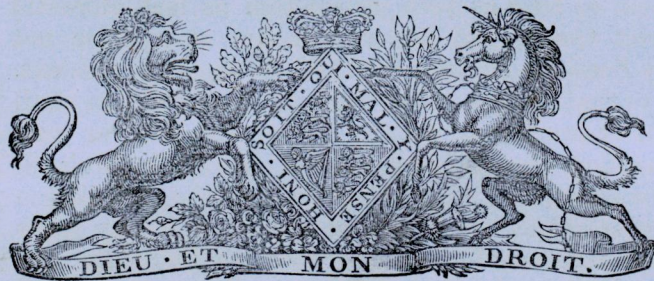


This PUBLIC BILL, having been this day passed by the LEGISLATIVE COUNCIL, is ready for presentation to the LEGISLATIVE ASSEMBLY, for its concurrence.

Legislative Council Chamber,
Sydney, 12th May, 1858. }

WM. MACPHERSON,
Clerk of the Legislative Council.

New South Wales.



ANNO VICESIMO PRIMO

VICTORIÆ REGINÆ.

No. .

An Act 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:—

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.

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.

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*.

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

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. Limits of jurisdiction generally, in civil matters.

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

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 personal actions.

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. In cases of partnership intestacy and legacy.

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. Joinder of causes of action.

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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.

- 5 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
 10 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.
- 15 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. Splitting debt by giving bills, &c.
- 20 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 were 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. Executors.
- 25 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. Infants.
- 30 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. Actions by Physicians &c.
- 35 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
 40 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. One of several persons jointly liable may be sued.
- 45 18. No privilege shall be allowed to any Attorney Solicitor or other person to exempt him from the provisions of this Act. Privilege.
- 50 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
 55 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
 60 summons if the defendant shall not appear thereto the Judge of the Court may
- Possession of tenements may be recovered in District Courts by landlords where terms have expired or been determined.

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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
5 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.

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
10 day named in the plaint so as the same shall not exceed one hundred pounds.

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

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
15 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
20 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
25 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
30 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
35 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
40 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.

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

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
45 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
50 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.

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

23. The District Courts holden under this Act shall have the same
55 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.

Jurisdiction in replevin.

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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
5 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 con-
10 tinued 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.
25. So soon as it shall appear that the jurisdiction now exercised
15 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
20 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.
26. The Acts of Council 10th George IV. No. 7 3rd Victoria
25 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
30 within the limits of the district for which he shall have been appointed.
27. The Governor with the advice of the Executive Council shall
35 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
40 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
45 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.
28. No Judge of a District Court shall practise at the Bar or as an
50 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.
29. The Judges of the said District Courts shall hold their offices
55 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

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

Cessation of jurisdiction of Petty Sessions.

Acts repealed.

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

Appointment and Qualification of Judges.

Judges not to practise or sit in Parliament.

Judges tenure of Office and removal therefrom.

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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.

30. In case of illness or absence it shall be lawful for the Governor ^{Deputy Judge.}
5 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.

31. For every District Court there shall be a Registrar whom ^{Appointment and Salary of Registrar.}
10 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
15 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.

32. It shall be lawful for the Registrar of any such Court with ^{Deputy Registrar.}
the approval of the Judge or in case of inability of the Registrar to
20 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
25 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
30 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.

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 ^{Judge to appoint Deputy Registrar provisionally if one has not been appointed.}
months provisionally appoint a person to discharge the duties of Registrar
35 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.

34. The Registrar of each Court shall sign and issue all summonses ^{Duties of Registrars.}
40 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
45 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. For every such Court there shall be one or more Bailiffs ^{Appointment of Bailiffs and Bailiff's Assistants.}
whom the Judge shall by order under his hand appoint and may remove
50 by like order and every such Bailiff may subject to the restriction herein-after 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
55 stead and every officer so appointed may also be suspended or dismissed by the Judge.

36. The death or removal of any Bailiff shall not invalidate the ^{Bailiffs' Assistants may act after the death or removal of Bailiff.}
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

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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
5 salary and allowances attached to the office of Bailiff.

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
10 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
15 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
20 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.

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
25 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
30 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
35 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
40 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.

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
45 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
50 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.

40. The Registrar and Bailiff of every District Court who may receive any moneys in the execution of his duty shall give
55 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.

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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.

Amount of Court fees.

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.

Fines and Fees part of the Consolidated Revenue.

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.

Seal of the Court.

Punishment for forging Seal or serving forged process.

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.

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

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

Proceedings in civil suits.

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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.

46. The Judge of the District Court shall be the sole Judge in all Trial 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.

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

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

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 Party requiring jury to make deposit. and such sum shall be considered costs in the cause unless otherwise ordered by the Judge.

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. Who shall be jurors.

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 Jury Lists for newly created Districts.

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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.

10 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
15 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' Book to be made therefrom.

20 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 impanelled an oath to
25 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
30 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.

Jurors.

35 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
40 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.

Jury to be chosen by ballot.

55 55. Whenever there are any issues for trial by Jury in any District Court four jurymen shall be impanelled and sworn as occasion shall require to give their verdicts in the causes which shall be brought before
45 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.

Number of jurors.

50 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.

Payment to jurors.

55 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

Power to Judge to change venue.

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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
5 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.

10 58. No defendant in any District Court shall be allowed to set off Notice of special defences. 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
15 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
20 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.

25 59. The defendant in any suit in a District Court other than in a Payment into Court. 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
30 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
35 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.

60. At the time and place in that behalf named in any summons Proceedings at the trial where both parties appear. issued out of any District Court the plaintiff shall appear and thereupon
40 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.

61. It shall be lawful for every party to an action or other Appearance to be in person or by Counsel or Attorney or other person allowed by the Judge. proceeding under this Act or a Barrister or Attorney of the Supreme
45 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
50 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.

55 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

Proceedings where Plaintiff does not appear.

District Courts Act.—1858.

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.

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.

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.

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.

66. Either party to any suit in a District Court may obtain at the office of the Registrar of the Court subpoenas 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 subpoena any number of names may be inserted.

67. Every person on whom such subpoena 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 subpoena 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.

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

or

District Courts Act.—1858

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
 5 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
 10 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.

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
 15 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
 20 defendant shall not be allowed to set off any debt or demand exceeding in amount one hundred pounds.

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

70. Every judgment of any District Court except as herein provided shall be final and conclusive between the parties but the
 25 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.

Judgments to be final unless new trial granted.

71. If there shall be cross judgments between the parties execu-
 30 tion 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
 35 judgments.

Cross judgments to be set off.

72. All the costs of any action or proceeding not herein or other
 wise 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
 40 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.

Costs.

73. The fees to be allowed to Barristers and Attorneys practising
 in any District Court for appearing or acting on behalf of any person
 45 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.

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
 50 allowed on such taxation which are not sanctioned by the scale then in force.

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

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
 55 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

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

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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
5 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.

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
10 the application of the party in whose favor such order decision judgment or adjudication has been made to issue a writ of *feri facias* which writ shall be directed to the Bailiff or Registrar of the said Court as the case may be.

Registrar to issue writs of *feri facias*.

77. It shall be lawful for the Registrar of every such Court
15 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
20 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.

Registrar to take under writ of execution.

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
25 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
30 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.

Registrar to execute bill of sale.

