

District Courts (Amendment).

Act No. 22, 1905.

An Act to amend the law relating to District Courts and appeals to Quarter Sessions; to extend the jurisdiction of such Courts, and to provide for the trial therein of issues under certain Acts; to provide for the removal of actions from the Supreme Court to a District Court; to amend the District Courts Act, 1901, the Common Law Procedure Act, 1899, and the Landlord and Tenant Act of 1899; and for purposes consequent thereon or incidental thereto. [8th November, 1905.]

DISTRICT COURTS
(AMENDMENT).

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.

1. (1) This Act may be cited as the "District Courts (Amendment) Act, 1905," and shall be construed with the District Courts Act, 1901. Short title.

(2) This Act is divided into Parts and divisions, as follows:— Division of Act.

PART I.—PRELIMINARY—*ss.* 1–3.

PART II.—THE JUDGES—*ss.* 4, 5.

PART III.—COMMON LAW JURISDICTION—*ss.* 6–13.

PART IV.—OTHER JURISDICTIONS—*ss.* 14–20.

1. *Issues equity, probate, and matrimonial*—*ss.* 14–17.

2. *Procedure in matrimonial matters*—*ss.* 18–20.

PART V.—PRACTICE AND PROCEDURE—*ss.* 21–60.

2. (1) The enactments mentioned in the Schedule are to the extent therein expressed repealed. Repeal. Schedule.

(2) All rules of Court, orders, and notices made or given under the authority of any enactment hereby repealed and being in force at the commencement of this Act shall be deemed to have been made

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made under this Act, and all references in any such rules, orders, and notices, or in the Principal Act, to any such repealed enactments shall be construed as references to the corresponding provisions of this Act.

Interpretation.

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

“Principal Act” means District Courts Act, 1901.

“Prescribed” means prescribed by the Principal Act or this Act, or by general rules made thereunder.

In this Act and in the Principal Act—

“Admitted set-off” means set-off admitted by the plaintiff at the time he brings the action.

“Registrar” includes assistant registrar.

PART II.

THE JUDGES.

Judges appointed for New South Wales.

4. Every Judge of a District Court appointed before or after the commencement of this Act is constituted a Judge of every District Court and Chairman of every Court of Quarter Sessions in New South Wales, but shall exercise such jurisdiction only in the Courts of the district appointed in that behalf by the Governor: Provided that in any emergency the Minister may authorise a Judge to act for a period not exceeding seven days in any Courts in any other district.

No irregularity in any such appointment or authorisation shall invalidate or affect the jurisdiction of a judge otherwise lawfully acting thereunder.

Power of Judge sitting in chambers.

5. It shall be lawful for a Judge of a District Court sitting in chambers, whether within or beyond his appointed district, to make any order, in respect of any proceeding pending in any Court in such district, or in any Court in which he is authorised as aforesaid to act, that he could lawfully make in Court and which he considers may be properly made in chambers.

PART III.

COMMON LAW JURISDICTION.

Ordinary jurisdiction of the Courts.

6. The jurisdiction of the District Courts (except in an action in which title to land is in question, and except in an action of ejectment) shall extend to every claim or cause of action cognisable on the common law side of the Supreme Court in which—

(a) the property sought to be recovered does not exceed four hundred pounds in value; or

(b)

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(b) the amount claimed, whether on balance of account or after an admitted set-off or otherwise, does not exceed that sum.

7. A District Court shall have jurisdiction in any action in which the title to land is in question where the value of the land does not exceed the sum of two hundred pounds: Provided that if such title incidentally comes in question in the action and the value of the land exceeds two hundred pounds, 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 proceeding in any other Court. Jurisdiction where title to land is in question.

8. (1) An action of ejection may be brought in a Court held at some place within the jurisdiction of which the land in dispute, or some part thereof, is situate. Ejection actions. English Act, 1888, sec. 59.

(2) In such action the defendant or his landlord may apply to a Judge of the Supreme Court at chambers for a summons to the plaintiff to show cause why the action should not be tried in the Supreme Court, on the ground that— Application to remove action to Supreme Court.

(a) the title to lands of greater value than two hundred pounds would be affected by the decision in the action; or

(b) difficult questions of law or fact are likely to arise in the action.

