

No. VII.

DISTRICT COURTS
ACT FURTHER
AMENDMENT (No. 2).

An Act to further amend the "District Courts Act of 1858." [21st July, 1884.]

Preamble.

WHEREAS it is expedient to further amend in certain particulars the "District Courts Act of 1858" 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:—

In respect of certain demands plaintiff may require defendant to give notice of intention to defend.

1. In all actions commenced in any District Court for a debt or liquidated demand in money with or without interest arising upon a contract express or implied the plaintiff shall be at liberty upon filing his plaint to cause to be issued a summons in the form or to the effect given in Schedule A to this Act and if such summons together with a statement of the particulars of plaintiff's claim shall be personally served on the defendant and the defendant shall not within eight days if resident within the district from which such summons issued or if not so resident then within ten days after such service inclusive of the day of such service give notice in writing signed by himself or his attorney to the Registrar of his intention to defend the action the plaintiff at any time within three months after the expiration of such time for giving notice of defence as aforesaid upon filing an affidavit of due service of such summons or of an order for leave to proceed as if personal service had been effected together with an account of what is justly due to him verified by the oath of such plaintiff his attorney or agent may have judgment entered up against the defendant for the amount of his claim together with interest to the date of judgment and a sum for costs to be fixed by the Judge unless the plaintiff claim more than such fixed sum in which case the costs shall be taxed by the Registrar *ex-parte*. Provided always that the defendant may give notice of his intention to defend at any time before judgment entered up against him as aforesaid.

Judgment thereon.

2. Such judgment shall be for payment forthwith or at such time or times and by such instalments if any as the plaintiff or his attorney shall in writing have consented to take at the time of entry of the plaint or of the judgment and it shall be lawful for the plaintiff in default of payment in accordance with such judgment to issue execution forthwith for the full amount thereof and in any case in which judgment has been entered up for payment by instalments execution shall be had for the whole amount due upon the judgment if default be made in payment of one such instalment.

Proceedings on notice of defence.

3. Where the defendant shall have given notice of defence the Registrar shall upon the receipt thereof cause a summons in the usual form to be issued and served upon the defendant at such time and in such manner as is provided by the principal Act. And the proceedings subsequent to the issue thereof shall in all respects be the same as if such summons had been issued in the first instance. And the Registrar shall forthwith communicate notice of such defence and of the time and place at which the action is intended to be tried to the plaintiff or his attorney by post or by leaving the same at his residence or usual place of business.

Neglect to give notice.

4. Where the defendant has neglected to give notice of defence the Judge upon an affidavit disclosing a defence upon the merits and satisfactorily explaining the neglect shall let in the defendant to defend upon such terms as the Judge may think fit.

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5. Where personal service cannot be effected and the Judge or Registrar is satisfied by affidavit that reasonable efforts have been made to effect such service and either that the summons has come to the knowledge of the defendant or that he wilfully evades service of the same or that the same has been served in the manner directed by the District Court Rules in respect of an ordinary summons it shall be lawful for the Judge or Registrar to order that the plaintiff be at liberty to proceed as if personal service had been effected subject to such conditions as to the Judge or Registrar may seem fit.

Where personal service dispensed with.

6. All matters which at present are only the subject of cross action or may be made the subject of a cross action between the parties shall hereafter be pleadable by way of set-off as at present in the Supreme Court provided the like notice thereof be given as is required in respect of the special defences enumerated in section fifty-nine of the Principal Act.

Matter of cross action may be pleaded.

7. It shall be lawful for the defendant or the plaintiff in replevin in any cause in which if judgment were obtained he would be entitled to relief against such judgment on equitable grounds to rely upon the facts which entitled him to such relief by way of defence provided notice of such facts with the words "for defence on equitable grounds" shall be given in like manner and time as is required in respect of the special defences enumerated in section fifty-nine of the Principal Act and the plaintiff or defendant as the case may be may reply in answer to any such plea facts which avoid the same on equitable grounds.

Equitable defence may be pleaded.

8. No defendant served with a summons in the form or to the effect given in Schedule A to this Act shall be allowed to set up either of the defences in the two previous sections hereof or any of the defences enumerated in section fifty-nine of the Principal Act without the consent of the plaintiff unless the defendant shall have given notice thereof at the time of filing notice of his intention to defend the action notice of which shall be communicated by the Registrar to the plaintiff at the time and in the manner notice of defence as aforesaid is communicated.