79. It shall be lawful for a Bailiff of any of the said Courts
35 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
40 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.

Bailiff to seize personal property.

80. No writ of execution under this Act shall bind any lands unless
45 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.

Executions not to bind land unless registered.

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
50 auction without a license shall apply to Registrars and Bailiffs of District Courts held under this Act and to their assistants.

Registrars and Bailiffs may sell by auction without license.

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
55 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 Executions issuing out of 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 Dis-
trict

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

District Courts Act.—1858.

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
 5 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
 10 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
 15 be sufficient justification to any Registrar Bailiff or Sheriff's Officer acting thereon.

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
 20 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
 25 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
 30 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
 35 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
 40 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.

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

85. If any claim shall be made to or in respect of any goods or
 45 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
 50 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
 55 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

Interpleader.

District Courts Act.—1858.

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.

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 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.

Execution against the person.

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 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.

Discharge on payment of debt and costs.

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 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.

Removal of causes.

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 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.

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

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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.
91. Whenever an order is granted for the removal of a plaintiff 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.
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.
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.
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.
95. The defendant in any plaintiff in any District Court may if he think fit whether he be summoned upon such plaintiff or not in the presence of the Registrar of the Court in which such plaintiff 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

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

Costs in the District Court.

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

Appeal to the Supreme Court.

Parties may agree not to appeal.

Confession of debts or parts of debts and judgment thereupon.

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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
5 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
10 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.

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
15 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
20 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 judg-
25 ment 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.

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
30 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
35 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
40 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.

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

98. No judgment order or determination given or made by any
45 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.

Removal of causes.

99. If in any action in the Supreme Court commenced after
50 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
55 of costs.

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

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

Costs in Supreme Court in certain cases.

District Courts Act.—1858.

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
 5 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.

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
 10 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
 15 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
 20 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.

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
 25 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.
- 30 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.
- 35 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.
- 40 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.
- 45 16. The grounds on which such new Trials were granted.

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

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
 50 Court or any Justice of the Peace.

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
 55 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

District Courts Act.—1858.

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.

105. A summons for the recovery of a tenement may be served like other summonses to appear to plaintiffs 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.

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

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.

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

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.

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

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.

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

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.

Jurisdiction along the borders of contiguous Districts.

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.

Indemnity to persons acting under this Act.

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

Short Title of Act.

DISTRICT COURTS BILL.

Legislative Assembly's Amendments. Message, 23 September, 1858.

- Clause 7, line 26. *Omit "one," substitute "two."*
- " 7, " 28 to 36. *Omit all the words after "Act," to the end of Clause.*
- " 8, " 38. *Omit "one," substitute "two."*
- " 12, " 10. *Omit "one," substitute "two."*
- " 13, " 16. *Omit "one," substitute "two."*
- " 13, " 18. *Omit "one," substitute "two."*
- " 15, " 26. *Omit "one," substitute "two."*
- " 25, " 13 to 22. *Omit Clause.*
- " 26, " 28. *Insert before "Quarter," "General and."*
- " 26, " 30. *Insert after "appointed," "And every such Chairman shall be sole judge at the trial of all Criminal Issues in such Courts, and in all matters relating to any information filed therein for any felony or misdemeanor, and all such Courts of General and Quarter Sessions shall possess jurisdiction in respect of all crimes and misdemeanors not punishable with death, anything in any law or statute to the contrary notwithstanding."*
- " 36. *Insert "New Clause No. 26."*
- " 27, " 57 to 60. *Omit all the words after "office" to end of Clause.*
- " 29, " 10. *Insert "One Thousand Pounds."*
- " 29, lines 19 to 23. *Insert "Provided also that if any District Court shall be abolished whether by consolidation with any other District Court or otherwise no Judge or other officer of such District Court shall be entitled to any compensation, on account of ceasing to hold his office."*
- " 29. *Insert "New Clause No. 31."*
- " 49, " 53. *Insert after "sum of," "Two Pounds."*
- " 57, " 21. *Omit "by either party."*
- " 57, " 22. *Omit "to a," substitute "that any."*
- " 57, " 22. *Omit "that such cause."*
- " 57, " 27. *Omit "some convenient," substitute "the nearest."*
- " 57, " 28. *Omit "at his discretion."*
- " 73, " 10. *Insert after "mentioned," "Provided that no such fees to Barristers or Attorneys shall be allowed in any case where the sum sued for shall not exceed ten pounds."*
- " 101, " 32. *Omit all the words in the line after "fit."*
- " 101, " 44. *Insert "The first set of Rules so made shall be subject to the approval of the Judges of the Supreme Court or any two of them."*
- " 111, " 15. *Insert after "and" "may be."*
- Page 21. *Insert "Schedule."*

This PUBLIC BILL, having been this day passed by the LEGISLATIVE COUNCIL, is ready for presentation to the LEGISLATIVE ASSEMBLY, for its concurrence.

Legislative Council Chamber,
Sydney, 12th May, 1858. }

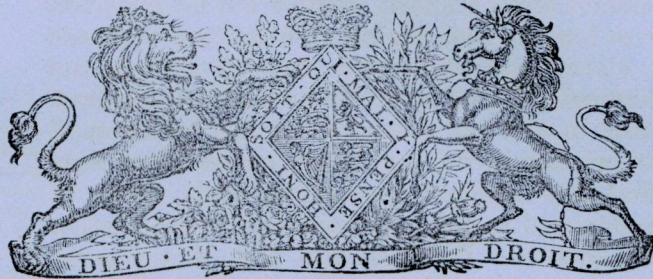
WM. MACPHERSON,
Clerk of the Legislative Council.

The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with Amendments.

Legislative Assembly Chamber,
Sydney, 23rd September, A.D., 1858. }

R. O'CONNOR,
Clerk of Legislative Assembly.

New South Wales.



ANNO VICESIMO PRIMO

VICTORIÆ REGINÆ.

No. .

An Act 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:—

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.

4.

NOTE.—The words and clauses *ruled through* are proposed to be struck out; those in **black letter** to be inserted.

District Courts Act.—1858.

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

District Courts to be Courts of Record.

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.

Limits of jurisdiction generally, in civil matters.

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.

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

7. All pleas of personal actions wherein the amount claimed is not more than ~~one~~ two 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 personal action.

8. The jurisdiction of the District Courts under this Act shall extend to the recovery of any demand not exceeding the sum of ~~one~~ two 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.

In cases of partnership intestacy and legacy.

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

Joinder of causes of action.

trial

District Courts Act.—1858.

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.

