No. II.

COURTS OF REQUESTS.

An Act for better regulating Courts of Requests in the Colony of New South Wales. [15*th August*, 1832.]

Preamble.

9 Geo. IV. c. 83.

WHEREAS by an Act of Parliament passed in the ninth year of the reign of His late Majesty King George the Fourth intituled "*An Act to provide for the Administration of Justice in New* "*South Wales and Van Diemen's Land and for the more effectual* "*Government thereof and for other purposes relating thereto*" it is amongst other things enacted That it shall be lawful for the Governor of New South Wales and Van Diemen's Land respectively with the advice of their Legislative Councils by Laws or Ordinances to be from time to time for that purpose made and enacted to institute Courts of Civil Jurisdiction to be called Courts of Requests in different parts of New South Wales and Van Diemen's Land and the Dependencies thereof with full power and authority to hear and determine in a summary way all actions plaints and suits for the payment and recovery of any debts damages or matter not exceeding ten pounds sterling except the matter in question shall relate to the

the title of any lands tenements or hereditaments or to the taking or demanding of any duty payable to His Majesty or any fee of office annual rent or such other matter where right in future may be bound or to any general right or duty and to award costs therein and that the determination and award of such Courts of Requests in any cases where the jurisdiction shall be final shall be carried into execution by attachment and sale of the goods and effects or by corporal arrest of the party or parties against whom such determination or award shall be made and that each of the said Courts of Requests respectively shall be holden by a Commissioner to be appointed by His Majesty with such salary as His Majesty shall think proper to appoint which salary shall be in lieu of all fees profits or emoluments whatsoever in respect of the office of such Commissioner as aforesaid And whereas an Act or Ordinance of the Governor in Council was made and passed in the tenth year of the reign of His said late Majesty intituled "*An Act for instituting Courts of Civil Jurisdiction* "*to be called Courts of Requests in different parts of New South* "*Wales*" And whereas a certain other Act of the Governor and Council was made and passed in the eleventh year of the reign of His said late Majesty George the Fourth intituled "*An Act for the further regulation of Courts of Requests in New South Wales*" And whereas it is expedient to repeal the said recited Acts or Ordinances of the Governor in Council and to make further provision for instituting and regulating Courts of Requests in the said Colony Be it therefore enacted by His Excellency the Governor of New South Wales by and with the advice of the Legislative Council That from and after the passing of this Act the said recited Acts or Ordinances of the Governor in Council shall be and the same are hereby repealed and all actions plaints and suits commenced and now pending in the said Courts respectively shall be proceeded in heard and determined under the provisions of this Act or Ordinance.

Act of Governor in Council 10 Geo. IV. No. 3

and 11 Geo. IV. No. 3.

Repealed.

2. And be it further enacted That Courts of Civil Jurisdiction to be called Courts of Requests shall be holden at and in the following Towns or Places respectively that is to say in the County of Cumberland at the several Towns of Sydney Parramatta Liverpool Penrith Windsor and Campbell-town in the County of Camden at the Towns of Wollongong and of Bong Bong or Berrima in the County of Bathurst in the Town of Bathurst and in the County of Northumberland at the Town of Maitland and the said Courts respectively shall be holden at such times at the said several Towns or Places as the Governor for the time-being shall by Proclamation to be issued for that purpose from time to time direct and appoint.

Courts of Requests to be holden at certain places

and at such times respectively as the Governor shall by Proclamation appoint.

3. And be it further enacted That the said Courts of Requests respectively shall exercise the jurisdiction and be holden by a Commissioner duly appointed by His Majesty as in and by the said recited Act of Parliament is provided and shall have such ministerial or other officers as shall be necessary for the administration of justice in the said Courts respectively and for the execution of the orders and process thereof and the said ministerial and other officers shall from time to time be appointed to and removed from their respective offices in such manner as the Governor of New South Wales for the time-being shall direct.

Such Courts to have such jurisdiction and to be holden by such Commissioner as provided by the said recited Act of Parliament

and such ministerial and other officers as the Governor may appoint.

4. And for the better discovery of the truth and the more speedily obtaining the end of such suits Be it further enacted by the authority aforesaid That it shall and may be lawful for the said Commissioner to examine the plaintiff or plaintiffs defendant or defendants *vivâ voce* on their several corporal oaths and that it shall be lawful for the Commissioner to award costs in all actions tried in the aforesaid Courts.

Plaintiffs and defendants may be examined on oath and Commissioner to award costs.

5.

No cause of action to be split but the Court may decide thereon if plaintiff be satisfied to receive the sum awarded in full of all demands.