Notices of special defence on filing notice of intention to defend.

9. In all actions where the amount claimed shall exceed twenty pounds the Judge may at any time order that a jury be summoned to try the action and the plaintiff shall be bound to proceed in the same manner as if he had required the action to be so tried and in all actions where the amount claimed does not exceed twenty pounds it shall be lawful for the Judge on the application of either of the parties *ex-parte* or otherwise if made at least five clear days before the day named in the summons for the hearing of such action to order that a jury be summoned to try the action and the party making such application shall be bound to proceed in the same manner as if the amount claimed had exceeded twenty pounds and he had required the action to be tried by a jury and it shall also be lawful in such actions for the plaintiff and defendant to require a jury to be summoned to try the action upon giving the Registrar or leaving at his office at least five clear days before the day named in the summons for the hearing of such action a notice thereof signed by both plaintiff and defendant or by their respective attorneys and the plaintiff shall be bound to proceed in the same manner as if the amount claimed had exceeded twenty pounds and had required the action to be tried by a jury.

When jury may be summoned to try action.

10. It shall be lawful for the Judge at any time during the sitting of the Court at which a cause has been struck out pursuant to section sixty-three of the Principal Act to order the said cause to be restored to the cause list upon such terms (if any) as to payment of costs giving security for costs or such other terms as he may think fit whereupon the same shall be proceeded with as if the plaintiff had

Causes to be restored to cause list.

duly

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duly appeared at the time and place named for such appearance or at the continuation or adjournment of the Court or cause for which the summons had been issued.

Interpretation and
short title.

11. The term "Principal Act" shall mean the "District Courts Act of 1858" and this Act may be cited as the "District Courts Act Amendment Act of 1884."

SCHEDULE A.

Summons to obtain judgment by default on personal service.

In the [title of Court issuing summons].

No. [of plaint].

Between A.B. [address and description of plaintiff] plaintiff and C.D. [address and description of defendant] defendant.

£ s. d.
Claim
Fee for plaint ..
Attorney's costs ..
Total amount of
debt and costs ..

TAKE notice that unless within _____ days after service of this summons on you inclusive of the day of such service you return to the Registrar of this Court at [place of office] the notice given below dated and signed by yourself or your attorney you will not afterwards be allowed to make any defence to the claim which the plaintiff makes on you as per margin the particulars of which are hereunto annexed but the plaintiff may proceed to judgment and execution without giving any further notice If you return such notice to the Registrar within the time specified a summons will be issued notifying the time and place upon which the action will be tried.

Dated this _____ day of _____ A.D. 188 _____.

Registrar of the Court.

(Seal of Court.)

Notice of intention to defend or to object to the jurisdiction of the Court.

In the [title of Court].

No. [of plaint].

Between A.B. Plaintiff and C.D. Defendant.

TAKE notice that I intend to defend this action [or to object to the jurisdiction of the Court] and to rely upon the following grounds of special defence namely :—

[Here enumerate grounds of special defence.]

Dated this _____ day of _____ 188 _____.

C.D. Defendant.

(To be endorsed on Summons.)

If you pay the debt and costs as per margin on the other side into the Registrar's office within the time specified for filing notice of intention to defend and without returning such notice you will avoid further costs.

If you confess the plaintiff's claim you should sign and deliver your confession to the Registrar of the Court within the like time You and the plaintiff may agree as to the amount due and mode of payment and may within the time specified for filing notice of intention to defend sign a memorandum of such agreement at the Registrar's office or before an attorney.

If you admit a part only of the claim you must return the notice of intention to defend within the time specified on the summons and you may by paying into the Registrar's office at the same time the amount so admitted together with costs proportionate to the amount you pay in avoid further costs unless the plaintiff at the trial shall prove a claim against you exceeding the sum so paid.

If you intend to rely on a set-off in any of the Statute of Frauds coverture any statute of limitations or discharge under any statute relating to bankrupts or under any Act for the relief of insolvent debtors or a plea of justification or of cross action or of an equitable defence you must in addition to the notice of intention to defend at the same time give notice of such special defence to the Registrar and you must deliver to the Registrar as many copies of such notice as there are plaintiffs and an additional copy for the use of the Court If your defence be a set-off you must with each notice thereof deliver to the Registrar a statement of the particulars thereof If your defence be a tender you must pay into Court before or at the hearing the amount tendered.