

No. XV.

COURTS OF REQUESTS. An Act to consolidate and amend the Law relating to Courts of Requests and to extend the Jurisdiction of such Courts in the County of Cumberland. [7th September, 1842.]

Preamble. WHEREAS by an Act of the Imperial Parliament passed in the second and third year of the reign of Her present Majesty Queen Victoria intituled "An Act to amend an Act of the ninth year of King George the Fourth 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 and to continue the same until the thirty-first day of December one thousand eight hundred and forty and thenceforward to the end of the then next Session of Parliament" it was amongst other things enacted that it should be lawful for the local Legislatures of the said respective Colonies by any laws or ordinances to be by them or either of them from time to time for that purpose made in the manner prescribed by the said recited Act and subject to the conditions and provisoies therein contained to make such provision as to them might seem meet for the better Administration of Justice and for defining the constitution of the Courts of Law and Equity and of Juries within the said Colonies respectively and whereas the said Act hath since been continued by Acts passed for that purpose in the third and fourth and fourth and fifth years of the reign of Her present Majesty and whereas the establishment of Courts of Requests in various parts of

Act of Parliament 2 and 3 Victoria c. 73.

3 and 4 Victoria c. 62 and 4 and 5 Victoria c. 44.

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of the said Colony for the recovery of small debts in a summary way has been found by experience to be very useful for such purpose and it is expedient to provide for the erection of similar Courts in other parts of the Colony and for an extension of the Jurisdiction of such Courts in the County of Cumberland in the manner hereinafter mentioned Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That from and after the first day of January one thousand eight hundred and forty-three Courts of Requests shall be holden in and for such counties or districts or other portions of this Colony and its Dependencies and at such places respectively as the Governor shall by Proclamation for that purpose from time to time appoint.

2. And be it enacted That on and from the first day of January Existing Request one thousand eight hundred and forty-three an Act intituled *"An* ^{Acts repealed.} *Act for better regulating Courts of Requests in the Colony of New* ^{3 William IV. No. 2.} *South Wales"* and also an Act intituled *"An Act to amend an Act* ^{4 Victoria No. 25.} *intituled 'An Act for better regulating Courts of Requests in New* *South Wales'"* and also an Act intituled *"An Act to establish* ^{3 Victoria No. 6.} *Courts of Requests at the Towns of Melbourne and Port Macquarie* *in the Colony of New South Wales"* shall be and the same are hereby repealed and all actions plaints and suits which shall have been commenced and shall be still pending in the said Courts respectively when this Act shall come into effect shall be proceeded in heard and determined under the provisions hereof.

3. And be it enacted That every such Court shall be holden ^{Officers of Courts.} by a Commissioner appointed by the Governor and shall have a Registrar and such other ministerial officers for the execution of the judgments orders and process thereof as the Governor shall deem necessary which officers shall from time to time be appointed to and removed from their respective offices in such manner as the Governor shall from time to time direct.

4. And be it enacted That every such Court shall have power ^{Jurisdiction of such Courts.} and authority to hear and determine in a summary way and according to equity and good conscience all actions whatsoever in the nature of actions for the recovery of any debt demand or damage to an amount not exceeding ten pounds and all actions for the recovery of any debt or demand for work or labor done and all actions for goods sold and delivered and all actions for rent or use and occupation or money had and paid on account and all actions upon any bill of exchange or promissory note and all actions for any assessment or award of arbitration and all actions of trespass or trover for taking goods and chattels to an amount in any such case not exceeding ten pounds and to award costs in all such actions either to the plaintiff or defendant Provided however that the said Courts shall not have power to determine any action where the matter in question relates to the title to any real property or (unless by the consent of the Attorney General) to the taking of any duty to Her Majesty or any fee of office or to any annual rent or other such matter where rights in future may be bound or to any general right or duty or to any action brought to recover the disputed balance of an unsettled account originally exceeding the amount of jurisdiction created by this Act 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 play or to any debt which there hath 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 the amount of jurisdiction created by this Act And provided also that any period for which the defendant may be absent from the Colony shall not be considered as any portion of time included in such limitation. ^{Certain exceptions to jurisdictions.}

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Commissioners of
Courts for the
County of Cumber-
land assisted by two
Assessors may decide
cases not exceeding
£30.

