

Act No. 23, 1912.

An Act to consolidate enactments relating to DISTRICT COURTS.
District Courts. [26th November, 1912.]

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. This Act may be cited as the "District Courts Act, 1912," Short title. and is divided into Parts and Divisions as follows:—

PART I.—PRELIMINARY.—ss. 1-3.

PART II.—COURTS, JUDGES, AND OFFICERS—

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PART

District Courts.

PART III.—JURISDICTION—

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Repeal.
First Schedule.

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 (1) The several enactments mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed.

(2) All persons appointed by virtue of or under any Act hereby repealed, and holding office at the commencement of this Act, shall remain in office as if this Act had been in force at the time they were appointed and they had been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 thereunder, 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rules of court, proclamations, appointments, orders, and notices made or given under the authority of any Act hereby repealed and being in force at the commencement of this Act, shall be deemed to have been made under the authority of this Act, and all references in any such rules,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)

District Courts.

(4) All District Courts created, and all limits of jurisdiction defined under the authority of any Act hereby repealed and existing at the commencement of this Act, shall be deemed to have been created and defined respectively under this Act, and the provisions of any Act not hereby or otherwise repealed at the commencement of this Act relating to any District Court, or any judge or officer thereof, shall apply, so far as applicable, to the District Courts,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 indicates or requires—
- “ Action ” includes cause, suit, and other proceeding. *Interpretation.*
No. 4, 1901, s. 3.
Ibid.
 - “ Admitted set-off ” means set-off admitted by the plaintiff at the time when he brings the action. No. 22, 1905, s. 3.
No. 4, 1901, s. 3.
 - “ Attorney ” means an attorney of the Supreme Court. *Ibid.*
 - “ Barrister ” means a barrister-at-law admitted by the Supreme Court. *Ibid.*
 - “ Prescribed ” means prescribed by this Act or by general rules made hereunder. No. 22, 1905, s. 3.
 - “ Registrar ” includes assistant registrar. *Ibid.*

PART II.

COURTS, JUDGES, AND OFFICERS.

DIVISION 1.—*Establishment of District Courts.*

4. (1) The Governor may, by proclamation in the Gazette, order that courts, to be called District Courts, shall be holden at such towns 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. *Appointment of*
District Courts.
No. 4, 1901, s. 4.

(2) All proceedings commenced or had in any District Court, the holding of which is discontinued under any such proclamation, may be continued, executed, and enforced against all persons liable thereto in the District Court holden in the nearest place to that at 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. *Proceedings in*
discontinued
District Courts.
Ibid.

(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.

District Courts.

Creation of districts.
No. 4, 1901, s. 5.

5. (1) The Governor may, by proclamation in the Gazette, divide New South Wales into districts for the purposes of this Act, and may 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.
Ibid.

(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.
Ibid. s. 6.

6. Every District Court shall be a court of record, and shall have jurisdiction as hereinafter provided.

Jurisdiction:
locality.

No. 4, 1901, s. 7.
No. 22, 1905, s. 22.

7. (1) The several courts appointed to be held at towns and places within such districts, respectively, shall have jurisdiction—

(a) when the defendant, or one of two or more defendants, as the case may be, is resident or carries on business, or

(b) when the debt sued for was contracted, or the liability for damages arose

within the districts for which such courts respectively are ordered to be held.

Claims under ten
pounds.
No. 4, 1901, s. 7 (2.)

(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.

Ibid. s. 7 (3).

(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.

Ibid. s. 8.

8. 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.

Notice of objection
to the jurisdiction.
No. 22, 1905, s. 24.

9. (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 seventy-five of this Act.

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

10.

District Courts.

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

Change of venue.
No. 4, 1901, s. 10.

(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) If the judge 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. 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 this Act.

Venue changed to place at which an assistant registrar has been appointed.
No. 22, 1905, s. 23.

(4) In any such case the registrar of the court in which the complaint was entered shall forthwith transmit by post to the registrar of the court to which the action is to be sent—

No. 4, 1901, s. 10.
No. 22, 1905, s. 23.

- (a) a certified copy of the complaint, as entered in the complaint 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.

Ibid.

(5) 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.

11. 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.

Power of judge sitting in chambers.
Ibid. s. 5.

12. 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

Judge may reserve his decision.
Ibid. s. 56.

at

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at which 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.

Seal of the Court,
No. 4, 1901, s. 9.

13. There shall be a seal for every District Court holden under this Act, and all notices, summonses, certificates, warrants, and other process issued by the registrar of the court shall be sealed or stamped with the seal of the court.

DIVISION 2.—*Judges.*

Appointment and
qualification of
judges.

Ibid. s. 11.

14. (1) The Governor shall, by commissions in His Majesty's 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 five years or an attorney of seven years standing.

Barristers and
attorneys when
qualified.

Ibid.

(2) No barrister or attorney shall be appointed to be a District Court judge unless he has been in practice, or has held some judicial or legal office under the Crown, within two years immediately preceding his appointment.

