

New Zealand.

ANNO TRICESIMO

VICTORIÆ REGINÆ.

No. 7.

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AN ACT to amend the Law for the recovery of Crown Debts and of Public Property. Title. [6th September 1866.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows—

I. The Short Title of this Act shall be “The Crown Debts Act 1866.” Short Title.

II. The present forms and modes of procedure for the recovery of debts damages duties sums of money land or goods due payable and belonging to Her Majesty shall be and the same are hereby abolished and from and after the passing of this Act all such debts damages duties sums of money land or goods shall be sued for and recovered by the means and in the manner hereinafter mentioned Provided that this Act shall not apply to a suit or other proceeding commenced before the passing of this Act. Mode of recovering Crown debts.

III. When any fine shall be imposed upon any person otherwise than by a judgment or conviction of some Court or Justice some Judge of the Court by which or the Justice by whom such fine shall be imposed if the same be not immediately paid shall by writing under his hand in the form contained in the first Schedule to this Act or to the like effect certify that fact together with the name and place of abode or business of the person on whom such fine shall have been so imposed and the cause and amount of such fine and shall deliver or send by the post such writing to the Attorney-General or to such person as is hereinafter mentioned and upon receipt thereof the Attorney-General or such person as is hereinafter mentioned shall cause a final judgment to be signed in the Supreme Court for the Fines to be recoverable by judgment.

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amount of such fine and five pounds for costs and every such judgment may be in the form contained in the second Schedule to this Act or to the like effect and no writ of error or appeal shall lie or be had therefrom.

Debts due by recognizance to be recovered by judgment.

IV. When any person shall have entered into any recognizance to Her Majesty and such recognizance shall be forfeited it shall be lawful for some Judge of the Court before which or for the Justice before whom the same shall be forfeited to cause such recognizance to be estreated and every such estreat shall be effected as follows (that is to say) such Judge or Justice shall by writing under his hand in the form contained in the third Schedule to this Act or to the like effect certify that such forfeiture has taken place and shall deliver or send by the post the said recognizance and writing to the Attorney-General or such person as is hereinafter mentioned and upon receipt thereof the Attorney-General or such person as is hereinafter mentioned shall cause a final judgment to be signed in the Supreme Court for the amount of such recognizance and five pounds for costs and every such judgment may be in the form contained in the fourth Schedule to this Act or to the like effect and no writ of error or appeal shall lie or be had therefrom.

Such judgments may be vacated by Court or Judge.

V. When any final judgment shall have been signed under the provisions hereinbefore contained it shall be lawful for the Supreme Court or any Judge thereof whether execution shall have been issued upon such judgment or not to order satisfaction to be entered upon such judgment. Provided always that no such order shall be so made except upon a rule *nisi* or summons calling upon the Attorney-General to show cause nor unless it shall be proved by affidavit to the satisfaction of such Court or Judge either that the said judgment has been satisfied or that according to equity and good conscience and the real merits and justice of the case the defendant ought not to be required to satisfy the same.

Other debts and duties to be recovered by Crown suit.

VI. When any debt duty or sum of money shall be due to Her Majesty otherwise than upon or by virtue of any recognizance it shall be lawful for Her Majesty to cause to be sued out of the Supreme Court a certain writ to be called a writ of *capias ad respondendum* and every such writ may be in the form contained in the fifth Schedule to this Act or to the like effect and shall be executed by the sheriff or other officer or person to whom the same may be directed and shall be deemed and taken to be the commencement of a Crown suit. Provided always that it shall be lawful for Her Majesty to order the sheriff or other officer or person to whom such writ may be directed not to arrest any one or more of the defendants but to serve a copy thereof only on such defendant or defendants which order shall be duly obeyed by such sheriff or other officer or person and such service shall be of the same force and effect as the service of a writ of summons in any personal action between subject and subject and no such writ shall be issued except upon a fiat under the hand of the Attorney-General in the form contained in the sixth Schedule to this Act or to the like effect stating the mode in which the same (so far as regards the execution or service thereof) is to be indorsed and before signing any such fiat the said Attorney-General shall by due inquiry in that behalf satisfy himself that such indorsement is reasonable and proper under the circumstances of the case.

Bail bonds in Crown suits assignable.

VII. If any person shall be arrested under or by virtue of any such writ as last aforesaid and the sheriff or other officer or person to whom the same may be directed shall take bail from such person such sheriff or other officer or person at the request of the Attorney-General shall

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assign to Her Majesty the bail bond taken from such person by indorsing and attesting the same under his hand and seal in the presence of two or more credible witnesses and if such bail bond be forfeited such process shall thereupon issue as on bonds originally made to Her Majesty.

VIII. All such steps and proceedings as are mentioned in or upon any writ issued under this Act or in any notice issued according to the course and practice for the time being of the Supreme Court shall and may *mutatis mutandis* be had and taken in the same manner as if the same were expressly directed by this Act.