5. And be it enacted That it shall be lawful for the Governor from time to time to nominate and appoint Commissioners being Barristers of England or Ireland of three years' standing to preside in Courts of Requests for the County of Cumberland in which Courts besides a power and authority to hear and determine in a summary way all actions as aforesaid actions also to the amount of thirty pounds of the nature authorized by this Act shall be heard and determined Provided always that in all such actions as aforesaid where the amount sued for exceeds the sum of ten pounds the Commissioner shall be assisted by two Assessors to be summoned by the Registrar from time to time for that purpose from amongst the class of special or common jurors resident within the county or district for which his Court shall have been appointed to be holden which Assessors shall be sworn to give a true verdict upon the matter or matters depending between the parties according to the evidence which verdict shall be the verdict of the Court and in case of a difference of opinion between the Assessors the verdict of a majority consisting of one Assessor and the Commissioner shall be equivalent to the verdict of all Provided also that in all cases of such difference of opinion it shall be lawful for the unsuccessful party to apply to the Commissioner for a new trial who shall grant or refuse the same and upon such terms as to payment of costs or otherwise as to him shall seem meet Provided further that whenever the said Commissioner shall see fit if the cause of action is above ten pounds it shall be lawful for him to reserve any point or points for the decision of one or more of the Judges of the Supreme Court and to refer such point or points to the said Judge or Judges in such manner and on such terms as the said Commissioner shall deem proper and the decision of such Judge or Judges shall be final binding and conclusive as regards the matter of such reference.

Summoning of
Assessors.

6. And be it enacted That the Registrars of the Courts of Requests holden in the County of Cumberland shall cause to be summoned one week before the first day of each sitting of the said Courts three persons to attend at the time and place of holding each sitting and every such summons shall be in the form of the rules of practice and proceeding framed under this Act and shall be served personally on each person or by leaving it at his dwelling-house Provided the summoning of Assessors to any such Court shall be by regular rotation from a list made by the Commissioner of such Court for that purpose and in case of the non-attendance of any of them the Commissioner shall have power to nominate Assessors in their stead from the bye-standers Provided however that only three be summoned for each day of the sitting of the Court who shall be each entitled to such a fee for their attendance as may be fixed by the rules of practice and proceeding as aforesaid Provided also that no Assessors shall be summoned whose residence shall be at a greater distance than ten miles from the place where the Court shall be holden And provided further that the Commissioner shall be empowered to impose a fine not exceeding forty shillings for the non-attendance of any person summoned as aforesaid.

Not to interfere with
jurisdiction of
Supreme Court or
power of Judges to
issue writs of *capias*
ad respondendum on
suspicion of the party
being about to
abscond.

7. And whereas parties may at present be arrested by law on mesne process issuing out of the Supreme Court in cases where it shall appear that they are about to abscond or to leave the Colony and where the sum claimed exceeds twenty pounds and it is expedient that this jurisdiction should not be interfered with Be it therefore enacted That in all such cases as aforesaid nothing in this Act shall be construed to impair or affect the jurisdiction of the Supreme Court or the power of any of the Judges thereof respectively to issue any writ or writs of *capias ad respondendum* where there shall appear to their satisfaction an intention to abscond or leave the Colony but it shall be

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be lawful for the plaintiff in every such case (where an arrest of the defendant shall have been allowed under such circumstances as aforesaid) to proceed to judgment in the Supreme Court and to recover his costs in such action although the sum sought to be recovered shall be under thirty pounds any thing in this Act to the contrary notwithstanding.

8. And be it enacted That it shall not be lawful to split or divide any cause of action for the purpose of bringing the same within the jurisdiction of any Commissioner and in case it shall appear to the said Commissioner in any stage of the proceedings that any cause of action has been so split or divided he shall dismiss the action brought thereupon with costs unless the plaintiff shall sign a memorandum to be filed with the Registrar of the Court undertaking to accept such sum of money as the Court is by this Act empowered to adjudge in full of the whole of his demand in respect of the cause of action so split or divided and thereupon the plaintiff shall upon proving his case recover to an amount not exceeding that which the Court is by this Act empowered to adjudge and such judgment shall be a full discharge of all demands of such plaintiff against the defendant or defendants for the same cause of action in all Courts whatsoever.

