Legislative Council.

21° Victoriæ, 1858.

A BILL

For establishing District Courts and for enabling the Judges thereof to act as Chairmen of Quarter Sessions.

WHEREAS it is expedient to establish District Courts in various parts of the Colony and to enable the Judges thereof to act as Chairmen of Courts of General Sessions of the Peace 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 New South Wales in Parliament assembled and by the authority of the same as follows :— Preamble.

1. In construing this Act every word importing the singular number shall when necessary be taken to comprehend several persons or things as well as one person or thing and every word importing the masculine gender may be applied to a female as well as a male and the term "landlord" shall be understood to signify the person entitled to the immediate reversion of the premises or if the property be held in joint tenancy coparcenary or tenancy in common shall be understood to signify any one of the persons entitled to such reversion and the words "Quarter "Sessions" shall include General Sessions and the word "suit" may be applied to any action or other proceeding. Interpretation Clause.

2. It shall be lawful for the Governor with the advice of the Executive Council from time to time to order by Proclamation in the *Government Gazette* that Courts to be called District Courts shall be holden at such towns and places as he shall think fit and to alter the place for holding any such Court or to order that the holding of any such Court be discontinued. Appointment of District Courts.

3. It shall be lawful for the Governor with the advice aforesaid to divide the Colony into Districts for the purposes of this Act and from time to time to alter such Districts as to the Governor with the advice aforesaid shall seem fit Provided always that no alteration in the boundaries or limits of any District shall take effect until after three months from the notification thereof in the *Government Gazette*. Creation of Districts.

4. Every District Court shall be a Court of Record and shall have jurisdiction as hereinafter provided. District Courts to be Courts of Record.

Limits of jurisdiction generally, in civil matters.

5. The several Courts appointed to be held at towns and places within such Districts respectively shall have jurisdiction when the defendant or one of two or more defendants as the case may be shall be resident within the Districts for which such Courts respectively shall be ordered to be held Provided that in respect of claims for amounts not exceeding ten pounds and at present within the jurisdiction of Courts of Petty Sessions under the Act of Council tenth Victoria number ten no defendant shall be compelled to appear so long as such jurisdiction as last aforesaid shall continue at a District Court held under this Act at a place not included within the Petty Sessions District in which he shall be resident. 5 10

Exceptions where debt expressly made payable in District other than that of Defendant's own residence or where Defendant removes after contracting liability.

6. Provided always that in case the defendant in any action shall have given an engagement or promise in writing to pay any debt or sum at a particular place specified the plaintiff may if he shall think fit cause such defendant to be summoned to the Court within the jurisdiction of which the place so specified shall be Provided also that if any party after having in one place contracted a debt or become liable for any damages recoverable in any District Court shall by removal become resident within the jurisdiction of any other such Court previously to the issuing of a summons for the recovery of such debt or damages it shall be lawful for the plaintiff if he shall think fit to cause such defendant to be summoned to the Court holden for the District within the jurisdiction of which such debt or liability for damages arose. 15 20

In personal actions.

7. All pleas of personal actions wherein the amount claimed is not more than one hundred pounds whether on balance of account or after an admitted set-off or otherwise may be holden in the Courts established under this Act Provided always that no such Court shall have cognizance of any action in which the title to land or the validity of any devise bequest or limitation under any will or settlement shall be in question or shall have jurisdiction in any action for seduction or criminal conversation Provided nevertheless that if such title as aforesaid shall incidentally come in question in any action the Court shall have power to decide the claim which it is the immediate object of the action to enforce but the judgment of the Court shall not be evidence of title between the parties or their privies in any other action in that Court or in any proceedings in any other Court. 25 30 35

In cases of partnership intestacy and legacy.

8. The jurisdiction of the District Courts under this Act shall extend to the recovery of any demand not exceeding the sum of one hundred pounds which is the whole or part of the unliquidated balance of a partnership account or the amount or part of the amount of the distributive share under an intestacy or of any legacy under a will. 40

9.

9. If both parties agree by a memorandum signed by them or by their attorneys that the District Court holden at any particular place shall have power to try any action which might be brought in the Supreme Court the said District Court shall have jurisdiction to try such action Provided that such memorandum shall state that the parties signing the same knew that such action was not triable within the jurisdiction of the District Court without such consent and provided that such memorandum shall be filed with the Registrar of the said Court at the time of filing the plaint. Consent jurisdiction.

10. In any proceedings under this Act by a man and his wife for an injury done to the wife in respect of which she is necessarily joined as a co-plaintiff or complainant it shall be lawful for the husband to add thereto claims in his own right provided that in the case of the death of either of them such suit or complaint so far only as relates to the causes of action if any which do not survive shall abate. Proceedings by husband and wife.

11. Two or more causes of action provided they be by and against the same parties and in the same rights may be joined in the same suit in a District Court but the Court shall have power to prevent the trial of different causes of action together if such trial would in the opinion of the Court be inexpedient or inconvenient and in such case may order separate trials to be had. Joinder of causes of action.

12. In case any defendant shall have given two or more bills of exchange promissory notes bonds or other securities for any debt or sum originally exceeding the amount of ten pounds or one hundred pounds respectively it shall be lawful for the plaintiff to sue upon each of such securities not exceeding in amount one hundred pounds respectively as forming a distinct cause of action. Splitting debt by giving bills, &c.

13. It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said Courts, but any plaintiff having a cause of action for more than the amount for which a plaint might be entered under this Act may abandon the excess (which abandonment shall be stated upon the plaint) and thereupon the plaintiff shall on proving his case recover to an amount not exceeding one hundred pounds and the judgment of the Court upon such plaint shall be in full discharge of all demands in respect of such cause of action and entry of the judgment of the Court shall be made accordingly. Splitting demands.

14. It shall be lawful for any Executor or Administrator to sue and be sued in any District Court and judgment and execution shall be such as in the like case would be given or issued in the Supreme Court. Executors.

15.

Infants.

15. It shall be lawful for any person not of the age of twenty-one years to sue in any District Court in his own name for the recovery of any sum of money not exceeding one hundred pounds which may be due to him for wages or piece-work or for work or services as a clerk servant mechanic or laborer in the same manner as if he were of full age. 5

Actions by Physicians &c.

16. Any doctor of medicine or other legally qualified practitioner in medicine may sue for the recovery of any fees or other remuneration as such practitioner in like manner as any debt or other demand may be recovered by any surgeon or other person under this Act.

One of several persons jointly liable may be sued.

17. Where any plaintiff shall have any demand recoverable under this Act against two or more persons jointly answerable it shall be sufficient if any one or more of such persons be served with process and judgment may be obtained and execution issued against the person or persons so served notwithstanding that others jointly liable may not have been served or sued or may not be within the jurisdiction of the Court and every such person 15 against whom judgment shall have been obtained under this Act and who shall have satisfied such judgment shall be entitled to demand and recover in the District Court under this Act contribution from any other person jointly liable with him. 10

Privilege.

18. No privilege shall be allowed to any Attorney Solicitor 20 or other person to exempt him from the provisions of this Act.

Possession of tenements may be recovered in District Courts by landlords where terms have expired or been determined.

19. When the term or interest of the tenant of any land held by him for any term of years or for any less estate or interest either with or without being liable to the payment of any rent shall have expired by effluxion of time or shall have been determined by notice to quit or 25 demand of possession and such tenant or any person claiming under him shall actually occupy such land or any part thereof the landlord may enter a plaint at his option either against such tenant or against such person so neglecting or refusing in the District Court nearest to the premises for the recovery of the same and thereupon a summons shall issue 30 to such tenant or such person so neglecting or refusing and if the defendant shall not at the time named in the summons show good cause to the contrary then on proof of his still neglecting or refusing to deliver up possession of the premises and of the holding and of the expiration or other determination of the tenancy with the time and manner thereof and 35 of the service of the summons if the defendant shall not appear thereto the Judge of the Court may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff either forthwith or on or before such day as the Judge shall think fit to name and if such order be not obeyed the Registrar of the Court whether such order can be 40 proved

proved to have been served or not shall at the instance of the plaintiff issue a warrant authorizing and requiring the bailiff of the Court to give possession of such premises to the plaintiff.

In plaint for recovery of possession plaintiff may claim for rent and mesne profits.

20. In any such plaint against a tenant as in the last preceding section is specified the plaintiff may add a claim for rent or mesne profits or both down to the day appointed for the hearing or to any preceding day named in the plaint so as the same shall not exceed one hundred pounds.

Possession of small tenements may be recovered in District Court by landlords for non-payment of rent.

21. When the rent of any corporeal hereditaments where neither the value of the premises nor the rent payable in respect thereof exceeds one hundred pounds by the year shall for one-half year be in arrear and the landlord shall have right by law to re-enter for the non-payment thereof he may without any formal demand or re-entry enter a plaint in the District Court nearest to the premises for the recovery of the premises and thereupon a summons shall issue to the tenant, the service whereof shall stand in lieu of a demand and re-entry and if the tenant shall five clear days before the return day of such summons pay into Court all the rent in arrear and the costs the said action shall cease but if he shall not make such payment and shall not at the time named in the summons show good cause why the premises should not be recovered then on proof of the yearly value and rent of the premises and of the fact that one half-year's rent was in arrear before the plaint was entered and that no sufficient distress was then to be found on the premises to countervail such arrear and of the landlord's power to re-enter and of the rent being still in arrear and of the service of the summons if the defendant shall not appear thereto the Judge may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff on or before such day not being less than four weeks from the day of hearing as the Judge shall think fit to name unless within that period all the rent in arrear and the costs be paid into Court and if such order be not obeyed and such rent and costs be not so paid the Registrar shall whether such order can be proved to have been served or not at the instance of the plaintiff issue a warrant authorizing and requiring the Bailiff of the Court to give possession of such premises to the plaintiff and the plaintiff shall from the time of the execution of such warrant hold the premises discharged of the tenancy and the defendant and all persons claiming by through or under him shall so long as the Order of the Court remains unreversed be barred from all relief in Equity or otherwise.

Sub-tenant served with summons to recover possession must give notice to his immediate landlord who may come in and defend.

2 . Where any summons for the recovery of a tenement as is hereinbefore specified shall be served on or come to the knowledge of any sub-tenant of the plaintiff's immediate tenant such sub-tenant being an occupier of the whole or of part of the premises sought to be recovered he shall forthwith give notice thereof to his immediate landlord under penalty of forfeiting three years' rack-rent of the premises held by such sub-tenant to such landlord to be recovered by such landlord by action in the Court from which summons shall have issued and such landlord on the receipt of such notice if not originally a defendant may be added or substituted as a defendant to defend possession of the premises in question.

Jurisdiction in replevin.

23. The District Courts holden under this Act shall have the same jurisdiction and powers in actions of replevin as to distresses for rent as are given to the Courts of Requests and Courts of Petty Sessions by the Act of Council 15th Victoria No. 11 and all such actions shall be tried and determined subject to the rules of practice in force for the time being for regulating the proceedings in such District Courts respectively.

Repeal of Courts of Requests Acts; pending causes may be continued.

24. The Acts of Council 6th Victoria No. 15 and 11th Victoria No. 35 shall be and the same are hereby repealed but so nevertheless that all proceedings commenced or taken under the said Acts or any of them before this Act shall come into operation upon Proclamation as hereinbefore provided shall be as valid to all intents and purposes and may be continued executed and enforced against all persons liable thereto in the same manner as if this Act had not been passed and all causes pending at the time of such Proclamation as aforesaid in the Courts of Requests for the City of Sydney and County of Cumberland may be continued heard and determined in the mode hereafter described by this Act in one of the Courts to be established under this Act within the said City or County.

Cessation of jurisdiction of Petty Sessions.

25. So soon as it shall appear that the jurisdiction now exercised by any Court of Petty Sessions under the Acts of Council 10th Victoria No. 10 and 11th Victoria No. 2 can in consequence of the establishment of a District Court be dispensed with wholly or in respect of residents within any portion of the Police District of such Court of Petty Sessions it shall be lawful for the Governor with the advice of the Executive Council to notify and declare that the jurisdiction of such Court of Petty Sessions shall thenceforward cease and such jurisdiction shall thereupon cease accordingly Provided however that the jurisdiction of the said Court of Petty Sessions shall continue in respect of all cases then pending therein.

Acts repealed.

26. The Acts of Council 10th George IV. No. 7 3rd Victoria No. 10 and 16th Victoria No. 36 so far as they relate to the election nomination

nomination and appointment of a Chairman of Quarter Sessions shall be repealed and it shall be lawful for the Governor with the advice of the Executive Council by Commission to appoint the Judge of any District Court to be the Chairman of any Court of Quarter Sessions to be holden within the limits of the district for which he shall have been appointed.

Judges of District Courts to have powers of Chairman of General or Quarter Sessions.

27. The Governor with the advice of the Executive Council shall by Commissions in Her Majesty's name appoint as many fit persons as are needed to be Judges of the District Courts under this Act each of whom shall be a Barrister-at-Law of five years or an Attorney-at-Law of seven years standing and every such person may be appointed by one Commission for several Courts or by several Commissions for each or any number of such Courts Provided that no Barrister or Attorney shall be so appointed unless he shall have been in practice or have held some judicial or legal office under the Crown within two years immediately preceding the appointment to such office Provided also that the person who at the commencement of this Act shall be Commissioner of the Courts of Requests for the City of Sydney and County of Cumberland shall be appointed one of the Judges under this Act.

Appointment and Qualification of Judges.

28. No Judge of a District Court shall practise at the Bar or as an Equity Draughtsman Pleader or Conveyancer or as an Attorney Solicitor Proctor or Notary or be directly or indirectly concerned or interested in any such practice profession or business and no such Judge shall be capable of being summoned or being elected or of sitting as a Member of the Legislative Council or Legislative Assembly.

Judges not to practise or sit in Parliament.

29. The Judges of the said District Courts shall hold their offices during ability and good behaviour but it shall be lawful for the Governor with the advice of the Executive Council to remove any Judge for inability or misbehaviour Provided that twenty-one days at the least before such removal the Judge shall have notice of the intention to remove him and that he shall thereafter and before removal have the opportunity of being heard before the Governor and Council in his defence and it shall also be lawful for the Governor with the advice aforesaid to remove any Judge appointed under this Act for the purpose of appointing him to some other District Court.

Judges tenure of Office and removal therefrom.

30. In case of illness or absence it shall be lawful for the Governor with the advice aforesaid to appoint some other person who shall be a Judge appointed under this Act or who shall be a Barrister-at-Law or Attorney to act as the Deputy of any District Court Judge during such illness or absence.

Deputy Judge.

31.

Appointment and Salary of Registrar.

31. For every District Court there shall be a Registrar whom the Governor with the advice aforesaid shall appoint and may remove and every such Registrar shall be paid by salary and it shall be lawful for the Governor with the advice aforesaid in populous districts in which it shall appear to be expedient to appoint two persons to execute jointly the office of Registrar under such regulations as to the division of their duties and emoluments of the said office as shall be from time to time made by order of Court in case of difference between them.

Deputy Registrar.

32. It shall be lawful for the Registrar of any such Court with the approval of the Judge or in case of inability of the Registrar to make such appointment for the Judge to appoint from time to time a Deputy to act for the Registrar of the said Court at any time when he shall be prevented by illness or absence from acting in such office and to remove such Deputy at his pleasure and such Deputy while acting under such appointment shall have the like powers and be subject to the like provisions duties and penalties for misbehaviour as if he were the Registrar of the said Court for the time being and in case of the death or removal of such Registrar whilst his Deputy is acting such Deputy shall continue to act until a successor to such Registrar shall be appointed and he shall receive as remuneration for his services during the period he may so act after the death or removal of the Registrar a rateable proportion of the salary attached to the office of Registrar.

Judge to appoint Deputy Registrar provisionally if one has not been appointed.

33. On the death or removal of a Registrar who shall not have appointed a Deputy the Judge may for a period not exceeding three months provisionally appoint a person to discharge the duties of Registrar and such person shall act as and have all the rights and liabilities of a Registrar until a permanent successor shall be appointed and shall receive as remuneration for his services during the period he may so act a rateable proportion of the salary attached to the office of Registrar.

Duties of Registrars.