Proceedings indorsed on writ may be taken.

IX. In lieu of the declaration in a civil suit between subject and subject an information shall be filed or delivered as the case may be by the Attorney-General for and on behalf of Her Majesty and in such information the cause of complaint shall be set forth in the same manner and form as nearly as may be as in any such declaration as aforesaid and every such information shall commence and conclude in the form contained in the seventh Schedule to this Act or to the like effect.

Form of information.

X. The time form and manner of process and proceeding in any Crown suit except where it is otherwise provided by this Act shall be the same as nearly as may be as by any law or rule of practice or pleading now or hereafter to be in force in the Supreme Court is or shall be directed in any civil action between subject and subject.

Proceedings to be the same as in actions,

XI. When any person against whom any proceedings under this Act shall be instituted in the Supreme Court shall be disabled by poverty from making defence thereto it shall be competent for such person to petition the Court on affidavit verifying such disability and the Court or any Judge thereof on being satisfied of the truth of the facts alleged in such affidavit may assign counsel and attorney to such person and the counsel and attorney so assigned are hereby required to act for such person without fee.

Persons may defend in forma pauperis.

XII. A motion for a new trial or to enter a verdict or in arrest of judgment or for judgment *non obstante veredicto* shall be allowed and be made and granted in the same manner and upon the same terms in all respects as by any law or rule of practice now or hereafter to be in force is or shall be directed in any civil action between subject and subject.

New trial &c.

XIII. The possession of land belonging to Her Majesty shall and may be recovered and obtained by proceedings in an action for possession of land in the same form as nearly as may be as in an action to recover possession of land between subject and subject and the possession of goods or damages for detaining taking damaging or converting them or for trespassing upon land shall and may be recovered in the same manner as is hereinbefore directed with respect to any debt duty or sum of money due to Her Majesty otherwise than upon or by virtue of a recognizance.

Suits relating to land or goods,

XIV. In all Crown suits in the nature of actions to recover possession of lands or goods such writs of execution as by any law or rule of practice now or hereafter to be in force are or can be issued in any civil action of the same nature between subject and subject for the recovery of land goods or writings shall and may be issued on behalf of Her Majesty and where such writ or any part of any such writ is or may be a *feri facias* such part may in future consist of the writ next hereinafter mentioned.

Execution in action for detention of goods or to recover possession of land.

XV. All sums recovered by Her Majesty by any judgment under this Act shall and may be levied and recovered by virtue of a writ to be called a *feri capias* and every such last-mentioned writ may be in the

Execution in other cases,

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form contained in the eighth Schedule to this Act or to the like effect and Her Majesty may levy the poundage fees and expenses of execution over and above the sum recovered and shall have all such rights powers and remedies for obtaining and compelling satisfaction of any judgment as by any law now or hereafter to be in force are or shall be available in a civil action between subject and subject.

Persons may be appointed in each judicial district to act for Attorney-General in signing judgments under the third and fourth sections of this Act.

XVI. It shall be lawful for the Governor to appoint for each Judicial District in the Colony a person being a barrister or solicitor of the Supreme Court to act in the judicial district for which such person shall be appointed in the name and on behalf of the Attorney-General in all such matters as by the third and fourth sections of this Act are to be done by such Attorney-General and on any such appointment being made and notified in the *New Zealand Gazette* all certificates made under the third section of this Act of all fines imposed within the judicial district for which any such person shall be appointed shall be sent to him instead of to the Attorney-General on behalf of the Attorney-General and he shall cause the final judgment to be signed thereon in the form mentioned in the third section of this Act and all recognizances forfeited within the judicial district for which any such person shall be appointed shall together with the certificate mentioned in the fourth section of this Act be sent to him and he shall cause the final judgment to be signed thereon on behalf of the Attorney-General in the form mentioned in the fourth section of this Act.

Lien on real estate of debtor.

XVII. A memorandum of the commencement of any proceedings under this Act in the form contained in the ninth Schedule to this Act under the hand of the Attorney-General may be filed with the Registrar of Deeds and Registrar of Land in any one or more districts of the Colony without any map or plan thereon the particulars whereof shall be by such registrar entered in a book to be called "The Registry of Crown Debts" and every such memorandum so filed shall create a lien upon and have precedence of all unregistered claims against any land of the defendant or beneficial interest of the defendant in land in the district of the registrar in whose office such memorandum shall be so filed for the sum which shall be recovered in the course of such proceedings and the costs of such proceedings.

Lien on personal estate of debtor.