9. Provided however and be it enacted That in case the defendant or defendants in any action shall appear to have given bills of exchange or promissory notes for the payment of any debt originally above the amount of jurisdiction created by this Act but which bills of exchange or promissory notes are separately security for a sum not exceeding thirty pounds or ten pounds as the case may be each bill or note shall be regarded as forming a distinct and separate contract and may be sued upon and recovered in the same way as any other debt recoverable under this Act.

10. And be it enacted That the said Courts of Requests shall be Courts of Record for the purpose of the judgments of any of the said Courts being set up as a defence in any action in the Supreme Court of New South Wales or of the District of Port Phillip or any Circuit Court and it shall not be incumbent on the party to plead such judgment specially but it shall be lawful for him to plead the general issue and give the judgment in evidence as special matter Provided however that the entry of the judgment on the Commissioner's Cause List shall be deemed and held to be a record of such judgment.

11. And be it enacted That from and after the commencement of this Act if any action shall be brought either in the Supreme Court of New South Wales or for the District of Port Phillip or any Circuit Court in the Colony for any cause for which an action might have been brought in pursuance of this Act before any Court of Requests and the plaintiff in such action shall recover no more than the amount which might have been recovered in any of the Courts of Requests established under this Act then and in such case the plaintiff shall have judgment only for the sum so recovered in such action without any costs whatsoever unless the Judge before whom the same shall be tried shall certify that the cause of action was not within the jurisdiction created by this Act.

12. And be it enacted That in every case where any wages or any other sum or sums of money whatsoever not exceeding the sum of thirty pounds or ten pounds as the case may be respectively recoverable under this Act shall be due and owing to any clerk book-keeper journeyman shopman shopwoman laborer menial servant or any other person whomsoever under the age of twenty-one years it shall and may be lawful to and for such clerk bookkeeper journeyman shopman shopwoman laborer menial servant or other person to sue for

Costs when party sues in Supreme or Circuit Courts.

Servants &c. under age may sue for wages.

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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.

All actions brought in Courts of Requests to be commenced by a demand or plaint in writing.

Summons to be according to form set forth in rules of practice and proceeding.

Mode of service of summons.

No decision unless affidavit of service made as herein.

Suits to be brought in Courts of Requests nearest to the defendant's residence.

Unless defendant has given an undertaking in writing to pay at a particular place

Or unless he leaves the district in which he has contracted a liability for debt or damage.

13. And be it enacted That no person shall be exempt from the jurisdiction of the said Court by reason of his being a sworn attorney or solicitor or other officer of the Supreme Court of New South Wales or any other Court whatsoever but that all such attorneys or 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.

14. And be it enacted That every action to be brought in any Court of Requests shall be commenced by a demand or plaint in writing in which demand the plaintiff shall shortly and in substance set forth his cause of action whether for debt or damages and shall also state the place of abode of himself or of his attorney if he sue by one and the place of abode of the defendant and shall cause such demand or plaint to be filed with the Registrar of the said Court at such times before the sitting of the Court at which the cause is to be tried and shall be prescribed by the rules framed under this Act and such Registrar shall lodge the same in a copy of the summons to be retained in Court the original or duplicate of which shall be served on the defendant and which summons shall be in the form set forth in the rules of practice and proceeding aforesaid or as near thereto as the nature of the case will admit always preserving the substance of the same.

15. And be it enacted That the summons hereinbefore directed to be served on the defendant may be served either by delivering such summons to the wife or servant of the defendant at the defendant's usual place of abode or to any person at such place of abode being or representing himself or herself to be an inmate thereof and in case the messenger or bailiff who shall be employed to serve the summons shall demand admittance into the house where the defendant usually resides and such admittance shall be refused it shall be lawful for him to put such copy into the house or to fix such copy upon the door of the house and the same shall in such case be deemed to be good service upon the defendant.