Judges appointed for
New South Wales.
No. 22, 1905, s. 4.

15. 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.

Two or more judges may
be appointed in the same
district.
No. 4, 1901, s. 11 (2).
No. 22, 1905, s. 4.

16. Two or more judges may be appointed to exercise jurisdiction at the same time as judges of the respective District Courts appointed to be held in one and the same district.

Judges to act
separately in
judicial, but together
in administrative
matters.
No. 4, 1901, s. 15.

(2) Where two or more District Court judges are appointed to exercise jurisdiction in 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.

No. 22, 1905, s. 59.

(3) 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.

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17. 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.
No. 4, 1901, s. 112.

18. (1) The District Court judges shall hold their offices during ability and good behaviour, and shall severally be paid, exclusive of any allowance for travelling expenses, an annual salary of one 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.

Judge's tenure of office.
Ibid. s. 12.

(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 in Council in his defence.

19. 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.

Deputy judge.
Ibid. s. 13.

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

Judges' pensions.
Ibid. s. 14 (1).

(2) If a District Court judge retires on permanent disability or infirmity, he shall—

(a) if he was appointed before the twelfth day of December, one thousand nine hundred and six, be entitled to a pension of one-half of his actual salary at the time of such retirement;

Ibid. s. 14.

(b) if he was appointed on or after the twelfth day of December, one thousand nine hundred and six, and if he has served in such office for five years, be entitled to a pension at the rate of twenty one-hundredths of his salary, and at the additional rate of two one-hundredths of his salary for each complete year of his service after the expiration of the said five years to the date of his retirement, but so that the rate of his pension shall not exceed one-half of his salary.

No. 27, 1906, s. 3.

(3) 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.

No. 4, 1901, s. 14.

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

Ibid.

DIVISION 3.—*Registrars and bailiffs.*

21. 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

Registrar.
Ibid. s. 16.

to

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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.
No. 4, 1901, s. 17.

22. (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.

(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.

Judge to appoint
deputy registrar
provisionally if one
has not been
appointed.
Ibid. s. 18.

23. 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.

Assistant registrars.
No. 22, 1905, s. 21.

24. The Governor may appoint an assistant registrar to act at any place.

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.

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.

Duties of registrars.
No. 4, 1901, s. 19.

25. The registrar of each court shall—

- (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; and
- (f)

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(f) 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.

List of money in court belonging to suitors.
No. 4, 1901, s. 111 (1)

26. 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. 20.

27. 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. 21.

28. (1) The bailiffs of any District Court shall, if required by the judge, attend every sitting of the court, and shall, within their own districts respectively, by themselves, or by the officers appointed to assist them as aforesaid, serve all summonses, and shall execute all the warrants and writs issued out of any District Court; and the said bailiffs and officers shall, in the execution of their duties, conform to the rules of court, and subject thereto to the order and direction of the judge of the district in which the process is to be served or executed.

Duties of bailiffs.
Ibid. s. 22.

(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 indorsed 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 indorsement, be served in any district by the plaintiff or any competent person employed by him.

29. (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

Remuneration of bailiffs
Ibid. s. 23.

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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 his 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.
No. 4, 1901, s. 24.

30. (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 to 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.

(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.

Registrar and bailiff
to give security.
Ibid. s. 25.

31. 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.

DIVISION 4.—*Time and place for holding court.*

Judge to hold court
where directed and
to give notice
thereof.
Ibid. s. 27.

32. (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) Notice of the day 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)

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(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.

(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.*

33. (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.

Amount of court fees.
Second Schedule.
No. 4, 1901, s. 28.

(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.

34. (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 and fees part of the Consolidated Revenue.
Ibid. s. 29.

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

Fines: how to be enforced and accounted for.
Ibid.

35. 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.
No. 22, 1905, s. 54.

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Court fees not charged to Government or Government departments.
No. 22, 1905, s. 55.

36. 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.

(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 thirty-four of this Act.

DIVISION 6.—Actions against persons acting under this Act.

Indemnity to persons acting under this Act.
No. 4, 1901, s. 30.

37. 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.

Appearance to be in person or by counsel or attorney or other person allowed by the judge.
Ibid. s. 31.

38. (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.

Fees to barristers and attorneys and expenses to witnesses.
Ibid. s. 32.

39. 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.

Address of counsel advocate may be reserved in certain cases.
Ibid. s. 33.

40. (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)

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(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.

PART III.

JURISDICTION.

DIVISION 1.—*Jurisdiction and Practice.*

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

Ordinary jurisdiction of the courts.
No. 22, 1905, s. 6.

- (a) the property sought to be recovered does not exceed four hundred pounds in value; or
- (b) the amount claimed, whether on balance of account or after an admitted set-off or otherwise, does not exceed that sum.

(2) 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 or might have been made does not exceed four hundred pounds in amount.

42. The jurisdiction of such courts shall extend to the recovery of any demand not exceeding the sum of four hundred pounds which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of the distributive share under an intestacy or of any legacy under a will.