- 5 12. It shall not be lawful for any plaintiff to divide any cause of Splitting demands.
 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
 10 not exceeding ~~one~~ two 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.
- 15 13. In case any defendant shall have given two or more bills of Splitting debt by
 giving bills, &c.
 exchange promissory notes bonds or other securities for any debt or sum
 originally exceeding the amount of ~~one~~ two hundred pounds it shall be
 lawful for the plaintiff to sue upon each of such securities not exceeding
 in amount ~~one~~ two hundred pounds as forming a distinct cause of
 action.
- 20 14. It shall be lawful for any Executor or Administrator to sue Executors.
 and be sued in any District Court in like manner as if he were 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.
- 25 15. It shall be lawful for any person not of the age of twenty-one Infants.
 years to sue in any District Court in his own name for the recovery of
 any sum of money not exceeding ~~one~~ two 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.
- 30 16. Any doctor of medicine or other legally qualified practitioner Actions by Physi-
 cians &c.
 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.
- 35 17. Where any plaintiff shall have any demand recoverable under this One of several per-
 sons jointly liable
 may be sued.
 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
 40 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 contri-
 bution from any other person jointly liable with him.
- 45 18. No privilege shall be allowed to any Attorney Solicitor Privilege.
 or other person to exempt him from the provisions of this Act.
- 50 19. When the term or interest of the tenant of any land held by Possession of tene-
 ments may be
 recovered in District
 Courts by landlords
 where terms have
 expired or been
 determined.
 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
 55 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 sum-
 60 mons if the defendant shall not appear thereto the Judge of the Court
 may

District Courts Act.—1858.

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

5 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.

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

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

10 day named in the plaint so as the same shall not exceed ~~one~~ two hundred pounds.

21. When the rent of any corporeal hereditaments where neither the value of the premises nor the rent payable in respect thereof exceeds

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

15 ~~one~~ two 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

20 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

25 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

30 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

35 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

40 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

45 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.

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

45 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

50 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.

23. The District Courts holden under this Act shall have the same

Jurisdiction in replevin.

55 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.

District Courts Act.—1858.

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 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.

25. 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 General and Quarter Sessions to be holden within the limits of the district for which he shall have been appointed. And every such Chairman shall be the sole Judge at the Trial of all Criminal Issues in such Courts and in all matters relating to any information filed therein for any felony or misdemeanor and all such Courts of General and Quarter Sessions shall possess jurisdiction in respect of all crimes and misdemeanors not punishable with death anything in any law or statute to the contrary notwithstanding.

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

Extension of Quarter Sessions Jurisdiction.

26. It shall be lawful for the Governor, with the advice of the Executive Council at any time to issue a special commission to any one or more District Court Judge or Judges or to any one or more Barrister or Barristers of five years' standing appointing him or them to act as Judge or Judges of the Supreme Court for the trial of issues civil or criminal at any Circuit Court or Court of Gaol Delivery or at remote places at which a Judge of the Supreme Court could not attend without detriment to the ordinary business of that Court and thereupon the Judge or Judges so appointed shall at the place and for the time and purposes specified in such commission have and exercise all the powers and privileges and discharge all the duties of a Judge of the Supreme Court.

Special commission may issue to one or more Judges of District Courts enabling them to discharge duties of a Judge of the Supreme Court at remote places.

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.

District Courts Act.—1858.

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 one thousand pounds 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 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 Provided also that if any District Court shall be abolished whether by consolidation with any other District Court or otherwise no Judge or other officer of such District Court shall be entitled to any compensation on account of ceasing to hold his office.

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. The jurisdiction and powers which by the Act passed in the present Session for amending the Deserted Wives and Children's Act are vested in and conferred on the Supreme Court and the Judges thereof severally for protecting in certain cases the property of married women deserted by their husbands may be equally exercised by every District Court and the Judge or Deputy Judge thereof and every order made in that behalf shall while in force have the same validity and effect as a similar order made under the same Act by the Supreme Court.

Powers under Deserted Wives and Children's Act Amendment Act.

32. 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.

Appointment and Salary of Registrar.

33. 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.

Deputy Registrar.

District Courts Act.—1858.

34. 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. Judge to appoint Deputy Registrar provisionally if one has not been appointed.
35. 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. Duties of Registrars.
36. 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 herein-after 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 and Bailiffs' Assistants.
37. 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.
38. 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. Duties of Bailiffs.
39. 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. Remuneration of Bailiffs.

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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
 5 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
 10 Registrar.

40. 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
 15 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
 20 and full costs of suit to any person who shall sue for the same.

41. 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
 25 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.

42. 41. There shall be payable on every civil proceeding in the District
 Courts the fees mentioned in the Schedule to this Act and none
 30 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
 35 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
 40 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.

43. 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
 50 taken to be part of the Consolidated Revenues of the Colony and shall be accounted for paid and applied accordingly.

44. 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
 55 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
 60 being convicted thereof shall at the discretion of the Court be kept to
 hard

Disabilities of Registrar and Bailiff.

Registrar and Bailiff to give security.

Amount of Court fees.

Fines and Fees part of the Consolidated Revenue.

Seal of the Court.

Punishment for forging Seal or serving forged process.

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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.

45. 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.

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

46. 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 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.

Proceedings in civil suits.

47. 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.

Trial.

48. 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.

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

49. 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.

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

50. 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 two pounds and such sum shall be considered costs in the cause unless otherwise ordered by the Judge.

Party requiring jury to make deposit.

51. 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

Who shall be jurors.

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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.

52. ~~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 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.

53. ~~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.

54. ~~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.

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55. 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. Jury to be chosen by ballot.
56. 55. Whenever there are any issues for trial by Jury in any District Court four jurymen shall be impanelled 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. Number of jurors.
57. 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. Payment to jurors.
58. 57. If a Judge of a District Court shall be satisfied by either party to a ~~that any~~ 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 sent for hearing to ~~some convenient~~ the nearest 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. Power to Judge to change venue.
59. 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. Notice of special defences.
60. 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 Payment into Court.

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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.

5 **61. 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. Proceedings at the trial where both parties appear.

10 **62. 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 wit- Appearance to be in person or by Counsel or Attorney or other person allowed by the Judge.

15 nesses 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 appear-

20 ing or acting on behalf of any other person in the said District Court.

63. 62. If at the time and place so named as aforesaid or at any con- Proceedings where Plaintiff does not appear.

25 tinuation 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 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

30 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.

35 **64. 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 Proceedings where Defendant does not appear.

40 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

45 for debt or costs or such other terms as he may think fit on sufficient cause shown to him for that purpose.

65. 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 Judge may grant time or adjourn.

50 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.

66. 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 Proof to be limited to matter in the summons.

in such suit.

55 **67. 66.** Either party to any suit in a District Court may obtain at the office of the Registrar of the Court subpoenas 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 Subpœna to witnesses.

60 any such subpoena any number of names may be inserted.

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68. 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.

Penalty on witnesses neglecting subpœna.

69. 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 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.

Examination *de bene esse*.

70. 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.

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

71. 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.

Judgments to be final unless new trial granted.

72. 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.

Cross judgments to be set off.

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73. 72. All the costs of any action or proceeding not herein or other wise 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 5 such costs may be recovered in like manner as any debt adjudged by the Court to be paid can be recovered. Costs.
74. 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 10 be fixed by scale in the rules to be made as hereinafter mentioned **Provided that no such fees to Barristers or Attorneys shall be allowed in any case where the sum sued for shall not exceed ten pounds.** Fees to Barristers and Attorneys and expenses to witnesses.
75. 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 15 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. Costs of attorney in certain proceedings in District Courts shall be taxed by Registrar as between party and party.
76. 75. When judgment has been obtained in any District Court for 20 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 25 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 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 30 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.
77. 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 35 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 *feri facias* which writ shall be directed to the Bailiff or Registrar of the said Court as the case may be. Registrar to issue writs of *feri facias*.
78. 77. It shall be lawful for the Registrar of every such Court 40 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 45 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.
79. 78. In case of any sale by the said Registrar by himself or 50 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 55 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. Registrar to take under writ of execution.
- Registrar to execute bill of sale.