16. And be it enacted That no judgment be recorded by the Commissioner in any case unless the process in such cause shall by the affidavit of at least one credible witness before the Commissioner of one of the Courts of Requests or a Commissioner of the Supreme Court or before a Magistrate of the Territory be deposed to have been duly served upon the defendant in the manner hereinbefore directed.

17. And be it enacted That in all actions or suits which shall be brought in any Court of Requests established under this Act for any cause arising after the passing thereof shall be brought in the Court which shall be holden in and for the district where the defendant in such action shall usually reside unless there shall be two or more joint defendants in which case the plaintiff may proceed in such manner as is hereinafter directed Provided however that in case the defendant or defendants in any action shall have given an engagement or promise in writing to pay any debt or sum demanded in a particular place therein specified it shall be lawful for the plaintiff to cause the defendant or defendants to be summoned to attend the Court which shall be holden in and for the district so specified in such engagement or promise to pay Provided also that if any party after having in one district contracted a debt or become liable for any damage recoverable in the Courts of Requests established under this Act shall become resident in another previous to the issuing of a summons for the recovery of such debt demand or damage it shall and may be lawful for the plaintiff to summon the defendant to the Court holden for the district

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in which such debt was contracted or liability for damage incurred originally in the same manner as if he had continued a resident of such district And provided further that in case the plaintiff shall be a resident of one district and the cause of action shall have occurred therein and the defendant be the resident of another and such plaintiff shall on due proof of demand and refusal to pay establish his claim to the satisfaction of the Court in which the defendant shall reside he may at the discretion of the Court be allowed double the amount of costs and expenses incurred in the prosecution of his claim.

If plaintiff is obliged to sue defendant out of the district in which plaintiff resides plaintiff may recover double costs in certain cases.

18. And be it enacted That where in case of persons jointly liable all the persons so liable shall not reside within the jurisdiction of the same Commissioner it shall be lawful for the plaintiff or plaintiffs to bring his or their action before any Commissioner within whose jurisdiction any of the persons so jointly liable shall reside by serving such last mentioned person or persons with a summons in the manner hereinbefore directed and such last mentioned person or persons may serve the other person or persons so jointly liable with a notice of such summons in order that he or they may appear and join in defending such action and in case such other person or persons shall not appear and join in defending such action the action may proceed and judgment be obtained and execution issued against the person or persons who shall have been served with the plaintiff's summons notwithstanding the others jointly liable may not have been served with such summonses or joined in such action and no plea in abatement shall be allowed for or advantage taken of the non-joinder of the person or persons so jointly liable Provided always and there is hereby reserved to the person against whom execution may have been issued any right which he may have to demand contribution from the other person or persons jointly liable with him and in case he shall have caused such other person or persons to be personally served with a copy of the plaintiff's summons upon him in such action three days before the day appointed for appearing and answering to the same the judgment or copy thereof certified by the Registrar recovered against him in such action shall be admissible in evidence in any action for contribution afterwards brought by him against the person or persons so personally served by him as aforesaid for the purpose of proving their liability to such contribution but in case he shall not have caused such other person or persons to be personally served as aforesaid then the liability of such person or persons to contribution shall be proved in the ordinary manner Provided also that as often as any question or dispute shall arise as to the district in which the defendant shall be deemed to be a resident the same shall be determined by the Commissioner of the Court as incident to the cause.

Question of residence incident to the cause.

19. And for the better discovery of the truth and the more satisfactorily obtaining the ends of such suits be it enacted That it shall and may be lawful for any Commissioner if he shall in his discretion think it necessary and proper so to do to examine the plaintiff or plaintiffs defendant or defendants *vivā voce* on their several corporal oaths and in case any person who shall be examined on oath or if a Quaker on affirmation by any such Commissioner by virtue of this Act shall commit wilful and corrupt perjury or falsely affirm and shall thereof be duly convicted according to law or shall commit wilful and corrupt perjury in false swearing or affirming in any affidavit or affirmation by this Act required to be made before any Commissioner or Magistrate and be thereof convicted according to law every such person or persons shall incur and suffer the like pains and penalties as any other person or persons convicted of wilful and corrupt perjury and in each and every such case it shall and may be lawful for the Commissioner to commit the party and to direct prosecution for perjury to be

Plaintiffs and defendants may be examined on oath.

