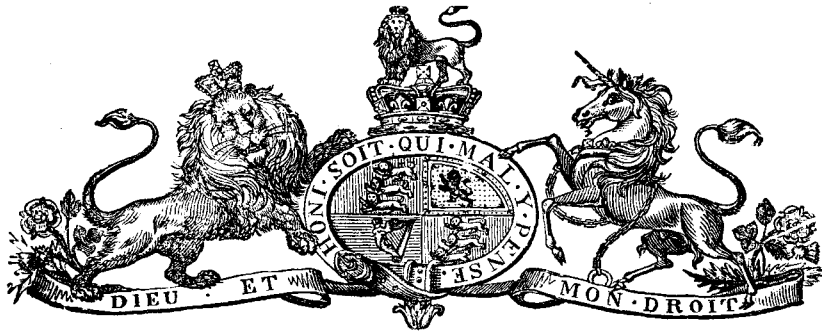


T A S M A N I A.



1860.

ANNO VICESIMO-QUARTO

VICTORIÆ REGINÆ,

No. 4.



AN ACT to facilitate the Remedies on Bills of Exchange, Promissory Notes, and Cheques, by the Prevention of frivolous or fictitious Defences to Actions thereon.

[4 October, 1860.]

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

1 All actions upon Bills of Exchange, Promissory Notes, or Cheques commenced in the Supreme Court within Six months after the same have become due and payable may be by writ of summons in the special form contained in the Schedule (1.) and indorsed as therein mentioned; and it shall be lawful for the plaintiff, on filing an affidavit of personal service of such writ, or an order for leave to proceed, as provided by *The Common Law Procedure Act*, and a copy of the writ of summons and the indorsements thereon, in case the defendant has not obtained leave to appear and appeared to such writ according to the exigency thereof, at once to sign final judgment in the form contained in the Schedule (2.), for any sum not exceeding the sum indorsed on the writ, together with interest, at the rate specified, if any, to the date of the judgment, and a sum for costs to be fixed by the Judges of the Supreme Court, unless the plaintiff claims more than such fixed sum, in which case the costs shall be taxed in the ordinary way, and the plaintiff may upon such judgment issue execution forthwith.

All actions upon Bills of Exchange, &c., may be by writ of summons as form in Schedule.

Plaintiff, on filing affidavit of personal service, may at once sign final judgment as form in Schedule.

Fixed sum for costs may be graduated.

**2** The sum for costs so to be fixed by the Judges may, if the Judges think fit, be graduated in proportion to the amount sought to be recovered in the action; and the Judges shall have power, from time to time, to alter the sum so fixed, as they may deem expedient.

Defendant showing a defence upon the merits to have leave to appear.

**3** A Judge shall, upon application within the period of Twelve days from such service, give leave to appear to such writ, and to defend the action, on the defendant paying into Court the sum indorsed on the writ, or upon affidavits satisfactory to the Judge, which disclose a legal or equitable defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Judge may deem sufficient to support the application, and on such terms as to security or otherwise as to the Judge may seem fit.

Judgment may, under special circumstances, be set aside.

**4** After judgment, the Court or a Judge may, under special circumstances, set aside the judgment, and, if necessary, stay or set aside execution, and may give leave to appear to the writ, and to defend the action, if it appears to be reasonable to the Court or Judge so to do, and on such terms as to the Court or Judge may seem just.

Court or Judge may order Bill to be deposited with Officer.

**5** In any proceedings under this Act it shall be competent to the Court or a Judge to order the Bill, Note, or Cheque sought to be proceeded upon to be forthwith deposited with an Officer of the Court, and further to order that all proceedings be stayed until the plaintiff has given security for the costs thereof.

Remedy for the recovery of expenses of noting non-acceptance of dishonoured Bill.

**6** The holder of every dishonoured Bill of Exchange or Promissory Note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Act for the recovery of the amount of such Bill or Note.

Holder of Bill of Exchange may issue one summons against all or any of the parties to the Bill.