5. Provided always That no cause of action which shall exist at any one time and shall amount in the whole to a sum beyond the sum of ten pounds as aforesaid shall be split or divided so as to be made the ground of two or more different actions in order to bring such cases within the jurisdiction created by this Act but if the Commissioner of the said Court shall find that the plaintiff in such cause shall have split his cause of action as aforesaid he shall dismiss the said action with the ordinary costs of a dismiss without prejudice however to the plaintiff's proceeding to sue upon such cause of action in the Supreme Court of the said Colony of New South Wales or in such other manner as he lawfully may Provided also that if such plaintiff shall be satisfied to recover such sum as according to this Act the jurisdiction of the said Court of Requests is made to extend to in full of the whole of such his demand then the said Commissioner shall and may if such plaintiff shall satisfactorily prove his case make and pronounce one decree for such plaintiff for such sum as shall in such case be demanded by the process so as such sum does not exceed the jurisdiction created by this Act and the same shall be expressed in such decree to be and shall be in full discharge of the whole of such demand and shall be a full and complete bar to any other action plaint or suit which may be brought thereon in the same or any other Court whatever.

No jurisdiction in certain cases.

6. And be it further enacted That nothing in this Act shall extend to any debt being the disputed balance of an unsettled account originally exceeding ten pounds nor to any debt for any money or thing won or alleged to have been won at or by means of any horse race cock match wager or any kind of gaming or play or to any debt which there had not been a contract acknowledgment undertaking or promise to pay within three years before the taking out of the summons although the same respectively shall not exceed ten pounds.

Suits prosecuted in the Supreme Court for causes of action under ten pounds.

7. And be it further enacted That if any action or suit shall be commenced in the Supreme Court of New South Wales for any debt or demand other than hereinbefore excepted and not exceeding the sum of ten pounds sterling and recoverable by virtue of this Act in any of the said Courts of Requests respectively or for any debt or demand which might have been recovered in any of the said Courts of Requests within the time hereinbefore limited for suing in the said Courts the plaintiff or plaintiffs in any such action or suit shall not by reason of a verdict for him her or them or otherwise have or be entitled to any costs whatever and if the verdict shall be given for the defendant or defendants in such action or suit and the Judge or Judges before whom the same shall be tried or heard shall think fit to certify that such action or suit ought to have been brought in any of the said Courts of Requests then such defendant or defendants shall have double costs and shall have such remedy for recovering the same as any defendant or defendants may have for his her or their costs in any cases by law.

Servants &c. under age may sue for wages.

8. And be it further enacted That in every case where any wages or any other sum or sums of money whatsoever not exceeding the sum of ten pounds shall be due and owing to any menial servant clerk book-keeper journeyman shopman shopwoman laborer or any other person whatsoever under the age of twenty-one years it shall and may be lawful to and for such servant clerk book-keeper journeyman shopman shopwoman laborer or other person to sue for and recover such debt in the said Court in the same manner as if he or she were of full age.

Officers of Supreme Court not exempt from the jurisdiction.

9. And be it further enacted That no person shall be exempt from the jurisdiction of the said Courts by reason of his being a sworn attorney or solicitor or other officer of the Supreme Court of New South

South Wales or of any other Court whatsoever but that all such attorneys solicitors and other officers shall be subject to the several processes orders judgments and executions of the said Court in the same manner as any other person or persons is or are subject to the same.

Suits in Courts of Requests to be brought in the Court nearest to the defendant's residence and no defendant to be summoned more than thirty miles.

10. And be it further enacted That all actions or suits which shall be brought in any Court of Requests established under this Act or Ordinance for any cause arising after the passing thereof shall be brought in the Court which shall be holden nearest to the place where the defendant in such action or suit shall usually reside and that no such defendant shall be summoned to attend any such Court which shall be holden at any greater distance than thirty miles from his or her usual place of abode unless there shall be two or more joint defendants in such action or suit in which case the plaintiff may bring the same in any Court of Requests which shall be holden within the distance of thirty miles from the usual place of abode of any one of such joint defendants and that as often as any question shall arise respecting any such distance as aforesaid the same shall be determined by the Commissioner of the Court as incident to the cause.

Proviso in case of written promise to pay at a particular place defendant liable to be summoned more than such distance.

11. Provided always however and be it further enacted That in case the defendant or defendants in any such action or suit shall have given an engagement on promise in writing to pay the debt or sum demanded at a particular place therein specified and the same shall be stated in the plaint which shall be filed in such action or suit and in the summons served on the defendant it shall be lawful for the plaintiff to cause the defendant or defendants to be summoned to attend the Court which shall be holden at or nearest to the place so specified in such engagement or promise as aforesaid notwithstanding such Court shall be holden at a greater distance than thirty miles from the usual place of abode of any such defendant and if the plaintiff in such case shall fail at the trial of such action or suit to produce and prove such engagement or promise in form and to the effect as aforesaid such plaintiff shall be non-suited and shall moreover be liable to pay all such reasonable costs and expenses as any such defendant or defendants shall have incurred thereby and the same shall be allowed and recovered in like manner as other costs taxed and allowed by the Commissioner of the said Courts.