34. The Registrar of each Court shall sign and issue all summonses and warrants and register all records orders and judgments of the said Court and keep an account of all proceedings of the Court and shall take charge of and keep an account of all Court Fees and fines payable or paid into Court and of all moneys paid into and out of Court and shall enter an account of all such fees fines and moneys in a ledger belonging to the Court to be kept by him for that purpose and shall at such times as the Governor with the advice aforesaid shall direct submit his accounts to be audited and settled by the Judge.

35.

35. For every such Court there shall be one or more Bailiffs whom the Judge shall by order under his hand appoint and may remove by like order and every such Bailiff may subject to the restriction hereinafter contained by any writing under his hand appoint a sufficient number of able and fit persons not exceeding such number as shall be from time to time allowed by the Judge to be officers to assist the said Bailiff and at his pleasure to dismiss all or any of them and appoint others in their stead and every officer so appointed may also be suspended or dismissed by the Judge. Appointment of Bailiffs.

36. The death or removal of any Bailiff shall not invalidate the acts of any Officers so appointed to assist such Bailiff as aforesaid but they shall continue to act until they shall be dismissed by the successor to the Bailiff or by the Judge and they shall be paid for their services during the period they shall so act after the death or removal of the Bailiff the same salary or wages as they were receiving at the date of such death or removal and such salary or wages shall be paid out of the salary and allowances attached to the office of Bailiff. Bailiffs' Assistants may act after the death or removal of Bailiff.

37. The said Bailiffs or one of them shall if required by the Judge attend every sitting of the Court unless when their absence shall be allowed for reasonable cause by the Judge and shall by themselves or by the officers appointed to assist them as aforesaid serve all summonses unless the plaintiff shall in any case be willing to serve the same and shall execute all the warrants and writs issued out of the Court and the said Bailiffs and Officers shall in the execution of their duties conform to all such general rules as shall be from time to time made for regulating the proceedings and practice of the Court as hereinafter provided and subject thereunto to the order and direction of the Judge and every such Bailiff shall receive a salary on account of the service of summonses and of his general duties other than in the execution of warrants and writs of execution and the said Bailiffs shall be entitled to receive and retain for their own use all fees and sums of money allowed as hereinafter mentioned in the name of fees payable to the Bailiff out of which they shall provide for the execution of the duties for which such fees are allowed and for the payment of the officers appointed to assist them and the fees upon execution shall be paid by the Registrar of the Court to the Bailiff upon the return of the warrant of execution but not before and every such Bailiff shall be responsible for all the acts and defaults of himself and of the officers appointed to assist him in like manner as the Sheriff of New South Wales is responsible for the acts and defaults of himself and his officers Duties of Bailiffs.

Provided always that in every Court holden under this Act in which the fees allowed to be taken by the Bailiffs of the Court shall appear to be more than sufficient it shall be lawful for the Governor with the advice aforesaid to order that a certain specified part only of their fees shall be paid to them respectively by the Registrar and in that case and so long as such order shall be in force the amount of the residue of such fees shall be accounted for paid and applied in the same manner as all other fees payable to such Registrar.

Disabilities of Registrar and Bailiff.

38. It shall not be lawful for the Registrar of any District Court or the partner of such Registrar or any person in the service of such Registrar or his partner except as hereinafter mentioned to act as Bailiff of the Court or for the Bailiff his partner or clerk or any person in the service or employment of such Bailiff or his partner to act as Registrar of any such Court and no officer of the Court shall either by himself or by his partner be directly or indirectly concerned as Attorney or agent for any party in any proceeding in any such Court and any person committing any such offence shall forfeit the sum of one hundred pounds and full costs of suit to any person who shall sue for the same.

Registrar and Bailiff to give security.

39. The Registrar and Bailiff of every District Court who may receive any moneys in the execution of his duty shall give security for such sum and in such manner and form as the Governor with the advice aforesaid from time to time shall order for the due performance of their several offices and for the due accounting for and payment of all moneys received by them under this Act or which they may become liable to pay for any misbehaviour in their office.

Amount of Court fees.

40. There shall be payable on every civil proceeding in the District Courts the fees mentioned in the Schedule to this Act and none other except as hereinafter provided and the fractional part of a pound shall for the purpose of poundage be reckoned as an entire pound and a table of such fees shall be put up in some conspicuous place in the Court House and in the Registrar's Office and the fees on every such proceeding shall be paid in the first instance by the party on whose behalf such proceeding is to be taken on or before such proceeding and the fees upon execution shall be paid into Court before or at the time of the issue of the warrant of execution And it shall be lawful for the Governor with the advice of the Executive Council from time to time to alter such scale of fees in any particular Provided that no such alteration in the scale of fees shall come into operation until the expiration of one month after the same shall have been notified to both

Houses

Houses of the Parliament of the Colony and that no such alteration shall take effect if within such period either House of Parliament shall by an address to the Governor signify its dissent therefrom.

Fines and Fees part of the Consolidated Revenue.

41. All fees payable on any proceedings in the District Courts to the Registrars of the several Courts except such part thereof as the Bailiffs of those Courts respectively shall from time to time be entitled to receive and retain for their own use and all fines imposed under this Act and received by such Registrar shall be deemed and taken to be part of the Consolidated Revenues of the Colony and shall be accounted for paid and applied accordingly.

Seal of the Court.

42. For every Court holden under this Act there shall be a Seal and all notices summonses certificates warrants and other process issued by the Clerk of the Court shall be sealed or stamped with the Seal of the Court and every person who shall forge the seal of any process of the Court or who shall serve or enforce any such forged process knowing the same to be forged or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of such Court knowing the same to be false or who shall act or profess to act under any false colour or pretence of the process of such Court shall be guilty of felony and being convicted thereof shall at the discretion of the Court be kept to hard labor upon the roads or other public works of the Colony for any period not exceeding seven years or be imprisoned with or without hard labor for any term not exceeding three years.

Punishment for forging Seal or serving forged process.

Judge to hold Court where directed and to give notice thereof.

43. The Judge of each District Court shall attend and hold such Court at the place where the Governor with the advice aforesaid shall have ordered that the Court shall be holden at such times as such Judge shall appoint for that purpose so that a Court shall be holden in such place once at least in such interval as the Governor with the advice aforesaid shall in each case order and notice of the days on which the Court will be holden shall be put up in some conspicuous place in the Court House and in the office of the Registrar of the Court and shall be otherwise published as to the Judge shall seem best Provided that where by reason of the death or absence of the Judge at any District Court at the time appointed such Court cannot be then held the Registrar or in the event of his death or absence the Bailiff shall adjourn the Court to such day as he may deem convenient and enter in the Minute Book the cause of such adjournment.

Proceedings in civil suits.

44. On the application of any person desirous of bringing an action under this Act the Registrar of the Court shall enter in a Book to be kept for this purpose in his Office a plaint in writing stating the names

and

and the last known places of abode of the parties and the substance of the action intended to be brought every one of which plaints shall be numbered in every year according to the order in which it shall be entered and thereupon a summons stating the substance of the action and bearing the number of the plaint on the margin thereof shall be issued under the Seal of the Court according to such form and be served on the defendant at such time and in such manner as shall be directed by the Rules made for regulating the practice of the Court as hereinafter pro vided and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same so that the person or place be therein described so as to be commonly known.

Trial.

45. The Judge of the District Court shall be the sole Judge in all actions or proceedings in the said Court and shall determine all questions of law and unless a jury be summoned all questions also of fact.

Actions may be tried by a jury when parties require it, if the amount claimed exceed £20.

46. In all actions where the amount claimed shall exceed twenty pounds it shall be lawful for the plaintiff or defendant to require a jury to be summoned to try the said action and in every case such jury shall be summoned according to the provisions hereinafter contained Provided always that the party requiring a jury to be summoned shall give to the Registrar of the Court or leave at his office such notice thereof as shall be directed by the rules made for regulating the practice of the Court as hereinafter provided and the said Registrar shall cause notice of such demand of a jury made either by the plaintiff or defendant to be communicated to the other party to the said action either by post or by causing the same to be delivered at his usual place of abode or business but it shall not be necessary for either party to prove on the trial that such a notice was communicated to the other party by the Registrar.

Party requiring jury to make deposit.

47. Every party requiring a jury to be summoned shall at the time of giving the said notice and before he shall be entitled to have such jury summoned pay to the Registrar of the Court the sum of and such sum shall be considered costs in the cause unless otherwise ordered by the Judge.

Who shall be jurors.

48. The persons qualified and liable to act as jurors for the trial of issues civil and criminal and for the assessment of damages under the provisions of the Act of Council 11th Victoria No. 20 sections one two and three shall be the persons qualified and liable to act as jurors in Courts holden under this Act and for the purposes of the establishment of Jurors' Districts and the preparation of Jurors' Lists every District Court shall be deemed to be a Court for the trial of issues and

the

the assessment of damages within the meaning of the said Act of Council 11th Victoria No. 20 and jury lists shall be prepared published and corrected according to the provisions therein contained and such lists when corrected shall be transmitted by the Clerks of the Benches to the Judge of such District Court who shall thereupon prepare a Jurors' Book for such Court according to the said Act.

Jury Lists for newly created Districts.

49. In case the Governor of the Colony of New South Wales shall by any Proclamation or Proclamations issued and published with the advice aforesaid order a District Court or Courts or any Court of General or Quarter Sessions of the Peace to be holden at any town or place where provision shall not have been theretofore made for the preparing and settling of the Jury Lists for such town or place it shall be lawful for the said Governor with the advice aforesaid to direct the Bench of Magistrates of the District wherein such town or place shall be situate to cause Jury Lists for such town or place to be prepared and thereupon the said Bench of Magistrates shall in pursuance of such direction and they are hereby authorized and required to prepare and cause to be prepared within three months after the receipt of any such direction Lists of all Jurors within the Jurors' District for such town or place and thereupon the Clerks of Petty Sessions Chief Constables and Justices shall do and perform within the said period of three months all such acts matters and things in and towards preparing correcting and allowing the Jury Lists as are in the said last mentioned Act required to be ordinarily done in the months of August September and October in each and every year and all such Jury Lists when prepared corrected and allowed as aforesaid shall be transmitted by the Clerks of the Benches to the District Court Judge Provided that in case any Jury List prepared under the direction of the Governor pursuant to this Act shall take effect at any time between the months of February and August in any year the same shall continue in force until the month of August in the year following until which time no new list shall in that case be prepared.

Jurors' Book to be made therefrom.

50. The District Court Judge shall within ten days from the receipt of the Jury Lists cause to be made out therefrom a Jurors' Book for such Court according to the provisions of the said Act so far as the same can be applied and all such Jury Lists when settled shall come into force and the persons whose names shall be therein set down shall be liable to serve as Jurors immediately after the Jurors Book for such newly appointed town or place as aforesaid shall have been made out by the District Court Judge and each of the said lists shall respectively continue in force until new lists shall have been allowed and a new Jurors' Book shall have been made out under the provisions hereinbefore contained.

Jurors.

51. Whenever a jury shall be required the Judge shall cause not less than eight nor more than twelve of the persons named in the said book to be summoned to attend the Court at a time and place to be mentioned in the summons and shall administer or cause to be administered to such of them as shall be impannelled an oath to give true verdicts according to the evidence and every person so summoned shall attend at the Court at the time mentioned in the summons and in default of attendance or of withdrawal from the Court without leave or of refusal to act as a juror shall forfeit such sum of money as the Judge shall direct not being more than ten pounds for each default and the delivery of such summons to the person whose attendance is required on such jury or to his wife or servant or any inmate at his usual place of abode or business shall be deemed good service Provided always that the Judge shall have power upon sufficient cause being shewn to him to remit a portion or the whole of the sum forfeited as aforesaid.

Jury to be chosen by ballot.

52. Upon the trial of all cases in such District Courts respectively the juries shall be chosen by ballot from the list of jurors so summoned as aforesaid and in case of a deficiency of jurors the necessary number of persons to compose a jury shall be nominated by the Judge from the by-standers and if any person so nominated shall refuse to act as a juror without an excuse allowed by the Judge he shall be liable to the same penalty as a juror for not attending after having been summoned.

Number of jurors.

53. Whenever there are any issues for trial by Jury in any District Court four jurymen shall be impannelled and sworn as occasion shall require to give their verdicts in the causes which shall be brought before them in the Court and being once sworn shall not need to be re-sworn on each trial and either of the parties to any such cause shall be entitled to his lawful challenge for cause against any of the said jurors and the said jurors shall give their verdict or may be discharged as in the said Act is provided with respect to juries for the trial of civil issues.

Payment to jurors.

54. Every person summoned or nominated to act as juror under this Act shall for his attendance be entitled to the same compensation and allowance for his travelling expenses as are provided by law for jurors attending the Supreme Court or any Circuit Court under a General Jury Precept.

Power to Judge to change venue.

55. If a Judge of a District Court shall be satisfied by either party to a cause pending in his Court that such cause can be more conveniently or fairly tried in some other District Court he shall order that the venue be changed and that the cause be sent for hearing to such other District Court or if the Judge shall be interested in the matter of any cause pending

in

in his Court he shall order that the venue be changed and that the cause be sent for hearing to some convenient District Court of which he is not the Judge at his discretion and in either case the Registrar of the Court in which the plaint was entered shall forthwith transmit by post to the Registrar of the Court to which the cause is to be sent a certified copy of the plaint as entered in the Plaint Book, the duplicate copy of the summons and particulars served on the defendant and a certified copy of the order for changing the venue and the Judge of such last mentioned Court shall appoint a day for the hearing notice whereof shall be sent by post or otherwise by the Registrar to both parties.

Notice of special defences.

56. No defendant in any District Court shall be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff or to set up by way of defence and to claim and have the benefit of infancy coverture or of the Statute of Frauds or of any Statute of Limitations or of his discharge under any statute relating to Bankrupts or any Act for relief of Insolvent Debtors or to plead a justification in any action of tort without the consent of the plaintiff unless such notice thereof as shall be directed by the rules made for regulating the practice of the Court shall have been given to the Registrar of the Court and in every case in which the practice of the Court shall require such notice to be given the Registrar shall as soon as conveniently may be after such notice communicate the same to the plaintiff by the post or by causing the same to be delivered at his usual place of abode or business but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the Registrar.

Payment into Court.

57. The defendant in any suit in a District Court may within such time as shall be directed by the rules to be made as aforesaid pay into Court such sum of money as he shall think a full satisfaction for the demand of the plaintiff together with the costs incurred by the plaintiff up to the time of such payment and notice of such payment shall be communicated by the defendant to the plaintiff by post or by causing the same to be delivered at his usual or last known place of abode or business and the sum of money shall be paid to the plaintiff but if he shall elect to proceed and shall recover no further sum in the action than shall have been so paid into Court the plaintiff shall pay to the defendant the costs incurred by him in the said action after such payment and an order shall thereupon be made by the Court for the payment of such costs by the plaintiff.

Proceedings at the trial where both parties appear.

58. At the time and place on that behalf named in any summons issued out of any District Court the plaintiff shall appear and thereupon the

the defendant shall be required to appear to answer such plaint and on answer being made in Court the Judge shall proceed to try the cause and give judgment without any further pleading or formal joinder of issue.

Appearance to be in person or by Counsel or Attorney or other person allowed by the Judge.

59. It shall be lawful for every party to an action or other proceeding under this Act or a Barrister or Attorney of the Supreme Court retained by or on behalf of the party on either side (but without any right of exclusive audience or pre-audience) or for any other person allowed by special leave of the Judge in each case to appear instead of the party to address the Court and examine and cross-examine the witnesses but subject to such regulations as the Judge may from time to time prescribe for the orderly transaction of the business of the Court Provided always that no person not being a Barrister or Attorney of the Supreme Court shall be entitled to receive or recover or shall receive directly or indirectly any sum of money or other remuneration for appearing or acting on behalf of any other person in the said District Court.

Proceedings where Plaintiff does not appear.

60. If at the time and place so named as aforesaid or at any continuation or adjournment of the Court or of the cause for which the summons shall have been issued the plaintiff shall not appear the cause shall be struck out and where the defendant shall appear and shall not admit the demand to award to the defendant by way of costs and satisfaction for his trouble and attendance such sum as the Judge in his discretion shall think fit and such sum shall be recoverable from the plaintiff in the same way as any debt adjudged by the Court to be paid can be recovered Provided always that if the plaintiff shall not appear when called upon and the defendant or some one duly authorized on his behalf shall appear and admit the cause of action to the full amount claimed and pay the fees payable in the first instance by the plaintiff the Court if it shall think fit may proceed to give judgment as if the plaintiff had appeared.