In cases of partnership, intestacy, and legacy.
No. 4, 1901, s. 35.
No. 22, 1905, s. 12.

43. 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.
Ibid. s. 7.

44. (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.
Ibid. s. 8.

(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.
Ibid.

- (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)

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Removal of action.
No. 22, 1905, s. 8.

(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.

(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.

Savings.
Ibid.

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

Decision as to
amount or value.
Ibid. s. 10.

45. If any question arises as to amount or value under any of the four last preceding sections, or sections fifty-four, fifty-five, fifty-seven, or seventy-three, subsection one, of this Act, or sections seventeen or eighteen of the Landlord and Tenant Act, 1899, the decision of the judge thereon shall be conclusive.

Consent jurisdiction.
No. 4, 1901, s. 36.

46. 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. 37.

47. (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.

(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 deposits in the hands of the prothonotary of the said court the amount claimed, together with the sum of one hundred pounds by way of security for the said costs.

Rule or summons to
show cause why a
writ of certiorari or
prohibition should
not issue to be a
stay of proceedings.
Ibid. s. 38.

48. 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

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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.

49. 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 judge thereof has made some order respecting such costs.

Notice of writ of certiorari or prohibition having been obtained to be sent to registrar. No. 4, 1901, s. 39.

50. 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.

Costs in the District Court where certiorari granted. *Ibid.* s. 40.

51. 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.

Removal of causes. *Ibid.* s. 41.

DIVISION 2.—*Causes and parties.*

52. 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.

Joinder of causes of action. *Ibid.* s. 42.

53. 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.

Proceedings by husband and wife. *Ibid.* s. 43.

54.

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Splitting demands,
No. 4, 1901, s. 44.

54. 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 the amount for which a plaint might be so entered, 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.

Splitting debt by
giving bills, &c.
Ibid. s. 45.

55. 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 four hundred pounds, the plaintiff may sue upon each of such securities, not exceeding in amount four hundred pounds, as forming a distinct cause of action.

Executors.
Ibid. s. 46.

56. 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.

Infants.
Ibid. s. 47.

57. 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 four 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.

Actions by
physicians, &c.
Ibid. s. 48.
No. 22, 1905, s. 13.

58. Any doctor of medicine, or other legally qualified practitioner in medicine, may sue for the recovery of any fees or other remuneration, not exceeding four hundred pounds, 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.

One of several
persons jointly
liable may be sued.
No. 4, 1901, s. 49.

59. (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.

Continuance of
actions.
No. 22, 1905, s. 36.

60. 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

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and whether the cause of action survive or not there shall be 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.

61. No privilege shall be allowed to any attorney, solicitor, or other person to exempt him from the provisions of this Act. Privilege. No. 4, 1901, s. 50.

DIVISION 3.—Plaint-note, summons, and default summons.

Plaint-note and summons.

62. 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. Commencement of action. Ibid. s. 51.

63. 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. Mode of service of process. No. 22, 1905, s. 58.

Default summons and procedure thereon.

64. 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 section sixty-two of this Act, cause to be issued a summons in the form prescribed by general rules made under this Act. Any such summons is hereinafter referred to as a default summons. Default summons. Ibid. s. 29.

65. A default summons shall, when practicable, be served personally on the defendant: Service of default summons. Ibid. s. 30.

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 this

Act in respect of a summons not being a default summons, 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.

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ground of defence
to be in writing
lodged with
registrar.
No. 22, 1905, s. 31.

66. 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.

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. . 32.

67. 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. 33.

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

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.

Proceedings where
statement of defence
filed.
Ibid. s. 34.

69. (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.

(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.

DIVISION 4.—*Confession of debt.*

Confession of or
agreement as to debt.
No. 4, 1901, s. 58.

70. (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)

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(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.

71. (1) The registrar shall receive such statement of confession or agreement as aforesaid, and shall, as soon as convenient thereafter, send notice of any such confession to the plaintiff, and thereupon it shall not be necessary for the plaintiff otherwise to prove the debt or demand, or part thereof, so confessed, or the debt or demand so agreed upon.

Judgment upon such confession or agreement.
No. 4, 1901, s. 59.

(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—Special defences.

72. (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.

Payment into court of money by defendant.
No. 22, 1905, s. 37.

(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.

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Proceedings where
defendant's set-off or
cross action exceeds
the plaintiff's claim.
No. 4, 1901, s. 63.

73. 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 four hundred pounds.

Equitable defence
may be pleaded.
Ibid. s. 61.

74. (1) The defendant or the plaintiff in replevin in any action in which, if judgment were obtained, he would be entitled to relief against such judgment on equitable grounds, may rely upon the facts 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.

Notice of equitable
and special defence.
Ibid. s. 62 (1).

75. (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; or
- (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,

unless notice of such defence, as directed by the rules of court, is given to the registrar.

Cross action.
Ibid. s. 62 (2).