(3) On the hearing of the summons, a Judge of the Supreme Court may order the action to be tried in the Supreme Court, and thereupon the action shall be so tried, and all proceedings in the District Court in the action shall be discontinued. Removal of action.

(4) When an order has been made that the action be tried in the Supreme Court, the costs of the order and all proceedings previous thereto shall be allowed and recovered in the District Court according to the scale of costs in the District Court, and the costs of all proceedings subsequent to the making of the said order shall be allowed and recovered in the Supreme Court according to the scale of costs in the Supreme Court.

(5) Nothing in this section shall apply to proceedings under sections seventeen or eighteen of the Landlord and Tenant Act of 1899. Savings.

9. The jurisdiction of a District Court shall extend to all cases of replevin on distress for rent where the rent for or in respect of which the distress has been made does not exceed four hundred pounds in amount. Jurisdiction in replevin.

10. If any question arises as to amount or value under any of the four last preceding sections of this Act, or sections thirty-five, forty-four, forty-five, forty-seven, or sixty-three of the Principal Act, or sections seventeen or eighteen of the Landlord and Tenant Act of 1899, the decision of the Judge thereon shall be conclusive. Decision as to amount or value.

11. Any person aggrieved by the ruling, order, direction, or decision of the Judge sitting to try any action in the jurisdiction conferred Right of appeal.

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conferred by sections seven, eight, and nine, may, irrespectively of the amount claimed or of the annual or capital value of the land sought to be recovered in such action, appeal therefrom in the manner hereinafter provided.

Amendment of section 35 of the Principal Act.

12. Section thirty-five of the Principal Act is amended by omitting the word "two" and by inserting in its place the word "four."

Amendment of section 48 of the Principal Act.

13. Section forty-eight of the Principal Act is amended by inserting the words "not exceeding four hundred pounds" after the word "remuneration."

PART IV.

OTHER JURISDICTIONS.

1. *Issues equity, probate, and matrimonial.*

Issues of fact remitted to District Court for trial.

14. Any question of fact arising in any matter, or other proceeding under the Equity Act, 1901, or the Wills, Probate and Administration Act, 1898, or the Matrimonial Causes Act, 1899, may be reduced into writing in the form of an issue and remitted by the Court as defined by the said Acts respectively to be tried by—

- (a) a Judge of a District Court without a jury; or
- (b) a jury before a Judge of a District Court.

Orders for trial.

15. (1) The Court remitting the question may make all necessary orders for the time and place of trial, and the return of findings therein, and respecting the costs of the trial.

Powers of Judge.

(2) The Judge presiding at the trial shall have the same jurisdiction and authority as when sitting at the trial of an action in a District Court.

Jury.

16. (1) Subject to this Act, a jury shall be summoned, called, struck, sworn, and paid in the same manner as when summoned for the trial of an action in a District Court, and the law and practice governing all questions respecting the jury shall be the same as at the trial of issues by a jury under the Principal Act and this Act.

(2) The jury may be a common or special jury, and may consist of four or twelve men as the Court remitting the question may direct.

New trial.

17. Any party may apply to the Supreme Court in the prescribed manner for the new trial of any issue tried by a Judge or a jury under this Act.

2. *Procedure in matrimonial matters.*

Number of jurors.

18. (1) When an issue under the Matrimonial Causes Act, 1899, has been remitted as aforesaid for trial by a jury in a District Court, the registrar of the District Court shall cause to be summoned not less than thirty special jurors. (2)

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(2) When there is more than one co-respondent on the record, the registrar shall cause so many additional special jurors to be summoned as will allow each co-respondent to strike off six names from the jury list.

19. (1) The registrar shall prepare separate cards with the respective names, places of abode, and additions of the jurors returned in the jury panel written thereon. Drawing of jury.

(2) At the trial of any such issue the registrar shall put the cards together in a box.

(3) Upon the issue being called on to be tried the registrar shall, in open Court, draw out the cards, one after another, until such number of jurors appears as will allow of a jury of twelve being struck therefrom, after each party on the record has struck off six names.

20. (1) A list of the names of such jurors shall be delivered by the registrar to the petitioner or his attorney or counsel, who may strike off six names. Impanneling jury. Matrimonial Causes Act, s. 75.

(2) The list shall then be delivered to the respondent or his attorney or counsel, who may strike off an equal number of names.

