

Act No. 4, 1901.

DISTRICT COURTS. An Act to consolidate enactments relating to District Courts. [3rd October, 1901.]

BE it enacted by the King'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:—

PART I.

PRELIMINARY.

Short title. 1. This Act may be cited as the "District Courts Act, 1901," and is divided into Parts and Divisions, as follows:—

PART I.—PRELIMINARY.—ss. 1-3.

PART II.—COURTS, JUDGES, AND OFFICERS—

DIVISION 1.—*Establishment of District Courts.*—ss. 4-10.DIVISION 2.—*Judges.*—ss. 11-15.DIVISION 3.—*Registrars and bailiffs.*—ss. 16-26.DIVISION 4.—*Time and place for holding Court.*—s. 27.DIVISION 5.—*Court fees and fines.*—ss. 28-29.DIVISION 6.—*Actions against persons acting under this Act.*—s. 30.DIVISION 7.—*Barristers and attorneys.*—ss. 31-33.

PART III.—JURISDICTION—

DIVISION 1.—*Jurisdiction and practice.*—ss. 34-41.DIVISION 2.—*Causes and parties.*—ss. 42-50.DIVISION 3.—*Plaint-note and summons.*—ss. 51-57.DIVISION 4.—*Confession of debt.*—ss. 58-59.DIVISION 5.—*Payment into Court.*—s. 60.DIVISION 6.—*Defences.*—ss. 61-63.DIVISION 7.—*Arbitration.*—s. 64.DIVISION 8.—*Witnesses and evidence.*—ss. 65-70.DIVISION 9.—*Trial.*—ss. 71-81.DIVISION 10.—*Judgment and new trial.*—ss. 82-84.DIVISION 11.—*Enforcement of judgments.*—ss. 85-104.DIVISION 12.—*Costs.*—ss. 105-106.

PART IV.—APPEALS.—ss. 107-109.

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2. (1) The several enactments mentioned in the First Schedule Repeal. to this Act are to the extent therein expressed hereby repealed. First Schedule.

(2) All persons appointed by virtue of or under any Act hereby repealed, and holding office at the commencement of this Act, shall remain in office as if this Act had been in force at the time they were appointed and they had been appointed hereunder, and this Act shall apply to them accordingly.

(3) All rules of Court, proclamations, appointments, orders, and notices made or given under the authority of any Act hereby repealed and being in force at the commencement of this Act shall be deemed to have been made under the authority of this Act, and all references in any such rules, proclamations, appointments, orders, and notices shall be construed as references to the corresponding provisions of this Act.

(4) All District Courts created and all limits of jurisdiction defined under the authority of any Act hereby repealed and existing at the commencement of this Act shall be deemed to have been created and defined respectively under this Act, and the provisions of any Act not hereby or otherwise repealed at the commencement of this Act relating to any District Court or any Judge or officer thereof shall apply so far as applicable to the District Courts, Judges, and officers established and appointed or deemed to be established and appointed under this Act.

3. In this Act, unless the context or subject-matter otherwise Interpretation. indicates or requires,—

“Action” includes cause, suit, and other proceeding.

“Attorney” means an attorney of the Supreme Court.

“Barrister” means a barrister-at-law admitted by the Supreme Court.

PART II.

COURTS, JUDGES, AND OFFICERS.

DIVISION 1.—*Establishment of District Courts.*

4. (1) The Governor may by proclamation in the Gazette order Appointment of that Courts to be called District Courts shall be holden at such towns District Courts. ^{22 Vic. No. 18, s. 2.} and places as he thinks fit, and may alter the place for holding any such Court, or order that the holding of any such Court be discontinued.

(2) All proceedings commenced or had in any District Court, Proceedings in discontinued the holding of which is discontinued under any such proclamation District Courts. ^{29 Vic. No. 11, s. 1.} may be continued, executed, and enforced against all persons liable thereto in the District Court holden in the nearest place to that at which

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which the Court so discontinued was holden, and in the same manner as nearly as possible as if such proceedings had been commenced or had in the Court holden at such nearest place.

(3) The records of the District Court, the holding of which is so discontinued, shall be removed to such nearest Court as soon as the Judge of the said last-mentioned Court directs.

Creation of districts. **5.** (1) The Governor may by proclamation in the Gazette divide **22 Vic. No. 18, s. 3.** New South Wales into districts for the purposes of this Act, and may **22 Vic. No. 25, s. 6.** alter such districts as he thinks fit, and define the limits within which each of the Courts appointed to be held shall have jurisdiction.

(2) No alteration in any such limits shall take effect until after three months from the notification thereof in the Gazette.

Proceedings where limits altered. **3.** All proceedings commenced or had in any District Court holden in any district, the limits of which have been altered as aforesaid, may be continued, executed, and enforced against all persons liable thereto as if no such alteration had been made.

District Courts to be Courts of Record. **6.** Every District Court shall be a Court of Record, and shall have jurisdiction as hereinafter provided.

Jurisdiction. **7.** (1) 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, is resident within the districts for which such Courts respectively are ordered to be held.

Claims under ten pounds. (2) In respect of claims for amounts not exceeding ten pounds and at present within the jurisdiction of Courts of Petty Sessions, no defendant shall be compelled to appear so long as such jurisdiction as last aforesaid continues at a District Court held at a place not included within the Petty Sessions district in which he is resident.

Jurisdiction along borders of adjacent districts. (3) For the purpose of preventing disputes as to the jurisdiction of District Courts, and in order to facilitate the execution of process including the service of summonses, the Courts holden in and for each of any two adjacent districts shall, for the purposes of this Act, be deemed to have jurisdiction for the space of two miles on either side of the boundary between such districts, but the fact that an action is pending in one of such Courts or a judgment recovered therein shall be a bar to an action in the other Court between the same parties for the same cause.

Exception where debt expressly made payable in particular district. **8.** (1) In case the defendant in any action has given an engagement or promise in writing to pay any debt or sum at a particular place specified, the plaintiff may cause such defendant to be summoned to the Court within the jurisdiction of which the place so specified is situated.

Where defendant removes after contracting liability. (2) If any party, after having in one place contracted a debt or become liable for any damages recoverable in any District Court, becomes by removal resident within the jurisdiction of any other such Court

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Court previously to the issuing of a summons for the recovery of such debt or damages, the plaintiff may cause such defendant to be summoned to the District Court within the jurisdiction of which such debt or liability for damages arose.

9. There shall be a seal for every District Court holden under *Seal of the Court.* this Act, and all notices, summonses, certificates, warrants, and other *22 Vic. No. 18, s. 44.* process issued by the registrar of the Court shall be sealed or stamped with the seal of the Court.

10. (1) If a Judge of a District Court is satisfied that any action *Change of venue.* pending in his Court can be more conveniently or fairly tried in some *Ibid. s. 58.* other District Court he shall order that the venue be changed, and that the action be sent for hearing to such other District Court.

(2) If the Judge is interested in the matter of any action pending in his Court he shall order that the venue be changed, and that the action be sent for hearing to the nearest District Court of which he is not the Judge.