(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.

Ibid. s. 62 (4).

(3) 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.

(4)

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(4) Payment into court, set-off, or cross action, or any defence, of which notice is required to be given by this 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 Act to the contrary notwithstanding.

Special defences set up by consent, or by leave of judge.
No. 22, 1905, s. 38.

DIVISION 6.—*Arbitration.*

76. (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 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.

Power to refer to arbitration by consent.
No. 4, 1901, s. 64.

(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 7.—*Witnesses and evidence.*

77. 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.
Ibid. s. 65.

78. Either party to any action in a District Court may obtain at the office of the registrar subpoenas 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 subpoena any number of names may be inserted.

Subpoena to witnesses.
Ibid. s. 66.

79. Every person on whom such subpoena 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,

Penalty on witnesses neglecting subpoena.
Ibid. s. 67.

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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.

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

No. 22, 1905, s. 39.

80. (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 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.

Expenses of custody.

Ibid.

(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.

Affidavits, before whom sworn.

Ibid. s. 68.

81. 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 the District Court, or a justice of the peace.

Discovery of documents.

Ibid. s. 69.

82. (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—

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

No. 4, 1901, s. 70.

No. 22, 1905, s. 40.

83. (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)

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(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, or that there is a probability of the testimony of the witness being lost if his evidence is not so taken,

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 8.—*Trial.*

84. 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.

Proceedings at the trial where both parties appear.
No. 4, 1901, s. 71.

85. 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 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.

Judge may grant time or adjourn.
Ibid. s. 72.

86. (1) If at the time and place so named as aforesaid, or at any continuation or adjournment of the court or of the action for which the summons has been issued the plaintiff does not appear, the action shall, subject to the provisions of subsection four hereof, be struck out.

Cause struck out.
Ibid. s. 73.

(2) The judge at any time during the sitting of the court at which an action has been so struck out may order the said action to 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

Cause restored to list.
Ibid.

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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.

Proceedings when
plaintiff does not
appear.
No. 4, 1901, s. 73.

(3) Where the plaintiff does not appear as aforesaid, and the 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.

(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.

Proceedings where
defendant does not
appear.
Ibid. s. 74 (1).

87. If the defendant does not appear when called in court, or sufficiently excuse his absence, the judge, upon due proof of service 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.

Judge.
Ibid. s. 75.

88. The judge of a District Court shall be the sole judge in all actions in the said court, and shall determine all questions of law, and unless a jury be summoned, all questions also of fact.

Ibid. s. 82.

89. The judge of a District Court may nonsuit the plaintiff in every case in which satisfactory proof is not given entitling him to the judgment of the court.

When jury may be
summoned to try
action.
Ibid. s. 76.

90. (1) In all actions where the amount claimed exceeds twenty 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 the action, and in such last-mentioned case the plaintiff shall proceed in the same manner as if he had required the action to be so tried.

Actions for more
than £20.
Ibid.

(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.
Ibid.

(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

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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.

91. 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.

Party requiring jury to make deposit.
No. 4, 1901, s. 77.

92. Save as in this Act otherwise provided, whenever there is any cause or issue for trial by jury in any District Court, four jurymen shall be impanelled and sworn as hereinafter provided to give their verdict in the cause or issue brought before them in court.

Number of jurors.
Ibid. s. 80.

93. 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' list.
o. 22, 1905, s. 41.

94. (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.
Ibid. s. 42.

(2) Every person summoned as a jurymen 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.
Ibid.

(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.
Ibid.

(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 impanelled an oath to give true verdicts according to the evidence.

Jury to be sworn.
Ibid.

95. (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

Jury, how chosen.
Ibid. s. 43.

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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 impanelled accordingly.

DIVISION 9.—*Amendment; misjoinder or nonjoinder.*

As to amendment of defects and errors of proceedings, &c.
No. 4, 1901, s. 81.

96. (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.

(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.

Misjoinder or non-joinder of parties.
No. 22, 1905, s. 35.

97. No action shall be defeated by reason of the misjoinder or nonjoinder of parties, and the judge may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The 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 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 judge effectually and completely to adjudicate upon and settle all the questions involved in the action or proceeding, be added.

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

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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.

DIVISION 10.—*Judgment and new trial.*

98. Every judgment of any District Court, except as in this Act provided, shall be final and conclusive between the parties, but the judge may—

Judgments final, but new trial may be granted.
No. 4, 1901, s. 32.

- (1) 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;
- (2) on sufficient cause being shown at the same or any subsequent sitting of the court, on such terms as he thinks fit, set aside any judgment and any execution thereupon, and let in the defendant to defend, if such judgment was entered up—
 - (a) irregularly,
 - (b) illegally,
 - (c) against good faith, or
 - (d) for neglect to file notice of grounds of defence.

Or judgment set aside.
No. 22, 1905, s. 45.

99. Where judgment has been entered up in any District Court in the absence of the defendant, the judge may—

Judgment in absence of defendant.