(3) The list shall then be delivered to the co-respondent or his attorney or counsel, who may strike off an equal number of names.

(4) If there be more than one co-respondent, the list shall be handed to each or the attorney or counsel of each in turn, who may strike off the like number of names.

(5) The jurors whose names then remain upon the list, or the first twelve jurors whose names remain thereon, as the case may require, shall be the jurors for the trial of the issue, and shall be sworn and impannelled accordingly.

(6) Every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party on the record on an issue at nisi prius.

PART V.

PRACTICE AND PROCEDURE.

Assistant registrars.

21. The Governor may appoint an assistant registrar to act at any place. Assistant registrars. Vict. Act, 1890, s. 27.

An assistant registrar may enter and issue complaints, summonses, and other process and proceedings, returnable at such places at which a District Court is holden as the Governor may direct.

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An assistant registrar shall, in the exercise of his office, have the powers and duties of a registrar, and all acts of an assistant registrar in the exercise of his powers shall be as valid as if performed by the registrar.

Venue.

Defendant may be sued in district where cause of action arose or where he carries on business.

22. Notwithstanding the provisions of subsection one of section seven of the Principal Act, the plaintiff may cause the defendant to be summoned to the District Court within the jurisdiction of which the debt sued for was contracted or the liability for damages arose, or within the jurisdiction of which the defendant, or one of two or more defendants, as the case may be, carries on business.

Venue changed to place at which an assistant registrar has been appointed.

23. (1) If a judge of a District Court is satisfied that any action pending in his court cannot be conveniently or fairly tried at such court, he may order that the action be sent for trial or hearing at a place at which an assistant registrar has been appointed under this Act.

(2) The judge of the district in which such place is situate, and the assistant registrar for such place, shall have the same jurisdiction and powers in respect of such action as if it had been set down for trial or hearing at a place appointed for holding a court under subsection one of section four of the Principal Act.

(3) The provisions of subsections three and four of section ten of the Principal Act shall apply to such action.

Objections to jurisdiction.

Notice of objection to the jurisdiction.

24. (1) A defendant shall not, except with the consent of the plaintiff or by leave of the Judge, be allowed to object to the jurisdiction of a District Court on the ground that the action ought to have been brought in some other District Court, unless such notice of the objection be given as is required in respect of the special defences enumerated in section sixty-two of the Principal Act.

(2) Nothing in this section shall affect the provisions of subsection two of section seven of the Principal Act.

Costs where Court has no jurisdiction.

Costs where Court has no jurisdiction. English Act, 1888, s. 114.

25. (1) Whenever an action is commenced over which the Court has no jurisdiction, the Judge shall have power to award costs to the same extent as if the Court had jurisdiction therein.

Objection to jurisdiction not waived by appearance.

(2) The defendant shall not, by appearing in such cause, be deemed to have waived any objection he may have on the ground of want of jurisdiction, or be precluded from setting up such objection thereafter. But, although the defendant succeeds in such objection, the Judge may order that the defendant pay the costs incurred

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incurred by the plaintiff by reason of the defendant's having wilfully or negligently refrained from making his objection at the time when, in the opinion of the Judge, he ought to have made the same.

Removal of action from Supreme Court.

26. Where, in any action brought in the Supreme Court, the claim—
 (a) does not exceed two hundred pounds; or,
 (b) though it originally exceeded two hundred pounds, is reduced by payment, an admitted set-off, or otherwise to a sum not exceeding two hundred pounds;

Judge of Supreme Court may order actions to be tried in a District Court.
 English Act, 1888, s. 114.

and the whole or part of the demand of the plaintiff is contested, a Judge of the Supreme Court at chambers may, on the application of either party, after joinder of issue, order such action to be tried in such District Court as he thinks fit.

27. Where an action of tort is brought in the Supreme Court (whatever may be the amount claimed) a Judge thereof, after joinder of issue, may, on affidavit by the defendant or his attorney that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff, order—

Actions of tort in the Supreme Court may be remitted to District Court.
Ibid. s. 66.

- (a) that, unless the plaintiff, within a time to be fixed, gives security for the defendant's costs to the satisfaction of the Prothonotary, or satisfies a Judge of the Supreme Court that he has a cause of action fit to be prosecuted in the Supreme Court, all proceedings in the action shall be stayed; or
- (b) in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy a Judge as aforesaid, that the action be remitted for trial to a District Court to be named in the order.