Proceedings where Defendant does not appear.

61. If at the time and place so named or at any continuation or adjournment of the Court or cause the defendant shall not appear or sufficiently excuse his absence or shall neglect to answer when called in Court the Judge upon due proof of service of the summons may proceed to the trial of the cause on the part of the plaintiff only and the judgment thereupon shall be as valid as if both parties had attended Provided always that the Judge in any such case at the same or any subsequent Court may set aside any judgment so given in the absence of the defendant and the execution thereupon and may grant a new trial of the cause upon such terms if any as to payment of costs giving security for debt or costs or such other terms as he may think fit on sufficient cause shown to him for that purpose.

62.

62. The Judge of any District Court may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit and may also from time to time adjourn the Court or the trial or further trial of any cause in such manner and upon such terms as to the Judge may seem fit. Judge may grant time or adjourn.

63. No evidence shall be given by the plaintiff of any demand or cause of action except such as shall be stated in the summons issued in such suit. Proof to be limited to matter in the summons.

64. Either party to any suit in a District Court may obtain at the office of the Registrar of the Court subpœnas to witnesses to be served at the option of such party by himself or his agent or by the Bailiff of the Court with or without a clause requiring the production of books deeds papers and writings in their possession and control and in any such subpœna any number of names may be inserted. Subpœna to witnesses.

65. Every person on whom such subpœna shall have been served either personally or in such other manner as shall be directed by the general Rules of the Court and to whom at the same time payment or a tender of payment of his expenses shall have been made on such scale of allowance as shall be settled by the general Rules of the Court and who shall refuse or neglect without sufficient cause to appear or to produce any books papers or writings required by such subpœna to be produced and also every person present in Court who shall be required to give evidence and who shall refuse to be sworn and give evidence shall forfeit and pay such fine not exceeding fifty pounds as the Judge shall set on him and the whole or any part of such fine in the discretion of the Judge after deducting the costs shall be applicable toward indemnifying the party injured by such refusal or neglect and the remainder thereof shall form part of the General Fund of the Court in which the fine was imposed but no such fine shall exempt such person from any action for disobeying such summons. Penalty on witnesses neglecting subpœna.

66. It shall be lawful for the Judge of any District Court at any time after plaint filed on the application of either party supported by affidavit that the evidence of any specified witness including in that term either of the parties is material in the cause and that such witness is absent from the Colony or above one hundred miles from the place of trial or is expected to die or to be unable from sickness or infirmity to attend at the hearing or is about to quit the Colony or go to some place beyond the said distance before the cause can be heard to take in Court or Chambers or to authorize the Registrar of any District Court or any Commissioner of the Supreme Court or Justice of the Peace or practising Examination *de bene esse.*

Barrister or Attorney to take at some convenient place the examination of such witness *de bene esse* and all evidence so taken shall be admissible at the hearing subject to all just exceptions unless it be proved that such witness is at the time of the hearing within a convenient distance of the said Court and able to attend Provided that in every such case the opposite party shall have sufficient notice of the time and place appointed for taking such examination and may cross-examine such witness in the usual manner Provided also that the Judge may either direct the whole costs of taking such evidence to be paid by the party applying or make the same costs in the cause.

Proceedings where defendant's set off exceeds the plaintiff's claim.

67. In every suit under this Act in which the defendant shall be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff such defendant shall whether the plaintiff shall be nonsuit or shall have judgment given against him be entitled to recover in such suit the amount if any by which the debt or demand so set off exceeds the debt or demand claimed and proved by the plaintiff and shall have judgment and execution for the same accordingly Provided that the defendant shall not be allowed to set off any debt or demand exceeding in amount one hundred pounds.

Judgments to be final unless new trial granted.

68. Every judgment of any District Court except as herein provided shall be final and conclusive between the parties but the Judge shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given entitling him to the judgment of the Court and shall also in every case whatever have the power if he shall think fit to order a new trial to be had upon such terms as he shall think reasonable and in the meantime to stay the proceedings.

Cross judgments to be set off.

69. If there shall be cross judgments between the parties execution shall be taken out by that party only who shall have obtained judgment for the larger sum and for so much only as shall remain after deducting the smaller sum and satisfaction for the remainder shall be entered as well as satisfaction on the judgment for the smaller sum and if both sums shall be equal satisfaction shall be entered upon both judgments.

Costs.

70. All the costs of any action or proceeding not herein or otherwise provided for shall be paid by or apportioned between the parties in such manner as the Judge shall think fit and in default of any special direction shall abide the event of the action or result of the decision and such costs may be recovered in like manner as any debt adjudged by the Court to be paid can be recovered.

71.

71. The fees to be allowed to Barristers and Attorneys practising in any District Court for appearing or acting on behalf of any person in any suit in such Court and the expenses to be paid to witnesses shall be fixed by scale in the rules to be made as hereinafter mentioned.

Fees and expenses to witnesses.

5 72. All costs and charges between party and party shall be taxed by the Registrar of the Court in which such costs and charges were incurred but this taxation may be reviewed by the Judge of the Court on the application of either party and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in 10 force.

Costs of attorney in certain proceedings in District Courts shall be taxed by Registrar as between party and party.

73. When judgment has been obtained in any District Court for a sum not exceeding twenty pounds exclusive of costs the Judge may order such sum and costs to be paid at such time or times and by such instalments if any as he shall think fit and all such moneys shall be paid 15 into Court but in all other cases he shall order the full amount for which judgment has been obtained to be paid either forthwith or within fourteen clear days from the date of the judgment unless the plaintiff or his counsel attorney or agent will consent that the same shall be paid by instalments in which case the Judge shall order the same to be paid at 20 such times and by such instalments as have been consented to and all such moneys whether payable in one sum or by instalments shall be paid into Court And in any case in which payment by instalments shall have been ordered execution may be had for the whole amount due upon the judgment if default shall be made in payment of one such instalment.

Where judgment does not exceed twenty pounds Judge may order payment by instalments; in other cases consent of plaintiffs necessary.

25 74. In any case where an order decision judgment or adjudication for the payment of money shall be made by any Court or the Judge thereof it shall and may be lawful for the Registrar of the said Court on the application of the party in whose favor such order decision judgment or adjudication has been made to issue a writ of *fieri facias* which writ 30 shall be directed to the Bailiff or Registrar of the said Court as the case may be.

Registrar to issue writs of *fieri facias*.

75. It shall be lawful for the Registrar of every such Court by himself or his deputies to be by him appointed and duly authorized under his hand and seal and for whose acts he shall be accountable during 35 his continuance in such office and their employment by him to seize and take under any writ of execution whereby he is directed to levy any sum of money and to cause to be sold all and singular the lands tenements and hereditaments of or to which the person named in the said writ is or may be seized or entitled or which he can either at Law or in Equity assign or 40 dispose of.

Registrar to take under writ of execution.

76.

Registrar to execute bill of sale.

76. In case of any sale by the said Registrar by himself or his deputy of the right title and interest of any person of to or in any lands or hereditaments the said Registrar is hereby required to execute a proper deed of bargain and sale thereof to the purchaser which deed of bargain and sale shall operate and be effectual as a conveyance of the estate right title and interest of such person Provided nevertheless that no such deed of bargain and sale shall so operate and be effectual as aforesaid until the same shall have been duly registered in the proper office for the Registration of Deeds and be indexed in the index book thereof in the name of the person whose interest in such lands and hereditaments is intended to be thereby conveyed.

Bailiff to seize personal property.

77. It shall be lawful for a Bailiff of any of the said Courts by himself or his deputies to be by him appointed and duly authorized under his hand and seal to seize and take under any writ of execution whereby he is directed to levy any sum of money and to cause to be sold all and singular the goods chattels and other personal property of or to which the person named in the said writ is or may be possessed or entitled or which he can either at Law or in Equity assign or dispose of Provided that the wearing apparel bedding tools and implements of trade of the defendant and his family to the value of ten pounds in the whole shall be protected from seizure.

Executions not to bind land unless registered.

78. No writ of execution under this Act shall bind any lands unless registered in the proper office for Registration of Deeds with the Registrar who shall duly register the same in a book to be kept for that purpose.

Registrars and Bailiffs may sell by auction without license.

79. The provisions of the first section of the Act of Council 13th Victoria No. 13 enabling Bailiffs of the Courts of Requests to sell by auction without a license shall apply to Registrars and Bailiffs of District Courts held under this Act and to their assistants.

Priority of Executions issuing out of District Court.

80. The precise time when any application shall be made to a Registrar to issue a warrant against the lands or goods of a party shall be entered by him in the Execution Book and on the Warrant and when more than one such Warrant shall be delivered to any Registrar or Bailiff to be executed he shall execute them in the order of the times so entered.

Priority of Execution issuing out of Supreme Court and District Court.

81. When a Writ against the lands or goods of a party has issued from the Supreme Court and a Warrant against the lands or goods of the same party has issued from any District Court the right to the property seized shall be determined by the priority of the time of the delivery of the Writ to the Sheriff to be executed or of the application to the Registrar for the issue of the Warrant and the Sheriff shall on demand inform the

Registrar

Registrar of the precise time of such delivery of the Writ and the Registrar or Bailiff on demand shall show his Warrant to any Sheriff's Officer and such Warrant and the endorsement on the Warrant shall respectively be sufficient justification to any Registrar Bailiff or Sheriff acting thereon.

When goods seized under process of District Courts landlord may claim certain rent in arrear.

82. The landlord of any tenement in which any such goods shall be so taken may claim the rent thereof at any time within five clear days from the date of such taking or before the removal of the goods by delivering to the Bailiff or officer making the levy any writing signed by himself or his agent which shall state the amount of rent claimed to be in arrear and the time for and in respect of which such rent is due and if such claim be made the Bailiff or officer making the levy shall in addition thereto distrain for the rent so claimed and the costs of such distress and shall not within five days next after such distress sell any part of the goods taken unless they be of a perishable nature or upon the request in writing of the party whose goods shall have been taken and the Bailiff shall afterwards sell such of the goods under the execution and distress as shall satisfy first the costs of and incident to the sale next the claim of such landlord not exceeding the rent of four weeks when the tenement is let by the week the rent of two terms of payment when the tenement is let for any other term less than a year and the rent of six months in any other case and lastly the amount for which the warrant issued and if any replevin be made of the goods so taken the Bailiff shall notwithstanding sell such portion thereof as will satisfy the costs of and incident to the sale under the execution and the amount for which the warrant issued and in either event the overplus of the sale if any and the residue of the goods shall be returned to the defendant and the poundage of the Bailiff and Broker for appraisement and sale under such distress shall be the same as would have been payable if the distress had been an execution of the District Court and no other fees shall be demanded or taken in respect thereof.

Interpleader.

83. If any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any District Court or in respect of the proceeds or value thereof by any person not being the party against whom such process has issued it shall be lawful for the Registrar of such Court upon application of the Officer charged with the execution of such process as well before as after any action brought against such Officer to enter an interpleader plaint and to issue a summons thereon calling before the said Court as well the party issuing such process as the party making such claim and thereupon any

action

action which shall have been brought in the Supreme Court or in any District Court in respect of such claim shall be stayed and the Court in which such action shall have been brought or any Judge thereof on proof of the issue of such summons and that the goods and chattels were so taken in execution may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the District Court and the Judge of the District Court shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as to him shall seem fit and such order shall be deemed a judgment of the Court and be enforced in like manner as a judgment in any other suit brought in such Court.

Execution against the person.

84. Whenever any sum of money shall have been recovered by the judgment of any District Court and the judgment creditor shall show to the satisfaction of a Judge of the Supreme Court or of any District Court that such sum of money has been recovered and that the debt was fraudulently contracted or that the judgment debtor conceals any goods chattels or valuable securities or that he has any income salary or means whereby in the opinion of such Judge he can satisfy such judgment or any part thereof or is about to leave the Colony or to remove any of his property with intent to evade payment of the said judgment debt such Judge may authorize the Registrar of the said District Court to issue a Writ of *capias ad satisfaciendum* in such form as shall be fixed by the rules to be made under this Act and any bailiff of the District Court and the keeper of any gaol to whom such Writ or any Warrant in pursuance thereof is directed shall respectively execute and obey the same respectively and all constables and other peace officers within their several jurisdictions shall aid and assist in the execution thereof.

Discharge on payment of debt and costs.

85. Any person arrested or imprisoned under this Act by virtue of any such warrant as last aforesaid shall be entitled to his discharge on payment of the amount named in such warrant as due for such judgment and the costs of obtaining and executing such warrant and the bailiff making the arrest and the keeper of the gaol to whom the warrant is directed are hereby empowered and required to receive the amount so paid and to transmit the same to the Registrar of the District Court in which the judgment was recovered.

Removal of causes.

86. Any plaint entered in any District Court may be removed by *certiorari* into the Supreme Court by order of any Judge thereof upon such terms as to payment of costs giving security for the amount claimed

or

or costs or such other terms as such Judge shall think fit Provided it shall appear to such Judge to be a case proper to be tried in the Supreme Court Provided also that no plaint shall be removed when the amount claimed does not exceed ten pounds unless the defendant give security to the satisfaction of such Judge for the amount claimed and also for the costs in the Supreme Court not exceeding one hundred pounds or deposit in the hands of the Prothonotary of the said Court the amount claimed together with the sum of one hundred pounds by way of security for the said costs.

Rule or summons to shew cause why a writ of *certiorari* or prohibition should not issue to be a stay of proceedings.

87. The granting by the Supreme Court or by any Judge thereof of a rule or summons to shew cause why a writ of *certiorari* or prohibition should not issue to a District Court shall if the Supreme Court or a Judge thereof so direct operate as a stay of proceedings in the cause to which the same shall relate until the determination of such rule or summons or until the Supreme Court or Judge shall otherwise order and the Judge of the District Court shall from time to time adjourn the hearing of such cause to such day as he shall think fit until such determination or until such order be made but if a copy of such rule or summons shall not be served by the party who obtained it on the opposite party and on the Registrar of the District Court within a reasonable time not being less than two clear days before the day fixed for hearing of the cause the Judge of the District Court may in his discretion order the party who obtained the rule or summons to pay all the costs of the day or so much thereof as he shall think fit unless the Supreme Court or a Judge thereof shall have made some order respecting such costs.

Notice of writ of *certiorari* or prohibition having been obtained to be sent to Registrar.

88. When a writ of *certiorari* or of prohibition addressed to a Judge of a District Court shall have been granted by the Supreme Court or a Judge thereof on an *ex parte* application and the party who obtained it shall not lodge it with the Registrar and give notice to the opposite party that it has issued within a reasonable time not being less than two clear days before the day fixed for hearing the cause to which it shall relate the Judge of the District Court may in his discretion order the party who obtained the writ to pay all the costs of the day or so much thereof as he shall think fit unless the Supreme Court or a Judge thereof shall have made some order respecting such costs.

Costs in the District Court.

89. Whenever an order is granted for the removal of a plaint from a District Court or for the issuing of a *certiorari* for such removal and no provision is made with respect to the costs of the proceedings in the District Court the costs of such proceedings shall be costs in the cause.

90.

Rule or Order substituted for writ of *mandamus* to a Judge or officer of a District Court.

90. No writ of *mandamus* shall henceforth issue to a Judge or an officer of the District Court for refusing to do any act relating to the duties of his office but any party requiring such act to be done may apply to the Supreme Court or a Judge thereof upon an affidavit of the facts for a rule or summons calling upon such Judge or officer of a District Court and also the party to be affected by such act to show cause why such act should not be done and if after the service of such rule or summons good cause shall not be shown the Supreme Court or a Judge thereof may by rule or order direct the act to be done and the Judge or officer of the District Court upon being served with such rule or order shall obey the same on pain of attachment and in any event the Supreme Court or Judge thereof may make such order with respect to costs as to such Court or Judge shall seem fit.

Appeal to the Supreme Court.