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80. 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.
81. 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.
82. 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.
83. 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.
84. 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 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.
85. 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

Bailiff to seize personal property.

Executions not to bind land unless registered.

Registrars and Bailiffs may sell by auction without license.

Priority of Executions issuing out of District Court.

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

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

the

District Courts Act.—1858.

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
5 be returned to the defendant and the poundage of the Bailiff and Broker for appraisalment 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.

10 **86. 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
15 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
20 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 sum-
25 mons 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
30 Court.

87. 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
35 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
40 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
45 obey the same respectively and all constables and other peace officers within their several jurisdictions shall aid and assist in the execution thereof.

88. 87. Any person arrested or imprisoned under this Act by virtue of any such warrant as last aforesaid shall be entitled to his discharge
50 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
55 which the judgment was recovered.

89. 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
60 shall appear to such Judge to be a case proper to be tried in the Supreme Court

Interpleader.

Execution against the person.

Discharge on payment of debt and costs.

Removal of causes.

District Courts Act.—1858.

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.

90. 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 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.

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

91. 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.

92. 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.

93. 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.

94. 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

Appeal to the Supreme Court.

District Courts Act.—1858.

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.

95. 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.

96. 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 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.

97. 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.

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

98. 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

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

Court

District Courts Act.—1858.

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
5 Supreme Court and judgment in accordance with such certificate may be signed in the Supreme Court.

99. 98. No judgment order or determination given or made by any Removal of causes. 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
10 *certiorari* or otherwise into any other Court whatever save and except in the manner and according to the provisions herein mentioned.

100. 99. If in any action in the Supreme Court commenced after Costs in Supreme Court when not more than £30 recovered. the coming into operation of this Act the plaintiff shall recover by judgment by default verdict or otherwise a sum not exceeding thirty
15 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.

101. 100. If the plaintiff shall in any such action recover a sum not Costs in Supreme Court in certain cases. 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 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
25 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.

30 102. 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 Power to make rules of practice. 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
35 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
40 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
45 **The first set of rules so made shall be subject to the approval of the Judges of the Supreme Court or any two of them.**

103. 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 Registrars to prepare Returns. certified under his hand and within the like time transmit the same to the Colonial Secretary which Return shall specify—

- 50 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.
- 55 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.
- 60 9. The number reversed.
10. The number of cases left in arrear.

District Courts Act.—1858.

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.
- 5 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.
- 10 **104.** ~~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. Affidavits before whom sworn.
- 15 **105.** ~~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 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 20 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.
- 30 **106.** ~~105.~~ A summons for the recovery of a tenement may be served like other summonses to appear to plaintiffs 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 35 part of the premises sought to be recovered and such posting shall be deemed good service on the defendant.
- 107.** ~~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 40 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.
- 108.** ~~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 45 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. Such warrants to be in force three months from the day next after last day named in Judge's order.
- 109.** ~~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 any- 50 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 55 the parties shall be so made. As to amendment of defects and errors of proceedings, &c.
- 110.** ~~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 60 in such places :—Be it enacted that for the space of two miles on either side

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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.

111. ~~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.
112. ~~111.~~ This Act shall be styled and may be cited as the "District Short Title of Act " Courts Act of 1858."

Indemnity to persons acting under this Act.

SCHEDULE.

COURT FEES.

	In cases not exceeding £5.		In cases not exceeding £10.		In cases not exceeding £30.		In all other cases.	
	s.	d.	s.	d.	s.	d.	s.	d.
20 For filing every plaint, issuing summons, and other proceedings to judgment	2	6	5	0	7	6	20	0
25 For issuing every subpoena	0	6	0	6	1	0	1	0
For service of every summons or subpoena, if within two miles from the Court House	0	6	0	6	0	6	0	6
For such service, every mile beyond two miles	0	3	0	3	0	3	0	3
For issuing every writ of execution	2	0	2	6	5	0	5	0

SPECIAL FEES.

	s.	d.
30 For filing every plea	1	0
For every search	0	6
For every copy	0	6
35 For swearing and filing every special affidavit	2	0
For taxing every bill of costs	2	6
For every summons to show cause in interlocutory matter	1	0
For every interlocutory order	1	0
For every writ of attachment	2	6

BAILIFF'S FEES.

	s.	d.
40 For keeping possession under an execution against the goods, each day... ..	6	0
For making levy where the sum levied for shall not exceed twenty pounds	5	0
For making levy where the sum levied for shall exceed twenty pounds, the like sum for the first twenty pounds and for every pound over that sum	0	3
45 For executing every writ against the person	5	0
For executing every writ of Habere in ejection	5	0
For mileage in the execution of any writ where the same shall be executed not more than two miles from the Court House... ..	1	0
50 For such mileage where the writ shall be executed beyond such distance of two miles for every such mile beyond	0	6

DISTRICT COURTS BILL.

SCHEDULE of Amendments made by the Legislative Council on the Amendments of the Legislative Assembly. Message, 27th October, 1858.

W.M. MACPHERSON,
Clerk of the Legislative Council.

- Page 2, clause 7, line 41 to 50. *Re-insert* the words “ 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.”
- „ 5, „ 25, line 30. *Omit* the word “ and ” ; *insert* the words
“ or of.”
- „ 5, „ 26, „ 42. After the word “ Court,” *insert* the words
“ of Sydney or Moreton Bay.”
- „ 5, „ 26, „ 45. At the commencement, *insert* the words
“ of Sydney or Moreton Bay.”
- „ 5, „ 26, „ 46. *Omit* the word “ that ” ; *insert* the word
“ such.”
- „ 5, „ 26, „ 46. *Omit* the words “ Judge or Judges ” ; *insert*
the words “ person or persons.”
- „ 5, „ 26, lines 47 and 48. *Omit* the words “ and purposes.”
- „ 5, „ 26, line 50. After the word “ Court ” *add* the words
“ of Sydney or Moreton Bay as the case
“ may be.”
- „ 19, „ 102, „ 43. At the commencement *insert* the word
“ And.”
-

The first part of the document discusses the general principles of the system, including the importance of maintaining accurate records and the role of the various departments involved. It emphasizes the need for a clear and concise reporting structure to ensure that all information is properly documented and accessible to the relevant personnel.

The second part of the document provides a detailed overview of the current status of the project, highlighting the progress made to date and the challenges that remain. It notes that while significant work has been completed, there are still several key areas that require further attention and resources to ensure the project is completed on time and within budget.

The third part of the document outlines the proposed plan of action for the next phase of the project, detailing the specific tasks to be undertaken and the resources required to complete them. It also identifies the key milestones and deadlines that will be used to track progress and ensure that the project stays on schedule.

Finally, the document concludes with a summary of the key findings and recommendations, emphasizing the importance of continued communication and collaboration between all stakeholders involved in the project. It encourages a proactive approach to problem-solving and a commitment to transparency and accountability throughout the entire process.

The following table provides a summary of the key data points discussed in the document, including the current status of the project, the proposed plan of action, and the key milestones and deadlines.