28. (1) Where an action is remitted to a District Court under either of the two last preceding sections, the plaintiff shall lodge the original writ and pleadings and the order with the registrar of such Court, and the Judge of such Court shall appoint a day for the trial of the action, notice whereof shall be sent in the prescribed manner by the registrar to both parties or their attorneys. Thereafter all proceedings therein shall be taken in such Court as if the action had been originally commenced therein: Provided that on failure of the plaintiff to lodge the writ and pleadings and order as aforesaid within ten days from the taking out of the said order, then the defendant may lodge certified copies thereof.

When action remitted to District Court plaintiff to lodge original writ.

(2) The costs of all proceedings subsequent to the making of the said order shall be allowed according to the scale of costs in the District Courts; and the costs of the order and all proceedings previously thereto shall be allowed according to the scale of costs in the Supreme Court.

Default

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Default summons.
See District Courts
Act, 1901, s. 52.

29. In any action in a District Court for the recovery of a debt or liquidated demand with or without interest, the plaintiff may, in lieu of the summons mentioned in the Principal Act, cause to be issued a summons in the form prescribed by general rules made under this Act, and until such rules are made such summons may be in the form of a default summons in the present District Court rules, or as near thereto as practicable. Any such summons is hereinafter referred to as a default summons.

Service of default
summons.
See *Ibid.* ss. 52 & 53.

30. A default summons shall, when practicable, be served personally on the defendant:

Provided that where prompt personal service cannot be effected on a defendant, and the Judge or registrar of the District Court is satisfied by affidavit that reasonable efforts have been made to effect such service, and that—

- (a) the defendant wilfully evades service of the summons; or
- (b) the summons has been served in the manner directed by the Principal Act in respect of a summons under that Act,

the Judge or registrar may order, on such conditions as may be thought fit, that the plaintiff may proceed as if personal service had been effected.

Ground of defence
to be in writing
lodged with registrar.

31. Notice of the grounds of defence to an action in which a default summons has been issued shall be in writing in the form prescribed, signed by the defendant or his attorney, and shall, together with an affidavit verifying it, or such facts as a Judge may under the circumstances deem sufficient in that behalf, be filed in duplicate with the registrar.

District Courts Act,
1901, s. 62 (4).

The registrar shall forthwith communicate any ground of defence so filed to the plaintiff or his attorney by posting the notice to, or by leaving the same at, his residence or usual place of abode or business.

Judgment in
default of defence.
Ibid. s. 54.

32. If, in such action, the defendant does not within seven days after personal service on him of a default summons, or, where service has not been personal, within ten days after leave to proceed as aforesaid, file notice of grounds of defence and affidavit as aforesaid, the plaintiff, within three months after the expiration of the time for filing such notice, upon filing an affidavit of personal service, or of an order of leave to proceed, and an account of what he claims to be due to him, verified by the oath of the plaintiff, his attorney or agent, may have judgment entered up by the Court or registrar against the defendant for the amount of the claim and a sum for costs to be prescribed.

Defence lodged after
time.
Ibid. s. 55.

33. The defendant may, at any time before judgment, file with the registrar notice of grounds of defence and affidavit as aforesaid.

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When such notice and affidavit are filed after the time mentioned in the last preceding section, the defendant may be let in to defend—

- (a) if the plaintiff consents in writing thereto; or
- (b) by leave of the Judge upon filing an affidavit disclosing a defence on the merits and satisfactorily explaining the neglect, and upon such terms as the Judge thinks fit.

34. (1) Where in any such action the defendant has filed a notice of defence and affidavit as aforesaid, the action shall, subject to the provisions of the last preceding section, go to trial at the next sittings of the Court held not less than eight clear days after the day on which such notice was filed. Proceedings where statement of defence filed.

(2) At the trial the defendant shall not, except with the consent of the plaintiff, or by leave of the Judge, set up any grounds of defence not included in the notice and verified as aforesaid.

Misjoinder or nonjoinder of parties.

35. No action or proceeding shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action or proceeding, be added. Misjoinder or non-joinder of parties. cf. O. 16, r. 11, R.S.C. Eng.

No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto.