91. If either party to any cause in any District Court in which the amount claimed exceeds thirty pounds shall be dissatisfied with the determination or direction of the said Court in point of law or upon the admission or rejection of any evidence such party may appeal from the same to the Supreme Court Provided such party shall within such time and in such manner as shall be prescribed by the Rules to be made under this Act give notice of such appeal to the other party or his attorney and also give security (to be approved of by the Registrar of the said District Court) for costs of the appeal and the amount of the judgment or in lieu of giving such security deposit in the hands of such Registrar the amount of the judgment together with thirty pounds in addition to such amount to answer the costs of the appeal if such appeal be dismissed and the Supreme Court may either order a new trial on such terms as it thinks fit or may order judgment to be entered for either party as the case may be and make such order with respect to the costs of the said appeal as such Court may think proper and such orders shall be final and such appeal shall be in the form of a case agreed on by both parties or their attorneys and if they cannot agree the Judge of the District Court upon being applied to by them or their attorneys shall settle the case and sign it and such case shall be transmitted by the appellant to the Prothonotary and be set down for argument in the Supreme Court in the same manner as special cases in actions in that Court.

Parties may agree not to appeal.

92. No appeal shall lie from the decision of a District Court if before such decision is pronounced both parties shall agree in writing signed by themselves or their Attorneys or Agents that the decision of the Judge shall be final.

93.

93. The defendant in any plaint in any District Court may if he think fit whether he be summoned upon such plaint or not in the presence of the Registrar of the Court in which such plaint shall have been entered or in the presence of an Attorney of the Supreme Court or a Justice of the Peace sign a statement confessing and admitting the amount of the debt or demand or part of the amount of the debt or demand for which such plaint shall have been entered and such Registrar shall as soon as conveniently may be after receiving such statement send notice thereof to the plaintiff and thereupon it shall not be necessary for him otherwise to prove the debt or demand so confessed and admitted as aforesaid but the Judge of such Court at the next sitting of such Court whether the parties or either of them attend such Court or not shall upon proof by affidavit of the signature of the party if such statement were not made in the presence of the Registrar proceed to give judgment for the debt or demand so confessed and admitted in the same manner and subject to the same conditions as if he had tried the cause and given judgment thereupon under the provisions of this Act.

Confession of debts or parts of debts and judgment thereupon.

94. If the defendant in any such plaint can agree with the plaintiff upon the amount of the debt or demand claimed and on the terms and conditions upon which the same shall be paid or satisfied it shall be lawful for such persons respectively in the presence of the Registrar of the Court in which such plaint shall have been entered or in the presence of an Attorney of the Supreme Court or a Justice of the Peace to sign a statement of the amount so agreed upon and of the terms and conditions upon which the same shall be paid or satisfied and the Registrar shall receive such statement and shall thereupon upon proof by affidavit of the signature of the defendant if such statement were not made in the presence of the Registrar enter up judgment for the plaintiff for such amount and upon the terms and conditions agreed upon and such judgment shall to all intents and purposes be the same as if it had been a judgment of the Judge of the same Court.

Agreement as to the amount of debt and conditions of payment.

95. Where in any action brought in the Supreme Court the claim indorsed on the writ does not exceed one hundred pounds or where such claim though it originally exceeded one hundred pounds is reduced by payment into Court or an admitted set-off or otherwise to a sum not exceeding one hundred pounds a Judge of the Supreme Court on the application of either party after issue joined or after any interlocutory judgment may if he shall think the case proper to be tried in a District Court on such terms as he shall think fit order that the cause be tried in any District Court which he shall name and thereupon

In certain cases Judge of Supreme Court may order cause to be tried in District Court.

the plaintiff shall lodge with the Registrar of such Court such order and the issue or the writ for the assessment of damages and the Judge of such Court shall appoint a day for the hearing of the cause notice whereof shall be sent by the Registrar to both parties or their attorneys in such manner as shall be directed by the rules of practice and after such hearing the Registrar shall certify the result to the Prothonotary of the Supreme Court and judgment in accordance with such certificate may be signed in the Supreme Court.

Removal of causes.

96. No judgment order or determination given or made by any Judge of a District Court nor any cause or matter brought before him or pending in his Court shall be removed by appeal motion writ of error *certiorari* or otherwise into any other Court whatever save and except in the manner and according to the provisions herein mentioned.

Costs in Supreme Court when not more than £30 recovered.

97. If in any action in the Supreme Court commenced after the coming into operation of this Act the plaintiff shall recover by judgment by default verdict or otherwise a sum not exceeding thirty pounds the plaintiff shall have judgment to recover such sum only and no costs except in the cases hereinafter provided and it shall not be necessary to enter any suggestion on the record to deprive such plaintiff of costs.

Costs in Supreme Court in certain cases.

98. If the plaintiff shall in any such action recover by verdict a sum not exceeding thirty pounds and the Judge or other presiding Officer before whom such verdict shall be obtained shall certify on the record that the cause of action was one for which a plaint could not have been tried in any District Court without the defendant's consent or that any officer of the District Court was a party (except in respect of any claim to any goods and chattels taken in execution of the process of the Court or the proceeds in virtue thereof) or that it appeared to him that there was a sufficient reason for bringing or trying the said action in the Supreme Court the plaintiff in any such case shall have the same judgment to recover his costs that he would have had if this Act had not been passed.

Power to make rules f practice.

99. The District Court Judges for the time being or any three of them shall have power to make such general rules as they shall think fit subject to the approval of two of the Judges of the Supreme Court for regulating the practice and proceedings of the District Courts the fees to be allowed to Barristers and Attorneys and the expenses to be paid to witnesses and also to frame forms for every matter or proceeding in the said Courts for which they shall think it necessary that a form be provided and also for keeping all books entries and accounts to be kept by the

Registrars

Registrars of the said Courts and from time to time to alter any such rule or form and the rules so made shall not take effect until one month after the publication thereof in the *Government Gazette* and in any case not expressly provided for herein or by the said rules the general rules of practice in the Supreme Court may be adopted and applied by the Judges of the District Courts to actions and proceedings in their several Courts.

Registrars to prepare Returns.

100. Every Registrar to be appointed under the Act shall within one month after the first day of March in every year prepare a Return to be certified under his hand and within the like time transmit the same to the Colonial Secretary which Return shall specify—

1. The number of Suits commenced in his Court during the twelve months preceding.
2. The number settled without hearing.
3. The number of Trials.
4. The result of the Trials whether in favor of the plaintiffs or defendants.
5. The nature of the Causes under distinct heads.
6. The costs of the Suits.
7. The number of Appeals.
8. The number of Judgments or Orders affirmed.
9. The number reversed.
10. The number of cases left in arrear.
11. The date place and duration of the sittings of each Court the duration to be specified in days and hours.
12. The number of cases tried by Jury.
    Ditto without a Jury.
13. The number of cases settled by arbitration.
14. The number of motions for new Trials.
15. The number of new Trials granted.
16. The grounds on which such new Trials were granted.

And a copy of such Return shall be laid before each House of Parliament.

Affidavits before whom sworn.

101. All affidavits to be used in any District Court shall and may be sworn before any Judge of the Supreme Court or any Commissioner for taking affidavits in that Court or before any Judge of any District Court or any Justice of the Peace.

Power to refer to arbitration by consent.

102. The Judge of any District Court may in any case with the consent of both parties to the suit order the same with or without other matters within the jurisdiction of the Court in dispute between such parties to be referred to arbitration to such person or persons and in such manner and on such terms as he shall think reasonable and just and such reference shall not be revocable by either party except by consent of the Judge and the arbitrator or arbitrators or umpire shall hear and determine the case and the award given by him or them shall be entered as the judgment in the cause and shall be as binding and effectual to all intents as if given by the Judge Provided that the Judge may if he think fit on application to him at the first Court held after the

the expiration of one week after the entry of such award set aside any such award so given as aforesaid or may refer such award back to the arbitrator arbitrators or umpire or may with the consent of both parties aforesaid revoke the reference or order another reference to be made in the manner aforesaid. 5

In plaints to recover possession of premises how summonses may be served

103. A summons for the recovery of a tenement may be served like other summonses to appear to plaints in District Courts and if the defendant cannot be found and his place of dwelling shall either not be known or admission thereto cannot be obtained for serving any such summons a copy of the summons shall be posted on some conspicuous 10 part of the premises sought to be recovered and such posting shall be deemed good service on the defendant.

Warrants to bailiffs sufficient to justify them for entering in premises.

104. Any warrant to a bailiff to give possession of a tenement shall justify the bailiff named therein in entering upon the premises named therein with such assistants as he shall deem necessary and in giving 15 possession accordingly but no entry upon any such warrant shall be made except between the hours of nine in the morning and four in the afternoon.

Such warrants to be in force three months from the day next after last day named in judge's order.

105. Every such warrant shall on whatever day it may be issued bear date on the day next after the last day named by the Judge in his 20 order for the delivery of possession of the premises in question and shall continue in force for three months from such date and no longer but no order for delivery of possession need be drawn up or served.

As to amendment of defects and errors of proceedings, &c.

106. The Judge of a District Court may at all times amend all defects and errors in any proceeding in such Court whether there is any- 25 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 the Judge may seem fit and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between 30 the parties shall be so made.

Indemnity to persons acting under this Act.

107. If any action shall be brought against any person for anything done in pursuance of this Act such person may plead the general issue and give the special matter in evidence and the warrant under the Seal of the District Court being produced in any such action 35 shall be deemed sufficient proof of the authority of the said District Court previous to the issuing of such warrant and in case the plaintiff in such action shall have a verdict pass against him be nonsuit or discontinue the action the defendant shall in any of the said cases be allowed full costs as between attorney and client. 40

Short Title of Act.

108. This Act shall be styled and cited as the "District Courts Act "of 1858."

Legislative Council.

DISTRICT COURTS BILL.

(*To be proposed by* Mr. Wise, *in Committee of the whole House.*)

Husbands and wives competent witnesses under this Act.

. In any suit under this Act the husbands and wives of the parties shall except as hereinafter excepted be competent and compellable to give evidence in the same manner as any other person Provided that no husband shall be competent or compellable to disclose any communication made to him by his wife during the marriage and no wife shall be competent or compellable to disclose any communication made to her by her husband during the marriage.

Legislative Council.

DISTRICT COURTS BILL.

(*New Clause proposed to be introduced by Sir Alfred Stephen in Committee of the whole House, to stand Clause* 74.)

74. Every Writ or Warrant of Execution upon a Judgment for the payment of money shall be issued by the Registrar on the application of the party entitled thereto and shall be directed to the Bailiff of the Court except where the party desires to take any land in execution in which case the Writ shall be directed to the Registrar And every such Writ and Warrant may be carried into execution in any District although not within the jurisdiction of the Court from which it issued if previously registered in the office of the Registrar of the Court of the District in which the Writ or Warrant is to be executed and the same may be executed by the Registrar or Bailiff to whom the process is directed or by any Deputy appointed by him for that purpose by indorsement under his hand upon the Writ or Warrant such Deputy being the Registrar or a Bailiff of the Court of the District in which the process is so executed. Writs of Execution.

Legislative Council.

DISTRICT COURTS BILL.

(*New Clause proposed to be introduced by the Solicitor General in Committee of the whole House.*)

The provisions of sections ten eleven twelve thirteen fourteen fifteen and twenty-three of "The Common Law Procedure Act of 1857" shall extend and apply to this Act and all proceedings thereunder as well in criminal as in civil matters.

(*To be proposed by Mr. Wise as an amendment in section* 29 *after the word* "behaviour.")

"And shall severally be paid (exclusive of any allowance for travelling
"expenses) an annual salary not exceeding the sum of
"which sum shall not be diminished during the continuance of such per-
"son in the office of District Court Judge and shall be in lieu of all fees
"and."

(*To be proposed by Mr. Docker in lieu of Clause* 26.)

The Acts of Council tenth George Fourth numbered seven third Victoria numbered ten and sixteenth Victoria numbered thirty-six so far as they relate to the election nomination and appointment of a Chairman of Quarter Sessions shall be repealed and the Judges of the District Courts are hereby required and empowered to perform all the duties hitherto performed by the Courts of General and Quarter Sessions and shall have jurisdiction in all criminal cases with the exception of those involving the punishment of death and shall hold Courts for the trial of such cases in such places and at such times as the Governor General shall by proclamation appoint to be the places and times for the holding of such Courts And the Registrars of the District Courts shall perform all the duties hitherto performed by the Clerks of the Peace in their respective Districts.

Legislative Council.

DISTRICT COURTS BILL.

(Additional Clauses to be proposed in Committee.)

. In any proceedings under this Act by a man and his wife for an injury done to the wife in respect of which she is necessarily joined as a co-plaintiff or complainant it shall be lawful for the husband to add thereto claims in his own right provided that in the case of the death of either of them such suit or complaint so far only as relates to the causes of action if any which do not survive shall abate. **Proceedings by husband and wife.**

If any person shall wilfully insult the Judge or any Assessor or any Bailiff Clerk or Officer of any Court holden under this Act during his sitting or attendance in Court or shall wilfully interrupt the proceedings of such Court or being summoned or examined as a witness in any suit in any such Court shall refuse to be sworn or to answer any lawful question or shall in the opinion of the Judge of such Court be guilty of wilful prevarication or shall otherwise misbehave in Court it shall be lawful for the Judge of such Court if he shall think fit to commit any such offender to prison for any time not exceeding two months or to impose on any such offender a fine not exceeding ten pounds for every such offence and in default of immediate payment thereof to commit the offender as aforesaid for any time not exceeding two months unless the said fine be sooner paid and in either of the cases aforesaid an order in the form contained in the last Schedule to this Act shall and may be issued by such Judge and shall be good and valid in law without any other order summons or adjudication whatsoever. **ontempt of Court.**

Every Clerk Bailiff or other officer employed in putting this Act or any of the powers thereof in execution who shall wilfully and corruptly exact take or accept any fee or reward whatsoever other than **Extortion by officers.**

and

and except such fees as are or shall be appointed and allowed respectively as aforesaid for or on account of anything done or to be done by virtue of this Act or on any account whatsoever relative to putting this Act into execution shall on conviction thereof forfeit and pay any sum not exceeding fifty pounds and shall be for ever incapable of serving or being employed under this Act in any office of profit or emolument.

. That it shall be lawful for the Registrar of every such Court by himself or his deputies to be by him appointed and duly authorized under his hand and seal and for whose acts he shall be accountable during his continuance in such office and their employment by him to seize and take under any writ of execution whereby he is directed to levy any sum of money and to cause to be sold all and singular the lands tenements and hereditaments of or to which the person named in the said writ against whom any judgment adjudication order or decision has been recovered or pronounced is or may be seized or entitled.

. That in case of any sale by the said Registrar by himself or his deputy of the right title and interest of any person of to or in any lands or hereditaments the said Registrar is hereby required to execute a proper deed of bargain and sale thereof to the purchaser which deed of bargain and sale shall operate and be effectual as a conveyance of the estate right title and interest of such person Provided nevertheless that no such deed of bargain and sale shall so operate and be effectual as aforesaid unless the same shall have been duly registered in the office in Sydney for the Registration of Deeds within one month from the date of sale and be indexed in the index book thereof in the name of the person whose interest in such lands and hereditaments is intended to be thereby conveyed.

. It shall be lawful for the Judge of any District Court at any time after plaint filed on the application of either party supported by affidavit that the evidence of any specified witness or of either of the

parties

parties to the cause is material and that such witness or party is beyond the seas or at a greater distance than one hundred miles from the intended place of trial or from age or infirmity is unable to attend the trial or where from either of such last-mentioned causes or from his being about to depart beyond sea or to some place beyond the distance of one hundred miles the testimony of any such witness is in danger of being lost to grant a commission or make an order for the examination of such witness either *vivâ voce* or upon interrogatories as such Judge shall think fit to direct and before such person or persons as he shall for that purpose appoint and all evidence so taken shall be admissible at the hearing subject to all just exceptions unless it be proved that such witness is at the time of the hearing within a convenient distance of the said Court and able to attend Provided that in every such case the opposite party shall have sufficient notice of the time and place appointed for taking such examination and may cross-examine such witness in the usual manner Provided also that the Judge may either direct the whole costs of taking such evidence to be paid by the party applying or make the same costs in the cause.

