

VICTORIA.



ANNO VICESIMO NONO

VICTORIÆ REGINÆ.

No. CCLXXXII.

An Act to provide for the better Administration
of Justice in County Courts.

[20th September, 1865.]

WHEREAS it is expedient to provide for the better administration of justice in County Courts Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows that is to say—

Preamble.

1. The Act mentioned in the first schedule to this Act to the extent to which the same is in and by the said schedule expressed to be repealed shall be and the same is hereby repealed but all proceedings taken before the commencement of this Act shall be continued dealt with and disposed of in like manner as if this Act had not passed and this Act shall come into operation on the first day of July in the year of our Lord One thousand eight hundred and sixty-five.

Repeal of Act.
First Schedule.

2. All pleas of personal actions where the amount claimed shall not exceed two hundred and fifty pounds whether on balance of account or otherwise and all pleas of personal actions where the amount claimed is more than the said sum if both parties or their attorneys by writing under their hands consent and all demands on foot of an unliquidated balance of partnership accounts or of a distributive share under an intestacy or of a specific legacy under a will when the amount claimed shall not exceed the said sum or where a like consent shall have been given may be held in any court established under any law now or hereafter

Jurisdiction of
County Court.

hereafter in force relating to county courts without writ and all such actions shall be heard and determined in a summary way according to the provisions of this Act and of the said Act. Provided that no such court shall have jurisdiction of any action of ejectment or replevin or of any action in which the title to any corporeal or incorporeal hereditaments or to any toll fair market or franchise shall be in question or in which the validity of any devise bequest except such specific legacy as aforesaid or limitation under any will or settlement may be disputed or for any infringement of copyright or letters patent or for any malicious prosecution either of civil or criminal proceedings or for any libel or slander or for seduction or breach of promise of marriage or upon any charter party of affreightment or policy of assurance.

Time for delivery of
defence.
Rule 11.

3. The notice mentioned in the thirty-fifth section of the "*County Courts Statute 1865*" shall be given by the defendant or his attorney to the plaintiff or his attorney by forwarding a copy through the post office to the address of the plaintiff or his attorney on the summons and also to the registrar of such court in such time as that the same should in the ordinary course of postal delivery be received six clear days before the summons on the plaint is returnable and such notice and particulars shall be entered in the registry book of the court

Consent to judgment.
16 Vict. No. 11 s. 34.

4. If the defendant in any action in any such court shall agree with the plaintiff upon the amount in dispute and upon the terms of payment the plaintiff and the defendant or their attorneys may in the presence of a justice sign a consent to entering judgment for the amount and upon the terms agreed and the registrar shall file such consent and enter the judgment of the court accordingly whether the court be at that time sitting or not.

Arbitration.
Ib. s. 50.

5. If the plaintiff and the defendant in any action in any such court shall agree to refer the subject of such action or such subject and all or any other matters in dispute between the parties and shall notify such agreement to the judge of such court in writing signed by themselves or their attorneys naming any two persons as arbitrators such agreement shall be filed by the clerk of such court and the arbitrators shall have power in the event of their disagreement to choose an umpire and the award of such arbitrators or umpire shall unless set aside by such court at the sitting of such court next after such award be binding final and conclusive on both parties and judgment shall be entered for the plaintiff or defendant in accordance therewith. Provided that the judge may enlarge the time for making such award.

Judge may order debt
to be paid by in-
stalments.
Ib. s. 37.

6. The judge of any such court may if he shall think fit order that the amount of any judgment recovered in such court shall be paid by the person liable to pay the same by instalments at such times in such sums and upon such terms as to giving security or otherwise as he may determine. Provided that upon the breach of any such order execution for the amount due at the time of such breach may forthwith issue as if such order had not been made unless such execution shall be stayed as next hereinafter provided.

7. The

7. The judge of any such court in which a judgment shall have been recovered if it shall appear to his satisfaction that the person liable to satisfy such judgment is unable from sickness or other temporary disability to pay the amount of such judgment or of any instalment thereof ordered to be paid as hereinbefore provided may stay the execution of such judgment for such time and upon such terms as to such judge shall seem fit and may from time to time continue such stay of execution until such disability has ceased.

Execution may be stayed in certain cases.