Every party whose name is so added as defendant shall be served with a summons or notice in such manner as may be prescribed, and the proceedings as against such party shall be deemed to have begun only on the service of such summons or notice.

Continuance of actions.

36. An action or matter shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title pendente lite; but the action or matter may be continued in the prescribed manner, and whether the cause of action survive or not there shall be Continuance of actions.

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no abatement by reason of the death of any party between the verdict or finding of the issue of fact and the judgment. The judgment may in such cases be entered up in the prescribed manner notwithstanding the death.

Payment into Court, set-off and cross action.

Payment into Court of money by defendant.

37. (1) A defendant may, within the prescribed time, pay into Court such sum of money as he may think a full satisfaction of the claim of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment.

(2) Notice of such payment shall be forthwith communicated by the defendant to the plaintiff, or his attorney, in the prescribed manner.

(3) Every such payment shall be taken to admit the claim in respect of which the payment is made, unless the defendant, at the time of paying the money into Court, files with the registrar a notice in the prescribed form stating that, notwithstanding such payment, the defendant denies his liability.

(4) If the plaintiff elects to accept the sum paid in in full satisfaction as aforesaid, and gives notice of such acceptance in the prescribed manner, the registrar shall pay over the same to the plaintiff or his attorney; but if such notice is not given such sum of money shall remain in Court to abide the order of the Judge.

(5) If the plaintiff elects to proceed, and recovers a sum not larger than the sum so paid into Court, the plaintiff shall, subject to the general discretion of the Judge as to costs, pay to the defendant the costs incurred by the latter after such payment into Court. Judgment shall be given for such costs; and they shall be a first charge on the sum paid into Court.

Special defences set up by consent, or by leave of Judge.

38. Payment into Court, set-off or cross-action, or any defence, of which notice is required to be given by this or the Principal Act, may, by leave of the Judge, and upon such terms as he may order, or with the consent of the plaintiff, be set up by the defendant, although the prescribed notice thereof was not given, anything in this or the Principal Act to the contrary notwithstanding.

Witnesses and evidence.

Judge may issue warrant for bringing up a prisoner to give evidence.

English Act, 1888, sec. 112.

39. (1) A District Court Judge, in any case where he thinks fit, upon application on affidavit by either party, may issue an order under his hand and the seal of the Court for bringing up before such Court any person confined in any gaol, prison, or place, under any sentence or under commitment for trial or otherwise, to be examined as a witness in any proceeding pending in such Court; and the person required by such order to be brought before the Court shall be so brought under the same care and custody, and be dealt with in the same

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same manner in all respects as a prisoner required by writ of habeas corpus awarded by the Supreme Court to be brought before such Court to be examined as a witness in any proceeding pending in such Court is by law required to be dealt with.

(2) The person having the custody of such person shall not be bound to obey such order unless a tender be made to him of a reasonable sum for the conveyance and maintenance of a proper officer or officers and of the prisoner or person in going to, remaining at, and returning from such Court. Expenses of custody.

40. The power conferred upon a Judge by section seventy of the Principal Act to take the examination of a witness de bene esse, or to authorise such examination to be taken, shall extend to all cases in which it is shown to the satisfaction of the Judge that there is a probability of the testimony of the witness being lost if his evidence is not so taken, although the matters mentioned in that section have not been established; and the provisions of the said section as to the admissibility of the evidence taken under it, and as to the costs of taking the evidence, shall apply to and in respect of evidence taken under this section. Examination de bene esse.

Juries.

41. The Judge shall, immediately on making out the jurors' book for the jurors' district of any District Court, make out therefrom a special jurors' list for such district in the manner prescribed by section twenty-one of the Jury Act, 1901. Special jurors' lists.

42. (1) Whenever a jury is required or ordered, the registrar shall, except where otherwise provided, summon not less than eight or more than forty-eight of the persons named in the jurors' book or special jurors' list for the jurors' district of the Court to attend the Court at a time and place to be mentioned in the summons. Summons to jurors. Principal Act, s. 78; Jury Act, 1901, s. 47.

(2) Every person summoned as a juror 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, he shall be fined such sum of money as the Judge directs, not being more than ten pounds for each default: But the Judge may, upon cause shown, remit a portion or the whole of such fine. Penalty for non-attendance.

