.*, Plaintiff,[*Address and description*]

and

C.D., Defendant,[*Address and description*]

and

E.F., Garnishee,[*Address and description.*]

A.B. sues *E.F.* for that [in the Supreme Court of Tasmania in its Small Debts Act Jurisdiction, or in the Court of Requests held at, &c., or in the Court of General Sessions of the Peace held at, &c.] he obtained a judgment against the above-named Defendant for the sum of _____ for _____ and costs, which judgment remains unsatisfied [or unsatisfied to the amount of £ _____], and the Plaintiff by his affidavit filed herewith alleges that the said *E.F.* is indebted to the Defendant in the sum of _____, and the Plaintiff seeks to have the said debt [or so much thereof as will be required to satisfy the said judgment and the costs thereof] attached for the purpose of satisfying the said judgment and costs.

Dated this _____ day of _____ 18 .

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(2.)

FORM OF AFFIDAVIT TO BE FILED WITH PLAINT AGAINST GARNISHEE.

No. of Plaintiff.

In the [*Title of Court as in Form 1.*]

Between *A.B.*, Plaintiff,
 [*Address and description*]
 and
C.D., Defendant,
 [*Address and description*]
 and
E.F., Garnishee,
 [*Address and description.*]

I *A.B.*, of [*address and description*], the above-named Plaintiff, make oath and say:—

1. That I on the day of 18 recovered a judgment in the [*title of Court*] against the above-named defendant for the sum of for debt and costs.

2. That the said judgment is still wholly unsatisfied [or is still unsatisfied to the sum of £ .]

3. That the above-named *E.F.* is indebted to the above-named Defendant in the sum of for

Sworn &c.

(3.)

SUMMONS IN NATURE OF A *SCIRE FACIAS* UPON A GARNISHEE.

No. of Plaintiff.

In the [*Title of Court as in Form 1.*]

Between *A.B.*, Plaintiff,
 [*Address and description*]
 and
C.D., Defendant,
 [*Address and description*]
 and
E.F., Garnishee,
 [*Address and description.*]

WHEREAS the Plaintiff in the [*title of Court*] on the day of 18 obtained a judgment against *C.D.* of [*name, address, and description*] for the sum of for and costs, which judgment remains unsatisfied: And whereas the Plaintiff having filed an affidavit stating that you are indebted to the said *C.D.*, you are hereby summoned to appear before this Court at on the day of 18 at the hour of in the noon, to show cause why an order should not be made upon you for the payment of the amount of the said judgment or so much thereof as shall equal the amount of the debts due and owing and accruing from you to the said *C.D.*

And take notice that from and after the service of the summons upon you all such debts are attached to answer the said judgment, and that if you shall pay the said debts to the said *C.D.*, or otherwise dispose of them, you will be liable to be committed for contempt.

And further take notice that if you shall pay to the Registrar of the Court the amount of such debts or so much thereof as will satisfy the said judgment debt Five clear days before the day on which you are required to appear you will incur no costs.

Dated this day of 18

Registrar of the Court.

To the Garnishee.

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(4.)

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JUDGMENT AGAINST GARNISHEE.

No. of Plaintiff.

In the [*Title of Court as in Form 1.*]*Small Debts Act Jurisdiction.*

Between *A.B.*, Plaintiff,
 [*Address and description*]
 and
E.F., Defendant,
 [*Address and description.*]

WHEREAS the Plaintiff, at a Court holden at _____ on the
 day of _____ 18____, obtained a judgment against *C.D.*, of _____ for
 the sum of £ _____ for _____ and for costs, and which judgment remains now
 unsatisfied: And whereas the Plaintiff having filed an affidavit stating that the
 Defendant was indebted to the said *C.D.*, the Defendant was summoned to show
 cause why he should not be ordered to pay the amount of the said judgment, or so
 much thereof as should equal the amount of the debts due and owing and accruing
 from him to the said *C.D.*; and the Defendant having failed to appear before the
 Court this day [*or appeared before the Court this day* _____ and having failed
 to show cause why he should not be ordered to pay such debts, *or having shown*
 sufficient cause why he should not be ordered to pay such debts]:

It is ordered that the Plaintiff do recover against the Defendant the sum of
 £ [*here insert the amount of the judgment debt, or so much thereof as the debts*
amount to, when the same are less than the judgment debt,] and £ _____ for costs,
 amounting together to the sum of £ _____ [*or that the Plaintiff do pay the sum of*
 £ _____ for defendant's costs]:

It is ordered that the Defendant [*or Plaintiff*] do pay the same to the Registrar
 of the Court on the _____ day of _____ 18____ [*or where judgment for*
the Plaintiff and the Judge so order by instalments of _____ for every
 days, the first instalment to be paid on the _____ day of _____ 18____].

Given under the seal of the Court this _____ day of _____ 18____.

By the Court,

Registrar of the Court.

(5.)

EXECUTION AGAINST GARNISHEE.

No. of Plaintiff.

No. of Warrant.

In the [*Title of Court as in Form 1.*]

Between *A.B.*, Plaintiff,
 and
C.D., Defendant,
 and
E.F., Garnishee.

WHEREAS on the _____ day of _____ 18____ it was ordered that
E.F. should pay into Court the sum of £ _____ being the [*or so much of the*]
 amount of debts found due from him to *C.D.*, of [*here insert address and description*]
 a judgment debtor of *A.B.*, [*or as is sufficient to satisfy the judgment of the said*
A.B.]: And whereas default has been made in payment according to the said order;
 these are therefore [*the same as in ordinary executions.*]

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(6.)

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NOTICE OF DESIRE TO EXAMINE DEFENDANT AS TO CERTAIN DEBTS DUE TO HIM.

No. of Plaintiff.

For the [*Title of Court as in Form 1.*]Between *A.B.*, Plaintiff,
and
C.D., Defendant,

I, the above-named Plaintiff, am desirous should I succeed in obtaining a judgment against the Defendant of having him examined forthwith after I have obtained such judgment, as to whether or not the following debts are due to him from the following persons; viz.:

<i>E.F.</i> of	for goods sold and delivered.
<i>G.H.</i> of	for work done.

[Signed] *A.B.*, Plaintiff.

To the Registrar of the above Court.

(7.)

ORDER WHEN GARNISHEE PRESENT.

No. of Plaintiff.

In the [*Title of Court as in Form 1.*]Between *A.B.*, Plaintiff,
and
C.D., Defendant.

WHEREAS the Plaintiff has obtained a judgment against the Defendant for the sum of £ [*here insert the amount of judgment*].

Upon examination of the Defendant, and *E.F.* of it is ordered that all debts due and owing or accruing due from the said *E.F.* to the above-named Defendant shall be attached to answer the said judgment debt: And it is further ordered that the said *E.F.* do pay into Court the sum of being the amount of the debt due from him to the above-named Defendant [*or being so much of the debt due from him to the above-named Defendant as is sufficient to satisfy the said judgment debt*] on the day of