Item	Current Status	Proposed Plan of Action	Key Milestones/Deadlines
Project Progress	75% Complete	Complete remaining 25% by Q3	Q3 2024
Resource Allocation	10 FTEs	15 FTEs	Q4 2024
Budget Status	Under Budget	Stay Under Budget	Q4 2024
Key Risks	Resource Shortage	Recruit Additional Staff	Q4 2024
Communication	Weekly Meetings	Monthly Reports	Q4 2024

The data indicates that the project is currently on track, but there are several key areas that require further attention and resources to ensure the project is completed on time and within budget. The proposed plan of action focuses on completing the remaining 25% of the project by Q3, recruiting additional staff to address the resource shortage, and staying under budget. Key milestones and deadlines are set for Q3 and Q4 2024.

In conclusion, the document provides a comprehensive overview of the project's current status, proposed plan of action, and key milestones and deadlines. It emphasizes the importance of continued communication and collaboration between all stakeholders involved in the project and encourages a proactive approach to problem-solving and a commitment to transparency and accountability throughout the entire process.

This PUBLIC BILL, having been this day passed by the LEGISLATIVE COUNCIL, is ready for presentation to the LEGISLATIVE ASSEMBLY, for its concurrence.

Legislative Council Chamber,
Sydney, 12th May, 1858. }

WM. MACPHERSON,
Clerk of the Legislative Council.

The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with Amendments.

Legislative Assembly Chamber,
Sydney, 23rd September, A.D., 1858. }

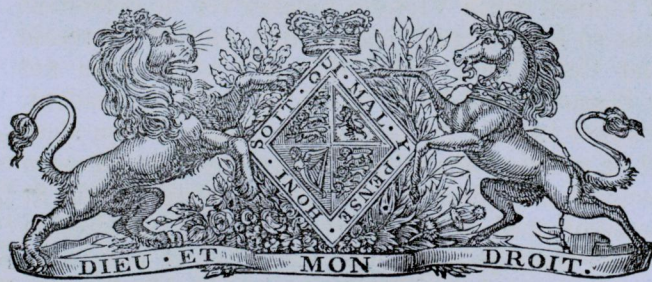
R. O'CONNOR,
Clerk of Legislative Assembly.

The LEGISLATIVE COUNCIL has this day agreed to the LEGISLATIVE ASSEMBLY'S Amendments on this Bill with Amendments.

Legislative Council Chamber,
Sydney, 21st October, 1858. }

WM. MACPHERSON,
Clerk of the Legislative Council.

New South Wales.



ANNO VICESIMO SECUNDO

VICTORIÆ REGINÆ.

No. .

An Act 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:—

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.

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.

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

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter.

District Courts Act.—1858.

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*.

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

District Courts to be Courts of Record.

10 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.

Limits of jurisdiction generally, in civil matters.

15 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.

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

20 7. All pleas of personal actions wherein the amount claimed is not more than two 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~~ 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 personal actions.

50 8. The jurisdiction of the District Courts under this Act shall extend to the recovery of any demand not exceeding the sum of two 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.

In cases of partnership intestacy and legacy.

55 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

Consent jurisdiction.

District Courts Act.—1858.

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.

- 5 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
10 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
15 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. It shall not be lawful for any plaintiff to divide any cause of
20 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 two hundred pounds and the judgment of the Court upon
25 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.
13. In case any defendant shall have given two or more bills of
30 exchange promissory notes bonds or other securities for any debt or sum originally exceeding the amount of two hundred pounds it shall be lawful for the plaintiff to sue upon each of such securities not exceeding in amount two hundred pounds as forming a distinct cause of action. Splitting debt by giving bills, &c.
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 were a party suing or sued in his own right and judgment and execution shall be
35 such as in the like case would be given or issued in the Supreme Court. Executors.
15. It shall be lawful for any person not of the age of twenty-one
40 years to sue in any District Court in his own name for the recovery of any sum of money not exceeding two 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. Infants.
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. Actions by Physicians &c.
- 45 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
50 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. One of several persons jointly liable may be sued.
- 55 18. No privilege shall be allowed to any Attorney Solicitor or other person to exempt him from the provisions of this Act. Privilege.
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
60 effluxion of time or shall have been determined by notice to quit or demand
Possession of tenements may be recovered in District Courts by landlords where terms have expired or been determined.

District Courts Act.—1858.

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 shew 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 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.

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 two hundred pounds.

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

21. When the rent of any corporeal hereditaments where neither the value of the premises nor the rent payable in respect thereof exceeds two 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.

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

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

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

penalty

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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
5 or substituted as a defendant to defend possession of the premises in question.

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
10 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. The Acts of Council 6th Victoria No. 15 and 11th Victoria No. 35 shall be and the same are hereby repealed but so nevertheless
15 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
20 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.

25. 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
30 Court to be the Chairman of any Court of General and or of Quarter Sessions to be holden within the limits of the district for which he shall have been appointed And every such Chairman shall be the sole Judge at the Trial of all Criminal Issues in such Courts and in all matters relating to any information filed therein for any felony or misdemeanor and all such
35 Courts of General and Quarter Sessions shall possess jurisdiction in respect of all crimes and misdemeanors not punishable with death anything in any law or statute to the contrary notwithstanding.

26. It shall be lawful for the Governor with the advice of the Executive Council at any time to issue a special commission to any one
40 or more District Court Judge or Judges or to any one or more Barrister or Barristers of five years' standing appointing him or them to act as Judge or Judges of the Supreme Court of **Sydney or Moreton Bay** for the trial of issues civil or criminal at any Circuit Court or Court of Gaol Delivery or at remote places at which a Judge of the Supreme Court
45 of **Sydney or Moreton Bay** could not attend without detriment to the ordinary business of ~~that~~ such Court and thereupon the ~~Judge or Judges~~ person or persons so appointed shall at the place and for the time and purposes specified in such commission have and exercise all the powers and privileges and discharge all the duties of a Judge of the Supreme
50 Court of **Sydney or Moreton Bay** as the case may be.

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
55 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
60 preceding the appointment to such office.

Jurisdiction in replevin.

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

Acts repealed.

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

Extension of Quarter Sessions Jurisdiction.

Special commission may issue to one or more Judges of District Courts enabling them to discharge duties of a Judge of the Supreme Court at remote places.

Appointment and Qualification of Judges.

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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 5 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 10 the sum of one thousand pounds 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 15 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 Provided 20 also that if any District Court shall be abolished whether by consolidation with any other District Court or otherwise no Judge or other officer of such District Court shall be entitled to any compensation on account of ceasing to hold his office.

Judges tenure of Office and removal therefrom.

30. In case of illness or absence it shall be lawful for the Governor 25 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. The jurisdiction and powers which by the Act passed in the 30 present Session for amending the Deserted Wives and Children's Act are vested in and conferred on the Supreme Court and the Judges thereof severally for protecting in certain cases the property of married women deserted by their husbands may be equally exercised by every District Court and the Judge or Deputy Judge thereof and every order 35 made in that behalf shall while in force have the same validity and effect as a similar order made under the same Act by the Supreme Court.

Powers under Deserted Wives and Children's Act Amendment Act.

32. For every District Court there shall be a Registrar whom the Governor with the advice aforesaid shall appoint and may remove 40 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 45 from time to time made by order of Court in case of difference between them.

Appointment and Salary of Registrar.

33. 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 50 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 55 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 60 a rateable proportion of the salary attached to the office of Registrar.

