

Courts of Requests.

No. XXXV.

An Act to amend the Laws relating to Courts of Requests in the City of Sydney and County of Cumberland and in the Town of Melbourne and County of Bourke respectively. [2nd October, 1847.]

WHEREAS since the passing of a certain Act passed in the tenth year of the reign of Her Majesty Queen Victoria intituled *"An Act to amend the Law respecting the recovery of Small Debts in all parts of the Colony"* doubts have arisen with respect to the jurisdiction of the several Courts of Requests established in the City of Sydney and in the County of Cumberland and in the Town of Melbourne and the County of Bourke in the District of Port Phillip And whereas it is expedient to exclude Courts of Requests established and to be established in the City of Sydney and County of Cumberland and in the Town of Melbourne and County of Bourke in the District of Port Phillip from the provisions of the said recited Act and to provide that all actions plaints and suits which shall have been commenced and are still pending or which shall hereafter be commenced in any such Courts of Requests shall subject to the provisions hereinafter contained be continued heard and determined under the provisions of a certain Act made and passed in the sixth year of the reign of Her said Majesty 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"* And whereas it is expedient that the Commissioners and other officers of the said several Courts of Requests who have acted under the Acts hereinbefore mentioned or either of them should be protected from all actions suits or other proceedings which may be instituted against them in consequence of their having so acted Be it therefore declared and enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That nothing in the said first recited Act contained shall be deemed or construed to alter or repeal any of the provisions of the said last recited Act passed in the sixth year of the reign of Her said Majesty so far as relates to any Court of Requests established or hereafter to be established in the City of Sydney and County of Cumberland and in the Town of Melbourne and County of Bourke in the District of Port Phillip aforesaid but that all actions plaints and suits which shall have been commenced and are still pending or which shall hereafter be commenced in any such Court of Requests shall from and after the passing of this Act be continued heard and determined under the provisions of the said last recited Act subject nevertheless to the provisions hereinafter contained.

2. Provided always and be it enacted That any Court of Requests now or that may hereafter be established in the City of Sydney and County of Cumberland and in the Town of Melbourne and County of Bourke as aforesaid shall respectively have jurisdiction power and authority to hear and determine in a summary way and according to equity and good conscience all actions whatsoever for the recovery of any debt demand or damage whether liquidated or unliquidated to an amount in any case not exceeding thirty pounds and to award costs in all such actions either to the plaintiff or the defendant according to such rules and regulations

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as have been or may be established in that behalf under the provisions of the said last recited Act Provided however that such Courts shall not have jurisdiction in any case where the matter in question relates to the taking of any duty to Her Majesty or any fee of office or to any annual rent or other matter by which rights in future may be bound or to any general right or duty nor where the debt sought to be recovered is for any money or thing won at or by means of any race match wager raffle or any kind of play or game nor in any case where the debt or claim shall have arisen more than three years before the issuing of the summons unless there hath been in writing an acknowledgement of or promise to pay the same within that period nor in respect of any contract for the sale of goods unless the buyers shall have actually received the same or part thereof or have given something in earnest to bind the bargain or in part payment or some note or memorandum in writing of the bargain shall have been signed by the party sought to be charged by such contract or his agent thereunto lawfully authorized Provided also that in every case of trespass to land if the title to the freehold therein shall *bonâ fide* be in dispute between the parties the said Court shall have no power to adjudicate therein and provided further that any period during which the defendant shall be beyond the jurisdiction of the said Courts shall not be considered as any portion of time in the limitation before created Provided nevertheless that in all cases in which the sum sued for in any such Court of Requests as aforesaid shall exceed ten pounds the same shall be tried before a Commissioner and Assessors in the manner provided for in the said last recited Act.

Previous judgments not to be impeached or invalidated.

3. And be it enacted That no judgment order or proceeding act matter or thing given made or done by any Commissioner or other officer of any of the said Courts of Requests or other person or persons as aforesaid before the passing of this Act shall be impeached or invalidated by reason of the want of or the supposed want of power and authority in such Commissioner to have heard and determined in a summary way actions for the recovery of any debt demand or damage to an amount not exceeding ten pounds but that the same shall be as valid and effectual to all intents and purposes whatsoever as if they had been given made or done after the passing and by virtue of this Act.

Declaratory that concurrent jurisdiction is not given to Courts of Petty Sessions.

4. And whereas doubts have arisen whether a concurrent jurisdiction has not been given to Courts of Petty Sessions in the City of Sydney and County of Cumberland and in the Town of Melbourne and County of Bourke by the said first recited Act with the Courts of Requests established therein and it is expedient to remove the said doubts Be it declared and enacted That from and after the passing of this Act nothing in the said first recited Act passed in the tenth year of the reign of Her said Majesty shall be deemed or construed to confer any jurisdiction in respect of any matter or thing therein contained on any Court of Petty Sessions now or that may hereafter be established in the City of Sydney and County of Cumberland and in the Town of Melbourne and County of Bourke respectively anything in the said first recited Act to the contrary notwithstanding.

Indemnity clause.

5. And be it enacted That no action suit information indictment prosecution or other proceeding shall be commenced or prosecuted in any manner whatsoever against any Commissioner or officer of any of the said Courts of Requests or any person or persons acting under and in obedience to any order or judgment of any of the said Courts for any matter or thing done by him or them under the said recited Acts or either of them by reason of the want of power and authority in such Commissioner to hear and determine in a summary way actions for the recovery of any debt demand or damage to an amount

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amount not exceeding ten pounds and if any action suit information indictment prosecution or proceeding whatsoever shall be or shall have been commenced against any Commissioner or officer or any person or persons acting under or in obedience to any order or judgment of any of the said Courts in respect of such want of summary jurisdiction under the said recited Acts or either of them as aforesaid it shall be lawful for the defendant or defendants to apply to the Supreme Court or to any Judge thereof to stay proceedings and such Court or Judge is hereby required to stay such proceedings accordingly and to make such order in regard to the costs of such application as to the Court or Judge shall seem fit.

6. And be it enacted That no plaint entered in any Court of Requests holden under this or the said last recited Act nor any order or other proceedings had thereon shall be removed out of the said Court by writ of *recordari facias loquelam certiorari* or otherwise howsoever. ^{*Certiorari* taken away.}