Commissioner may order prosecution for perjury.

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be forthwith instituted against any person so falsely swearing or affirming as aforesaid in order that he or she may be prosecuted for the same according to law Provided that no plaintiff or defendant shall be examined as aforesaid if other conclusive evidence can be obtained.

Witnesses not attending and persons guilty of contempt how punishable.

20. 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 for disobeying such summons as they would be subject to for disobedience to a subpoena issuing out of the Supreme Court and that it shall and may be lawful for any Commissioner to punish as for contempt in a summary way by fine not exceeding forty shillings or by imprisonment for any time not exceeding a fortnight any plaintiff defendant or witness neglecting to attend without sufficient cause or refusing to be sworn or to answer any lawful question or any other person or persons guilty of contempt before any such Court.

Execution of process.

21. And be it enacted That in any case where the Commissioner of any of the said Courts shall make any order or decision for the payment of money it shall and may be lawful for the Registrar of the said Court on the application of the party in whose favour such order or decision has been made to issue a decree or precept in the nature of a *fieri facias* or a *capias ad satisfaciendum* which precept shall be directed to any bailiff of the said Courts or his deputies who are hereby authorized and empowered to execute the same in any part of the said Colony in the same manner in all respects as process of a similar nature issuing out of the Supreme Court may be executed by the Sheriff or Deputy Sheriff Provided however that no real or leasehold property be liable to be levied upon under writs of execution out of the aforesaid Courts.

Writs of execution to be in form prescribed by rules of practice.

22. And be it enacted That writs of execution whether against the body or the effects of the defendant as the case may be shall be in the form set forth in the rules of practice as aforesaid or as near thereto as the nature of the case will permit always preserving the substance of the same.

Defendant in certain cases entitled to a writ of execution.

23. And be it enacted That if the person summoned to appear on any answer complaint or demand shall appear according to the said summons and the party complaining shall make default the Court shall adjudge the said plaintiff to be disproved or if he appear and the judgment of the Court be for the defendant the said Court shall at its discretion in either case adjudge to the said defendant his reasonable costs in like manner as for the party complaining and the said defendant shall be entitled to the like process of execution for the same as the plaintiff would be entitled to if he had established his claim against the defendant.

Special writs at peril of plaintiff.

24. And be it enacted That the Registrar of any of the said Courts shall grant a special writ of execution when demanded by the plaintiff in any suit wherein such writ may be issued at the peril of the plaintiff and such Registrar shall appoint one or more special bailiffs to be named by the plaintiff to execute such writ and such plaintiff shall give to the Registrar of the Court from which the writ issues a bond of indemnity (for which bond he shall pay to the Registrar for his own use a fee of two shillings and sixpence) as a full and sufficient security to the defendant against any improper use of such writ of execution whereupon the plaintiff or defendant may as the case may be maintain any action against the party or parties only giving such bond for any wrong or damage done in the execution thereof.

Defendant contracting debts in one district and removing into another liable to execution wherever found.

25. And whereas persons residing in and contracting debts within the limits of one of the said Courts to avoid execution upon judgments recovered against them do remove into the limits of another of the said Courts whereby plaintiffs are prevented from recovering their

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their debts by reason of the defendant not being resident within the jurisdiction in which such judgments have been obtained Be it therefore enacted That any defendant removing from one of the said jurisdictions into another shall not prevent any plaintiff proceeding against such defendant in the jurisdiction where such defendant may happen to be resident at the time of issuing execution and it shall be lawful for the bailiff or his deputy of any Court to take such defendant into custody or to dispose of his goods in like manner as if he had been a resident of the district in which judgment was recovered against him.