. No execution shall bind any lands unless registered in the Office of the Registrar General in Sydney who shall duly register the same in a book kept for that purpose.

. That if the defendant in any action brought on a bill of exchange promissory note or other negotiable security shall fail to file a plea or defence to such action within the time limited by the rules and regulations afdresaid it shall be lawful for the Registrar of the Court without the necessity for any order by the Judge to compute principal and interest at a rate not exceeding eight per cent. upon such bill of exchange promissory note or other negotiable security and thereupon to cause judgment to be entered up for the amount so computed and in every such case the plaintiff may tax his costs of suit and issue execution according to the course and practice of the Court.

That

. That it shall be lawful for any doctor of medicine licentiate of any college of physicians or other legally qualified practitioner in medicine to sue for the recovery of any fees or other remuneration for time occupied in journeying to attending upon or prescribing for or for any professional aid or service rendered to any person in like manner as any debt or demand may be recovered by any other person under the provisions of this Act.

. Clerks articled to Attorneys or Solicitors may after serving two years under articles and with consent of their masters appear as Advocates The Clerk to any Attorney or Solicitor who has already been or who hereafter shall become articled to such Attorney or Solicitor and who may have served two years under his articles with such Attorney or Solicitor may appear as Advocate on behalf of any party to any proceedings in the County Court on producing to the Registrar of the Court his articles and also a certificate from his master that he consents thereto and the Attorney to whom such Clerk is or may be articled shall be entitled to the same fees as if he had personally attended the same Court Provided that the Clerk shall be subject to the same rules and regulations as Attorneys now are or hereafter may be subject to.

. That in case any defendant shall have given to any plaintiff two or more bills of exchange promissory notes bonds or other securities for any debt or sum originally exceeding the amount of ten pounds or fifty pounds respectively it shall be lawful for such plaintiff to sue in any such Court upon each of such bills of exchange promissory notes bonds or other securities as forming a distinct and separate cause of action and for such Court to decree accordingly.

. Every Judge to be appointed under the Act shall within one month after the first day of March in every year prepare a Return to be certified under his hand and within the like time transmit the same to the Colonial Secretary which Return shall specify—

1. The number of Suits commenced in his Court during the twelve months preceding.

2. The number settled without hearing.
3. The number of Trials.
4. The result of the Trials whether in favor of the plaintiffs or defendants.
5. The nature of the Causes under distinct heads.
6. The costs of the Suits.
7. The number of Appeals.
8. The number of Judgments or Orders affirmed.
9. The number reversed.
10. The number of cases left in arrear.
11. The date place and duration of the sittings of each Court the duration to be specified in days and hours.
12. The number of cases tried by Jury.
    Ditto without a Jury.
13. The number of cases settled by arbitration.
14. The number of motions for new Trials.
15. The number of new Trials granted.
16. The grounds on which such new Trials were granted.

And a copy of such Return shall be laid before each House of Parliament.

Proviso to Clause 46.

. Provided always that the Judge shall have power upon sufficient cause being shewn to him to remit a portion or the whole of the sum forfeited as aforesaid.

As to two or more notes or bills &c. being separate causes of action.

. Provided always that in case any defendant shall have given to any plaintiff two or more bills of exchange promissory notes bonds or other securities for any debt or sum originally exceeding the amount of one hundred pounds it shall be lawful for such plaintiff to sue in any such District Court upon each of such bills of exchange promissory notes bonds or other securities not exceeding in amount one hundred pounds respectively.

Physicians may sue for fees.

. It shall be lawful for any doctor of medicine licentiate of any college of physicians or other legally qualified practitioner in medicine to sue for the recovery of any fees or other remuneration for time occupied in journeying to attending upon or prescribing for or for any professional aid or service rendered to any person in like manner as any other person may sue for the recovery of any debt under the provisions of this Act.

(*The*

(*The last Schedule.*)

To the Bailiff of the County Court at and to the Keeper of the Gaol at

These are to command you the said Bailiff to apprehend O.B. and convey him to the said gaol and to deliver him to the said keeper thereof and you the said keeper are hereby required to receive him into your custody in the said gaol and him there safely to keep for the term of (unless the sum of shall be sooner paid) I the undersigned Judge of the said Court having now here adjudged the said O B. (to pay a fine of and in default of immediate payment thereof) to be imprisoned for the said term for that the said O B. has now in open Court wilfully

[*Here state the cause as follows.*]

" insulted the said Judge (or an Assessor Bailiff &c. as the case may be) of the said Court " during my sitting (or) his attendance therein " (or) " or interrupted the proceedings of the " said Court " (or) " misbehaved himself towards the said Court."

Given under my hand and sealed with the seal of the said Court this day of

(L.S.) J. G. F.
Judge of the said Court.

Legislative Council.

21° VICTORIÆ, 1858.

A BILL

For establishing District Courts and for enabling the Judges thereof to act as Chairmen of Quarter Sessions.

(*As Amended in Committee of the whole House.*)

WHEREAS it is expedient to establish District Courts in various parts of the Colony and to enable the Judges thereof to act as Chairmen of Courts of General Sessions of the Peace 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 New South Wales in Parliament assembled and by the authority of the same as follows :— Preamble.

1. In construing this Act every word importing the singular number shall when necessary be taken to comprehend several persons or things as well as one person or thing and every word importing the masculine gender may be applied to a female as well as a male and the term "District" shall if not inconsistent with the context be taken to mean some District in and for which a District Court is holden and the term "landlord" shall be understood to signify the person entitled to the immediate reversion of the premises or if the property be held in joint tenancy coparcenary or tenancy in common shall be understood to signify any one of the persons entitled to such reversion and the words "Quarter "Sessions" shall include General Sessions and the word "suit" may be applied to any action or other proceeding. Interpretation Clause.

2. It shall be lawful for the Governor with the advice of the Executive Council from time to time to order by Proclamation in the *Government Gazette* that Courts to be called District Courts shall be holden at such towns and places as he shall think fit and to alter the place for holding any such Court or to order that the holding of any such Court be discontinued. Appointment of District Courts.

3. It shall be lawful for the Governor with the advice aforesaid to divide the Colony into Districts for the purposes of this Act and from time to time to alter such Districts as to the Governor with the advice aforesaid shall seem fit Provided always that no alteration in the boundaries or limits of any District shall take effect until after three months from the notification thereof in the *Government Gazette*. Creation of Districts.

District Courts to be Courts of Record.

4. Every District Court shall be a Court of Record and shall have jurisdiction as hereinafter provided.

Limits of jurisdiction generally, in civil matters.

5. The several Courts appointed to be held at towns and places within such Districts respectively shall have jurisdiction when the defendant or one of two or more defendants as the case may be shall be resident within the Districts for which such Courts respectively shall be ordered to be held Provided that in respect of claims for amounts not exceeding ten pounds and at present within the jurisdiction of Courts of Petty Sessions under the Act of Council tenth Victoria number ten no defendant shall be compelled to appear so long as such jurisdiction as last aforesaid shall continue at a District Court held under this Act at a place not included within the Petty Sessions District in which he shall be resident.

Exceptions where debt expressly made payable in District other than that of Defendant's own residence or where Defendant removes after contracting liability.

6. Provided always that in case the defendant in any action shall have given an engagement or promise in writing to pay any debt or sum at a particular place specified the plaintiff may if he shall think fit cause such defendant to be summoned to the Court within the jurisdiction of which the place so specified shall be Provided also that if any party after having in one place contracted a debt or become liable for any damages recoverable in any District Court shall by removal become resident within the jurisdiction of any other such Court previously to the issuing of a summons for the recovery of such debt or damages it shall be lawful for the plaintiff if he shall think fit to cause such defendant to be summoned to the Court holden for the District within the jurisdiction of which such debt or liability for damages arose.

In personal actions.

7. All pleas of personal actions wherein the amount claimed is not more than one hundred pounds whether on balance of account or after an admitted set-off or otherwise may be holden in the Courts established under this Act Provided always that no such Court shall have cognizance of any action in which the title to land or the validity of any devise bequest or limitation under any will or settlement shall be in question or shall have jurisdiction in any action for seduction or criminal conversation Provided nevertheless that if such title as aforesaid shall incidentally come in question in any action the Court shall have power to decide the claim which it is the immediate object of the action to enforce but the judgment of the Court shall not be evidence of title between the parties or their privies in any other action in that Court or in any proceedings in any other Court.

In cases of partnership intestacy and legacy.

8. The jurisdiction of the District Courts under this Act shall extend to the recovery of any demand not exceeding the sum of one hundred pounds which is the whole or part of the unliquidated balance of a partnership account or the amount or part of the amount of the distributive share under an intestacy or of any legacy under a will.

Consent jurisdiction.

9. If both parties agree by a memorandum signed by them or by their attorneys that the District Court holden at any particular place shall have power to try any action which might be brought in the Supreme Court the said District Court shall have jurisdiction to try such action Provided that such memorandum shall state that the parties signing the same knew that such action was not triable within the jurisdiction of the District Court without such consent and provided that such memorandum shall be filed with the Registrar of the said Court at the time of filing the plaint.

Proceedings by husband and wife.

10. In any proceedings under this Act by a man and his wife for an injury done to the wife in respect of which she is necessarily joined as a co-plaintiff or complainant it shall be lawful for the husband to add thereto claims in his own right provided that in the case of the death of either of them such suit or complaint so far only as relates to the causes of action if any which do not survive shall abate.

Joinder of causes of action.

11. Two or more causes of action provided they be by and against the same parties and in the same rights may be joined in the same suit

suit in a District Court but the Court shall have power to prevent the trial of different causes of action together if such trial would in the opinion of the Court be inexpedient or inconvenient and in such case may order separate trials to be had.

Splitting demands.

12. It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said Courts, but any plaintiff having a cause of action for more than the amount for which a plaint might be entered under this Act may abandon the excess (which abandonment shall be stated upon the plaint) and thereupon the plaintiff shall on proving his case recover to an amount not exceeding one hundred pounds and the judgment of the Court upon such plaint shall be in full discharge of all demands in respect of such cause of action and entry of the judgment of the Court shall be made accordingly.

Splitting debt by giving bills, &c.

13. In case any defendant shall have given two or more bills of exchange promissory notes bonds or other securities for any debt or sum originally exceeding the amount of one hundred pounds it shall be lawful for the plaintiff to sue upon each of such securities not exceeding in amount one hundred pounds as forming a distinct cause of action.

Executors.

14. It shall be lawful for any Executor or Administrator to sue and be sued in any District Court in like manner as if he was a party suing or sued in his own right and judgment and execution shall be such as in the like case would be given or issued in the Supreme Court.

Infants.

15. It shall be lawful for any person not of the age of twenty-one years to sue in any District Court in his own name for the recovery of any sum of money not exceeding one hundred pounds which may be due to him for wages or piece-work or for work or services as a clerk servant mechanic or laborer in the same manner as if he were of full age.

Actions by Physicians &c.

16. Any doctor of medicine or other legally qualified practitioner in medicine may sue for the recovery of any fees or other remuneration as such practitioner in like manner as any debt or other demand may be recovered by any surgeon or other person under this Act.

One of several persons jointly liable may be sued.

17. Where any plaintiff shall have any demand recoverable under this Act against two or more persons jointly answerable it shall be sufficient if any one or more of such persons be served with process and judgment may be obtained and execution issued against the person or persons so served notwithstanding that others jointly liable may not have been served or sued or may not be within the jurisdiction of the Court and every such person against whom judgment shall have been obtained under this Act and who shall have satisfied the whole or any part of such judgment shall be entitled to demand and recover in the District Court under this Act contribution from any other person jointly liable with him.

Privilege.

18. No privilege shall be allowed to any Attorney Solicitor or other person to exempt him from the provisions of this Act.

Possession of tenements may be recovered in District Courts by landlords where terms have expired or been determined.

19. When the term or interest of the tenant of any land held by him for any term of years or for any less estate or interest either with or without being liable to the payment of any rent shall have expired by effluxion of time or shall have been determined by notice to quit or demand of possession and such tenant or any person claiming under him shall actually occupy such land or any part thereof and shall neglect or refuse to give up possession thereof the landlord may enter a plaint at his option either against such tenant or against such person so neglecting or refusing in the District Court nearest to the premises for the recovery of the same and thereupon a summons shall issue to such tenant or such person so neglecting or refusing and if the defendant shall not at the time named in the summons show good cause to the contrary then on proof of such neglect or refusal to deliver up possession of the premises and of the holding and of the expiration or other determination of the tenancy with the time and manner thereof and of the service of the summons if the defendant shall not appear thereto the Judge of the Court

may

may order that possession of the premises mentioned in the plaint be given to the plaintiff either forthwith or on or before such day as the Judge shall think fit to name and if such order be not obeyed the Registrar of the Court whether such order can be proved to have been served or not shall at the instance of the plaintiff issue a warrant authorizing and requiring the bailiff of the Court to give possession of such premises to the plaintiff.

In plaint for recovery of possession plaintiff may claim for rent and mesne profits.

20. In any such plaint against a tenant as in the last preceding section is specified the plaintiff may add a claim for rent or mesne profits or both down to the day appointed for the hearing or to any preceding day named in the plaint so as the same shall not exceed one hundred pounds.

Possession of small tenements may be recovered in District Court by landlords for non-payment of rent.

21. When the rent of any corporeal hereditaments where neither the value of the premises nor the rent payable in respect thereof exceeds one hundred pounds by the year shall for one-half year be in arrear and the landlord shall have right by law to re-enter for the non-payment thereof he may without any formal demand or re-entry enter a plaint in the District Court nearest to the premises for the recovery of the premises and thereupon a summons shall issue to the tenant, the service whereof shall stand in lieu of a demand and re-entry and if the tenant shall five clear days before the return day of such summons pay into Court all the rent in arrear and the costs the said action shall cease but if he shall not make such payment and shall not at the time named in the summons show good cause why the premises should not be recovered then on proof of the yearly value and rent of the premises and of the fact that one half-year's rent was in arrear before the plaint was entered and that no sufficient distress was then to be found on the premises to countervail such arrear and of the landlord's power to re-enter and of the rent being still in arrear and of the service of the summons if the defendant shall not appear thereto the Judge may order that possession of the premises mentioned in the plaint be given to the plaintiff on or before such day not being less than fourteen days from the day of hearing as the Judge shall think fit to name unless within that period all the rent in arrear and the costs be paid into Court and if such order be not obeyed and such rent and costs be not so paid the Registrar shall whether such order can be proved to have been served or not at the instance of the plaintiff issue a warrant authorizing and requiring the Bailiff of the Court to give possession of such premises to the plaintiff and the plaintiff shall from the time of the execution of such warrant hold the premises discharged of the tenancy and the defendant and all persons claiming by through or under him shall so long as the Order of the Court remains unreversed be barred from all relief in Equity or otherwise.

Sub-tenant served with summons to recover possession must give notice to his immediate landlord who may come in and defend.

22. Where any summons for the recovery of a tenement as is hereinbefore specified shall be served on or come to the knowledge of any sub-tenant of the plaintiff's immediate tenant such sub-tenant being an occupier of the whole or of part of the premises sought to be recovered he shall forthwith give notice thereof to his immediate landlord under penalty of forfeiting three years' rack-rent of the premises held by such sub-tenant to such landlord to be recovered by such landlord by action in the Court from which summons shall have issued and such landlord on the receipt of such notice if not originally a defendant may be added or substituted as a defendant to defend possession of the premises in question.

Jurisdiction in replevin.

23. The District Courts holden under this Act shall have the same jurisdiction and powers in actions of replevin as to distresses for rent as are given to the Courts of Requests and Courts of Petty Sessions by the Act of Council 15th Victoria No. 11 and all such actions shall be tried and determined subject to the rules of practice in force for the time being for regulating the proceedings in such District Courts respectively.

24.

24. The Acts of Council 6th Victoria No. 15 and 11th Victoria No. 35 shall be and the same are hereby repealed but so nevertheless that all proceedings commenced or taken under the said Acts or any of them before this Act shall come into operation upon Proclamation as hereinbefore provided shall be as valid to all intents and purposes and may be continued executed and enforced against all persons liable thereto in the same manner as if this Act had not been passed and all causes pending at the time of such Proclamation as aforesaid in the Courts of Requests holden in the City of Sydney and County of Cumberland may be continued heard and determined in the mode hereafter described by this Act in one of the Courts to be established under this Act within the said City or County.