(3) 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 action is to be sent—

- (a) a certified copy of the plaint as entered in the plaint book;
- (b) the duplicate copy of the summons and particulars served on the defendant; and
- (c) a certified copy of the order for changing the venue.

(4) 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.

DIVISION 2.—*Judges.*

11. (1) The Governor shall, by commissions in His Majesty's *Appointment and qualification of Judges.* name, appoint as many persons as are needed to be Judges of the District Courts under this Act, each of whom shall be a barrister of *Ibid. s. 27.* five years or an attorney 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.

(2) Two or more such persons may be appointed to act at the *Two or more Judges may be appointed in the same district.* same time as Judges of the respective District Courts appointed to be held in one and the same district. *30 Vic. No. 9, s. 1.*

(3) No barrister or attorney shall be appointed to be a *Barristers and attorneys when qualified.* District Court Judge unless he has been in practice, or has held some judicial or legal office under the Crown, within two years immediately *22 Vic. No. 18, s. 27.* preceding his appointment.

12. (1) The District Court Judges shall hold their offices *Judges tenure of office.* during ability and good behaviour, and shall severally be paid, exclusive *Ibid. s. 29.* of any allowance for travelling expenses, an annual salary of one *46 Vic. No. 16, s. 1.* thousand

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thousand five hundred pounds, which sum shall not be diminished during the continuance of such person in the office of District Court Judge, but the Governor may remove any Judge for inability or misbehaviour.

22 Vic. No. 18, s. 29.

(2) Twenty-one days at least before such removal the Judge shall have notice of the intention to remove him, and shall thereafter and before removal have the opportunity of being heard before the Governor and Council in his defence.

(3) The Governor may remove any Judge for the purpose of appointing him to some other District Court.

Deputy Judge.
Ibid. s. 30.

13. The Governor may appoint a District Court Judge or barrister or attorney to act as the deputy of any District Court Judge during his illness or absence.

Pension.

46 Vic. No. 16, s. 2.

(1) Every District Court Judge on his retirement after twenty years' service as such, or on permanent disability or infirmity, shall be entitled to a pension of one-half of his actual salary at the time of such retirement.

(2) Any period, whether before or after the commencement of this Act, during which a District Court Judge has served as Judge of any superior Court or as acting Judge of any District Court shall be computed as portion of the service of such District Court Judge for the purposes of this section.

(3) All such pensions shall be charged upon and be payable out of the Consolidated Revenue Fund.

Judges to act
separately in
judicial but together
in administrative
matters.
30 Vic. No. 9, s. 4.

15. Where two or more District Court Judges are appointed for the District Courts in one and the same district, only one of such Judges shall sit, preside, or act at any trial or at the hearing of any application or the making of any order in reference thereto; but in the appointment and removal of officers, the appointment of the times for holding District Courts, and in the discharge of other administrative duties imposed by this Act upon the Judge of any District Court the whole of such Judges shall concur.

DIVISION 3.—*Registrars and bailiffs.*

Registrar.

22 Vic. No. 18, s. 32.

16. There shall be a registrar for every District Court, whom the Governor shall appoint, and every such registrar shall be paid by salary, and the Governor may in populous districts appoint two persons to execute jointly the office of registrar under such regulations as to the division of their duties and emoluments as may be made by order of the Court in case of difference between them.

Deputy registrar.
Ibid. s. 33.

17. (1) The registrar of any such Court with the approval of the Judge, or in case of inability of the registrar to make such appointment the Judge, may appoint a deputy to act for the registrar of the said Court at any time when he is prevented by illness or absence from acting in such office.

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(2) 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.

(3) 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 is 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 ratable proportion of the salary attached to the office of registrar.

18. On the death or removal of a registrar who has not 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 is appointed, and shall receive as remuneration for his services during the period he may so act a ratable proportion of the salary attached to the office of registrar.

Judge to appoint
deputy registrar
provisionally if one
has not been
appointed.

22 Vic. No. 18, s. 34.

19. The registrar of each Court shall—

Duties of registrars.
Ibid. s. 35.

- (a) sign and issue all summonses and warrants; and
- (b) register all records, orders, and judgments of the said Court; and
- (c) keep an account of all proceedings of the Court; and
- (d) 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
- (e) 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.

20. For every such Court there shall be one or more bailiffs whom the Judge shall by order under his hand appoint and may by like order remove, and every such bailiff may, subject to the restriction hereinafter contained, by any writing under his hand, appoint a sufficient number of persons, not exceeding such number as may from time to time be allowed by the Judge, to be officers to assist the said bailiff; and the said bailiff may dismiss any such officer and may appoint another in his stead, and the Judge may suspend or dismiss any such officer.

Appointment of
bailiffs and bailiff's
assistants.

Ibid. s. 36.

21. 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 are dismissed by the successor to the bailiff or by the Judge, and they shall be paid for their services while they 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.

Bailiff's assistants
may act after the
death or removal of
bailiff.

Ibid. s. 37.

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Duties of bailiffs.

22. (1) The bailiffs of any District Court shall, if required by *22 Vic. No. 18, s. 38.* 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 the rules of Court, and subject thereunto to the order and direction of the Judge of the district in which the process is to be served or executed.

(2) No summons or other process (except process of execution) shall be so served or executed in any district other than that in which it issued until endorsed by the registrar of the district within which the same is sought to be served or executed.

(3) Any summons wheresoever issued may without any such endorsement be served in any district by the plaintiff or any competent person employed by him.

Remuneration of
bailiffs.
Ibid. s. 39.

23. (1) 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 bailiff shall be entitled to receive and retain for his own use all fees and sums of money allowed as hereinafter mentioned in the name of fees payable to the bailiff, out of which he shall provide for the execution of the duties for which such fees are allowed and for the payment of the officers appointed to assist him.

(2) The fees upon execution shall be paid by the registrar of the Court to the bailiff upon the return of the writ of execution, but not before, and every such bailiff shall be responsible for all the acts and defaults of himself and of the officers appointed to assist him in like manner as the sheriff is responsible for the acts and defaults of himself and his officers.

(3) In every Court holden under this Act in which the fees allowed to be taken by the bailiffs of the Court appear to be more than sufficient, the Governor may 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 is 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.
Ibid. s. 40.

24. (1) No registrar of any District Court, or partner of such registrar, or person in the service of such registrar or partner, shall act as bailiff of the Court, and no bailiff of any District Court, or partner or clerk of such bailiff, or person in the service of such bailiff or partner, shall act as registrar of the Court, and no officer of any District Court shall by himself or his partner be directly or indirectly concerned as attorney or agent for any party in any proceeding in the Court.

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(2) Any person acting in contravention of this section shall forfeit the sum of one hundred pounds and full costs of suit to any person who sues for the same.

25. 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 may 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.