26. And be it enacted That if previous to the sale of any property levied upon such property being in the actual or ostensible possession of the defendant a disputed claim shall be made to it and such claim be deposed to before a Commissioner or Magistrate and in such deposition it be averred that the defendant in whose actual or ostensible possession the property so levied upon be found is not the true owner but the bailee thereof such property shall be released from execution and the cost of the levy if any shall be either added to the amount of the costs charged in the execution or defrayed by the plaintiff as the Commissioner shall in his discretion direct Provided however that no absolute or conditional bill of sale or mortgage of chattel property whatever shall protect such property so levied upon from sale unless such bill of sale or deed of mortgage as the case may be produced to the bailiff And provided also that it shall have been executed at least ten days before the summons shall have been served upon the defendant in the case in which the writ of execution issued and unless there be expressed in any such instrument made by way of mortgage a certain time for the payment of the principal sum for which such instrument was given as security and such time does not exceed one year from the date of the instrument itself and at the expiration of that time the holder of such bill of sale or mortgagee of chattel property shall not renew it but either assume possession or proceed to the sale of the property so secured or relinquish all claim to the protection of it from the debts of other creditors Provided further that protection from sale under any circumstances shall only extend to such articles of chattel property as are specifically set forth and enumerated in a schedule to be annexed to such bill of sale or deed of mortgage as the case may be.

27. And be it enacted That all executors administrators and executors *de son tort* shall be liable to sue and to be sued in the said Courts and that judgments which have been obtained by plaintiffs but not satisfied previous to their decease as well as all causes of action shall survive to their executors administrators or other proper representative as the case may be who may sue out execution in his or their names in the same way that the plaintiffs themselves if living might have done.

28. And be it enacted That no person who shall be committed to gaol or prison by order of the said Court of Requests shall be kept or continued in custody on any pretence whatsoever except in the case hereinafter otherwise provided for any larger space or spaces of time from the time of his or her or their commitment to prison than one month Provided however that in order the more effectually to prevent persons summoned for debts or demands to the said Court from fraudulently concealing their money goods or effects that in case upon the summons of any persons for any debt or demand before the said Court information of such fraudulent concealment shall be given such Court shall have power to hear evidence as to the fact and in case it shall be proved to their satisfaction upon the oath of one or more witness or witnesses then and in every such case it shall be lawful

Mode of proceeding
as to disputed property levied upon.

Provision to prevent
fraudulent claims.

Protection from sale
to extend only to
articles enumerated
in schedule to be
annexed to bill of
sale.

Executors administrators and executors
de son tort to be
liable.

Limitation of time of
imprisonment of
debtors.

If any debtor conceal
money or goods the
time of his imprison-
ment shall be
extended.

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lawful for the said Court to extend the aforesaid time of imprisonment of such debtor or defendant to any period in addition thereto not exceeding six months.

Persons taken into custody for more than one execution to be imprisoned the limited time for the first execution and afterwards the limited time on each subsequent execution.

29. Provided always nevertheless and be it enacted That every person who shall be taken in execution under or by virtue of any process issuing from or out of the said Court and who at the time of being taken into custody or during his imprisonment shall have more than one judgment recorded or writ of execution against him in the said Court obtained at the suit of a different *bona fide* creditor from the creditor having defendant under previous execution and not obtained on any bill of exchange or promissory note on which the name of any previous judgment creditor shall appear shall be imprisoned the limited time for the first execution and afterwards for and in respect of each other execution that is to say after the limited time is expired on the first execution the imprisonment shall commence on the second execution and continue the limited time and so on until he shall have been imprisoned the limited time for the first execution and afterwards the limited time for and in respect of each other separate execution to be issued against him in the said Court previously to his being taken into custody or during his imprisonment any law statute or usage to the contrary notwithstanding Provided always that the term of imprisonment on all such executions shall not in the whole exceed the space of three months.

Liability of future effects.

30. Provided also and be it enacted That if in any case the defendant shall be discharged from gaol without satisfying the judgment of the Court it shall be lawful for the complainant at any further 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.

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

31. And be it enacted That it shall and may be lawful for the Commissioners of the said Courts of Requests wherever it shall appear to any of them 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 he shall deem to be reasonable and just Provided always 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 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 and in case the plaintiff shall take out execution after due tender of payment has been made to him according to the time stated in the order of the said Commissioner and on satisfactory proof thereof being given to the Commissioner he shall either wholly forfeit the amount of the judgment or the residue thereof as the case may be.

Levy on defendant's goods to be made between sunrise and sunset.