Repeal of Courts of Requests Acts; pending causes may be continued.

25. So soon as it shall appear that the jurisdiction now exercised by any Court of Petty Sessions under the Acts of Council 10th Victoria No. 10 and 11th Victoria No. 2 can in consequence of the establishment of a District Court be dispensed with wholly or in respect of residents within any portion of the Police District of such Court of Petty Sessions it shall be lawful for the Governor with the advice of the Executive Council to notify and declare that the jurisdiction of such Court of Petty Sessions shall thenceforward cease and such jurisdiction shall thereupon cease accordingly Provided however that the jurisdiction of the said Court of Petty Sessions shall continue in respect of all cases then pending therein.

Cessation of jurisdiction of Petty Sessions.

26. The Acts of Council 10th George IV. No. 7 3rd Victoria No. 10 and 16th Victoria No. 36 so far as they relate to the election nomination and appointment of a Chairman of Quarter Sessions shall be repealed and it shall be lawful for the Governor with the advice of the Executive Council by Commission to appoint the Judge of any District Court to be the Chairman of any Court of Quarter Sessions to be holden within the limits of the district for which he shall have been appointed.

Acts repealed.

Judges of District Courts to have powers of Chairman of General or Quarter Sessions.

27. The Governor with the advice of the Executive Council shall by Commissions in Her Majesty's name appoint as many fit persons as are needed to be Judges of the District Courts under this Act each of whom shall be a Barrister-at-Law of five years or an Attorney-at-Law of seven years standing and every such person may be appointed by one Commission for several Courts or by several Commissions for each or any number of such Courts Provided that no Barrister or Attorney shall be so appointed unless he shall have been in practice or have held some judicial or legal office under the Crown within two years immediately preceding the appointment to such office Provided also that the person who at the commencement of this Act shall be Commissioner of the Courts of Requests for the City of Sydney and County of Cumberland shall be appointed one of the Judges under this Act.

Appointment and Qualification of Judges.

28. No Judge of a District Court shall practise at the Bar or as an Equity Draughtsman Pleader or Conveyancer or as an Attorney Solicitor Proctor or Notary or be directly or indirectly concerned or interested in any such practice profession or business and no such Judge shall be capable of being summoned or being elected or of sitting as a Member of the Legislative Council or Legislative Assembly.

Judges not to practise or sit in Parliament.

29. The Judges of the said District Courts shall hold their offices during ability and good behaviour and shall severally be paid (exclusive of any allowance for travelling expenses) an annual salary not less than the sum of which sum shall not be diminished during the continuance of such person in the office of District Court Judge but it shall be lawful for the Governor with the advice of the Executive Council to remove any Judge for inability or misbehaviour Provided that twenty-one days at the least before such removal the Judge shall have notice of the intention to remove him and that he shall thereafter and before removal have the opportunity of being heard before the Governor and Council in his defence and it shall also be lawful

Judges tenure of Office and removal therefrom.

lawful for the Governor with the advice aforesaid to remove any Judge appointed under this Act for the purpose of appointing him to some other District Court.

Deputy Judge.

30. In case of illness or absence it shall be lawful for the Governor with the advice aforesaid to appoint some other person who shall be a Judge appointed under this Act or who shall be a Barrister-at-Law or Attorney to act as the Deputy of any District Court Judge during such illness or absence.

Appointment and Salary of Registrar.

31. For every District Court there shall be a Registrar whom the Governor with the advice aforesaid shall appoint and may remove and every such Registrar shall be paid by salary and it shall be lawful for the Governor with the advice aforesaid in populous districts in which it shall appear to be expedient to appoint two persons to execute jointly the office of Registrar under such regulations as to the division of their duties and emoluments of the said office as shall be from time to time made by order of Court in case of difference between them.

Deputy Registrar.

32. It shall be lawful for the Registrar of any such Court with the approval of the Judge or in case of inability of the Registrar to make such appointment for the Judge to appoint from time to time a Deputy to act for the Registrar of the said Court at any time when he shall be prevented by illness or absence from acting in such office and to remove such Deputy at his pleasure and such Deputy while acting under such appointment shall have the like powers and be subject to the like provisions duties and penalties for misbehaviour as if he were the Registrar of the said Court for the time being and in case of the death or removal of such Registrar whilst his Deputy is acting such Deputy shall continue to act until a successor to such Registrar shall be appointed and he shall receive as remuneration for his services during the period he may so act after the death or removal of the Registrar a rateable proportion of the salary attached to the office of Registrar.

Judge to appoint Deputy Registrar provisionally if one has not been appointed.

33. On the death or removal of a Registrar who shall not have appointed a Deputy the Judge may for a period not exceeding three months provisionally appoint a person to discharge the duties of Registrar and such person shall act as and have all the rights and liabilities of a Registrar until a permanent successor shall be appointed and shall receive as remuneration for his services during the period he may so act a rateable proportion of the salary attached to the office of Registrar.

Duties of Registrars.

34. The Registrar of each Court shall sign and issue all summonses and warrants and register all records orders and judgments of the said Court and keep an account of all proceedings of the Court and shall take charge of and keep an account of all Court Fees and fines payable or paid into Court and of all moneys paid into and out of Court and shall enter an account of all such fees fines and moneys in a ledger belonging to the Court to be kept by him for that purpose and shall at such times as the Governor with the advice aforesaid shall direct submit his accounts to be audited and settled by the Judge.

Appointment of Bailiffs and Bailiff's Assistants.

35. For every such Court there shall be one or more Bailiffs whom the Judge shall by order under his hand appoint and may remove by like order and every such Bailiff may subject to the restriction hereinafter contained by any writing under his hand appoint a sufficient number of able and fit persons not exceeding such number as shall be from time to time allowed by the Judge to be officers to assist the said Bailiff and at his pleasure to dismiss all or any of them and appoint others in their stead and every officer so appointed may also be suspended or dismissed by the Judge.

Bailiffs' Assistants may act after the death or removal of Bailiff.

36. The death or removal of any Bailiff shall not invalidate the acts of any Officers so appointed to assist such Bailiff as aforesaid but they shall continue to act until they shall be dismissed by the successor

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to the Bailiff or by the Judge and they shall be paid for their services during the period they shall so act after the death or removal of the Bailiff the same salary or wages as they were receiving at the date of such death or removal and such salary or wages shall be paid out of the salary and allowances attached to the office of Bailiff.

Duties of Bailiffs.

37. The said Bailiffs or one of them shall if required by the Judge attend every sitting of the Court and shall within their own Districts respectively by themselves or by the officers appointed to assist them as aforesaid serve all summonses and shall execute all the warrants and writs issued out of any District Court and the said Bailiffs and Officers shall in the execution of their duties conform to all such general rules as shall be from time to time made for regulating the proceedings and practice of the Court as hereinafter provided and subject thereunto to the order and direction of the Judge of the District in which the process is to be served or executed Provided that no summons or other process (other than process of execution) shall be so served or executed in any District other than that in which it issued until indorsed by the Registrar of the District within which the same is sought to be served or executed Provided also that any summons wheresoever issued may be served by the plaintiff if he shall think fit or any competent person employed by him in any District without any such indorsement.

Remuneration of Bailiffs.

38. Every such Bailiff shall receive a salary on account of the service of summonses and of his general duties other than in the execution of warrants and of writs of execution and the said Bailiffs shall be entitled to receive and retain for their own use all fees and sums of money allowed as hereinafter mentioned in the name of fees payable to the Bailiff out of which they shall provide for the execution of the duties for which such fees are allowed and for the payment of the officers appointed to assist them and the fees upon execution shall be paid by the Registrar of the Court to the Bailiff upon the return of the writ of execution but not before and every such Bailiff shall be responsible for all the acts and defaults of himself and of the officers appointed to assist him in like manner as the Sheriff of New South Wales is responsible for the acts and defaults of himself and his officers Provided always that in every Court holden under this Act in which the fees allowed to be taken by the Bailiffs of the Court shall appear to be more than sufficient it shall be lawful for the Governor with the advice aforesaid to order that a certain specified part only of their fees shall be retained by them and in that case and so long as such order shall be in force the amount of the residue of such fees shall be accounted for paid and applied in the same manner as all other fees payable to such Registrar.

Disabilities of Registrar and Bailiff.

39. It shall not be lawful for the Registrar of any District Court or the partner of such Registrar or any person in the service of such Registrar or his partner except as hereinafter mentioned to act as Bailiff of the Court or for the Bailiff his partner or clerk or any person in the service or employment of such Bailiff or his partner to act as Registrar of any such Court and no officer of the Court shall either by himself or by his partner be directly or indirectly concerned as Attorney or agent for any party in any proceeding in any such Court and any person committing any such offence shall forfeit the sum of one hundred pounds and full costs of suit to any person who shall sue for the same.

Registrar and Bailiff to give security.

40. The Registrar and Bailiff of every District Court who may receive any moneys in the execution of his duty shall give security for such sum and in such manner and form as the Governor with the advice aforesaid from time to time shall order for the due performance of their several offices and for the due accounting for and payment of all moneys received by them under this Act or which they may become liable to pay for any misbehaviour in their office.

41.

Amount of Court fees.

41. There shall be payable on every civil proceeding in the District Courts the fees mentioned in the Schedule to this Act and none other except as hereinafter provided and the fractional part of a pound shall for the purpose of poundage be reckoned as an entire pound and a table of such fees shall be put up in some conspicuous place in the Court House and in the Registrar's Office and the fees on every such proceeding shall be paid in the first instance by the party on whose behalf such proceeding is to be taken on or before such proceeding and the fees upon execution shall be paid into Court before or at the time of the issue of the process of execution And it shall be lawful for the Governor with the advice of the Executive Council from time to time to alter such scale of fees in any particular Provided that no such alteration in the scale of fees shall come into operation until the expiration of one month after the same shall have been notified to both Houses of the Parliament of the Colony and that no such alteration shall take effect if within such period either House of Parliament shall by an address to the Governor signify its dissent therefrom.

Fines and Fees part of the Consolidated Revenue.

42. All fees payable on any proceedings in the District Courts to the Registrars of the several Courts except such part thereof as the Bailiffs of those Courts respectively shall from time to time be entitled to receive and retain for their own use and all fines imposed under this Act and received by such Registrar shall be deemed and taken to be part of the Consolidated Revenues of the Colony and shall be accounted for paid and applied accordingly.

Seal of the Court.

43. For every Court holden under this Act there shall be a Seal and all notices summonses certificates warrants and other process issued by the Registrar of the Court shall be sealed or stamped with the Seal of the Court and every person who shall forge the seal of any process of the Court or who shall serve or enforce any such forged process knowing the same to be forged or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of such Court knowing the same to be false shall be guilty of felony and being convicted thereof shall at the discretion of the Court be kept to hard labor upon the roads or other public works of the Colony for any period not exceeding seven years or be imprisoned with or without hard labor for any term not exceeding three years.

Punishment for forging Seal or serving forged process.

Judge to hold Court where directed and to give notice thereof.

44. The Judge of each District Court shall attend and hold such Court at the place where the Governor with the advice aforesaid shall have ordered that the Court shall be holden at such times as such Judge shall appoint for that purpose so that a Court shall be holden in such place once at least in such interval as the Governor with the advice aforesaid shall in each case order and notice of the days on which the Court will be holden shall be put up in some conspicuous place in the Court House and in the office of the Registrar of the Court and shall be otherwise published as to the Judge shall seem best Provided that where by reason of the death or absence of the Judge at any District Court at the time appointed such Court cannot be then held the Registrar or in the event of his death or absence the Bailiff shall adjourn the Court to such day as he may deem convenient and enter in the Minute Book the cause of such adjournment.

Proceedings in civil suits.

45. On the application of any person desirous of bringing an action under this Act the Registrar of the Court shall enter in a Book to be kept for this purpose in his Office a plaint in writing stating the names and the last known places of abode of the parties and the substance of the action intended to be brought every one of which plaints shall be numbered in every year according to the order in which it shall be entered and thereupon a summons stating the substance of the action and bearing the number of the plaint on the margin thereof shall be issued under the Seal of the Court according to such form and be served

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on the defendant at such time and in such manner as shall be directed by the Rules made for regulating the practice of the Court as hereinafter provided and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same so that the person or place be therein described so as to be commonly known.

Trial.

46. The Judge of the District Court shall be the sole Judge in all actions or proceedings in the said Court and shall determine all questions of law and unless a jury be summoned all questions also of fact.

Certain Provisions of 20 Vict., No. 31, to apply to this Act.

47. The provisions of sections ten eleven twelve thirteen fourteen fifteen and twenty-three of "The Common Law Procedure Act of 1857" shall extend and apply to this Act and all proceedings thereunder.

Actions may be tried by a jury when parties require it, if the amount claimed exceed £20.

48. In all actions where the amount claimed shall exceed twenty pounds it shall be lawful for the plaintiff or defendant to require a jury to be summoned to try the said action and in every case such jury shall be summoned according to the provisions hereinafter contained Provided always that the party requiring a jury to be summoned shall give to the Registrar of the Court or leave at his office such notice thereof as shall be directed by the rules made for regulating the practice of the Court as hereinafter provided and the said Registrar shall cause notice of such demand of a jury made either by the plaintiff or defendant to be communicated to the other party to the said action either by post or by causing the same to be delivered at his usual place of abode or business but it shall not be necessary for either party to prove on the trial that such a notice was communicated to the other party by the Registrar.

Party requiring jury to make deposit.

49. Every party requiring a jury to be summoned shall at the time of giving the said notice and before he shall be entitled to have such jury summoned pay to the Registrar of the Court the sum of and such sum shall be considered costs in the cause unless otherwise ordered by the Judge.

Who shall be jurors.

50. The persons qualified and liable to act as jurors for the trial of issues civil and criminal and for the assessment of damages under the provisions of the Act of Council 11th Victoria No. 20 sections one two and three shall be the persons qualified and liable to act as jurors in Courts holden under this Act and for the purposes of the establishment of Jurors' Districts and the preparation of Jurors' Lists every District Court shall be deemed to be a Court for the trial of issues and the assessment of damages within the meaning of the said Act of Council 11th Victoria No. 20 and jury lists shall be prepared published and corrected according to the provisions therein contained and such lists when corrected shall be transmitted by the Clerks of the Benches to the Judge of such District Court who shall thereupon prepare a Jurors' Book for such Court according to the said Act.

Jury Lists for newly created Districts.

51. In case the Governor of the Colony of New South Wales shall by any Proclamation or Proclamations issued and published with the advice aforesaid order a District Court or Courts or any Court of General or Quarter Sessions of the Peace to be holden at any town or place where provision shall not have been theretofore made for the preparing and settling of the Jury Lists for such town or place it shall be lawful for the said Governor with the advice aforesaid to direct the Bench of Magistrates of the District wherein such town or place shall be situate to cause Jury Lists for such town or place to be prepared and thereupon the said Bench of Magistrates shall in pursuance of such direction and they are hereby authorized and required to prepare and cause to be prepared within three months after the receipt of any such direction Lists of all Jurors within the Jurors' District for such town or place and thereupon the Clerks of Petty Sessions Chief Constables and Justices shall do and perform within the said period of three months all such acts matters and things in and towards preparing correcting and allowing the Jury Lists as are in the said

said last mentioned Act required to be ordinarily done in the months of August September and October in each and every year and all such Jury Lists when prepared corrected and allowed as aforesaid shall be transmitted by the Clerks of the Benches to the District Court Judge Provided that in case any Jury List prepared under the direction of the Governor pursuant to this Act shall take effect at any time between the months of February and August in any year the same shall continue in force until the month of August in the year following until which time no new list shall in that case be prepared.

Jurors' Book to be made therefrom.

52. The District Court Judge shall within ten days from the receipt of the Jury Lists cause to be made out therefrom a Jurors' Book for such Court according to the provisions of the said Act so far as the same can be applied and all such Jury Lists when settled shall come into force and the persons whose names shall be therein set down shall be liable to serve as Jurors immediately after the Jurors Book for such newly appointed town or place as aforesaid shall have been made out by the District Court Judge and each of the said lists shall respectively continue in force until new lists shall have been allowed and a new Jurors' Book shall have been made out under the provisions hereinbefore contained.