Deputy Registrar.

District Courts Act.—1858.

34. 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.

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

35. 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.

Duties of Registrars.

36. 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 herein 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 and Bailiff's Assistants.

37. 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.

38. 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.

Duties of Bailiffs.

39. 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

Remuneration of Bailiffs.

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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
 5 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
 10 Registrar.

40. 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
 15 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
 20 and full costs of suit to any person who shall sue for the same.

41. 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
 25 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.

42. There shall be payable on every civil proceeding in the District Courts the fees mentioned in the Schedule to this Act and none
 30 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
 35 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
 40 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.

43. 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
 50 taken to be part of the Consolidated Revenues of the Colony and shall be accounted for paid and applied accordingly.

44. 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
 55 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
 60 being convicted thereof shall at the discretion of the Court be kept to

hard

Disabilities of Registrar and Bailiff.

Registrar and Bailiff to give security.

Amount of Court fees.

Fines and Fees part of the Consolidated Revenue.

Seal of the Court.

Punishment for forging Seal or serving forged process.

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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.

45. The Judge of each District Court shall attend and hold
5 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
10 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
15 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.

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

46. On the application of any person desirous of bringing an action
20 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
25 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 provided and no misnomer or inaccurate description of any person or place
30 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.

Proceedings in civil suits.

47. 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.

Trial.

35 48. 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.

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

49. In all actions where the amount claimed shall exceed twenty
40 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
45 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
50 notice was communicated to the other party by the Registrar.

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

50. 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 two pounds
and such sum shall be considered costs in the cause unless otherwise
55 ordered by the Judge.

Party requiring jury to make deposit.

51. 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
Who shall be jurors.

District Courts Act.—1858.

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
 5 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
 10 such Court according to the said Act.

52. 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
 15 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
 20 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
 25 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 trans-
 30 mitted 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
 35 no new list shall in that case be prepared.

53. 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
 40 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
 45 made out under the provisions hereinbefore contained.

54. 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
 50 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
 55 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
 60 to him to remit a portion or the whole of the sum forfeited as aforesaid.

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55. 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 5 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. Jury to be chosen by ballot.

56. Whenever there are any issues for trial by Jury in any District Court four jurymen shall be impanelled and sworn as occasion shall 10 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 15 is provided with respect to juries for the trial of civil issues. Number of jurors.

57. 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 20 General Jury Precept. Payment to jurors.

58. If a Judge of a District Court shall be satisfied that any cause pending in his Court 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 25 interested in the matter of any cause pending in his Court he shall order that the venue be changed and that the cause be sent for hearing to the nearest District Court of which he is not the Judge 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 30 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. Power to Judge to change venue.

59. 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 40 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 45 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. Notice of special defences.

60. 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 55 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

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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.

5 61. 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.

Proceedings at the trial where both parties appear.

10 62. 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 wit-
15 nesses 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
20 ing or acting on behalf of any other person in the said District Court.

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

25 63. 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
30 demand it shall be lawful for the Judge 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
35 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 Plaintiff does not appear.

40 64. 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
45 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 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
50 for debt or costs or such other terms as he may think fit on sufficient cause shown to him for that purpose.

Proceedings where Defendant does not appear.

55 65. 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
50 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.

66. 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
60 in such suit.

Proof to be limited to matter in the summons.

67. Either party to any suit in a District Court may obtain at
60 the office of the Registrar of the Court subpoenas 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 subpoena any number of names may be inserted.

Subpoena to witnesses.

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68. Every person on whom such subpoena 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 subpoena 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 subpoena.

69. 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 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.

Examination *de bene esse*

70. 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.

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

71. 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.

Judgments to be final unless new trial granted.

72. 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.

Cross judgments to be set off.

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73. All the costs of any action or proceeding not herein or other
wise 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
5 such costs may be recovered in like manner as any debt adjudged by the
Court to be paid can be recovered.

74. 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
10 be fixed by scale in the rules to be made as hereinafter mentioned Pro-
vided that no such fees to Barristers or Attorneys shall be allowed in any
case where the sum sued for shall not exceed ten pounds.

75. All costs and charges between party and party shall be taxed
by the Registrar of the Court in which such costs and charges were
15 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.

76. When judgment has been obtained in any District Court for
20 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
25 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
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
30 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.

77. In any case where an order decision judgment or adjudication
for the payment of money shall be made by any Court or the Judge
35 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 *feri facias* which writ
shall be directed to the Bailiff or Registrar of the said Court as the case
may be.

78. It shall be lawful for the Registrar of every such Court
40 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
45 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.

79. In case of any sale by the said Registrar by himself or
50 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
55 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.

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80. 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.
81. 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.
82. 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.
83. 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.
84. 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 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 authorizing 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.
85. 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

Bailiff to seize personal property.

Executions not to bind land unless registered.

Registrars and Bailiffs may sell by auction without license.

Priority of Executions issuing out of District Court.

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

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

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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
 5 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.

10 86. 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
 15 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
 20 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 sum-
 25 mons 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
 30 Court.

87. 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
 35 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
 40 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
 45 obey the same respectively and all constables and other peace officers within their several jurisdictions shall aid and assist in the execution thereof.

88. Any person arrested or imprisoned under this Act by virtue of any such warrant as last aforesaid shall be entitled to his discharge
 50 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
 55 which the judgment was recovered.

89. Any plaint entered in any District Court may be removed by
 60 *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 Court

Interpleader.

Execution against the person.

Discharge on payment of debt and costs.

Removal of causes.

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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 5 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.

90. 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 15 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 20 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.

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

91. 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 30 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.

92. 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. 35

Costs in the District Court.

93. 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 40 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 45 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 50 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.

94. 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 55 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 60 the amount of the judgment or in lieu of giving such security deposit

Appeal to the Supreme Court.

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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.

95. 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.

96. 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.

97. 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.

98. 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

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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
 5 Supreme Court and judgment in accordance with such certificate may be signed in the Supreme Court.

99. No judgment order or determination given or made by any Removal of causes. 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
 10 *certiorari* or otherwise into any other Court whatever save and except in the manner and according to the provisions herein mentioned.

100. If in any action in the Supreme Court commenced after Costs in Supreme Court when not more than £30 recovered. the coming into operation of this Act the plaintiff shall recover by judgment by default verdict or otherwise a sum not exceeding thirty
 15 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.

101. If the plaintiff shall in any such action recover a sum not Costs in Supreme Court in certain cases. 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 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
 25 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.

102. The District Court Judges for the time being or any three Power to make rules of practice. of them shall have power to make such general rules as they shall think fit 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
 35 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
 40 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 **And** the first set of rules so made shall be subject to the approval of the Judges of the Supreme Court or any two of them.

103. Every Registrar to be appointed under the Act shall within one Registrars to prepare Returns. 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—

- 50 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.
- 55 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.
- 60 10. The number of cases left in arrear.

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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.
 5 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.

10 104. 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. Affidavits before whom sworn.

15 105. 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 20 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.

30 106. A summons for the recovery of a tenement may be served like other summonses to appear to plaintiffs 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 35 part of the premises sought to be recovered and such posting shall be deemed good service on the defendant. In plaintiffs to recover possession of premises how summonses may be served.

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

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

50 109. 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 55 the parties shall be so made. As to amendment of defects and errors of proceedings, &c.