Plaintiffs and defendants must attend personally unless unavoidably prevented.

12. And be it further enacted That no person whatever shall be permitted to appear and act in the Court of Requests in any suit for or in behalf of any plaintiff or defendant in such suit unless it shall be first proved to the satisfaction of the Commissioner of such Court that such plaintiff or defendant is prevented by some unavoidable necessity or some good and sufficient cause from attending such Court in person.

Judgments may be executed any where within the Colony.

13. And be it further enacted That the judgments decrees and orders of any of the said Courts may and shall be carried into execution in any district or place whatsoever within the said Colony where the defendant or his goods or chattels may be found or be met with.

Witnesses not attending and persons guilty of contempt how punishable.

14. And be it further enacted That all persons summoned as witnesses to attend any of the said Courts shall attend pursuant to such summons and shall be subject to the like actions and attachments for disobeying such summons as they would be subject to for disobedience to a *subpœna* out of the Supreme Court and also that it shall and may be lawful for any of the said Courts to punish in a summary way by fine not exceeding forty shillings or by imprisonment for any time not exceeding a fortnight any person or persons guilty of any contempt before any such Court.

Witnesses guilty of perjury may be prosecuted for the same.

15. And be it further enacted That if it shall appear to the Commissioner of the said Courts of Requests that any person examined on oath or if a Quaker on affirmation has in any proceeding whatever hereafter to be instituted in or in any way connected with the said Courts of Requests committed wilful and corrupt perjury or falsely affirmed in swearing and affirming in any affidavit or affirmation required to be made before the said Commissioner then and in each and every such case it shall and may be lawful for the said Commissioner to direct a prosecution for perjury to be forthwith instituted against any such person so falsely swearing or affirming as aforesaid in order that he or she may be punished for the same according to law.

After judgment what execution may issue and to whom directed.

16. And be it further enacted That in any case where the said Commissioner shall have made any order or decree for the payment of money it shall and may be lawful for the said Courts at the prayer of the party prosecuting such order or decree to issue a precept signed by the Commissioner in the nature of a writ of *fieri facias* or *capias ad satisfaciendum* which precept shall be directed to a bailiff of any of the said Courts who is hereby authorized and empowered to levy the amount thereof off the goods and effects of the defendant and to arrest the defendant as the case may be Provided however that the said Commissioner is hereby empowered and authorized when thereto required by the plaintiff in any suit wherein such precept or writ may be issued to appoint one or more special bailiff or bailiffs to be named by the said plaintiff to execute such precept or writ upon receiving from such plaintiff full and sufficient security against any improper use or abuse of such precept or writ.

Commissioner may appoint special bailiffs for executing writs in certain cases.

Mode of proceeding in the writ of execution.

17. And be it further enacted by the authority aforesaid That for the purpose of preventing any disputes as to the mode of executing the aforesaid writ or precept of the Commissioner that it be executed in the following manner that is to say that the bailiff is directed in the first instance to levy on the goods and chattels of the defendant and that in the event of such bailiff not being able to find any goods of the defendant and the defendant failing to point out to his notice any goods whereon to levy the amount it shall and may be lawful for the said bailiff to enforce the judgment of the Conrt by the personal arrest and imprisonment of the defendant as hereinafter is mentioned Provided that if previous to the sale of the property so levied upon a disputed claim shall be made to it and such claim be deposed to before a Magistrate by any party the bailiff on payment to him of the costs of the levy by such party shall release it from the execution and proceed to enforce the judgment of the Court by levying upon other goods of the defendant if any can be found or pointed out to him or by arresting the body of the defendant as hereinbefore is directed.

Proviso.

Imprisonment by process of Court not to exceed three months.

18. Provided always and be it further enacted That every such defendant who shall be arrested and taken in execution by process of the said Courts as aforesaid shall and may be imprisoned in any one of His Majesty's Gaols and shall be there detained for a space of time not exceeding three calendar months unless before the expiration thereof the judgment of the said Courts shall have been satisfied and in case such judgment shall not then be satisfied such defendant shall be discharged from such gaol but it shall be lawful for the complainant at any future time within three years after such judgment to take out execution against any estates or effects of such defendant until such judgment shall be fully satisfied.

Liability of future effects.