- (1) at the same or any subsequent sitting of the court set aside such judgment and the execution thereupon, and 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;
- (2) on sufficient cause being shown at the same or any subsequent sitting of the court on such terms as he thinks fit, set aside such judgment and any execution thereupon, and let in the defendant to defend.

No. 4, 1901, s. 74 (2).

No. 22, 1905, s. 45.

100. (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 payable by instalments by consent.
Ibid. s. 44.

(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.

Judgment paid by instalments where sum not exceeding £30.
Ibid.

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

Where no order made.
Ibid.

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

Payment into court.
Ibid.

101.

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Where judgment given against some only of defendants.
No. 22, 1905, s. 46.

101. 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.

DIVISION 11.—*Enforcement of judgments.*(1) *Execution.*

Registrar to issue writs of fieri facias.
No. 4, 1901, s. 85.

102. 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.

Cross judgments to be set off.
Ibid. s. 83.

103. 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.

Judgment payable by instalments.
No. 22, 1905, s. 44 (5).

104. 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.

Execution in six years without revival.
Ibid. s. 47.

105. 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.

Priority of executions issuing out of district court.
No. 4, 1901, s. 90.

106. 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.

Warrant to be sufficient justification of person acting thereon.
Ibid. s. 91.

107. 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.

Registrar to take under writ of execution.
Ibid. s. 86.

108. The registrar of every District Court may, by himself or his deputies, to be by him appointed and duly authorised under his hand and

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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.

109. It shall not be necessary under the last preceding section of this 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 may 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 fi. fa. No. 22, 1905, s. 48.

110. (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.

Registrar to execute deed of sale. No. 4, 1901, s. 87.

(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 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.

111. 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.

Executions not to bind land unless registered. *Ibid.* s. 89.

112. 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:

Bailiff to seize personal property. *Ibid.* s. 88.

Provided that the wearing apparel, bedding, tools, and implements of trade of the said person and his family, to the value of ten pounds in the whole, shall be protected from seizure.

113. (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.

When goods seized under process of District Courts landlord may claim certain rent in arrear. *Ibid.* s. 92.

(2)

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(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 person named in the writ of execution, and the 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.

Execution against
the person.
No. 4, 1901, s. 94.

114. (1) Whenever any judgment has been recovered in any District Court, and the judgment creditor shows, to the satisfaction of a judge of the Supreme Court or of any District Court, that such judgment has been recovered, and is unsatisfied, and to what amount, and—

- (a) 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.

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115. 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.
No. 4, 1901, s. 95.

(2) *Attachment of debts.*

116. (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 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.
No. 22, 1905, s. 52.

(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.

117. (1) The judge or registrar of any District Court, upon the ex parte application of any creditor who has obtained a judgment in any District 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 or registrar may summon the garnishee to appear before the judge 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.
No. 4, 1901, s. 97 (1).
No. 22, 1905, s. 53.

(2) No order for the attachment of wages or salary of any servant or employee shall be made in any case where such wage or salary does not exceed the rate of two pounds per week; and where such

Wages or salary of £2 per week or under not to be attached.

wage No. 6, 1900, s. 1.

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wage or salary is at a greater rate than two pounds per week, an order shall be made only for the attachment of amounts of the wage or salary in excess of that rate: Provided that no debt contracted prior to the seventeenth day of August, one thousand nine hundred, shall be affected by this subsection.

Attachment order to bind debts.
No. 4, 1901, s. 98.

118. 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 hands of the garnishee all debts due, owing, or accruing from him to the judgment debtor.

Proceedings to levy amounts due from the garnishee to the judgment debtor.
Ibid. s. 99.

119. 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 out 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.

Judgment creditor may sue garnishee in certain cases.
Ibid. s. 100.

120. (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.

Payment by instalments.
Ibid. s. 97 (2).

121. 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.

Garnishee discharged.
Ibid. s. 102.

122. 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.

Judge may refuse to interfere in proceedings to attach debt.
Ibid. s. 103.

123. In proceedings to obtain an attachment of debt 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.

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124. 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.

Costs in garnishee proceedings.
No. 4, 1901, s. 101.

125. 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.

Attachment book.
Ibid. s. 104.

DIVISION 12.—*Interpleader.*

126. (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 value or pay costs of keeping possession, otherwise goods shall be sold.
No. 22, 1905, s. 49.

- (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,

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) In case of a 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 appraisal 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.

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

Interpleader by defendant or bailiff.
Ibid. s. 50.

- (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.

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(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. No. 22, 1905, s. 51.

128. (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) 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.

DIVISION 13.—*Costs.*

Costs in discretion of judge. No. 4, 1901, s. 105.

129. 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.

130.

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130. (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. Costs where court has no jurisdiction. No. 22, 1905, s. 25.

(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 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. Objection to jurisdiction not waived by appearance. *Ibid.*

131. 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. Taxation of costs. No. 4, 1901, s. 106.

PART IV.

OTHER JURISDICTIONS.