Jurors.

53. Whenever a jury shall be required the Judge shall cause not less than eight nor more than twelve of the persons named in the said book to be summoned to attend the Court at a time and place to be mentioned in the summons and shall administer or cause to be administered to such of them as shall be impannelled an oath to give true verdicts according to the evidence and every person so summoned shall attend at the Court at the time mentioned in the summons and in default of attendance or of withdrawal from the Court without leave or of refusal to act as a juror shall forfeit such sum of money as the Judge shall direct not being more than ten pounds for each default and the delivery of such summons to the person whose attendance is required on such jury or to his wife or servant or any inmate at his usual place of abode or business shall be deemed good service Provided always that the Judge shall have power upon sufficient cause being shewn to him to remit a portion or the whole of the sum forfeited as aforesaid.

Jury to be chosen by ballot.

54. Upon the trial of all cases in such District Courts respectively the juries shall be chosen by ballot from the list of jurors so summoned as aforesaid and in case of a deficiency of jurors the necessary number of persons to compose a jury shall be nominated by the Judge from the by-standers and if any person so nominated shall refuse to act as a juror without an excuse allowed by the Judge he shall be liable to the same penalty as a juror for not attending after having been summoned.

Number of jurors.

55. Whenever there are any issues for trial by Jury in any District Court four jurymen shall be impannelled and sworn as occasion shall require to give their verdicts in the causes which shall be brought before them in the Court and being once sworn shall not need to be re-sworn on each trial and either of the parties to any such cause shall be entitled to his lawful challenge for cause against any of the said jurors and the said jurors shall give their verdict or may be discharged as in the said Act is provided with respect to juries for the trial of civil issues.

Payment to jurors.

56. Every person summoned or nominated to act as a juror under this Act shall for his attendance be entitled to the same compensation and allowance for his travelling expenses as are provided by law for jurors attending the Supreme Court or any Circuit Court under a General Jury Precept.

Power to Judge to change venue.

57. If a Judge of a District Court shall be satisfied by either party to a cause pending in his Court that such cause can be more conveniently or fairly tried in some other District Court he shall order that the venue be changed and that the cause be sent for hearing to such other District Court or if the Judge shall be interested in the matter of any cause pending in his Court he shall order that the venue be changed and that the cause be

be sent for hearing to some convenient District Court of which he is not the Judge at his discretion and in either case the Registrar of the Court in which the plaint was entered shall forthwith transmit by post to the Registrar of the Court to which the cause is to be sent a certified copy of the plaint as entered in the Plaint Book the duplicate copy of the summons and particulars served on the defendant and a certified copy of the order for changing the venue and the Judge of such last mentioned Court shall appoint a day for the hearing notice whereof shall be sent by post or otherwise by the Registrar to both parties.

Notice of special defences.

58. No defendant in any District Court shall be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff or to set up by way of defence and to claim and have the benefit of infancy coverture or of the Statute of Frauds or of any Statute of Limitations or of his discharge under any statute relating to Bankrupts or any Act for relief of Insolvent Debtors or to plead a justification in any action of tort without the consent of the plaintiff unless such notice thereof as shall be directed by the rules made for regulating the practice of the Court shall have been given to the Registrar of the Court and in every case in which the practice of the Court shall require such notice to be given the Registrar shall as soon as conveniently may be after such notice communicate the same to the plaintiff by the post or by causing the same to be delivered at his usual place of abode or business but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the Registrar.

Payment into Court.

59. The defendant in any suit in a District Court other than in a suit for libel or slander may within such time as shall be directed by the rules to be made as aforesaid pay into Court such sum of money as he shall think a full satisfaction for the demand of the plaintiff together with the costs incurred by the plaintiff up to the time of such payment and notice of such payment shall be communicated by the defendant to the plaintiff by post or by causing the same to be delivered at his usual or last known place of abode or business and the sum of money shall be paid to the plaintiff but if he shall elect to proceed and shall recover no further sum in the action than shall have been so paid into Court the plaintiff shall pay to the defendant the costs incurred by him in the said action after such payment and an order shall thereupon be made by the Court for the payment of such costs by the plaintiff.

Proceedings at the trial where both parties appear.

60. At the time and place in that behalf named in any summons issued out of any District Court the plaintiff shall appear and thereupon the defendant shall be required to appear to answer such plaint and on answer being made in Court the Judge shall proceed to try the cause and give judgment without any further pleading or formal joinder of issue.

Appearance to be in person or by Counsel or Attorney or other person allowed by the Judge.

61. It shall be lawful for every party to an action or other proceeding under this Act or a Barrister or Attorney of the Supreme Court retained by or on behalf of the party on either side (but without any right of exclusive audience or pre-audience) or for any other person allowed by special leave of the Judge in each case to appear instead of the party to address the Court and examine and cross-examine the witnesses but subject to such regulations as the Judge may from time to time prescribe for the orderly transaction of the business of the Court Provided always that no person not being a Barrister or Attorney of the Supreme Court shall be entitled to receive or recover or shall receive directly or indirectly any sum of money or other remuneration for appearing or acting on behalf of any other person in the said District Court.

Proceedings where Plaintiff does not appear.

62. If at the time and place so named as aforesaid or at any continuation or adjournment of the Court or of the cause for which the summons shall have been issued the plaintiff shall not appear the cause shall be struck out and where the defendant shall appear and shall not admit the demand it shall be lawful for the Judge to award to the defendant by way of

of costs and satisfaction for his trouble and attendance such sum as the Judge in his discretion shall think fit and such sum shall be recoverable from the plaintiff in the same way as any debt adjudged by the Court to be paid can be recovered Provided always that if the plaintiff shall not appear when called upon and the defendant or some one duly authorized on his behalf shall appear and admit the cause of action to the full amount claimed and pay the fees payable in the first instance by the plaintiff the Court if it shall think fit may proceed to give judgment as if the plaintiff had appeared.

Proceedings where Defendant does not appear.

63. If at the time and place so named or at any continuation or adjournment of the Court or cause the defendant shall not appear or sufficiently excuse his absence or shall neglect to answer when called in Court the Judge upon due proof of service of the summons may proceed to the trial of the cause on the part of the plaintiff only and the judgment thereupon shall be as valid as if both parties had attended Provided always that the Judge in any such case at the same or any subsequent Court may set aside any judgment so given in the absence of the defendant and the execution thereupon and may grant a new trial of the cause upon such terms if any as to payment of costs giving security for debt or costs or such other terms as he may think fit on sufficient cause shown to him for that purpose.

Judge may grant time or adjourn.

64. The Judge of any District Court may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit and may also from time to time adjourn the Court or the trial or further trial of any cause in such manner and upon such terms as to the Judge may seem fit.

Proof to be limited to matter in the summons.

65. No evidence shall be given by the plaintiff of any demand or cause of action except such as shall be stated in the summons issued in such suit.

Subpœna to witnesses.

66. Either party to any suit in a District Court may obtain at the office of the Registrar of the Court subpœnas to witnesses to be served at the option of such party by himself or his agent or by the Bailiff of the Court with or without a clause requiring the production of books deeds papers and writings in their possession and control and in any such subpœna any number of names may be inserted.

Penalty on witnesses neglecting subpœna.

67. Every person on whom such subpœna shall have been served either personally or in such other manner as shall be directed by the general Rules of the Court and to whom at the same time payment or a tender of payment of his expenses shall have been made on such scale of allowance as shall be settled by the general Rules of the Court and who shall refuse or neglect without sufficient cause to appear or to produce any books papers or writings required by such subpœna to be produced and also every person present in Court who shall be required to give evidence and who shall refuse to be sworn and give evidence shall forfeit and pay such fine not exceeding fifty pounds as the Judge shall set on him and the whole or any part of such fine in the discretion of the Judge after deducting the costs shall be applicable toward indemnifying the party injured by such refusal or neglect and the remainder thereof shall form part of the General Fund of the Court in which the fine was imposed but no such fine shall exempt such person from any action for disobeying such summons.

Examination *de bene esse.*

68. It shall be lawful for the Judge of any District Court at any time after plaint filed on the application of either party supported by affidavit that the evidence of any specified witness including in that term either of the parties is material in the cause and that such witness is absent from the Colony or above one hundred miles from the place of trial or is expected to die or to be unable from sickness or infirmity to attend at the hearing or is about to quit the Colony or go to some place beyond the said distance before the cause can be heard to take in Court

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or Chambers or to authorize the Registrar of any District Court or any Commissioner of the Supreme Court or Justice of the Peace or practising Barrister or Attorney to take at some convenient place the examination of such witness *de bene esse* and all evidence so taken shall be admissible at the hearing subject to all just exceptions unless it be proved that such witness is at the time of the hearing within a convenient distance of the said Court and able to attend Provided that in every such case the opposite party shall have sufficient notice of the time and place appointed for taking such examination and may cross-examine such witness in the usual manner Provided also that the Judge may either direct the whole costs of taking such evidence to be paid by the party applying or make the same costs in the cause.

Proceedings where defendant's set-off exceeds the plaintiff's claim.

69. In every suit under this Act in which the defendant shall be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff such defendant shall whether the plaintiff shall be nonsuit or shall have judgment given against him be entitled to recover in such suit the amount if any by which the debt or demand so set off exceeds the debt or demand claimed and proved by the plaintiff and shall have judgment and execution for the same accordingly Provided that the defendant shall not be allowed to set off any debt or demand exceeding in amount one hundred pounds.

Judgments to be final unless new trial granted.

70. Every judgment of any District Court except as herein provided shall be final and conclusive between the parties but the Judge shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given entitling him to the judgment of the Court and shall also in every case whatever have the power if he shall think fit to order a new trial to be had upon such terms as he shall think reasonable and in the meantime to stay the proceedings.

Cross judgments to be set off.

71. If there shall be cross judgments between the parties execution shall be taken out by that party only who shall have obtained judgment for the larger sum and for so much only as shall remain after deducting the smaller sum and satisfaction for the remainder shall be entered as well as satisfaction on the judgment for the smaller sum and if both sums shall be equal satisfaction shall be entered upon both judgments.

Costs.

72. All the costs of any action or proceeding not herein or otherwise provided for shall be paid by or apportioned between the parties in such manner as the Judge shall think fit and in default of any special direction shall abide the event of the action or result of the decision and such costs may be recovered in like manner as any debt adjudged by the Court to be paid can be recovered.

Fees and expenses to witnesses.

73. The fees to be allowed to Barristers and Attorneys practising in any District Court for appearing or acting on behalf of any person in any suit in such Court and the expenses to be paid to witnesses shall be fixed by scale in the rules to be made as hereinafter mentioned.

Costs of attorney in certain proceedings in District Courts shall be taxed by Registrar as between party and party.

74. All costs and charges between party and party shall be taxed by the Registrar of the Court in which such costs and charges were incurred but this taxation may be reviewed by the Judge of the Court on the application of either party and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in force.

Where judgment does not exceed twenty pounds Judge may order payment by instalments; in other cases consent of plaintiffs necessary.

75. When judgment has been obtained in any District Court for a sum not exceeding twenty pounds exclusive of costs the Judge may order such sum and costs to be paid at such time or times and by such instalments if any as he shall think fit and all such moneys shall be paid into Court but in all other cases he shall order the full amount for which judgment has been obtained to be paid either forthwith or within fourteen clear days from the date of the judgment unless the plaintiff or his counsel attorney or agent will consent that the same shall be paid by

instalments

instalments in which case the Judge shall order the same to be paid at such times and by such instalments as have been consented to and all such moneys whether payable in one sum or by instalments shall be paid into Court And in any case in which payment by instalments shall have been ordered execution may be had for the whole amount due upon the judgment if default shall be made in payment of one such instalment. 5

Registrar to issue writs of *fieri facias.*

76. In any case where an order decision judgment or adjudication for the payment of money shall be made by any Court or the Judge thereof it shall and may be lawful for the Registrar of the said Court on the application of the party in whose favor such order decision judgment or adjudication has been made to issue a writ of *fieri facias* which writ shall be directed to the Bailiff or Registrar of the said Court as the case may be. 10

Registrar to take under writ of execution.

77. It shall be lawful for the Registrar of every such Court by himself or his deputies to be by him appointed and duly authorized under his hand and seal and for whose acts he shall be accountable during his continuance in such office and their employment by him to seize and take under any writ of execution whereby he is directed to levy any sum of money and to cause to be sold all and singular the lands tenements and hereditaments of or to which the person named in the said writ is or may be seized or entitled or which he can either at Law or in Equity assign or dispose of. 15 20

Registrar to execute bill of sale.

78. In case of any sale by the said Registrar by himself or his deputy of the right title and interest of any person of to or in any lands or hereditaments the said Registrar is hereby required to execute a proper deed of bargain and sale thereof to the purchaser which deed of bargain and sale shall operate and be effectual as a conveyance of the estate right title and interest of such person Provided nevertheless that no such deed of bargain and sale shall so operate and be effectual as aforesaid until the same shall have been duly registered in the proper office for the Registration of Deeds and be indexed in the index book thereof in the name of the person whose interest in such lands and hereditaments is intended to be thereby conveyed. 25 30

Bailiff to seize personal property.

79. It shall be lawful for a Bailiff of any of the said Courts by himself or his deputies to be by him appointed and duly authorized under his hand and seal to seize and take under any writ of execution whereby he is directed to levy any sum of money and to cause to be sold all and singular the goods chattels and other personal property of or to which the person named in the said writ is or may be possessed or entitled or which he can either at Law or in Equity assign or dispose of Provided that the wearing apparel bedding tools and implements of trade of the defendant and his family to the value of ten pounds in the whole shall be protected from seizure. 35 40

Executions not to bind land unless registered.

80. No writ of execution under this Act shall bind any lands unless registered in the proper office for Registration of Deeds with the Registrar who shall duly register the same in a book to be kept for that purpose. 45

Registrars and Bailiffs may sell by auction without license.

81. The provisions of the first section of the Act of Council 13th Victoria No. 13 enabling Bailiffs of the Courts of Requests to sell by auction without a license shall apply to Registrars and Bailiffs of District Courts held under this Act and to their assistants. 50

Priority of Executions issuing out of District Court.

82. The precise time when any application shall be made to a Registrar to issue a Warrant or Writ of Execution against the lands or goods of a party shall be entered by him in the Execution Book and on such Warrant or Writ and when more than one such Warrant or Writ shall be delivered to any Registrar or Bailiff to be executed he shall execute them in the order of the times so entered. 55

Priority of Execution issuing out of Supreme Court and District Court.

83. When a Writ against the lands or goods of a party to any suit has issued out of the Supreme Court and a Warrant or Writ of Execution against the lands or goods of the same party has issued out of any District

trict Court the right to the property seized shall be determined by the priority of the time of the delivery of the Writ so issued out of the Supreme Court as aforesaid to the Sheriff to be executed or of the application to the Registrar for the issue from such District Court of the Warrant or Writ of Execution and the Sheriff shall on demand inform the Registrar of the precise time of such delivery of the Writ so issued out of the Supreme Court as aforesaid and the Registrar on demand shall inform the Sheriff or any Sheriff's Officer of the precise time of the application to such Registrar for the issue from such District Court of the Warrant or Writ of Execution And any Warrant granted in pursuance of any Writ of Execution issued out of the Supreme Court or any District Court and the indorsement thereon And any Warrant issued by the Registrar of any District Court authorising the Bailiff of such District Court to give possession of premises as hereinbefore mentioned shall respectively be sufficient justification to any Registrar Bailiff or Sheriff's Officer acting thereon.

When goods seized under process of District Courts landlord may claim certain rent in arrear.