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

1. The number of suits commenced in his Court during the twelve months preceding.
2. The number settled without hearing.
3. The number of trials.
4. The result of the trials whether in favour of the plaintiffs or defendants.
5. The nature of the causes under distinct heads.
6. The costs of the suits.
7. The number of appeals.
8. The number of judgments or orders affirmed.
9. The number reversed.
10. The number of cases left in arrear.
11. The date, place, and duration of the sittings of each Court; the duration to be specified in days and hours.
12. The number of cases tried by jury.
The number of cases tried 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.

DIVISION 4.—Time and place for holding Court.

27. (1) The Governor shall, as to each place in which District Courts are ordered to be held under this Act, proclaim an interval within which a Court must be held, and a Court shall be held in every such place once at least during such interval.

(2) Subject as aforesaid the Judge of each District Court shall appoint the times for holding the Court, and shall attend and hold the Court at the times so appointed.

(3)

Registrar and bailiff to give security.
22 Vic. No. 18, s. 41.

Registrars to prepare returns.
Ibid. s. 103.

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(3) Notice of the days on which the Court will be held 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 the Judge directs.

(4) Where by reason of the death or absence of the Judge of any District Court at the time appointed for holding a Court, 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 shall enter in the minute-book the cause of such adjournment.

29 Vic. No. 11, s. 3.

(5) Where any proclamation is made for altering districts under section five of this Act, any District Court Judge may appoint the times for holding any District Court at any place which is not at the date of such appointment, but will be at the time when such proclamation takes effect, within the district of which he is Judge.

DIVISION 5.—*Court fees and fines.*

Amount of Court fees.
Second Schedule.

22 Vic. No. 18, s. 42.

28. (1) There shall be payable on every proceeding in the District Courts the fees mentioned in the Second 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.

(2) The Governor may 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 has been notified to both Houses of Parliament, and that no such alteration shall take effect if within such period either House of Parliament by an address to the Governor signifies its dissent therefrom.

Fines and fees part of the Consolidated Revenue.
Ibid. s. 43.

29. (1) 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 are 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, and shall be accounted for, paid, and applied accordingly.

Fines how to be enforced and accounted for.
22 Vic. No. 25, s. 4.

(2) Payment of any fine imposed by any Court under the authority of this Act may be enforced upon the order of any District Court Judge in like manner as payment of any debt adjudged in such Court.

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*District Courts.***DIVISION 6.—Actions against persons acting under this Act.**

30. If any action is 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 if in such action there is a verdict for the defendant or the plaintiff is nonsuited or discontinues the action, the defendant shall be allowed full costs as between attorney and client.

DIVISION 7.—Barristers and Attorneys.

31. (1) Any party to an action or other proceeding under this Act, or any barrister or attorney retained by or on behalf of any party (but without any right of exclusive audience or pre-audience), or any other person allowed by special leave of the Judge in each case to appear instead of any party, may address the Court and examine and cross-examine the witnesses, but subject to such regulations as the Judge may prescribe for the orderly transaction of the business of the Court.

(2) No person other than a barrister or attorney 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 a District Court.

32. 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 action in such Court, and the expenses to be paid to witnesses, shall be fixed by scale in the rules of Court:

Provided that no such fees to barristers or attorneys shall be allowed in any case where the sum sued for does not exceed ten pounds.

33. (1) In all actions tried in any District Court the address for the defendant may be reserved until the close of the evidence for the defendant and the right to reply shall be the same as at present.

(2) When such address on the part of the defendant is reserved as aforesaid, the evidence in reply, if any, on behalf of the plaintiff must be given before such address.

(3) Where the defendant begins, the address for the plaintiff may be reserved in like manner and subject to the same conditions as hereinbefore provided with respect to the address for the defendant.

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PART III.

JURISDICTION.

DIVISION 1.—*Jurisdiction and Practice.*

In personal actions.

22 Vic. No. 18, s. 7.

34. (1) The District Courts established under this Act shall have jurisdiction in all personal actions wherin the amount claimed is not more than two hundred pounds whether on balance of account or after an admitted set-off or otherwise.

(2) 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 is in question, or shall have jurisdiction in any action for seduction, but if such title as aforesaid incidentally comes in question in any action, the Court may decide the claim which it is the immediate object of the action to enforce, but the judgment of the Court shall not be evidence of title between the parties or their privies in any other action in that Court or in any proceedings in any other Court.

In cases of
partnership,
intestacy, and legacy.

Ibid. s. 8.

35. The jurisdiction of such Courts 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.

Ibid. s. 9.

36. If both parties agree, by a memorandum signed by them or 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, and if such memorandum states that the parties signing the same knew that such action was not triable within the jurisdiction of the District Court without such consent, and if such memorandum is filed with the registrar of the said Court at the time of filing the plaint, the said District Court shall have jurisdiction to try such action.

Removal of causes.

Ibid. s. 89.

37. (1) Any plaint entered in any District Court may be removed by writ of 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 thinks fit.

No removal in cases
under £10.

Ibid. s. 89.

(2) No plaint shall be removed when the amount claimed does not exceed ten pounds unless the defendant gives 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.

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38. The granting by the Supreme Court or by any Judge thereof of a rule or summons to show 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 directs, operate as a stay of proceedings in the action to which the same relates until the determination of such rule or summons or until the Supreme Court or Judge otherwise orders, and the Judge of the District Court shall from time to time adjourn the hearing of such action to such day as he thinks fit until such determination or until such order is made, but if a copy of such rule or summons is not 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 action, the Judge of the District Court may order the party who obtained the rule or summons to pay all the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court or a Judge thereof has made some order respecting such costs.

39. When a writ of certiorari or of prohibition addressed to a Judge of a District Court has been granted by the Supreme Court or a Judge thereof on an ex parte application, and the party who obtained it does 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 action to which it relates, the Judge of the District Court may order the party who obtained the writ to pay all the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court or a Judge thereof has made some order respecting such costs.

40. Whenever an order is granted for the removal of a plaintiff from a District Court or for the issuing of a writ of 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.

41. Except as in this Act provided 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.

DIVISION 2.—Causes and parties.

42. Two or more causes of action, provided they are by and against the same parties and in the same rights, may be joined in the same suit in a District Court; but the Judge may prevent the trial of different causes of action together if such trial would, in his opinion, be inexpedient or inconvenient, and in such case may order separate trials to be had.

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Proceedings by
husband and wife.

22 Vic. No. 18, s. 10.

Splitting demands.
Ibid. s. 12.

Splitting debt by
giving bills, &c.
Ibid. s. 13.

Executors.
Ibid. s. 14.

Infants.
Ibid. s. 15.

Actions by
physicians, &c.
Ibid. s. 16.

One of several
persons jointly liable
may be sued.
Ibid. s. 17.

43. 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 the husband may 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.

44. No plaintiff shall divide any cause of action for the purpose of bringing two or more suits in any District Court; 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 judgment upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

45. In case any defendant has 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, the plaintiff may sue upon each of such securities, not exceeding in amount two hundred pounds, as forming a distinct cause of action.

46. Any executor or administrator may 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.

47. Any person not of the age of twenty-one years may 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 labourer, in the same manner as if he were of full age.

48. 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 surgeon or other person may sue for the recovery of any debt or other demand under this Act.