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

132. 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— Issues of fact remitted to District Court for trial. No. 22, 1905, s. 14.

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

133. (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. Orders for trial. *Ibid.* s. 15.

(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. Powers of judge. *Ibid.*

134. (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 this Act. Jury. *Ibid.* s. 16.

(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.

135.

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New trial.
No. 22, 1905, s. 17.

135. 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 Part of this Act.

DIVISION 2.—*Procedure in matrimonial matters.*

Number of jurors.
Ibid. s. 18.

136. (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) 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.

Drawing of jury.
Ibid. s. 19.

137. (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.

(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.

Impannelling jury.
Ibid. s. 20.

138. (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.

(2) This 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.

District Courts.

PART V.

REMOVAL OF ACTION FROM SUPREME COURT.

139. 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,

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.

140. 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—

- (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.

141. (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.**

(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.

Judge of Supreme Court may order actions to be tried in a District Court.

No. 22, 1905, s. 26.

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

Ibid. s. 27.

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

Ibid. s. 28.

District Courts.

PART VI.

APPEALS.

Appeal by special
case.
No. 4, 1901, s. 107.

142. If either party in any District Court—

(a) in any action in which the amount claimed exceeds ten pounds;
or

(b) in any action for the recovery of tenements where the yearly
rent or value of the premises exceeds ten pounds; or

(c) in any proceeding in interpleader where the money claimed, or
the value of the goods in question, exceeds ten pounds; or

No. 22, 1905, s. 11.

(d) in any action of replevin or ejectment or in which title to land
comes incidentally in question, irrespectively of the amount
claimed or of the annual or capital value of the land sought to
be recovered in the action,

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 either by special
case or upon notice of motion as hereinafter provided.

No. 4, 1901, s. 107.

143. (1) Where the party so aggrieved desires to appeal by
special case he shall, within such time and in such manner as is pre-
scribed by rules of court, give notice of such appeal to the other party
or his attorney.

(2) Such special case shall be 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 notice of
motion.
No. 22, 1905, s. 57.

144. (1) Where the party so aggrieved desires to appeal by
notice of motion, 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 be filed
in the Supreme Court within the prescribed time from the date of the
ruling, order, direction, or decision complained of.

Ibid.

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

(3) 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 pre-
scribed 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.

Ibid.

145.

District Courts.

145. In any appeal—

- (1) the appellant shall 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;
- (2) 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.
- (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.

Security for costs of appeal.

No. 4, 1901, s. 107 (2),

Bulmer v. Tattersall, 6 S.R. 690.

Gilchrist v. Benjamin, 8 S.R. 29.

Power of Supreme Court in Appeal.

No. 4, 1901, s. 107 (3).

Jeffrey v. Holley, 6 S.R. 375.

Notice not to operate as stay of proceedings.

Ibid.

146. No appeal shall lie from the decision of a District Court if before such decision is pronounced both parties shall agree in writing signed by themselves or their attorneys or agents that the decision of the judge shall be final.

Parties may agree not to appeal.

Ibid. s. 109.

PART VII.

MISCELLANEOUS PROVISIONS.

147. 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 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.

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

Ibid. s. 110.

148. (1) 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 Colonial Treasurer, and shall be by him carried to the account of the Consolidated Revenue Fund.

Unclaimed moneys.

Ibid. s. 111.

(2)

Act No. 23, 1912.

District Courts.

(2) 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 femme couverte, or of unsound mind, or beyond the seas, shall be taken into account in estimating the said period of six years.

Rules to be made by
Judges.
No. 22, 1905, s. 60.

149. (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—

- (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 this Act relating to the examination of judgment debtors or the attachment of debts;
- (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.

(4) In any case not expressly by this 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.

SCHEDULES.

District Courts.

SCHEDULES.

FIRST SCHEDULE.

Section 2.

Number of Act.	Title or Short Title.	Extent of repeal.
No. 6, 1900 ...	Attachment of Wages Limitation Act, 1900.	So much of the Act as refers to attachment of debts in District Courts.
No. 4, 1901 ...	District Courts Act, 1901 ...	The whole, except such portions as were repealed by Acts No. 22, 1905, and No. 27, 1906.
No. 22, 1905 ...	District Courts (Amendment) Act,	The whole.
No. 27, 1906 ...	Judges' Pensions Amendment Act, 1906.	Section 3.

SECOND SCHEDULE.

Section 33.

PART I—COURT FEES.

Fees prescribed under District Courts Act, Section 33.

	Not exceeding £10.			Not exceeding £30.			Exceeding £30.		
	£	s.	d.	£	s.	d.	£	s.	d.
1. For entering every plaint and issuing summons, including filing praecipe and particulars of claim	0	5	0	0	5	0	0	5	0
2. For every hearing on the trial of any action (other than an interpleader action), or of any question necessary for determining the liability of a garnishee. To be charged once only in any action or matter, unless a new trial is ordered; and to be paid by the party prior to the action or matter being set down in any list for trial, or, where there is no such list, prior to the hearing... No hearing fee is payable in respect of issues or actions remitted from the Supreme Court	0	5	0	0	5	0	0	10	0
3. For every application by a defendant for relief by way of interpleader, including summons for particulars, entering plaint, and issuing summonses thereon	0	5	0	0	10	0	1	0	0

SECOND

Act No. 23, 1912.