84. The landlord of any tenement in which any such goods shall be so taken may claim the rent thereof at any time within five clear days from the date of such taking or before the removal of the goods by delivering to the Bailiff or officer making the levy any writing signed by himself or his agent which shall state the amount of rent claimed to be in arrear and the time for and in respect of which such rent is due and if such claim be made the Bailiff or officer making the levy shall in addition thereto distrain for the rent so claimed and the costs of such distress and shall not within five days next after such distress sell any part of the goods taken unless they be of a perishable nature or upon the request in writing of the party whose goods shall have been taken and the Bailiff shall afterwards sell such of the goods under the execution and distress as shall satisfy first the costs of and incident to the sale next the claim of such landlord not exceeding the rent of four weeks when the tenement is let by the week the rent of two terms of payment when the tenement is let for any other term less than a year and the rent of six months in any other case and lastly the amount for which the warrant issued and if any replevin be made of the goods so taken the Bailiff shall notwithstanding sell such portion thereof as will satisfy the costs of and incident to the sale under the execution and the amount for which the warrant issued and in either event the overplus of the sale if any and the residue of the goods shall be returned to the defendant and the poundage of the Bailiff and Broker for appraisement and sale under such distress shall be the same as would have been payable if the distress had been an execution of the District Court and no other fees shall be demanded or taken in respect thereof.

Interpleader.

85. If any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any District Court or in respect of the proceeds or value thereof by any person not being the party against whom such process has issued it shall be lawful for the Registrar of such Court upon application of the Officer charged with the execution of such process as well before as after any action brought against such Officer to enter an interpleader plaint and to issue a summons thereon calling before the said Court as well the party issuing such process as the party making such claim and thereupon any action which shall have been brought in the Supreme Court or in any District Court in respect of such claim shall be stayed and the Court in which such action shall have been brought or any Judge thereof on proof of the issue of such summons and that the goods and chattels were so taken in execution may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the District Court and the Judge of the District Court shall adjudicate

adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as to him shall seem fit and such order shall be deemed a judgment of the Court and be enforced in like manner as a judgment in any other suit brought in such Court. 5

Execution against the person.

86. Whenever any sum of money shall have been recovered by the judgment of any District Court and the judgment creditor shall show to the satisfaction of a Judge of the Supreme Court or of any District Court that such sum of money has been recovered and that the debt was fraudulently contracted or that the judgment debtor conceals 10 any goods chattels or valuable securities or that he has any income salary or means whereby in the opinion of such Judge he can satisfy such judgment or any part thereof or is about to leave the Colony or to remove any of his property with intent to evade payment of the said judgment debt such Judge may authorize the Registrar of the said District Court to issue a Writ of *capias ad satisfaciendum* in such form as 15 shall be fixed by the rules to be made under this Act and any bailiff of the District Court and the keeper of any gaol to whom such Writ or any Warrant in pursuance thereof is directed shall respectively execute and obey the same respectively and all constables and other peace officers 20 within their several jurisdictions shall aid and assist in the execution thereof.

Discharge on payment of debt and costs.

87. Any person arrested or imprisoned under this Act by virtue of any such warrant as last aforesaid shall be entitled to his discharge on payment of the amount named in such warrant as due for such 25 judgment and the costs of obtaining and executing such warrant and the bailiff making the arrest and the keeper of the gaol to whom the warrant is directed are hereby empowered and required to receive the amount so paid and to transmit the same to the Registrar of the District Court in which the judgment was recovered. 30

Removal of causes.

88. Any plaint entered in any District Court may be removed by *certiorari* into the Supreme Court by order of any Judge thereof upon such terms as to payment of costs giving security for the amount claimed or costs or such other terms as such Judge shall think fit Provided it shall appear to such Judge to be a case proper to be tried in the Supreme 35 Court Provided also that no plaint shall be removed when the amount claimed does not exceed ten pounds unless the defendant give security to the satisfaction of such Judge for the amount claimed and also for the costs in the Supreme Court not exceeding one hundred pounds or deposit in the hands of the Prothonotary of the said Court the amount claimed 40 together with the sum of one hundred pounds by way of security for the said costs.

Rule or summons to shew cause why a writ of *certiorari* or prohibition should not issue to be a stay of proceedings.

89. The granting by the Supreme Court or by any Judge thereof of a rule or summons to shew cause why a writ of *certiorari* or prohibition should not issue to a District Court shall if the Supreme Court or a Judge 45 thereof so direct operate as a stay of proceedings in the cause to which the same shall relate until the determination of such rule or summons or until the Supreme Court or Judge shall otherwise order and the Judge of the District Court shall from time to time adjourn the hearing of such cause to such day as he shall think fit until such determination or until such 50 order be made but if a copy of such rule or summons shall not be served by the party who obtained it on the opposite party and on the Registrar of the District Court within a reasonable time not being less than two clear days before the day fixed for hearing of the cause the Judge of the District Court may in his discretion order the party who obtained the 55 rule or summons to pay all the costs of the day or so much thereof as he shall think fit unless the Supreme Court or a Judge thereof shall have made some order respecting such costs.

90. When a writ of *certiorari* or of prohibition addressed to a Judge of a District Court shall have been granted by the Supreme Court or a Judge thereof on an *ex parte* application and the party who obtained it shall not lodge it with the Registrar and give notice to the opposite party that it has issued within a reasonable time not being less than two clear days before the day fixed for hearing the cause to which it shall relate the Judge of the District Court may in his discretion order the party who obtained the writ to pay all the costs of the day or so much thereof as he shall think fit unless the Supreme Court or a Judge thereof shall have made some order respecting such costs.

Notice of writ of *certiorari* or prohibition having been obtained to be sent to Registrar.

91. Whenever an order is granted for the removal of a plaint from a District Court or for the issuing of a *certiorari* for such removal and no provision is made with respect to the costs of the proceedings in the District Court the costs of such proceedings shall be costs in the cause.

Costs in the District Court.

92. No writ of *mandamus* shall henceforth issue to a Judge or an officer of the District Court for refusing to do any act relating to the duties of his office but any party requiring such act to be done may apply to the Supreme Court or a Judge thereof upon an affidavit of the facts for a rule or summons calling upon such Judge or officer of a District Court and also the party to be affected by such act to show cause why such act should not be done and if after the service of such rule or summons good cause shall not be shown the Supreme Court or a Judge thereof may by rule or order direct the act to be done and the Judge or officer of the District Court upon being served with such rule or order shall obey the same on pain of attachment and in any event the Supreme Court or Judge thereof may make such order with respect to costs as to such Court or Judge shall seem fit.

Rule or Order substituted for writ of *mandamus* to a Judge or officer of a District Court.

93. If either party to any cause in any District Court in which the amount claimed exceeds thirty pounds shall be dissatisfied with the determination or direction of the said Court in point of law or upon the admission or rejection of any evidence such party may appeal from the same to the Supreme Court Provided such party shall within such time and in such manner as shall be prescribed by the Rules to be made under this Act give notice of such appeal to the other party or his attorney and also give security (to be approved of by the Registrar of the said District Court) for costs of the appeal and the amount of the judgment or in lieu of giving such security deposit in the hands of such Registrar the amount of the judgment together with thirty pounds in addition to such amount to answer the costs of the appeal if such appeal be dismissed and the Supreme Court may either order a new trial on such terms as it thinks fit or may order judgment to be entered for either party as the case may be and make such order with respect to the costs of the said appeal as such Court may think proper and such orders shall be final and such appeal shall be in the form of a case agreed on by both parties or their attorneys and if they cannot agree the Judge of the District Court upon being applied to by them or their attorneys shall settle the case and sign it and such case shall be transmitted by the appellant to the Prothonotary and be set down for argument in the Supreme Court in the same manner as special cases in actions in that Court.

Appeal to the Supreme Court.

94. No appeal shall lie from the decision of a District Court if before such decision is pronounced both parties shall agree in writing signed by themselves or their Attorneys or Agents that the decision of the Judge shall be final.

Parties may agree not to appeal.

95. The defendant in any plaint in any District Court may if he think fit whether he be summoned upon such plaint or not in the presence of the Registrar of the Court in which such plaint shall have been entered or in the presence of an Attorney of the Supreme Court or a Justice of the Peace sign a statement confessing and admitting the amount

Confession of debts or parts of debts and judgment thereupon.

amount of the debt or demand or part of the amount of the debt or demand for which such plaint shall have been entered and such Registrar shall as soon as conveniently may be after receiving such statement send notice thereof to the plaintiff and thereupon it shall not be necessary for him otherwise to prove the debt or demand so confessed and admitted as aforesaid but the Judge of such Court at the next sitting of such Court whether the parties or either of them attend such Court or not shall upon proof by affidavit of the signature of the party if such statement were not made in the presence of the Registrar proceed to give judgment for the debt or demand so confessed and admitted in the same manner and subject to the same conditions as if he had tried the cause and given judgment thereupon under the provisions of this Act.

Agreement as to the amount of debt and conditions of payment.

96. If the defendant in any such plaint can agree with the plaintiff upon the amount of the debt or demand claimed and on the terms and conditions upon which the same shall be paid or satisfied it shall be lawful for such persons respectively in the presence of the Registrar of the Court in which such plaint shall have been entered or in the presence of an Attorney of the Supreme Court or a Justice of the Peace to sign a statement of the amount so agreed upon and of the terms and conditions upon which the same shall be paid or satisfied and the Registrar shall receive such statement and shall thereupon upon proof by affidavit of the signature of the defendant if such statement were not made in the presence of the Registrar enter up judgment for the plaintiff for such amount and upon the terms and conditions agreed upon and such judgment shall to all intents and purposes be the same as if it had been a judgment of the Judge of the same Court.

In certain cases Judge of Supreme Court may order cause to be tried in District Court.

97. Where in any action brought in the Supreme Court the claim indorsed on the writ does not exceed one hundred pounds or where such claim though it originally exceeded one hundred pounds is reduced by payment into Court or an admitted set-off or otherwise to a sum not exceeding one hundred pounds a Judge of the Supreme Court on the application of either party after issue joined or after any interlocutory judgment may if he shall think the case proper to be tried in a District Court on such terms as he shall think fit order that the cause be tried in any District Court which he shall name and thereupon the plaintiff shall lodge with the Registrar of such Court such order and the issue or the writ for the assessment of damages and the Judge of such Court shall appoint a day for the hearing of the cause notice whereof shall be sent by the Registrar to both parties or their attorneys in such manner as shall be directed by the rules of practice and after such hearing the Registrar shall certify the result to the Prothonotary of the Supreme Court and judgment in accordance with such certificate may be signed in the Supreme Court.

Removal of causes.

98. No judgment order or determination given or made by any Judge of a District Court nor any cause or matter brought before him or pending in his Court shall be removed by appeal motion writ of error *certiorari* or otherwise into any other Court whatever save and except in the manner and according to the provisions herein mentioned.

Costs in Supreme Court when not more than £30 recovered.

99. If in any action in the Supreme Court commenced after the coming into operation of this Act the plaintiff shall recover by judgment by default verdict or otherwise a sum not exceeding thirty pounds the plaintiff shall have judgment to recover such sum only and no costs except in the cases hereinafter provided and it shall not be necessary to enter any suggestion on the record to deprive such plaintiff of costs.

Costs in Supreme Court in certain cases.

100. If the plaintiff shall in any such action recover a sum not exceeding thirty pounds and a Judge of the Supreme Court shall certify that the cause of action was one for which a plaint could not have been tried in any District Court without the defendant's consent or that any officer

officer of the District Court was a party (except in respect of any claim to any goods and chattels taken in execution of the process of the Court or the proceeds in virtue thereof) or that it appeared to him that there was a sufficient reason for bringing or trying the said action in the Supreme Court the plaintiff in any such case shall have the same judgment to recover his costs that he would have had if this Act had not been passed.

Power to make rules of practice.

101. The District Court Judges for the time being or any three of them shall have power to make such general rules as they shall think fit subject to the approval of two of the Judges of the Supreme Court for regulating the practice and proceedings of the District Courts the fees to be allowed to Barristers and Attorneys and the expenses to be paid to witnesses and also to frame forms for every matter or proceeding in the said Courts for which they shall think it necessary that a form be provided and also for keeping all books entries and accounts to be kept by the Registrars of the said Courts and from time to time to alter any such rule or form and the rules so made shall not take effect until one month after the publication thereof in the *Government Gazette* and in any case not expressly provided for herein or by the said rules the general rules of practice in the Supreme Court may be adopted and applied by the Judges of the District Courts to actions and proceedings in their several Courts.

Registrars to prepare Returns.

102. Every Registrar to be appointed under the Act shall within one month after the first day of March in every year prepare a Return to be certified under his hand and within the like time transmit the same to the Colonial Secretary which Return shall specify—

1. The number of Suits commenced in his Court during the twelve months preceding.
2. The number settled without hearing.
3. The number of Trials.
4. The result of the Trials whether in favor of the plaintiffs or defendants.
5. The nature of the Causes under distinct heads.
6. The costs of the Suits.
7. The number of Appeals.
8. The number of Judgments or Orders affirmed.
9. The number reversed.
10. The number of cases left in arrear.
11. The date place and duration of the sittings of each Court the duration to be specified in days and hours.
12. The number of cases tried by Jury.
    Ditto without a Jury.
13. The number of cases settled by arbitration.
14. The number of motions for new Trials.
15. The number of new Trials granted.
16. The grounds on which such new Trials were granted.

And a copy of such Return shall be laid before each House of Parliament.

Affidavits before whom sworn.

103. All affidavits to be used in any District Court shall and may be sworn before any Judge of the Supreme Court or any Commissioner for taking affidavits in that Court or before any Judge of any District Court or any Justice of the Peace.

Power to refer to arbitration by consent.

104. The Judge of any District Court may in any case with the consent of both parties to the suit order the same with or without other matters within the jurisdiction of the Court in dispute between such parties to be referred to arbitration to such person or persons and in such manner and on such terms as he shall think reasonable and just and such reference shall not be revocable by either party except by consent of the Judge and the arbitrator or arbitrators or umpire shall hear and determine the case and the award given by him or them shall be entered as the judgment in the cause and shall be as binding and effectual

effectual to all intents as if given by the Judge Provided that the Judge may if he think fit on application to him at the first Court held after the expiration of one week after the entry of such award set aside any such award so given as aforesaid or may refer such award back to the arbitrator arbitrators or umpire or may with the consent of both parties aforesaid revoke the reference or order another reference to be made in the manner aforesaid.

In plaints to recover possession of premises how summonses may be served.

105. A summons for the recovery of a tenement may be served like other summonses to appear to plaints in District Courts and if the defendant cannot be found and his place of dwelling shall either not be known or admission thereto cannot be obtained for serving any such summons a copy of the summons shall be posted on some conspicuous part of the premises sought to be recovered and such posting shall be deemed good service on the defendant.

Warrants to bailiffs sufficient to justify them for entering in premises.

106. Any warrant to a bailiff to give possession of a tenement shall justify the bailiff named therein in entering upon the premises named therein with such assistants as he shall deem necessary and in giving possession accordingly but no entry upon any such warrant shall be made except between the hours of nine in the morning and four in the afternoon.

Such warrants to be in force three months from the day next after last day named in Judge's order.

107. Every such warrant shall on whatever day it may be issued bear date on the day next after the last day named by the Judge in his order for the delivery of possession of the premises in question and shall continue in force for three months from such date and no longer but no order for delivery of possession need be drawn up or served.

As to amendment of defects and errors of proceedings, &c.

108. The Judge of a District Court may at all times amend all defects and errors in any proceeding in such Court whether there is anything 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 the Judge may seem fit and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made.

Jurisdiction along the borders of conterminous Districts.

109. For the prevention of disputes as to the jurisdiction of the District Courts severally in cases where it may be difficult to ascertain within which of two Districts a particular place is situated and in order to facilitate the execution of Process including the service of Summonses in such places :—Be it enacted that for the space of two miles on either side of the boundary between two adjacent Districts the Court holden in and for each of such Districts shall for the purposes of this Act be deemed to have jurisdiction Provided that the pendency of a Suit in one of such Courts or a Judgment recovered therein shall be a bar to a Suit in the other Court between the same parties for the same cause.

Indemnity to persons acting under this Act.

110. If any action shall be brought against any person for anything done in pursuance of this Act such person may plead the general issue and give the special matter in evidence and the warrant under the Seal of the District Court being produced in any such action shall be deemed sufficient proof of the authority of the said District Court previous to the issuing of such warrant and in case the plaintiff in such action shall have a verdict pass against him be nonsuit or discontinue the action the defendant shall in any of the said cases be allowed full costs as between attorney and client.

Short Title of Act.

111. This Act shall be styled and cited as the "District Courts Act "of 1858."