32. And be it enacted 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 sunset nor before sunrise and if any officer or person shall execute any such judgment after sunset or before sunrise such officer or other person shall be subject and liable to a fine of ten pounds which shall be imposed and if necessary enforced by an order of the Commissioner for the distress and sale of the offender's goods.

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33. And be it enacted 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 and in pursuance of the said Act.

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

35. And be it enacted That no Commissioner appointed under this Act shall proceed to hear and determine such causes as aforesaid until he shall have first taken the following oath before a Judge or Commissioner of the Supreme Court which oath the Judges and Commissioners of the Supreme Court are hereby respectively empowered to administer—

“ I (A. B.) do swear that I will execute the office of Commissioner of the Court of Requests for the District of “ diligently justly and impartially and without favour or “ affection or malice do equal right to all the Queen’s subjects that shall come within my jurisdiction and that I “ will in all things to the best of my skill and power faithfully and diligently execute the duty imposed on me by “ an Act of the Governor and Legislative Council passed “ in the sixth year of the reign of Her Majesty Queen “ Victoria intituled ‘*An Act to consolidate and amend the Law relating to Courts of Requests and to extend the Jurisdiction of such Courts in the County of Cumberland*’ So help me God.” A. B.

36. And be it enacted That in all cases where any defendant shall be charged in execution by any such Court it shall and may be lawful at any time and from time to time for the Commissioner of such Court or of any other Court of Requests in the said Colony or its Dependencies nearest to the place where such defendant shall be imprisoned or for any Police Magistrate or Visiting Justice of the gaol in which such defendant shall be confined on application by or on behalf of such prisoner if it shall appear to be necessary for his support to order the creditor or creditors at whose suit he shall be so imprisoned to pay to him such weekly sum or sums in such manner and in such proportions as by any of them shall be directed and on failure for one whole week from the date of such order of payment thereof as directed such prisoner shall be forthwith discharged from custody at the suit of the creditor or creditors so failing Provided however that notice of such application in writing shall be served personally on the plaintiff or left at his or her usual abode or shall be transmitted with a particular and sufficient address to such plaintiff through the General Post Office in reasonable time to apprise the plaintiff of the time and place where such application shall be intended to be made and that such notice be served on the defendant in all instances at least two days before such application shall be entertained.

37. And be it enacted That every Sheriff and keeper of any prison or any person whomsoever who shall do any thing in obedience to any legal order of any such Court shall be and they are hereby indemnified for whatsoever shall be done by them respectively in

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obedience thereto and if any action whatsoever shall be brought against any such Sheriff keeper or person or against any Commissioner or officer of any such Court for performing any duty of his office in pursuance of this Act such Sheriff Commissioner keeper officer or other person may plead the general issue and give this Act and the special matter in evidence and if the plaintiff be nonsuited or shall discontinue his action or a verdict shall pass against him or judgment be had for the defendant upon demurrer such defendant shall have double costs.

Limitation of actions
against officers of
Courts.

38. And for the protection of persons acting in execution of this Act be it enacted That all actions for any thing done under this Act shall be commenced within six months after the fact was committed and that no writ shall be sued against nor process served upon any Commissioner Registrar Bailiff or other officer of any Court of Requests for any thing done in the execution of or by reason of his office until one calendar month next after notice in writing shall have been delivered to him or left at his usual place of abode by the attorney or agent for the party who intends to sue out such writ as aforesaid in which notice shall be clearly and explicitly contained the cause of action the name and place of abode of the person who is to bring such action and the name and place of abode of the attorney or agent and that a fee of twenty shillings shall be paid for preparing or serving of every such notice and no more.

Fees to be taken
under this Act.

39. And be it enacted That the several fees and sums of money limited and expressed in the rule of practice and proceeding framed for the dispatch of business in the Courts of Requests and no other shall be taken by the several officers of the said Courts therein mentioned for their several and respective services in execution of this Act.

Governor with as-
sistance of Commissi-
oner may make
rules and regulations
for the practice of
Courts of Requests.

40. And be it enacted That it shall and may be lawful for the Governor of the said Colony with the assistance of the Commissioner of the Courts of Requests for the County of Cumberland to make such rules and regulations for the practice of the said Courts of Requests as may from time to time be deemed expedient and necessary.

