

Interpleader.

Act No. 7, 1901.

INTERPLEADER.

An Act to consolidate the Statutes relating to Interpleader in the Supreme Court. [3rd October, 1901.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

Preliminary.

1. This Act may be cited as the "Interpleader Act, 1901," and is divided into Parts as follows—

PART I.—*Preliminary*—ss. 1-3.

PART II.—*Applications by defendants*—ss. 4-7.

PART III.—*Applications by Sheriff and other officers*—s. 8.

PART IV.—*Supplementary*—ss. 9-11.

Short title and division.

Repeal Schedule.

Interpretation.

2. The Acts mentioned in the Schedule to this Act are, to the extent therein expressed, hereby repealed.

3. In this Act,—

"Court" means the Supreme Court.

"Judge" means a Judge of the Court.

PART II.

Applications by defendants.

4. Upon application made by or on the behalf of any defendant, sued in the Court in any action of assumpsit, debt, detinue, or trover, such application being made after declaration and before plea, by affidavit or otherwise showing—

(a) that such defendant does not claim any interest in the subject-matter of the action ;

(b) that the right thereto is claimed or supposed to belong to some third party who has sued, or is expected to sue for the same ;

(c) that such defendant does not in any manner collude with such third party ; and

(d)

Interpleader proceedings upon application of defendant.
1 and 2 Will. IV, c 58, s. 1.

Interpleader.

(d) that such defendant is ready to bring into Court or to pay or dispose of the subject-matter of the action in such manner as the Court or Judge may order or direct,
the Court or a Judge may—

- (i) by rule or order call upon such third party to appear and to state the nature and particulars of his claim, and to maintain or relinquish his claim; and
- (ii) upon such rule or order hear the allegations as well of such third party as of the plaintiff; and
- (iii) in the meantime stay the proceedings in such action; and, finally,
- (iv) order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more feigned issue or issues; and direct which party shall be plaintiff or defendant on such trial; or, with the consent of the plaintiff and such third party, dispose of the merits of their claims, and determine the same in a summary manner; and
- (v) make such other rules and orders therein as to costs and all other matters as appear just and reasonable.

5. The judgment in any such action or issue as may be directed by the Court or Judge, and the decision of the Court or Judge in a summary manner, shall be final and conclusive against the parties and all persons claiming by, from, or under them.

Judgment and decision to be final. 1 and 2 Will. IV, c. 53, s. 2.

6. If such third party—

- (a) having been duly served with such rule or order does not appear thereupon to maintain or relinquish his claim; or
- (b) neglects or refuses to comply with any rule or order made after his appearance,

Claim of third party may be barred on his non-appearance or non-compliance with order.

Ibid. s. 3.

the Court or Judge may—

- (i) declare such third party and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors or administrators, saving, nevertheless, the right or claim of such third party against the plaintiff; and
- (ii) thereupon make such order between such defendant and the plaintiff as to costs and other matters as appears just and reasonable.

7. (1) If a Judge, upon application to him in the first instance, or in any later stage of the proceedings thinks the matter more fit for the decision of the Court, he may refer the matter to the Court.

Judge may refer matter to Court. *Ibid.* s. 5.

(2) The Court shall thereupon hear and dispose of the matter in the same manner as if the proceeding had originally commenced by rule of Court instead of by order of a Judge.

Interpleader.

PART III.

Applications by Sheriff and other officers.

Interpleader
proceedings upon
application of
Sheriff, &c.

1 and 2 Will. IV,
c. 58, s. 6.

7 Vic. No. 13, s. 7.

8. (1) When any claim to any goods or chattels taken or intended to be taken in execution under any process issued by or under the authority of the Court, or to the proceeds or value thereof, is made by a person not being the party against whom such process has issued, the Court or a Judge, upon the application of the Sheriff or other officer made before or after the return of such process, and before or after any action brought against such Sheriff or officer may—

- (a) by rule or order call before the Court or a Judge the party issuing the process and the person making the claim; and
- (b) thereupon exercise for the adjustment of such claim and the relief and protection of the Sheriff or other officer all or any of the powers and authorities hereinbefore contained, and make such rules, orders, and decisions as appear to be just according to the circumstances of the case.

(2) The costs of all such proceedings shall be in the discretion of the Court or Judge.

PART IV.*Supplementary.*

Appeal from order of
a Judge.

1 and 2 Will. IV, c.
53, s. 4.

Rules, &c., may be
entered of record.

Ibid. s. 7.

9. Every order made in pursuance of this Act by a single Judge not sitting in open Court shall be liable to be rescinded or altered by the Court in like manner as other orders made by a single Judge.

10. (1) All rules, orders, matters and decisions made and done in pursuance of this Act, except only the affidavits filed, may, together with the declaration in the cause, if any, be entered of record with a note in the margin expressing the true date of such entry to the end that the same may be evidence in future times if required, and to secure and enforce the payment of costs directed by any such rule or order.

(2) Every such rule or order so entered shall have the force and effect of a judgment except only as to becoming a charge on any land.

Execution for costs.

Ibid.

11. (1) If any such costs are not paid within fifteen days after notice of the taxation and amount thereof given to the party ordered to pay the same, or his agent or attorney, execution may issue for the same together with the costs of such entry and of the execution.

(2) Every such writ may bear teste on the day of issuing the same whether in or out of term.

(3) The Sheriff or other officer executing any such writ shall be entitled to the same fees and no more as upon a similar writ grounded upon a judgment of the Court.

Act No. 8, 1901.

115

Judgment Creditors' Remedies.

SCHEDULE.

Reference to Act.	Title.	Extent of repeal.
5 Will. IV No. 8..	An Act for adopting and applying certain Acts of Parliament passed in the eleventh year of the reign of His late Majesty and first year of the reign of His present Majesty and in the first and second years of the reign of His present Majesty respectively in the administration of justice in New South Wales in like manner as other laws of England are applied therein.	The whole, in so far as it applies to sections 1 to 7, inclusive, of the Act 1 & 2 Will. IV c. 58.
1 & 2 Will. IV c. 58	An Act to enable Courts of law to give relief against adverse claims made upon persons having no interest in the subject of such claims.	The whole, except section 8.
7 Vic. No. 13 ..	An Act for regulating the appointment and duties of Sheriff in New South Wales.	The unrevoked portion.