(3) Such summons shall be delivered to the person whose attendance is required on such jury, or left at his usual place of abode or place of business, or sent to him by post. Service of summons.

(4) Proof that the summons was posted shall be evidence that the juror named therein was served in the ordinary course of post.

(5) The Judge shall, in each case to be tried by a jury, and before the trial begins, administer or cause to be administered to such jurors as are impannelled an oath to give true verdicts according to the evidence. Jury to be sworn.

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Jury, how chosen.

43. (1) In every case, except an issue in any proceeding under the Matrimonial Causes Act, 1899, in which a jury has been summoned, if the number of jurors in attendance be more than double the number required for the jury, the names of such jurors shall at the time of trial be placed in a box to be provided for that purpose, and the registrar shall in open Court draw therefrom the names one after another until double the number so required have been so drawn and remain after all causes of challenge allowed, or until the names of the jurors summoned are exhausted; and, in case of a deficiency of jurors, the necessary number of persons to complete double the number so required shall be nominated by the Judge from the bystanders (whether their names are on the jurors' book or special jurors' list or not); 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 penalty to which a juror is liable for not attending after having been summoned.

(2) The registrar shall deliver a list containing the names of the said jurors to the plaintiff or his counsel or attorney, by whom one-fourth of the names may be struck off; the list shall then, if the defendant appears, be delivered to the defendant or his counsel or attorney, by whom one-fourth of the names may be struck off.

(3) The jurors whose names remain upon the list, or the first four or twelve of such jurors (as the case may require) shall be the jurors for the trial, and shall be sworn and impannelled accordingly.

Judgments payable by instalments.

Judgment payable by instalments by consent.

44. (1) Where a judgment for the plaintiff has been given or entered up in a District Court, and the plaintiff or his counsel, attorney, or agent, consents that the same shall be paid by instalments, the Judge or the registrar, as the case may be, shall order the same to be paid at such time or times and by such instalments as have been consented to.

Judgment paid by instalments where sum not exceeding £30.

(2) Where the amount of any such judgment does not exceed thirty pounds, exclusive of costs, the Judge may at any time order such sum and costs to be paid at such time or times and by such instalments, if any, as he thinks fit.

Where no order made.

(3) Where no such order is made, the judgment shall be for payment forthwith.

Payment into Court.

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

Execution.

(5) 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.

Setting

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Setting aside judgment.

45. A Judge of a District Court, on sufficient cause being shown at the next or any subsequent sitting of the Court, may, on such terms as he thinks fit, set aside any judgment entered up irregularly, illegally, or against good faith, or in the absence of the defendant, or for neglect to file notice of grounds of defence and any execution thereupon, and let in the defendant to defend.

Setting aside of judgment.

Judgment where several defendants.

46. In any action in a District Court for a debt or liquidated demand, judgment by default or confession against one or more of several defendants shall not preclude the plaintiff from proceeding to judgment and issuing execution against any other defendant or defendants, except in so far as satisfaction by any of them operates in favour of all.

Where judgment given against some only of defendants.

Execution.

47. During the lives of the parties to a judgment in any District Court, or those of them during whose lives execution may at present issue within a year and a day without a scire facias, and within six years from the recovery of the judgment, execution may issue without a revival of the judgment.

Execution in six years without revival. C.L.P. Act, 1899, s. 144.

48. It shall not be necessary under section eighty-six of the Principal Act to make an actual seizure of land under any writ of execution in order to authorise the sale thereof; but instead of such seizure the registrar shall cause notice of the writ and of the intended day and place of sale, and the particulars of the property, to be published in such manner as may be prescribed; and the publication of such notice shall be equivalent to an actual levy by the registrar on the land indicated by such notice.

Not necessary to make an actual seizure of lands under a ff. fa. Act No. 8, 1901, s. 14.

Interpleader.

49. (1) Where any claim is made to or in respect of any goods taken in execution under the process of a District Court, the claimant may give to the bailiff—

Claimant of goods taken in execution must deposit their values or pay costs of keeping possession, otherwise goods shall be sold.

- (a) the amount of the value of the goods claimed, to be by such bailiff paid into Court, to abide the decision of the Judge upon such claim; or
- (b) the sum which the bailiff shall be allowed to charge as costs for keeping possession of such goods until such decision can be obtained; or
- (c) security in the prescribed manner for the value of the goods claimed,

English County Courts Act, 1888, s. 156.

and in default of the claimant so doing the bailiff shall sell such goods as if no such claim had been made, and shall pay into Court the proceeds of such sale to abide the decision of the Judge.