60 110. 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 Jurisdiction along the borders of conterminous Districts.

District Courts Act.—1858.

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 5 other Court between the same parties for the same cause.

111. 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 discontinued the action the defendant shall in any of the said cases be allowed full costs as between attorney and client.

Indemnity to persons acting under this Act.

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

Short Title of Act.

SCHEDULE.

COURT FEES.

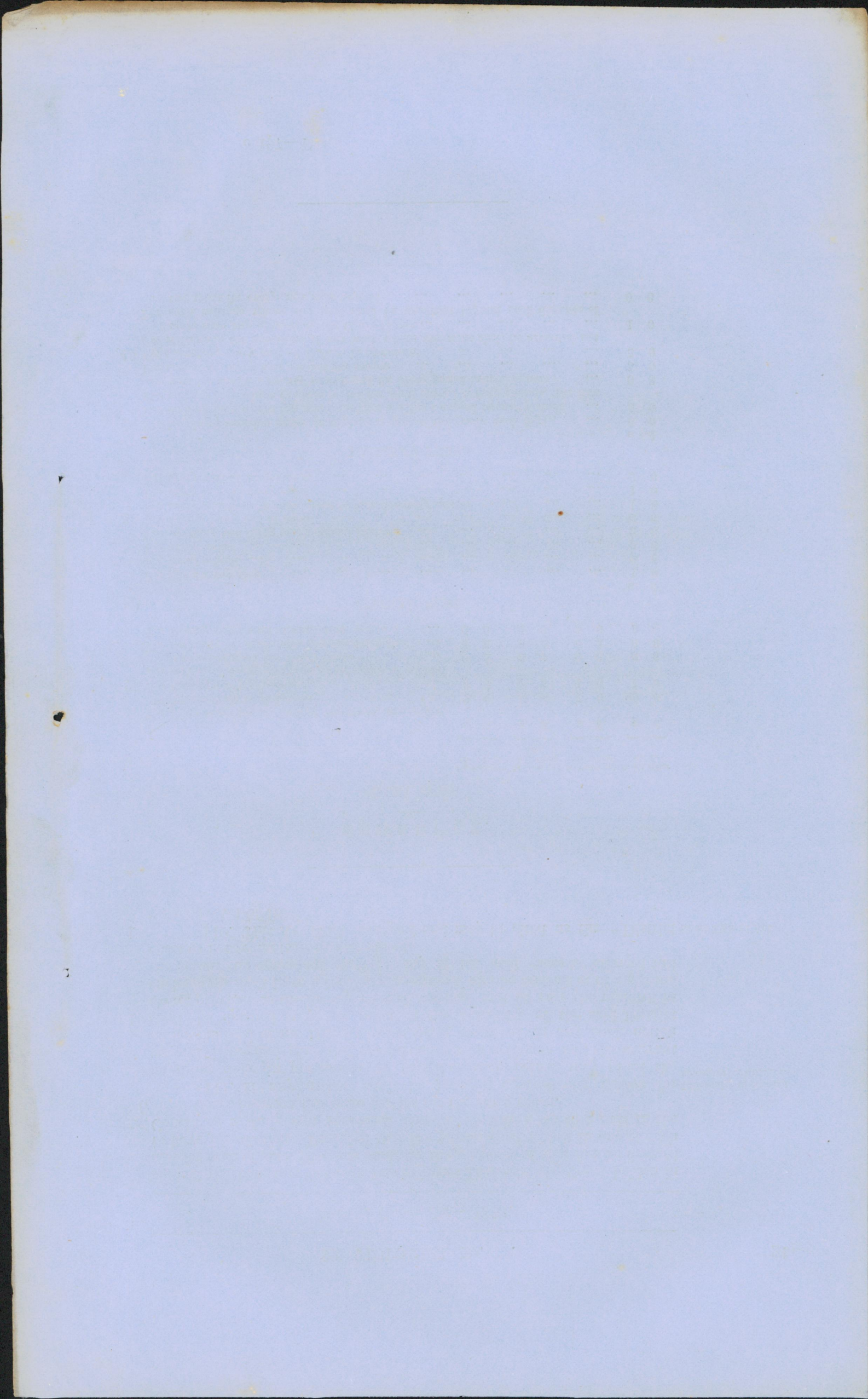
20		In cases not exceeding £5.		In cases not exceeding £10.		In cases not exceeding £30.		In all other cases.	
		s.	d.	s.	d.	s.	d.	s.	d.
	For filing every plaint, issuing summons, and other proceedings to judgment	2	6	5	0	7	6	20	0
25	For issuing every subpoena	0	6	0	6	1	0	1	0
	For service of every summons or subpoena, if within two miles from the Court House	0	6	0	6	0	6	0	6
	For such service, every mile beyond two miles	0	3	0	3	0	3	0	3
	For issuing every writ of execution	2	0	2	6	5	0	5	0

SPECIAL FEES.

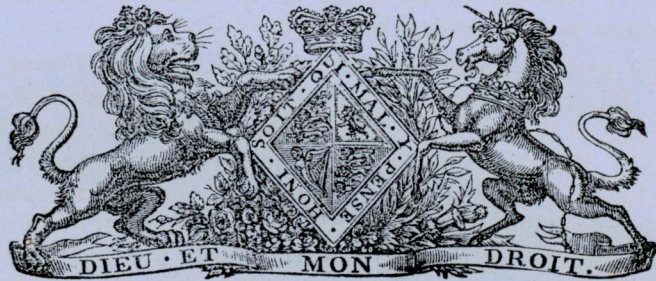
30		s.	d.
	For filing every plea	1	0
	For every search	0	6
	For every copy	0	6
	For swearing and filing every special affidavit	2	0
35	For taxing every bill of costs	2	6
	For every summons to show cause in interlocutory matter	1	0
	For every interlocutory order	1	0
	For every writ of attachment	2	6

BAILIFF'S FEES.

40		s.	d.
	For keeping possession under an execution against the goods, each day... ..	6	0
	For making levy where the sum levied for shall not exceed twenty pounds	5	0
	For making levy where the sum levied for shall exceed twenty pounds, the like sum for the first twenty pounds and for every pound over that sum	0	3
	For executing every writ against the person	5	0
45	For executing every writ of Habere in ejection	5	0
	For mileage in the execution of any writ where the same shall be executed not more than two miles from the Court House... ..	1	0
	For such mileage where the writ shall be executed beyond such distance of two miles for every such mile beyond	0	6



New South Wales.



ANNO VICESIMO SECUNDO

VICTORIÆ REGINÆ.

No. XVIII.

An Act for establishing District Courts and for enabling the Judges thereof to act as Chairmen of Quarter Sessions. [Assented to, 12th November, 1858.]

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:—

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.

District Courts Act.—1858.

Appointment of
District Courts.

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.

Creation of Districts.

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*.

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 jurisdic-
tion 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 two 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 partner-
ship 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 two 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

District Courts Act—1858.

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.

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. 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 two 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.

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 two hundred pounds it shall be lawful for the plaintiff to sue upon each of such securities not exceeding in amount two hundred pounds as forming a distinct cause of action.

Splitting debt by giving bills, &c.

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 were 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.

Executors.

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 two 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.

Infants.

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.

Actions by Physicians &c.

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.