Penalty on bailiff or
other officer neglect-
ing duty.

41. And be it enacted That if any bailiff or deputy bailiff or other officer of the said Court employed to execute any process of execution shall by connivance wilful neglect or omission cause or suffer the party against whom such execution shall be awarded to escape or abscond or the goods of such party to be rescued or carried away so that such execution shall not have its due effect it shall be lawful for any Commissioner upon complaint and due proof thereof made upon the oath or oaths of one or more credible witness or witnesses to order such bailiff or officer to pay the sum of money for which such execution was awarded or such part thereof as the said Commissioner may think proper to the party complaining and to enforce the payment thereof by the same ways and means as are herein provided for the recovery of debts.

Process of Courts not
to be set aside on
account of verbal or
technical errors only.

42. And be it enacted That no process or proceeding of the said Courts shall be set aside on account of any technical error or mistake and it shall be competent to every Commissioner to decide and determine what is a verbal or technical error or mistake in any action or proceeding and all errors or mistakes which have not a tendency to misinform or mislead the opposite party shall in all cases be deemed merely verbal or technical.

Power of the
Governor to nomi-
nate a substitute.

43. And whereas it may sometimes happen that such Commissioner may by reason of sickness leave or other sufficient cause of absence be unable to attend and hold the said Court Be it therefore enacted That it shall and may be lawful for the Governor of the said Colony for the time being to nominate a fit and proper substitute or *locum tenens* qualified as aforesaid to do and execute the duty of such Commissioner as well in holding such Court as in all other business which

Courts of Requests.

which such Commissioner is by this Act authorized and empowered to do for such time as such illness or leave or other sufficient cause for the absence of such Commissioner shall continue.

44. And be it enacted That if both parties in any cause shall agree between themselves not to try their cause before the Court of Requests but by means of arbitration and shall notify such agreement by a memorandum in writing signed by themselves or their agents the amount of award declared by such arbitration shall be binding on both parties and judgment in accordance therewith be entered in the Commissioner's cause list for the plaintiff or defendant as the case may be.

45. And be it enacted That no person shall be permitted to appear and act in any Court of Requests in any suit on behalf of any plaintiff or defendant brought for any sum not exceeding ten pounds unless it shall be proved to the satisfaction of the Commissioner of the Court that such plaintiff or defendant is prevented by some unavoidable necessity or some good or sufficient cause from conducting his case in person Provided that no costs shall be allowed by the Commissioner in any such case for professional assistance.

46. And whereas by reason of the extension of the amount of jurisdiction created by this Act in the County of Cumberland it is expedient that suitors should be entitled to the aid of the legal profession Be it therefore enacted That in all actions in which the sum sought to be recovered is above ten pounds the plaintiff and defendant may appear and each conduct his case by himself his clerk or servant or employ any person admitted an attorney of the Supreme Court of New South Wales or of the District of Port Phillip respectively to practise as an advocate and attorney before the Commissioner Provided however that no attorney so practising shall demand or take more by way of fees for work by him done than the sums allowed by the rules framed under this Act And provided also that the costs of such professional assistance shall be paid by the party in the cause by whom the Commissioner shall deem it equitable they should be paid.

47. And be it enacted That all attorneys of the Supreme Court intending to practise in any of the said Courts shall make formal application to the Commissioner of the Court for that purpose and shall be duly enrolled as practitioners therein before they shall be admitted to practise.

48. And be it enacted That it shall and may be lawful for any Commissioner if any attorney practising in causes before him shall appear to him either upon such Commissioner's own view in open Court or by examination of others upon oath to have acted in any such cause corruptly contemptuously or in any respect knowingly and wilfully against his duty as an attorney to make an order to remain of record with the Registrar of the Court either suspending such attorney from practising for a given time or prohibiting such attorney for ever from practising in such Court which order shall be binding Provided nevertheless that it shall be lawful for any attorney against whom such order shall be made to appeal to the Judges of the Supreme Court who may by examination on oath examine into the grounds of such order and reverse vary or confirm the same as they shall see reason.