(2)

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(2) In case of dispute as to the value of the goods claimed, such value shall be determined by some competent person to be nominated by the registrar; and the prescribed fee for such appraisement shall be added to the amount or security to be given to the bailiff as aforesaid, and shall in the first instance be paid by the claimant.

Interpleader.

50. (1) Application may be made for relief by way of interpleader—

- (a) by a defendant in an action brought in a District Court for or in respect of any debt, money, goods, or chattels to which some third party makes a claim;
- (b) by an officer charged with the execution of the process of a District Court, if the claim is made to any money, goods, or chattels, taken or intended to be taken in execution under any such process, or to the proceeds or value of any such goods or chattels, by any person other than the person against whom the process issued.

(2) The application must be made to the registrar of the Court in which the action is brought or of the Court in the district of which the process is executed, as the case may be.

(3) When the application is made by the defendant, it must be supported by an affidavit showing—

- (a) that the applicant claims no interest in the subject-matter in dispute other than for charges or costs;
- (b) that the applicant does not collude with the person claiming as aforesaid; and
- (c) that the applicant is willing to pay or transfer the subject-matter into Court.

Registrar to issue summons and enter interpleader plaint.

51. (1) The registrar shall thereupon issue a summons calling upon the person claiming as aforesaid (hereinafter called the claimant) to state the nature and particulars of his claim in such form and within such time as may be prescribed; and upon the issue of the summons, and where the application for relief is made by the defendant upon the payment or transfer of the subject matter into Court, all proceedings in the action and in any other action which may have been brought in the Supreme Court or a District Court in respect of such claim shall be stayed.

(2) If the claimant complies with the summons, the registrar shall enter an interpleader plaint and issue a summons thereon calling before the Court the execution creditor or the plaintiff in the action and the claimant, and the Judge shall adjudicate upon such claim, and make such order between the parties in respect thereof and of the costs of the proceedings and the continuance of the actions in which proceedings have been stayed as may to him seem fit; and such order shall be enforced in the same manner as a judgment or order in any other action brought in such Court. (3)

District Courts (Amendment).

(3) If the claimant fails to comply with the summons, the stay of proceedings shall be removed, and the claimant shall be forever barred from prosecuting any claim in respect of the subject-matter of the action, unless the Judge otherwise orders, upon satisfactory explanation made by the claimant in such manner and within such time as may be prescribed.

Attachment of debts.

52. (1) Any creditor who has obtained a judgment in a District Court may apply to the Judge or registrar of any such Court, for a rule or order that the judgment debtor be orally examined, before any such Judge or registrar or such commissioner for taking affidavits as the Court or Judge may appoint, as to his property or means available for the satisfaction of such judgment, and in particular as to any and what debts are owing to him.

Examination of debtor, when judgment, &c., for recovery of money. S. 180 of C.L.P. Act 1899.

(2) The Judge or registrar may make such rule or order for the attendance and examination of such judgment debtor and for the production of any books or documents.

(3) No such examination as to the property or means of the judgment debtor, other than debts due to him, shall be permitted without leave of a Judge.

(4) Any person who refuses or neglects to obey such order shall be subject to all the penalties to which a witness duly subpoenaed to attend at a District Court, and failing to appear at the time appointed, would be subject.

53. The power conferred by section ninety-seven of the Principal Act upon the Judge of a District Court to order the attachment of debts, and to summon the garnishee to appear and show cause, may in like manner be exercised by the registrar of such Court.

Registrar may order attachment of debts.

Court fees.

54. The provisions of sections thirty-four, thirty-five, thirty-six, and thirty-seven of the Supreme Court and Circuit Courts Act, 1900, relating to the collection of the fees to be demanded and paid in the Supreme Court, shall mutatis mutandis apply to the fees to be demanded and paid in any District Court.

Court fees to be denoted by stamps.

55. (1) No Court fees, except fees in respect of the copying of documents, payable to a registrar shall be charged to or payable by the Government of New South Wales or any department or board whose expenditure is paid out of the Consolidated Revenue Fund.