*District Courts.*SECOND SCHEDULE—*continued.*PART I.—COURT FEES—*continued.**Fees prescribed under District Courts Act—continued.*

	Not exceeding £10.			Not exceeding £30.			Exceeding £30.		
	£	s.	d.	£	s.	d.	£	s.	d.
4. Where any action or matter in which a set-off is claimed, or a cross-action is set up, is brought to a hearing, the defendant shall, prior to the hearing, pay the same hearing fee on the set-off or cross-action as would have been payable if such set-off or cross-action had been the subject of a separate action, less the fee payable by the plaintiff for the hearing of the plaint ... ..	.....			.....			.....
5. For filing every notice of intention to defend, or notice of defence	0	1	0	0	1	0	0	2	0
6. For filing every admission, confession, or agreement	0	1	0	0	1	0	0	2	0
7. For filing every affidavit, further particulars, or any notice or other document not otherwise provided for	0	1	0	0	1	0	0	1	0
8. For issuing every subpoena, for each name inserted therein, including filing præcipe	0	1	0	0	1	0	0	1	0
9. For issuing every duplicate plaint note	0	1	0	0	1	0	0	1	0
10. For exchanging a default summons for an ordinary summons	0	2	6	0	2	6	0	2	6
11. For issuing every concurrent or successive ordinary summons or default summons, or concurrent warrant... ..	0	2	6	0	2	6	0	2	6
12. For issuing every certificate or notice under the Contractors' Debts Act of 1897	0	2	6	0	2	6	0	2	6
13. For every search, or for searching any index (for each name)	0	0	6	0	0	6	0	0	6
14. For every search (other than a search of an index) where judgment over five years old	0	2	6	0	2	6	0	2	6
15. For every office copy, per folio of 72 words... ..	0	0	4	0	0	4	0	0	4
16. For certifying such copy	0	1	0	0	1	0	0	1	0
17. For every other certificate of the Registrar (including filing request for such certificate)... ..	0	2	6	0	2	6	0	2	6
18. For filing every notice of appeal under Section 143 of the District Courts Act, 1912... ..	.....			0	5	0	0	5	0
19. For every interlocutory summons, or a summons to show cause	0	2	0	0	2	0	0	2	6
20. For every Ca. Sa. summons	0	2	0	0	3	6	0	5	0
21. For drawing every judgment or order	0	1	0	0	2	0	0	2	0
22. For filing every judgment or order	0	1	0	0	1	0	0	1	0
23. For every appointment	0	1	0	0	1	0	0	1	0
24. For taxing costs—where amount of bill as taxed does not exceed £12	0	2	0	0	3	0	0	3	0
25. In every other case—threepence in the pound on amount allowed ... ..	.....			.....			.....

SECOND

District Courts.

SECOND SCHEDULE—*continued.*

PART I.—COURT FEES—*continued.*

Fees prescribed under District Courts Act—continued.

	Not exceeding £10.			Not exceeding £30.			Exceeding £30.		
	£	s.	d.	£	s.	d.	£	s.	d.
26. For every examination of a judgment debtor before the Registrar, including taking depositions and making report thereon	0	5	0	0	7	6	0	10	0
Or per hour	0	5	0	0	7	6	0	10	0
27. For issuing every writ of execution or attachment, including filing præcipe	0	2	6	0	5	0	0	5	0
28. For every notice of execution... ..	0	1	0	0	1	0	0	1	0
29. For approving any bond	0	5	0	0	5	0	0	5	0
30. For filing and entering every satisfaction of judgment (except in pursuance of a notification received from a court of another State)	0	1	0	0	1	0	0	1	0
31. For every sale of lands under a warrant of execution, including settling and executing (but not including drawing) deed of transfer... ..	0	10	0	0	10	0	0	10	0
32. For every order of attachment of debt and summons to garnishee—(R. 264.)	0	5	0	0	5	0	0	5	0
33. For every other proceeding under Sections 117 to 125 of the District Courts Act, 1912, the fees prescribed by that Act shall be charged so far as the same are applicable—(R. 264.) ... ..	.....			.....			.....
34. For filing every certificate under Section 27 of the Small Debts Recovery Act, 1905... ..	0	2	6	0	5	0	0	5	0
35. For filing and entering original writ, pleadings, and order for trial, or certified copies thereof, under Section 141 of the District Courts Act, 1912 ...	0	5	0	0	10	0	1	0	0
36. For filing and entering issues of fact remitted for trial under Section 132 of the District Courts Act, 1912, including filing order for trial	0	5	0	0	10	0	1	0	0
37. For every jury fee thereon—									
(a) in a case of trial by a jury of four... ..	2	0	0	2	0	0	2	0	0
(b) in a case of trial by a common jury of twelve	3	0	0	3	0	0	3	0	0
(c) In a case of trial by a special jury of twelve	6	0	0	6	0	0	6	0	0
38. For every other jury fee (D. C. Act, 1912, s. 90) ...	2	0	0	2	0	0	2	0	0

PART II.—BAILIFF'S FEES.