XVIII. A memorandum of the commencement of any proceedings under this Act in the form contained in the tenth Schedule to this Act under the hand of the Attorney-General may be filed in the office of the Registrar of the Supreme Court in any one or more judicial district or districts of the Colony and every memorandum so filed shall create a lien upon and have precedence over all other debts against the personal estate of the defendant within the judicial district in the office of whose registrar such memorandum shall be filed for the sum which shall be recovered and the costs of such proceedings.

Title of the cause and costs of suit.

XIX. In all pleadings and proceedings under this Act and in all affidavits notices consents summonses and rules to be used therein the title of the cause or proceedings shall be stated to be "The Queen against" the person sued (naming him) and no other title whatsoever shall be necessary and Her Majesty shall be entitled to full costs of suit in all cases in which a plaintiff in any civil action between subject and subject would be entitled thereto.

Judges to make rules of practice.

XX. It shall and may be lawful for the Judges of the Supreme Court or any two of them to make such rules as they may think necessary for regulating and conducting the practice and mode of procedure under this Act in all instances in which the practice and mode of procedure in civil actions between subject and subject is or shall be inapplicable.

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should cause an appearance to be entered and special bail to be put in for them in our Supreme Court at _____ at our suit in this action and that in default of their so doing such proceedings may be had and taken as are mentioned in the warning indorsed hereon And we do further command you that immediately after the execution hereof you do return this writ to our said Court together with the manner in which you shall have executed the same and the day of the execution hereof Witness _____ of our Supreme Court at _____ the _____ day _____ in the year of our Lord one thousand eight hundred and _____

(To be indorsed.)

A WARNING TO DEFENDANTS.

If a defendant (whether he has given bail or made deposit or not) shall omit to enter an appearance as required by the within writ Her Majesty may proceed to judgment and execution.

If a defendant having given bail on the arrest shall omit to put in special bail as required by the within writ Her Majesty may proceed against the sheriff or on the bail bond.

NOTICE TO THE SHERIFF.

Bail for £ _____ by order of the Attorney-General and if that amount together with £ _____ for costs be paid at _____ within four days from the service hereof further proceedings will be stayed Deliver a copy to but do not arrest the within-named C. D.

The within-named A. B. was arrested by me on _____ the _____ day of _____ 18 _____ and the within-named E. F. was arrested by me on _____ the _____ day of _____ 18 _____ and the within-named C. D. was personally served by me on _____ the _____ day of _____ 18 _____.

THE SIXTH SCHEDULE.

In the Supreme Court.

The Queen *against* A. B. of &c. and C. D. of &c.

LET a writ of *capias ad respondendum* issue in this suit to hold to bail for _____ pounds with an indorsement thereon [*not*] to arrest the above-named A. B. [*or as the case may be.*]

Dated this _____ day of _____

Attorney-General.

THE SEVENTH SCHEDULE.

In the Supreme Court.

The _____ day of _____ in the year of our Lord

(to wit)

Attorney-General of our Lady the Queen for and on behalf of our said Lady the Queen sues E. F. and G. H. who have been arrested to answer our said Lady the Queen by a writ issued on the _____ day of _____

And also for &c. [*proceed as usual with the second and subsequent counts if any*] And our said Lady the Queen claims [_____ pounds or if the suit is to recover specific goods] a return of the said goods or their value and _____ pounds for their detention.

THE EIGHTH SCHEDULE.

No.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith To the sheriff of the _____ Greeting We command you that you take C. D. if he shall be found in your bailiwick and him safely keep so that you may have his body before our Supreme Court at _____ immediately after the execution hereof to satisfy us _____ pounds which lately in our said Court we recovered against the said C. D. whereof the said C. D. is convicted together with the sum of _____ for interest upon the said sum at the rate of eight pounds for every one hundred pounds by the year until this day And we do further command you that of the real and personal estate of the said C. D. in your bailiwick you cause to be made the said sums and have the same before our said Court immediately after the execution hereof to be rendered to us and in what you shall have executed this writ make appear to our said Court immediately after the execution hereof and have there then this writ Witness _____ at _____ this _____ day of _____ in the year of our Lord one thousand eight hundred and _____

(To be indorsed.)

Levy [the whole or £ _____] besides sheriff's poundage officers' fees and other incidental expenses.

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When the full amount is levied the defendant may be discharged without further authority but if the full amount is not levied the defendant can only be discharged by the Court or a Judge or by the written authority of the Attorney-General.

The defendant is a and resides at

THE NINTH SCHEDULE.

The Queen against
 PROCEEDINGS to recover the sum of £ (or "certain goods or the sum of £ ")
 have been commenced in the Supreme Court of New Zealand at against
 of the defendant above named.

A. B.
 Attorney-General.

THE TENTH SCHEDULE.

The Queen against
 PROCEEDINGS to recover the sum of £ (or "certain goods or the sum of £ ")
 have been commenced against of the defendant above named.

A. B.
 Attorney-General.

WELLINGTON, NEW ZEALAND :

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