16 Vict. No. 11 s. 60

8. The judge of any such court may at all times whether before or during the trial of any action amend all defects and errors in any proceeding whether there is any thing in writing to amend by or not and whether the defect or error be that of the party applying to amend or not and all such amendments may be made with or without costs and upon such terms as to postponing or adjourning the trial or otherwise as to the judge shall seem fit and all such amendments as may be necessary for the purpose of determining in the existing action the real question in controversy between the parties shall be so made.

Amendment of variances.

16 Vict. No. 19 s. 162

9. Whenever any sum of money shall have been recovered by the judgment of any county court any warrant for enforcing such judgment may be directed to the bailiff of any other county court and shall be executed by him in the same manner as if such judgment had been a judgment of such last-mentioned court.

Certificate of judgment execution thereon.

16 Vict. No. 11 s. 52.

10. No warrant of execution issued out of any county court against the goods of a debtor shall prejudice the title to such goods acquired by any person *bonâ fide* and for valuable consideration before the actual seizure thereof by virtue of such warrant provided that such person had not at the time when he acquired such title notice that such warrant or any other warrant by which the goods of such debtor might be seized had been delivered to and remained unexecuted in the hands of the bailiff of any county court or other officer or person having the execution of such warrant.

Goods acquired *bonâ fide* and without notice protected against writs of execution.

No. 182 s. 9.

11. It shall be lawful for the Governor in Council to appoint a deputy clerk to act at any place although the same shall not be a place at which a county court is holden and such deputy clerk shall enter plaints and other process and issue plaints summonses and all other process and proceedings returnable at such place or places at which a county court is holden as the Governor in Council shall direct and all persons so appointed shall have the same powers and privileges and be subject to the same general provisions duties and penalties for misbehaviour as clerks of county courts appointed under the "*County Courts Statute 1865*" or under this Act.

Governor in Council to appoint deputy clerks or deputy registrars.

12. Such deputy clerk shall within eight days before any plaint summons shall be returnable forward to the clerk of the court at which the same are returnable a list arranged numerically and in order of date of all plaints entered and of all plaint summonses issued by him together with certified copies of such plaint summonses and which plaint summonses shall have written or printed upon them the name of the place

Numerical lists of summonses issued to be forwarded to registrar of courts.

place at which the same are issued and of the place at which the same are returnable and which last named place shall be deemed to be the county court in which the action is depending and such deputy clerk shall also so frequently as shall be directed by the rules of court to be passed as herein provided forward lists and certified copies of all other processes or proceedings entered or issued by him to the said clerk.

Plaints summonses &c. issued to be as effective and judges or court to have same powers &c. as if process issued by clerk or registrar of court.

13. All complaints, summonses and other process and proceedings entered and issued under the last two preceding sections shall be as effective and the judges before whom or the court before which the same are made returnable shall have the same powers, jurisdiction and authority to hear and determine the several actions and proceedings in or with reference to which the same shall have been entered or issued as though such complaints, summonses, process or proceedings had been entered or issued by the clerk of any county court under the provisions of the "*County Courts Statute 1865*" or under this Act.

Registrar of court to enter complaint summons &c. in cause list in the order prescribed by rules.

14. The clerk of the court at which any such complaint summons or other process are made returnable shall enter the same in the cause list for hearing before the court or the judge at the place at which the same are returnable in such order and in such manner as shall be prescribed by the rules to be made as hereinafter provided.

Attorney and Solicitor-General and county court judges to frame rules.

15. The Attorney-General, Solicitor-General and county court judges or any three of them of whom the said Attorney-General or Solicitor-General shall be one may frame general rules for carrying out the preceding provisions in the same manner as general rules are directed to be framed under any law now in force relating to County Courts and such rules when framed shall be of the same force and effect as if the same had been enacted by the legislature.

Act to be part of "*County Courts Statute 1865*"

16. This Act shall be read and construed as part of the "*County Courts Statute 1865*."

SCHEDULES.

FIRST SCHEDULE.

Date of Act.	Title of Act.	Extent of Repeal.
28 Vict. No.	" <i>County Courts Statute 1865</i> "	Section 22.

MELBOURNE:

By Authority: JOHN FERRIS, Government Printer.