Fees prescribed under District Courts Act.

£ s. d.

1. For service or attempted service of every summons (other than a default summons), subpoena, order, notice, or other document where service cannot be effected by post	0	1	0
2. For service by post	0	0	6
3. For service or attempted service of a default summons	0	2	0

PART

District Courts.

PART II.—BAILIFF'S FEES—*continued.*

<i>Fees prescribed under District Courts Act—continued.</i>		£	s.	d.
4.	For mileage in the service or attempted service of any process or document in the district of the Metropolitan Court, for each mile, beyond one mile, from the Court-house to place where service is effected or has been attempted	0	0	6
5.	The like in the district of every other court	0	1	0
6.	For keeping possession under a writ of fi. fa. for each man necessarily employed, per diem—the whole amount to be paid to the man in possession, and his receipt to be produced to the Registrar	0	8	0
7.	Where keeper not employed—costs out of pocket to be allowed by the Registrar ... ..			.....
8.	For making levy, where the sum levied for shall not exceed £20	0	6	0
	and for every pound over that sum	0	0	3
9.	For every sale under a warrant of execution, for every £100 or part thereof realised	0	10	0
10.	For executing every writ against the person (for each person taken)	0	10	0
11.	Mileage in conveying party to prison, each bailiff per mile	0	0	6
12.	In executing every writ of ha. fa.	0	10	0
13.	For mileage in the execution of any writ, for each visit necessarily made to place where bailiff has been directed to make the levy or arrest, but not to exceed one visit after levy made, per mile	0	1	0
14.	Attending a view by jury within five miles of Court-house, when engaged not more than three hours	0	5	0
15.	The like—engaged over three hours, per diem	0	10	0
16.	If at a greater distance, the like sum for the first five miles, and for each mile beyond that distance	0	1	0
17.	While attending a view by the jury, the bailiff shall not be entitled to claim mileage where his travelling expenses have been paid by the party, nor for any distance beyond fifty miles, unless by special order of the judge ... ..			.....
18.	Delivering goods in replevin	0	10	0
19.	For every search or inspection of any document	0	0	6
20.	Disbursements:—			
	Affidavits			
	Advertisements			
	Conveyance of keeper to and from place of levy			
	Meals for keeper			
	Removal of party arrested to prison			
	Live-stock levied on—cost of keep			
	Necessary assistance to officer in execution of any writ... ..			
	Telegrams and stamps			
21.	Where the keeper is conveyed to or from the place of levy in a vehicle owned by the bailiff, for every mile such keeper is conveyed from the Court-house to the place of levy, each way, per mile	0	0	2
	But in no case shall the amount allowed exceed the cost of conveyance by rail, steamer, or other available public conveyance			
22.	Fee to appraiser for valuing goods under section 126 of the District Courts Act, 1912:—			
	Where the value of the goods claimed does not exceed £20	1	0	0
	And for every pound over that sum	0	0	6
	Besides mileage from the Registrar's Office to the place where the goods are, at per mile.	0	1	0

NOTE

Inebriates.

NOTE TO PARTS I AND II.

1. The bailiff's fees, allowances, and charges in respect of the execution of warrants shall be taxed by the Registrar of the Home Court, subject to review by the Judge of such Court.
 2. All fees, except where otherwise herein specified, shall be estimated upon the amount or value of the subject-matter of the plaintiff's claim, or the judgment, as the case may be.
 3. In actions of ejection all fees shall be estimated on the amount of the value of the property sought to be recovered.
 4. In actions for the recovery of tenements when the term has expired or been determined by notice, all fees, except as aforesaid, shall be estimated on the amount of the weekly, monthly, quarterly, half-yearly, or yearly rent of the tenement, as such tenement shall have been let by the week or by the month, or for any longer period, plus the amount of rents or mesne profits, or both; and if no rent shall have been reserved, then on the amount of the half-yearly value of the tenement, to be fixed by the Registrar.
 5. In actions for the recovery of tenements for the non-payment of rent, all fees, except as aforesaid, shall be estimated on the amount of the half-yearly rent of the tenement.
 6. In all actions where jurisdiction is given by consent, the fees shall be charged on the highest scale.
 7. In every case where the fees cannot be estimated by any rule in this Schedule, they shall be charged on the highest scale.
 8. All fractions of a pound shall, for the purpose of calculating poundage, be treated as an entire pound.
 9. Except where otherwise provided herein, mileage shall be reckoned one way only, and any portion of a mile shall be reckoned as a mile.
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