49. (1) Where any plaintiff has 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 is served with process, and judgment may be obtained and execution issued against the 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.

(2) Every such person against whom judgment has been obtained under this Act, and who has 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.

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50. No privilege shall be allowed to any attorney, solicitor, or Privilege. other person to exempt him from the provisions of this Act. 22 Vic. No. 18, s. 18.

DIVISION 3.—*Plaint-note and summons.*

51. On the application of any person desirous of bringing an action under this Act the registrar 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 is 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 is directed by the rules of Court, 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 is therein described so as to be commonly known.

52. 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 may upon filing his plaint cause a summons to be issued, in the form or to the effect given in the Third Schedule to this Act, and such summons, together with a statement of the particulars of plaintiff's claim, shall be personally served on the defendant.

53. Where personal service of such summons 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 rules of Court in respect of an ordinary summons, the Judge or registrar may order that the plaintiff may proceed as if personal service had been effected, subject to such conditions as the Judge or registrar thinks fit.

54. If the defendant does 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 to the registrar in writing, signed by himself or his attorney, in the form or to the effect given in the Third Schedule to this Act of his intention to defend the action, the plaintiff at any time within three months after the expiration of such time for giving notice 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

Commencement of actions.
Ibid. s. 46.

Action for debt or liquidated demand.
48 Vic. No. 7, s. 1.

Where personal service dispensed with.
Ibid. s. 5.

When judgment may be signed.
Ibid. s. 1.

Third Schedule.

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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 ex parte by the registrar.

Notice of defence.

48 Vic. No. 7, ss. 1, 4.

55. The defendant may give notice of his intention to defend at any time before judgment is entered up against him as aforesaid, and where the defendant has neglected to give such notice 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.

Judgment thereon.

Ibid. s. 2.

56. 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 consents in writing to take at the time of entry of the plaint or of the judgment, and the plaintiff in default of payment in accordance with such judgment may issue execution forthwith for the full amount then due upon such judgment, 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 is made in payment of one such instalment.

Proceedings on
notice of defence.

Ibid. s. 3.

57. Where the defendant has given notice of his intention to defend 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 this 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.

DIVISION 4.—*Confession of debt.*

Confession of or
agreement as to debt.

22 Vic. No. 18, ss.

93, 97.

58. (1) In any plaint in any District Court whether the defendant is summoned upon such plaint or not,—

(a) the defendant may sign a statement confessing the amount of the debt or demand for which such plaint has been entered or any part thereof; or

(b) the plaintiff and defendant may sign a statement of any agreement upon the amount of such debt or demand, and of the terms and conditions upon which the same is to be paid or satisfied.

(2) Any such statement shall be signed in the presence of the registrar of the Court in which such plaint has been entered or of an attorney or a justice of the peace.

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59. (1) The registrar shall receive such statement of confession ^{Judgment upon such} or agreement as aforesaid, and shall as soon as convenient thereafter <sup>confession or agree-
ment.</sup> send notice of any such confession to the plaintiff, and thereupon it ^{22 Vic. No. 18, ss.} shall not be necessary for the plaintiff otherwise to prove the debt or ^{96, 97.} demand or part thereof so confessed or the debt or demand so agreed upon.

(2) The registrar in case of any such statement of confession or agreement shall (upon proof by affidavit of the signature of the defendant, if such statement was not made in the presence of the registrar) enter up judgment for the plaintiff for the debt or demand so confessed, or for the part thereof so confessed if the plaintiff is willing to accept such part in satisfaction of his claim, or for the amounts and upon the terms and conditions agreed upon as the case may be, and such judgment shall to all intents and purposes be the same as if it had been a judgment of the Judge of such Court.

DIVISION 5.—Payment into Court.

60. The defendant in any action in a District Court for a debt ^{Payment into Court.} or damages may, within such time as is directed by the rules of Court, ^{Ibid. s. 60.} pay into Court such sum of money as he thinks 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 on application; but if he elects to proceed and recovers no further sum in the action than has been so paid into Court, the plaintiff shall pay to the defendant the costs incurred by him in the said action after such payment, and an order shall thereupon be made by the Judge for the payment of such costs by the plaintiff.

DIVISION 6.—Defences.

61. (1) The defendant or the plaintiff in replevin in any action ^{Equitable defence} in which if judgment were obtained he would be entitled to relief ^{may be pleaded.} against such judgment on equitable grounds, may rely upon the facts ^{48 Vic. No. 7, s. 7.} which entitled him to such relief by way of defence.

(2) Notice of such facts with the words "for defence on equitable grounds" shall be given as hereinafter provided, and the plaintiff or defendant (as the case may be) may reply to any such plea facts which avoid the same on equitable grounds.

62. (1) No defendant in any District Court shall—

(a) have the benefit of any equitable defence; or

(b) be allowed to set off any debt or demand against the plaintiff; ^{22 Vic. No. 18, s. 59.}
or;

<sup>Notice of equitable
and special defence.</sup>

^{48 Vic. No. 7, s. 7.}

(c)

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(c) be allowed to set up by way of defence, and to claim, and have the benefit of

- (i) infancy ; or
- (ii) coverture ; or
- (iii) the Statute of Frauds ; or
- (iv) any Statute of Limitations ; or
- (v) his discharge or release under any Statute relating to bankruptcy or insolvency ; or

(d) be allowed to plead justification in any action of tort ; without the consent of the plaintiff, unless notice of such defence, as directed by the rules of Court, is given to the registrar.

Cross action.

48 Vic. No. 7, s. 6.

(2) All matters which 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 is given as is required in respect of the special defences hereinbefore mentioned.

Notice of defence filed with notice of intention to defend in certain cases.

Ibid. s. 8.

22 Vic. No. 18, s. 59.

(3) No defendant served with a summons, in the form or to the effect given in the Third Schedule to this Act, shall be allowed to set up any of the defences hereinbefore mentioned without the consent of the plaintiff, unless the defendant has given notice thereof to the registrar at the time of filing notice of his intention to defend.

(4) The registrar shall forthwith communicate any notice under this section to the plaintiff or his attorney by post, or by leaving the same at his residence or usual place of business. It shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the registrar.

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

Ibid. s. 70.

22 Vic. No. 25, s. 1.

63. In every action under this Act in which the defendant has a right of set-off or cross action in respect of any debt or demand against the plaintiff, such defendant shall be entitled to recover in such action the amount, if any, by which the debt or demand so set off or claimed by cross action is found to exceed the debt or demand claimed and proved by the plaintiff, and shall have judgment and execution for the same accordingly :

Provided that no such set-off or cross action shall be allowed in respect of any debt or demand exceeding in amount two hundred pounds.

DIVISION 7.—*Arbitration.*

Power to refer to arbitration by consent.

22 Vic. No. 18, s. 105.

64. (1) The Judge of any District Court may, with the consent of both parties, order any action in such Court, with or without other matters within the jurisdiction of the Court in dispute between such parties, to be referred to arbitration to such person and in such manner and on such terms as he thinks just, and such reference shall not be revocable by either party except by consent of the Judge ; and the arbitrator or umpire shall hear and determine the action and matters

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matters referred, and the award given by him shall be entered as the judgment in the action, and shall be as binding and effectual to all intents as if given by the Judge.