**7** The holder of any Bill of Exchange, Promissory Note, or Cheque may, if he thinks fit, issue one writ of summons, according to this Act, against all or any number of the parties to such Bill, Note, or Cheque, and such writ of summons shall be the commencement of an action or actions against the parties therein named respectively; and all subsequent proceedings against such respective parties shall be in like manner, so far as may be, as if separate writs of summons had been issued.

Ordinary practice applicable to proceedings under this Act.

**8** The practice and mode of procedure for the time being regulating actions at law in other cases, shall, so far as the same are applicable, and not inconsistent with this Act, extend and apply to all proceedings under this Act.

Proviso to Section 29 of *Common Law Procedure Act* not to apply.

**9** The enactments contained in the proviso to Section 29 of *The Common Law Procedure Act* shall not apply to any proceeding under this Act.

Short Title.

**10** In referring to this Act it shall be sufficient to use the expression *The Summary Procedure on Bills of Exchange Act*.

---

SCHEDULE.

---

(1.)

Victoria, by the Grace of GOD, &c.

To C.D., of

WE warn you, that unless within Twelve Days after the Service of this Writ on you, inclusive of the Day of such Service, you obtain Leave from One of the Judges of Our Supreme Court at *Hobart Town*, to appear, and do within that Time appear in Our said Court in an Action at the suit of A.B., the said A.B. may proceed to Judgment and Execution.

Witness, &c.

*Memorandum to be subscribed on the Writ.*

N.B. This Writ is to be served within Six Months from the Date hereof, or if renewed, from the Date of such Renewal, including the Day of such Date, and not afterwards.

*Indorsement to be made on the Writ before Service thereof.*

This Writ was issued by E.F., of \_\_\_\_\_, Attorney for the Plaintiff. Or, This Writ was issued in Person by A.B., who resides at [mention the place of the Plaintiff's Residence.]

*Indorsement.*

The Plaintiff claims £ \_\_\_\_\_ Principal and Interest, [or £ \_\_\_\_\_ balance of Principal and Interest] due to him as the Payee [or Indorsee, &c.] of a Bill of Exchange [or Promissory Note or Cheque] of which the following is a Copy :—

[Here copy Bill of Exchange or Promissory Note or Cheque, and all Indorsements upon it.]

And also \_\_\_\_\_ Shillings for noting [if noting has been paid] and £ \_\_\_\_\_ for Costs. And if the Amount thereof be paid to the Plaintiff or his Attorney within \_\_\_\_\_ Days from the Service hereof, further Proceedings will be stayed.

NOTICE.

Take notice, that if the Defendant do not obtain Leave from One of the Judges of the Supreme Court within Twelve Days after having been served with this Writ, inclusive of the Day of such Service to appear thereto, and do not within such Time cause an Appearance to be entered for him in the said Court, the Plaintiff will be at liberty at any Time after the Expiration of such Twelve Days, to sign final Judgment for any Sum not exceeding the Sum [or Sums] above claimed, and the Sum of £ \_\_\_\_\_ for Costs, and issue Execution for the same.

Leave to appear may be obtained on an Application at the Judges Chambers, *Hobart Town*, supported by Affidavit showing that there is a Defence to the Action on the Merits, or that it is reasonable that the Defendant should be allowed to appear in the Action.

*Indorsement to be made on the Writ after Service thereof.*

This Writ was served by X.Y. on L.M. the Defendant [or One of the Defendants], on Monday, the \_\_\_\_\_ day of \_\_\_\_\_ 1860.

(Signed) X.Y.

---

(2.)

In the Supreme Court of *Tasmania*.

The                      day of                      1860.

[*Day of signing Judgment.*]TASMANIA (to wit). *A. B.* in his own Person [or by                      his Attorney]  
sued out a Writ against *C. D.*, indorsed as follows:—[*Here copy Indorsement of Plaintiff's Claim.*]and the said *C. D.* has not appeared:Therefore it is considered that the said *A. B.* recover against the said *C. D.*  
£                      , together with £                      for Costs of Suit.