One of several persons jointly liable may be sued.

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

Privilege.

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

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

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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 shew 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 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 two 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 two 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

District Courts Act.—1858.

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.

23. The District Courts holden under this Act shall have the same Jurisdiction in replevin. 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. 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. 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 General or of Quarter Sessions to be holden within the limits of the district for which he shall have been appointed And every such Chairman shall be the sole Judge at the Trial of all Criminal Issues in such Courts and in all matters relating to any information filed therein for any felony or misdemeanor and all such Courts of General and Quarter Sessions shall possess jurisdiction in respect of all crimes and misdemeanors not punishable with death anything in any law or statute to the contrary notwithstanding. Acts repealed. Judges of District Courts to have powers of Chairman of General or Quarter Sessions. Extension of Quarter Sessions Jurisdiction.

26. It shall be lawful for the Governor with the advice of the Executive Council at any time to issue a special commission to any one or more District Court Judge or Judges or to any one or more Barrister or Barristers of five years' standing appointing him or them to act as Judge or Judges of the Supreme Court of Sydney or Moreton Bay for the trial of issues civil or criminal at any Circuit Court or Court of Gaol Delivery or at remote places at which a Judge of the Supreme Court of Sydney or Moreton Bay could not attend without detriment to the ordinary business of such Court and thereupon the person or persons so appointed shall at the place and for the time specified in such commission have and exercise all the powers and privileges and discharge all the duties of a Judge of the Supreme Court of Sydney or Moreton Bay as the case may be. Special commission may issue to one or more Judges of District Courts enabling them to discharge duties of a Judge of the Supreme Court at remote places.

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. Appointment and Qualification of Judges.

District Courts Act.—1858.

Judges not to practise or sit in Parliament.

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 tenure of Office and removal therefrom.

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 one thousand pounds 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 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. Provided also that if any District Court shall be abolished whether by consolidation with any other District Court or otherwise no Judge or other officer of such District Court shall be entitled to any compensation on account of ceasing to hold his office.

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.

Powers under Deserted Wives and Children's Act Amendment Act.

31. The jurisdiction and powers which by the Act passed in the present Session for amending the Deserted Wives and Children's Act are vested in and conferred on the Supreme Court and the Judges thereof severally for protecting in certain cases the property of married women deserted by their husbands may be equally exercised by every District Court and the Judge or Deputy Judge thereof and every order made in that behalf shall while in force have the same validity and effect as a similar order made under the same Act by the Supreme Court.

Appointment and Salary of Registrar.

32. 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.

33. 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.

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34. 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.

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

35. 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.

Duties of Registrars.

36. 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 and Bailiffs Assistants.

37. 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.

38. 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.

Duties of Bailiffs.

39. 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

Remuneration of Bailiffs.

appointed

District Courts Act.—1858.

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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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

Punishment for forging Seal or serving forged process.

hard

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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.

45. 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.

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

46. 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 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.

Proceedings in civil suits.

47. 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.

Trial.

48. 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.

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

49. 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.

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

50. 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 two pounds and such sum shall be considered costs in the cause unless otherwise ordered by the Judge.

Party requiring jury to make deposit.

51. 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

Who shall be jurors.

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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.

52. 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.

53. 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.

54. 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.

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55. 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.

Jury to be chosen
by ballot.

56. Whenever there are any issues for trial by Jury in any District Court four jurymen shall be impanelled 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.

Number of jurors.

57. 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.

Payment to jurors.

58. If a Judge of a District Court shall be satisfied that any cause pending in his Court 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 sent for hearing to the nearest District Court of which he is not the Judge 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.

Power to Judge to
change venue.

59. 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.

Notice of special
defences.

60. 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

Payment into Court.

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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.

61. 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.

62. 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.

63. 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 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.

64. 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.

65. 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.

66. 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.

67. 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.

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68. Every person on whom such subpoena 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 subpoena 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 subpoena.

69. 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 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.

Examination *de bene esse*

70. 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.

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

71. 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.

Judgments to be final unless new trial granted.

72. 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.

Cross judgments to be set off.

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Costs.

73. 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 to Barristers and Attorneys and expenses to witnesses.

74. 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. Provided that no such fees to Barristers or Attorneys shall be allowed in any case where the sum sued for shall not exceed ten pounds.

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

75. 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.

76. 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 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.

Registrar to issue writs of *feri facias*.

77. 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 *feri facias* which writ shall be directed to the Bailiff or Registrar of the said Court as the case may be.

Registrar to take under writ of execution.

78. 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.

Registrar to execute bill of sale.

79. 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.

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80. 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.

Bailiff to seize personal property.

81. 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.

Executions not to bind land unless registered.

82. 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.

Registrars and Bailiffs may sell by auction without license.

83. 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.

Priority of Executions issuing out of District Court.

84. 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 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 authorizing 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.

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

85. 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

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

the

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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.

86. 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 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.

87. 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.

88. 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.

89. 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 Court

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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.

90. 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.

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

91. 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.

92. 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.

93. 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.

94. 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

Appeal to the Supreme Court.

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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.

95. 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.

Confession of debts or parts of debts and judgment thereupon.

96. 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.

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

97. 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.

98. 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

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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.

99. 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. Removal of causes.

100. 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 when not more than £30 recovered.

101. 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 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. Costs in Supreme Court in certain cases.

102. 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 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 And the first set of rules so made shall be subject to the approval of the Judges of the Supreme Court or any two of them. Power to make rules of practice.

103. 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— Registrars to prepare Returns.

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.

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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.

104. 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.

105. 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 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.

106. 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.

107. 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.

108. 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.

109. 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 contiguous Districts.

110. 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

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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.

111. 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. Indemnity to persons acting under this Act.

112. This Act shall be styled and may be cited as the "District Short Title of Act. Courts Act of 1858."

SCHEDULE.

COURT FEES.

	In cases not exceeding £5.		In cases not exceeding £10.		In cases not exceeding £30.		In all other cases.	
	s.	d.	s.	d.	s.	d.	s.	d.
For filing every plaint, issuing summons, and other proceedings to judgment	2	6	5	0	7	6	20	0
For issuing every subpoena	0	6	0	6	1	0	1	0
For service of every summons or subpoena, if within two miles from the Court House	0	6	0	6	0	6	0	6
For such service, every mile beyond two miles	0	3	0	3	0	3	0	3
For issuing every writ of execution	2	0	2	6	5	0	5	0

SPECIAL FEES.

	s.	d.
For filing every plea	1	0
For every search	0	6
For every copy	0	6
For swearing and filing every special affidavit	2	0
For taxing every bill of costs	2	6
For every summons to show cause in interlocutory matter	1	0
For every interlocutory order	1	0
For every writ of attachment	2	6

BAILIFF'S FEES.

	s.	d.
For keeping possession under an execution against the goods, each day... ..	6	0
For making levy where the sum levied for shall not exceed twenty pounds	5	0
For making levy where the sum levied for shall exceed twenty pounds, the like sum for the first twenty pounds and for every pound over that sum	0	3
For executing every writ against the person	5	0
For executing every writ of Habere in ejection	5	0
For mileage in the execution of any writ where the same shall be executed not more than two miles from the Court House... ..	1	0
For such mileage where the writ shall be executed beyond such distance of two miles for every such mile beyond	0	6

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