(2) The Judge, on application to him at the first Court held after the expiration of one week after the entry of such award, may set aside any such award so given as aforesaid, or may refer such award back to the arbitrator 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.

DIVISION 8.—*Witnesses and Evidence.*

65. No evidence shall be given by the plaintiff of any demand or cause of action, except such as is stated in the summons. Proof to be limited to matter in the summons.
22 Vic. No. 18, s. 66.

66. Either party to any action in a District Court may obtain at the office of the registrar subpœnas to witnesses to be served at the option of such party by himself or his agent, or by the bailiff, with or without a clause requiring the production of books, deeds, papers, and writings in their possession and control, and in any such subpœna any number of names may be inserted. Subpœna to witnesses.
Ibid. s. 67.

67. Every person on whom such subpœna has been served, either personally or in such other manner as is directed by the rules of Court, and to whom at the same time payment or a tender of payment of his expenses has been made on such scale of allowance as is settled by the rules of Court, and who refuses or neglects 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 is required to give evidence and who refuses to be sworn and give evidence shall forfeit and pay such fine, not exceeding fifty pounds, as the Judge orders, and the whole or any part of such fine in the discretion of the Judge, after deducting the costs, shall be applicable towards 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.
Ibid. s. 68.

68. All affidavits to be used in any District Court shall be sworn before a Judge of the Supreme Court, or a commissioner for taking affidavits in the Supreme Court, or before a Judge of any District Court, or a justice of the peace. Affidavits, before whom sworn.
Ibid. s. 104.

69. (1) Upon the application of either party to any action in any District Court, upon an affidavit by such party, or his attorney, of his belief that any document to the production of which he is entitled for the purpose of discovery or otherwise is in the possession or power of the opposite party, the Judge may order that— Discovery of documents.
Ibid. s. 48.
20 Vic. No. 31, s. 23.

(a) the party against whom such application is made; or

(b)

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(b) if such party is a body corporate, some officer to be named of such body corporate

shall answer, on affidavit, stating what documents he or they has or have in his or their possession or power relating to the matters in dispute, or what he knows as to the custody such documents or any of them are in, and whether he or they objects or object to the production of such as are in his or their possession or power, and if so, on what grounds.

(2) Upon such affidavit being made, the Judge may make such further order thereon as shall be just.

**Examination de
bene esse.**
22 Vic. No. 18, s. 69.

70. (1) Any District Court Judge may at any time after plaint filed, on the application of either party, supported by affidavit showing,—

(a) that the evidence of any specified witness, including either of the parties, is material in the cause; and
 (b) that such witness is absent from New South Wales, 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 New South Wales or to go to some place beyond the said distance;

take in Court or in chambers, or authorise the registrar of any District Court, or any commissioner for taking affidavits, or justice of the peace, or practising barrister or attorney, whether of New South Wales or elsewhere in His Majesty's Dominions, to take, at some convenient place, the examination of such witness *de bene esse*.

(2) All evidence so taken shall be admissible at the hearing, subject to all just exceptions, unless it is proved that such witness is, at the time of the hearing, within a convenient distance of the Court and able to attend.

(3) In every 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.

(4) 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.

DIVISION 9.—Trial.

**Proceedings at
the trial where
both parties appear.**
Ibid. s. 61.

71. 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 action and give judgment without any further pleading or formal joinder of issue.

**Judge may grant
time or adjourn.**
Ibid. s. 65.

72. The Judge may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the

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the action, and may also from time to time adjourn the Court or the trial or further trial of any action in such manner and upon such terms as to the Judge may seem fit.

73. (1) If at the time and place so named as aforesaid, or at ^{Cause struck out.} any continuation or adjournment of the Court or of the action for which ^{22 Vic. No. 18, s. 63.} the summons has been issued the plaintiff does not appear, the action shall, subject to the provisions of subsection (4) hereof, be struck out.

(2) The Judge at any time during the sitting of the Court ^{Cause restored to list.} at which an action has been so struck out may order the said action to ^{48 Vic. No. 7, s. 10.} be restored to the 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 duly appeared at the time and place named for such appearance, or at the continuation or adjournment of the Court or action for which the summons was issued.

(3) Where the plaintiff does not appear as aforesaid and the ^{Proceedings when defendant appears and does not appear.} defendant appears and does not admit the demand, the Judge may award to the defendant by way of costs and satisfaction for his trouble and attendance such sum as the Judge in his discretion thinks fit, and such sum shall be recoverable from the plaintiff in the same way as any debt adjudged to be paid can be recovered. ^{22 Vic. No. 18, s. 63.}

(4) If the plaintiff does not appear when called upon, and the defendant or some one duly authorised on his behalf appears and admits the cause of action to the full amount claimed, and pays the fees payable in the first instance by the plaintiff, the Judge may proceed to give judgment as if the plaintiff had appeared.

74. (1) If the defendant does not appear when called in Court ^{Proceedings where defendant does not appear.} or sufficiently excuse his absence, the Judge, upon due proof of service ^{Ibid. s. 64.} of the summons, may proceed to the trial of the action on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended.

(2) 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 action upon such terms, if any, as to payment of costs, giving security for debt, or costs, or otherwise, as he may think fit.

75. The Judge of a District Court shall be the sole Judge in ^{Judge.} all actions in the said Court, and shall determine all questions of law, ^{Ibid. s. 47.} and unless a jury be summoned all questions also of fact.

76. (1) In all actions where the amount claimed exceeds twenty ^{When jury may be summoned to try action.} pounds the plaintiff or defendant may require a jury to be summoned, or the Judge may at any time order that a jury be summoned to try ^{Ibid. s. 49.} the action, and in such last-mentioned case the plaintiff shall proceed ^{48 Vic. No. 7, s. 9.} in the same manner as if he had required the action to be so tried.

(2)

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Actions for more than £20.

(2) The party so requiring a jury to be summoned shall give to the registrar or leave at his office such notice thereof as is directed by the rules of Court, and the registrar shall cause notice of such demand of a jury 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 for less than £20.

(3) Where the amount claimed does not exceed twenty pounds, the Judge, on the application of either of the parties, *ex parte* or otherwise, made at least five clear days before the day named for the hearing, may order that a jury be summoned to try the action, and the party making such application shall then proceed in the same manner as if he had required the action to be tried by a jury, and further in such cases the plaintiff and defendant may 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 for the hearing a notice to that effect signed by the plaintiff and defendant or their respective attorneys, and the plaintiff shall then proceed in the same manner as if he had required the action to be tried by a jury.

Party requiring jury to make deposit.
22 Vic. No. 18, s. 50.

77. Every party requiring a jury to be summoned shall at the time of giving the said notice pay to the registrar the sum of two pounds, and such sum shall be considered costs in the cause unless otherwise ordered by the Judge, and no party shall be entitled to have such jury summoned unless he has made such payment as aforesaid.