Court fees not charged to Government or Government departments.

(2) But the said Government department or board may include the amount of such fees in any costs which it may be entitled to receive from any person, and may recover the same as if such fees had been charged and paid; and when recovered such fees shall be paid to and accounted for by the registrar as directed by section twenty-nine of the Principal Act.

Reserving

*District Courts (Amendment).**Reserving decision.*

Judge may reserve
his decision.
54 Vic. No. 1078,
s. 88.

56. In any action in a District Court the Judge of such Court may if he think fit reserve his decision on any question of fact or of law.

Where the Judge has so reserved his decision, he may give the same at any continuation or adjournment of such Court or at any subsequent holding thereof, or he may draw up such decision in writing, and, having duly signed the same, forward it to the registrar; upon the receipt of such decision in writing, such registrar shall notify the parties or their respective counsel or attorneys of his intention to proceed at some convenient time by him specified to read the same in the court-house at which such Court is holden, or other convenient place, and he shall read the same accordingly, and thereupon such decision shall be of the same force and effect as if given by such Judge in open Court at the trial or hearing of such action.

Appeal.

Form of appeal to be
by notice of motion.

57. (1) In any action tried or heard in the District Court in respect of which there is a right of appeal under this Act or the Principal Act, any person aggrieved by the ruling, order, direction, or decision of the Judge, may appeal against the same by notice of motion to the Supreme Court instead of by special case, and no rule nisi or order to show cause shall be necessary.

Notice to state
grounds.

(2) Such notice of motion shall state the grounds of appeal, and shall be served on every party directly affected, and shall be filed in the Supreme Court within the prescribed time from the date of the ruling, order, direction, or decision complained of.

Notice not to operate
as stay of
proceedings.

(3) The Judge of the District Court, on application made within the prescribed time, may order a stay of proceedings on such terms as he may think fit. In the absence of such order the notice of appeal shall not operate as a stay of proceedings.

Judge to note
questions of law and
his decisions thereon,
&c.

(4) At the hearing of any such action in any District Court the Judge, at the request of a party, shall make a note of any question of law raised on 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 the appellant, furnish him with a copy of such note, or allow a copy to be taken of the same. Such copy shall be filed in the Supreme Court within the prescribed time or within such extended time as may be allowed by the Supreme Court or a judge thereof, and shall be used and received at the hearing of such appeal, and the cost thereof shall be in the discretion of the Supreme Court.

Service of process.

Mode of service of
process.

58. Service of any summons, subpoena, order, or notice, may be effected by delivering a copy thereof to the party to be served, or in such other manner as may be prescribed.

Appeal

District Courts (Amendment).

Appeal to Quarter Sessions.

59. The Judge of a District Court may, sitting as a Chairman of Quarter Sessions at any place appointed for holding a District Court, hear and determine any appeal made to any Court of Quarter Sessions appointed to be held within his district.

Appeal to Quarter Sessions heard at District Court.

General rules.

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

Rules to be made by Judges. cf. English Act, 1888, s. 161.

- (a) the practice of the Courts and the forms of proceedings therein;
- (b) the scales of fees and costs to be paid 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 the Principal Act, inclusive;
- (e) the keeping of all books, entries, and accounts, required to be kept by the registrars and bailiffs:

and from time to time to amend such rules, forms, and scales.

(2) This power of making rules shall extend to all matters of procedure or practice, or relating to or concerning the effect or operation in law of any procedure or practice, or the enforcement of judgments or orders in any case within the jurisdiction of District Courts.

(3) The rules shall be published in the Gazette, and shall not take effect till one month after they have been laid on the Tables of both Houses of Parliament. The rules made under the Principal Act shall, except in so far as they are inconsistent with the provisions of this Act, remain in force until superseded by rules made under this section.

(4) In any case not expressly by this or the Principal Act or in pursuance thereof provided for, the general principles of practice in the Supreme Court may be adopted so far as they are applicable.

SCHEDULE.

Number of Act.	Title or short title.	Extent of repeal.
No. 4, 1901 ..	District Courts Act, 1901	Sections 26, 34, 52, 53, 54, 55, 56, 57, 60, 78, 79, 84, 93, 96, 108, 113, and Third Schedule.
No. 21, 1899...	Common Law Procedure Act, 1899...	Sections 117, 118, 119.