19. And whereas by an Act or Ordinance made by the Governor with the advice of the Council in the sixth year of the reign of His late Majesty King George the Fourth intituled "*An Act for the Relief of Persons imprisoned for Debt*" authority is given to the Commissioner of the Court of Requests in certain cases to order a reasonable

6 Geo. IV. No. 8.

reasonable allowance to be made for the support of any person imprisoned for debt as therein mentioned but by reason of the difficulty of bringing persons so imprisoned from distant gaols before the said Commissioner as required by the said Act or Ordinance the beneficial intentions thereof have been in many cases defeated for remedy whereof Be it further enacted That whenever any debtor shall be imprisoned in any gaol of the said Colony not being within the Towns of Sydney or Parramatta respectively by the process of the said Courts of Requests it shall be lawful for such debtor to apply by petition in writing to the Bench of Magistrates for the district or place wherein such debtor shall be imprisoned to be brought before such Justices on some day usually appointed for holding their Sessions to have an allowance according to the said Act or Ordinance first giving reasonable notice of such intended application in the manner hereinafter directed and every such petition shall set forth in a brief form the amount of the judgment and the place where the same was given as also the name and usual place of abode of the plaintiff and in what manner such notice shall have been given to him of such intended application for relief and every such notice to such plaintiff shall be in writing and shall set forth the day when and the place where such application shall be intended to be made and such notice shall be either served personally upon the plaintiff or left at his or her usual place of abode or shall be transmitted with a particular and sufficient address to such plaintiff through the General Post eight clear days between the serving and transmitting such notice if such plaintiff shall usually reside within the distance of fifty miles of the place of holding the Court of Sessions before which such debtor shall apply to be brought or sixteen clear days if such plaintiff shall reside at any greater distance and upon the day set forth in such petition or on some subsequent early day to be appointed by the Justices of such Court the said Justices shall and may and they are hereby required to cause such debtor to be brought before them and thereupon to hear and determine the matter of such petition and if they shall deem proper to make such and the like orders for an allowance to such debtor and to proceed in all respects therein as the Commissioner of the Courts of Requests could or might do in case such debtor had been brought before him in conformity with the provisions of the said Act or Ordinance.

Proviso for enabling Benches of Magistrates to make allowances to debtors in distant gaols.

20. And be it further enacted That it shall be lawful for the said Commissioner of the Courts of Requests whenever it shall appear to him that the levy of the full amount of any judgment in the said Courts at one time may be attended with great distress to the defendant and that such distress may be avoided or lessened by enlarging the time for satisfying such judgment to order and direct the amount thereof together with the costs and charges to be levied by instalments at such stated times and in such proportional amounts as shall be expressed in any such order and as shall be reasonable and just Always provided that the time for satisfying any such judgment shall not exceed six months from the time of making such order as aforesaid and in case such defendant shall fail to pay any such instalment agreeably to such order in every such case the plaintiff may proceed to take out execution for the amount of such judgment and the costs and charges thereof then remaining due and unsatisfied in like manner as if no such order as aforesaid had been made.

Commissioner may in certain cases order judgments to be paid by instalments.

21. Provided however That no judgment of any of the said Courts against the goods and chattels of the defendant in any suit or action brought therein shall be executed at any time after sun-set nor before sun-rise and if any officer or person shall execute any such judgment after sun-set or before sun-rise such officer or other person shall be subject and liable to a fine of ten pounds which shall be set

Levy on defendant's goods to be made between sun-rise and sun-set.

by

by the Commissioner of the said Court and enforced by distress and sale of the offender's goods.

Execution not to prejudice landlords.

22. And be it further enacted by the authority aforesaid That no execution awarded against the goods of any party or parties shall extend to or be construed to extend to deprive any landlord or landlords of the power vested in such landlord or landlords by an Act passed in the eighth year of the reign of Her late Majesty Queen Anne intituled "*An Act for the better Security of Rents and to prevent Frauds committed by Tenants*" of recovering one year's rent by virtue of and in pursuance of the said Act.

8th Anne c. 14.

No plaints to be removed.

23. And be it further enacted by the authority aforesaid That from and after the passing of this Act no plaint to be entered in the said Courts as aforesaid nor any order or orders or other proceedings to be had thereon by virtue of this Act shall be removed out of the said Courts by writ of *recordari facias loquelam certiorari* or false judgment or otherwise howsoever but such order or orders so to be made by the Commissioner shall be final and conclusive to all intents and purposes whatsoever.

General issue.

24. And be it further enacted by the authority aforesaid That in case any action or suit shall at any time hereafter be commenced or brought against any member officer or minister of the said Court of Requests or against any other person or persons for or in pusuance or under the authority of this Act that it shall and may be lawful for such person in every such suit or action to plead the general issue and give this Act and the special matter in evidence and the warrant and precept signed by the Commissioner being duly proved in any such suit or action shall be deemed a sufficient proof of the authority of the said Courts of Requests and of all other proceedings in the said Courts previous to the issuing of such warrant or precept and in case the plaintiff or plaintiffs in such action or suit shall have a verdict pass against him or them or be non-suit or discontinue his her or their action or suit the defendant or defendants shall in any of the said cases be allowed double costs.