Jurors.
Ibid. s. 51.

78. (1) Whenever a jury is required the Judge shall cause not less than eight nor more than twelve of the persons named in the jurors' book for the Court 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 are impanelled an oath to give true verdicts according to the evidence.

(2) Every person so summoned shall attend at the Court at the time mentioned in the summons, and if he fails to attend or withdraws from the Court without leave or refuses to act as a juror shall forfeit such sum of money as the Judge directs, not being more than ten pounds for each default.

(3) 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.

(4) The Judge may, upon cause shown, remit a portion or the whole of the sum forfeited as aforesaid.

Jury to be chosen by ballot.
Ibid. s. 53.

79. Upon the trial of all actions to be tried by juries in District Courts the juries shall be chosen by ballot from the jurors so summoned as aforesaid, and in case of a deficiency of jurors, the necessary number of

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of persons to compose a jury shall be nominated by the Judge from the bystanders, and if any person so nominated refuses to act as a juror without an excuse allowed by the Judge, he shall be liable to the same penalty as if he had been summoned as aforesaid.

80. Whenever there are any issues for trial by jury in any District Court four Number of jurors. jurymen shall be impanelled and sworn as occasion requires to give their verdicts in the causes which are brought before them in the Court, and being once sworn, shall not need to be resworn 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 is by law provided with respect to juries for the trial of civil issues.

81. (1) 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 is that of the party applying to amend or not; all such amendments may be made with or without costs and upon such terms as to the Judge seems fit. *As to amendment of defects and errors of proceedings, &c.* *Ibid. s. 109.*

(2) All such amendments as are necessary for determining in the existing action the real question in controversy between the parties shall be so made.

DIVISION 10.—Judgment and new trial.

82. Every judgment of any District Court except as herein provided shall be final and conclusive between the parties, but the Judge may nonsuit the plaintiff in every case in which satisfactory proof is not given entitling him to the judgment of the Court, and may also in any case order a new trial to be had upon such terms as he thinks reasonable, and may in the meantime stay the proceedings. *Judgments to be final unless new trial granted.* *Ibid. s. 71.*

83. If there are cross judgments between the parties execution shall be taken out by that party only who has obtained judgment for the larger sum and for so much only as remains 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 are equal satisfaction shall be entered upon both judgments. *Cross judgments to be set off.* *Ibid. s. 72.*

84. (1) 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 thinks fit. *Where judgment does not exceed twenty pounds Judge may order payment by instalments—in other cases consent of plaintiffs necessary.* *Ibid. s. 76.*

(2) 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 consents 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. *(3)*

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(3) All such moneys whether payable in one sum or by instalments shall be paid into Court.

(4) In any case in which payment by instalments has been ordered execution may be had for the whole amount due upon the judgment if default is made in payment of one such instalment.

DIVISION 11.—*Enforcement of judgment.*(1) *Execution and interpleader.*

Registrar to issue
writs of fieri facias.
22 Vic. No. 18. s. 77.

85. In any case where an order or judgment for the payment of money is made by the Judge of any District Court the registrar of such Court may, on the application of the party in whose favour such order or judgment has been made or given, issue a writ of fieri facias, which writ shall be directed to the bailiff or registrar of the said Court as the case may be.

Registrar to take
under writ of
execution.
Ibid. s. 78.

86. The registrar of every such Court may by himself or his deputies, to be by him appointed and duly authorised under his hand and seal, and for whose acts he shall be accountable during his continuance in such office and their employment by him, seize and take under any writ of execution whereby he is directed to levy any sum of money, and may cause to be sold all the lands, tenements, and hereditaments of or to which the person named in the said writ is seized or entitled or which he can either at law or in equity assign or dispose of.

Registrar to execute
deed of sale.
Ibid. s. 79.

87. (1) 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 shall 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.

(2) No such deed of bargain and sale shall so operate and be effectual as aforesaid until the same has been duly registered in the proper office for the registration of deeds, and be indexed in the index book thereof in the name of the person whose interest in such lands and hereditaments is intended to be thereby conveyed.

Bailiff to seize
personal property.
Ibid. s. 80.

88. A bailiff of any District Court may by himself or his deputies, to be by him appointed and duly authorised under his hand and seal, seize and take under any writ of execution whereby he is directed to levy any sum of money, and may cause to be sold, all 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.

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89. No writ of execution under this Act shall bind any lands unless registered in the proper office for the registration of deeds with the Registrar-General, who shall duly register the same in a book to be kept for that purpose.

90. The precise time when any application is 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 is delivered to any registrar or bailiff to be executed, he shall execute them in the order of the times so entered.

91. Any warrant granted in pursuance of any writ of execution issued out of any District Court, and the endorsement thereon, and any warrant issued by the registrar of any District Court authorising the bailiff of such District Court to give possession of premises shall respectively be sufficient justification to any registrar or bailiff acting thereon.

92. (1) The landlord of any tenement in which any such goods are 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.

(2) If such claim is 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 are of a perishable nature, or upon the request in writing of the party whose goods have been taken.

(3) The bailiff shall afterwards sell such of the goods under the execution and distress as will satisfy—

- (a) first, the costs of and incident to the sale ;
- (b) 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,
- (c) the amount for which the warrant issued.

(4) If any replevin is made of the goods so taken the bailiff shall, notwithstanding, sell such portion thereof as will satisfy the costs of and incident to the sale under the execution, and the amount for which the warrant issued.

(5) In either event the surplus of the sale, if any, and the residue of the goods shall be returned to the defendant, and the fees

Executions not to bind land unless registered.
22 Vic. No. 18, s. 81.

Priority of executions issuing out of District Court.
Ibid. s. 83.

Warrant to be sufficient justification of person acting thereon.
Ibid. s. 84.

When goods seized under process of District Courts landlord may claim certain rent in arrear.
Ibid. s. 85.

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fees of the bailiff 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.

22 Vic. No. 18, s. 86. **93.** (1) If any claim is 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, the registrar of such Court may, upon application of the officer charged with the execution of such process as well before as after any action brought against such officer, enter an interpleader plaint and issue a summons thereon, calling before the said Court the party issuing such process and the person making such claim, and thereupon any action which has been brought in the Supreme Court or in any District Court in respect of such claim shall be stayed.

(2) The Court in which such action has 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.

(3) 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 seems fit, and such order shall be deemed a judgment of the Court and be enforced in like manner as a judgment in any other action brought in such Court.

Execution against the person.

Ibid. s. 87.

94. (1) Whenever any sum of money has been recovered by the judgment of any District Court, and the judgment creditor shows to the satisfaction of a Judge of the Supreme Court or of any District Court—

- (a) that such sum of money has been recovered, and that the debt was fraudulently contracted; or
- (b) that the judgment debtor is concealing any goods, chattels, or valuable securities; or
- (c) 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
- (d) that he is about to leave New South Wales, or to remove any of his property with intent to evade payment of the said judgment debt,

such Judge may authorise the registrar of the said District Court to issue a writ of *capias ad satisfaciendum* in such form as is fixed by the rules of Court.

(2) 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 severally execute and obey the same, and all constables and other peace officers within their several jurisdictions shall aid and assist in the execution thereof.

95.

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95. 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.
22 Vic. No. 18, s. 88.

(2) Attachment of debts.

96. (1) Any creditor who has obtained a judgment in any District Court may apply to Judge of such Court for an order that the judgment debtor be orally examined as to whether any and what debts are owing to him, and the Judge may thereupon make an order for the examination of such judgment debtor and for the production of any books or documents, and shall cause him to be orally examined touching the premises.

(2) Every judgment debtor who refuses or neglects to obey such order shall be subject to all the penalties to which a witness duly subpoenaed to attend at such Court and failing to appear at the time appointed would be subject.

97. (1) The Judge of any District Court, upon the ex parte application of any creditor who has obtained a judgment in such Court either before or after such oral examination as is provided in the last preceding section, and upon affidavit by such judgment creditor or his attorney or agent stating that the judgment has been recovered and is still unsatisfied and to what amount and that any person is indebted to the judgment debtor and resides within the jurisdiction of the Court to which such application is made, may order that all debts due, owing, or accruing from such third person (hereinafter called the garnishee) to the judgment debtor be attached to answer the judgment debt, and by the same or any subsequent order the Judge may summon the garnishee to appear to show cause why he should not pay to the registrar for the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

Attachment of debts may be ordered.
Ibid. s. 3.

(2) In any order for the payment of money by a garnishee under this Act or upon an application at any time made by him, the Judge may direct such payment to be made at such times and by such instalments as he thinks fit, and if default is made in the payment of any one such instalment execution may issue for so much of the amount then due by the garnishee as will satisfy the judgment debt remaining unpaid at the time of such default.

Payment by instalments.
56 Vic. No. 37, s. 2.

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Attachment order
to bind debts.

45 Vic. No. 27, s. 4.

Proceedings to levy
amounts due from
the garnishee to the
judgment debtor.

Ibid. s. 5.

Judgment creditor
may sue garnishee
in certain cases.

Ibid. s. 6.

No costs when
garnishee pays.

Ibid. s. 7.

Garnishee
discharged.

Ibid. s. 8.

Judge may refuse to
interfere in
proceedings to attach
debt.

Ibid. s. 9.

Attachment book.

Ibid. s. 10.

98. Service of an order on a garnishee that debts due, owing, or accruing to the judgment debtor be attached or notice to the garnishee of the making of such order shall attach in the hand of the garnishee all debts due, owing, or accruing from him to the judgment debtor.

99. If the garnishee does not forthwith pay to the registrar for the judgment creditor the amount due from him to the judgment debtor or an amount equal to the judgment debt and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, the Judge may order execution to issue, and it may be sued for accordingly without any other previous writ or process to levy the amount due from such garnishee in payment of the judgment debt or towards satisfaction of the same.

100. (1) If the garnishee appears upon summons and disputes his liability the Judge instead of making an order that execution shall issue may order the hearing of such summons to stand adjourned until some day to be appointed for that purpose, and may direct that upon such adjourned hearing any question necessary for determining the liability of the garnishee be tried or determined.

(2) The order for such adjournment shall be served upon the garnishee and shall operate as a plaint entered against him to obtain payment of the sum claimed to be due by him to the judgment debtor.

101. The costs of any application for an attachment of debt and of any proceedings arising from or incidental to such application shall be in the discretion of the Judge, but where the garnishee pays all debts due, owing, or accruing from him to the judgment debtor or so much thereof as is sufficient to satisfy the judgment debt into Court five clear days before the return day of the summons he shall not be liable for any costs incurred by the judgment creditor.

102. Payment made by or execution levied upon the garnishee under any proceedings herein provided shall be a valid discharge to him as against the judgment debtor to the amount paid or levied although such proceedings may be set aside or the judgment reversed.

103. (1) In proceedings to obtain an attachment of debts as herein provided the Judge may refuse to interfere where, from the smallness of the judgment debt or of the amount to be recovered or of the debt sought to be attached or otherwise, the remedy sought would be inadequate, worthless, or vexatious.

(2) The costs of an application for an attachment of debt and of any proceeding arising from or incidental to such application shall be in the discretion of the Judge.

104. In each District Court the registrar shall keep a debt attachment book, in which book entries shall be made of all attachments and proceedings thereon with names, dates, and statements of the amounts recovered, and copies of entries made therein may be taken by any person upon payment of the fee prescribed.

*District Courts.*DIVISION 12.—*Costs.*

105. All the costs of any action not herein or otherwise provided for shall be paid by or apportioned between the parties in such manner as the Judge thinks 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 to be paid can be recovered.

106. 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.

PART IV.

APPEALS.

107. (1) If either party in any District Court—

- (a) in any action in which the amount claimed exceeds ten pounds; or
- (b) in any action of replevin where the amount of rent in respect of which any distress was or might have been made exceeds ten pounds; or
- (c) in any action for the recovery of tenements where the yearly rent or value of the premises exceeds ten pounds; or
- (d) in any proceeding in interpleader where the money claimed, or the value of the goods in question, exceeds ten pounds;

is aggrieved by the ruling, order, direction, or decision of the Judge in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to the Supreme Court.

(2) Such party shall within such time and in such manner as is prescribed by the rules of Court give notice of such appeal to the other party or his attorney and also give security to be approved of by the registrar 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.

(3) 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.

District Courts.

(4) 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 upon being applied to by them or their attorneys shall settle the case and sign it, and such case shall be transmitted by the appellant to the prothonotary and be set down for argument in the Supreme Court in the same manner as special cases in actions in that Court.

Appeal by motion.

44 Vic. No. 30, s. 1.

108. (1) In any action tried or heard in any District Court in which any person has a right of appeal under this Act, any person aggrieved by the ruling, order, direction, or decision of the Judge may at any time within eight days after the same has been made or given appeal against such ruling, order, direction, or decision by motion to the Supreme Court instead of by special case.

(2) Such motion shall be ex parte in the first instance, and shall be granted on such terms as to costs, security, or stay of proceedings as to the said Court seems fit; and if pending such eight days or at the time of their expiration such Court is not sitting in banco, such motion may be made before any Judge thereof.

(3) At the trial or hearing of any such action in any District Court, the Judge, at the request of either party, shall make a note of any question of law raised at such trial or hearing and of the facts in evidence in relation thereto and of his decision thereon, and of his final decision in the action; and he shall, at the expense of either party requiring the same for the purpose of appeal, furnish a copy of such note or allow a copy to be taken of the same, which copy shall be used and received on such motion and at the hearing of such appeal, and the costs thereof shall be in the discretion of the Supreme Court.

Parties may agree not to appeal.

22 Vic. No. 18, s. 95.

109. 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.

PART V.

MISCELLANEOUS PROVISIONS.

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

Ibid. s. 93.

110. No writ of mandamus shall henceforth issue to a Judge or an officer of any 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 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 is not 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

District Courts.

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 seems fit.

111. (1) The registrar of every District Court shall, in March in each year, make out a correct list of all sums of money belonging to suitors in the Court which have been paid into Court and remained unclaimed for five years before the first day of January then last past, specifying the names of the parties for whom or on whose account the same were so paid into Court, and a copy of such list shall be put up and remain during Court hours in some conspicuous part of the Court-house, and at all times in the registrar's office.

(2) All sums of money heretofore or hereafter paid into any District Court to the use of any suitor, and which remain unclaimed for the period of six years after the same have been so paid in, shall be paid to the Treasurer, and shall be by him carried to the account of the Consolidated Revenue Fund.

(3) No person shall be entitled to claim any sum which has remained unclaimed for six years, but no time during which the person entitled to claim such sum has been an infant or feme covert, or of unsound mind, or beyond the seas, shall be taken into account in estimating the said period of six years.

112. No Judge of a District Court shall practise as a barrister, attorney, solicitor, or proctor, or be directly or indirectly concerned in any such practice or profession, or shall be capable of being summoned, or of being elected or of sitting as a Member of Parliament.

Judge may not practise as a barrister.
22 Vic. No. 18, s. 28.
22 Vic. No. 25, s. 3.

113. (1) The District Court Judges, or any three of them, shall have power to make such general rules as they think fit for regulating with regard to District Courts—

22 Vic. No. 18, s. 102.
45 Vic. No. 27, s. 11.

(a) the practice of the Courts and the forms of proceedings therein;

(b) the fees to be allowed to barristers and attorneys;

(c) the expenses to be paid to witnesses;

(d) the Court fees payable in any proceedings under sections ninety-six to one hundred and four of this Act, inclusive;

(e) the keeping of all books, entries, and accounts required to be kept by the registrars.

(2) The rules so made shall be published in the Gazette, and shall not take effect until one month after the publication thereof.

(3) In any case not expressly by this or any other Act, or by any rules made in pursuance therefor, otherwise provided for, the general rules of practice for the time being in force in the Supreme Court may be adopted by the Judges of the District Courts to actions in their several Courts.

District Courts.

SCHEDULES.

Section 2.

FIRST SCHEDULE.

Number of Act.	Title or Short Title.	Extent of Repeal.
22 Vic. No. 18 ...	District Courts Act of 1858 ...	The unrepealed portion except ss. 31, 51, 52, 53, 57; and excepting portion of s. 84 from the commencement of the section down to and including the words "time of the application to such registrar for the issue from such District Court of the warrant or writ of execution," and excepting so much of the remainder of the section as relates to any warrant or writ of execution issued out of the Supreme Court.
22 Vic. No. 25 ...	District Courts Act Amendment Act of 1859.	The unrepealed portion except s. 5.
24 Vic. No. 6 ...	An Act to extend the Common Law Procedure Act of 1857.	The unrepealed portion.
29 Vic. No. 11 ...	District Courts Act Amendment Act of 1865.	The whole.
30 Vic. No. 9 ...	An Act to alter the law relating to the appointment of District Court Judges.	The unrepealed portion.
34 Vic. No. 3 ...	Unclaimed Suitors' Fund Appropriation Act of 1870.	The whole.
44 Vic. No. 30...	District Courts Act Further Amendment Act of 1881.	The whole.
45 Vic. No. 27 ...	Small Debts Recovery Act ...	The unrepealed portion.
46 Vic. No. 16...	District Court Judges, &c., Salaries Act, 1883.	The whole.
48 Vic. No. 7 ...	District Courts Act Amendment Act of 1884.	The whole.
56 Vic. No. 37 ...	Debts Recovery Act, 1893 ...	The unrepealed portion.

SECOND

District Courts.

SECOND SCHEDULE.

Section 28.

Court fees.

	In cases not exceeding £5.	In cases not exceeding £10.	In cases not exceeding £20.	In cases not exceeding £100.	In all other cases except those tried by consent under s. 36 of this Act.	In all cases tried by consent under s. 36 of this Act.
For filing every plaint, issuing summons, and other proceedings to judgment...	s. d. 3 6	s. d. 6 0	s. d. 10 0	s. d. 20 0	s. d. 20 0	s. d. 20 0
For issuing every subpoena ...	1 0	1 0	1 0	1 0	1 0	1 0
For issuing every writ of execution ...	2 0	2 6	5 0	5 0	7 6	7 6
Bailiff's notice of execution ...	1 0	1 0	1 0	1 0	2 0	2 0
For issuing every ca. sa. summons ...	1 0	1 0	2 6	5 0	5 0	5 0
For every certificate of judgment ...	2 6	2 6	2 6	2 6	3 6	3 6
For filing every notice of appeal ...	...	...	...	5 0	5 0	5 0
For issuing every instalment form ...	1 0	1 0	1 0	1 0	1 0	1 0
For filing every notice of defence, special defence, or plea ...	1 0	1 0	1 0	2 0	2 0	2 0
For filing every confession ...	1 0	1 0	1 0	2 0	2 0	2 0
For filing every affidavit ...	1 0	1 0	1 0	1 0	1 0	1 0
For every appointment to tax ...	...	...	2 6	3 6	3 6	3 6
For every copy of execution against lands	2 6	2 6	2 6	3 6	3 6	3 6
For every search ...	0 6	0 6	0 6	0 6	0 6	0 6
For every copy ...	0 6	0 6	0 6	0 6	0 6	0 6
For every summons to show cause in interlocutory matter ...	1 0	1 0	1 0	1 0	2 0	2 0
For every order ...	1 0	1 0	1 0	1 0	2 0	2 0
For every writ of attachment ...	2 6	2 6	2 6	3 6	3 6	3 6
For every jury demand ...	...	...	40 0	40 0	40 0	40 0

Bailiff's

*District Courts.**Bailiffs' fees.*

	s. d.
1. For the service of every summons or subpoena within the city of Sydney	0 6
2. For the service of every summons or subpoena in the Sydney district, outside the boundary of the city of Sydney, for every mile beyond such boundary, an additional	0 6
3. For the service of every summons or subpoena in any other district, for every mile	1 0
4. For keeping possession under a writ of <i>fit. fa.</i> , each day	7 0
5. For making levy, where the sum levied for shall not exceed £20	6 0
6. For making levy, where the sum levied for shall exceed £20, the like sum for the first £20, and for every £ over that sum	0 3
7. For executing every writ against the person	6 0
8. For executing every writ of <i>habere in ejectionem</i>	7 0
9. For mileage in the execution of any writ, per mile	1 0

NOTE.—Mileage to be reckoned one way only, and any fraction of a mile to be reckoned as a mile.

THIRD SCHEDULE.

Sections 52, 54, 55.

Summons to obtain judgment by default on personal service.

In the [title of Court issuing summons.]

No. [of plaintiff.]

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

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.

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

Dated this day of A.D. 19 .

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 plaintiff.]

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 , 19 .

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

Police Offences.

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 infancy, the Statute of Frauds Coverter, 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.
