

New Zealand.



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1893, No. 55.

AN ACT to consolidate and amend the Law relating to the Jurisdiction of Magistrates and Justices of the Peace in Civil Matters. Title.

[6th October, 1893.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. The Short Title of this Act is "The Magistrates' Courts Act, 1893."

Commencement of Act.

2. This Act shall come into force and commence on the first day of March, one thousand eight hundred and ninety-four, except that all provisions authorising respectively the establishment of Courts, the appointment of the officers thereof, the framing of regulations, the appointment of fees, and all other matters incident to the full constitution of such Courts, shall come into force on the passing hereof; but nothing done under such provisions shall take effect before the aforesaid day of the commencement of this Act.

Continuance of actions commenced before passing of Act.

3. Actions commenced prior to the day of the commencement of this Act in any Resident Magistrate's Court under any of the Acts hereby repealed shall be continued in the nearest Magistrate's Court constituted under this Act the Magistrate whereof has competent jurisdiction, and according to the procedure prescribed by or under this Act.

Outstanding judgments, &c., may be enforced.

4. Any Magistrate appointed under this Act, exercising jurisdiction within any area comprised within the limits of a Resident Magistrate's district heretofore existing, on receiving a copy of any judgment of such Resident Magistrate's Court, whether in its ordinary, extended, special, or Native jurisdictions, certified under the hand of the Clerk of such Court, or the officer having custody of the records of such Court, in which such judgment shall have been given, and a certificate from the said Clerk or officer that the same or some part thereof has not been satisfied, may grant a warrant of distress, and order such proceedings therein to enforce satisfaction of such judgment, as if such judgment had been originally obtained in his own Court.

Where, by any Act or enactment for the time being in force, any act, matter, or thing is required to be or may be performed, made, or done, or any power is required or may be exercised by a Resident Magistrate, such act, matter, or thing may be performed, and such power may be exercised, by a Magistrate appointed under this Act.

Pension rights, &c., preserved.

5. No Magistrate, Clerk, bailiff, or other officer shall, by reason of his appointment to any office under this Act, lose the benefit of any claim to superannuation or retiring allowance or compensation for loss of office under any law in force at any time before the passing of this Act, and which he may claim to be entitled to by virtue of any office then or previously held by him.

Fidelity bonds, &c., to remain in force.

Every fidelity or guarantee bond or other security for the faithful discharge of his duties, given by any person holding an office under any of the Acts hereby repealed, shall subsist in force without necessity of renewal, in case such person is continued in or appointed to the same or any other office under this Act.

How collateral Acts are to be read.

6. Where, in an unrepealed Act or enactment, or in any document or instrument, reference is made to any Act repealed by this Act, or to any provisions thereof, or to any Court, office, or officer established, constituted, or appointed under any Act hereby repealed, such reference shall be construed and shall operate as if made to this Act, or to the provisions of this Act corresponding to the provisions referred to, or to the Court, office, or officer constituted or appointed under this Act.

7. The several Acts and parts of Acts mentioned in the Schedule hereto are hereby repealed. Repeal.

8. In this Act, if not inconsistent with the context,— Interpretation.

“Action” means any action, suit, or other civil proceeding in a Court, including interpleader :

“Agent” includes any person usually employed by the landlord in the letting of any tenement or in the collection of the rents thereof, or specially authorised to act in the particular manner by writing under the hand of such landlord :

“Bailiff” means any bailiff of a Court or any deputy-bailiff :

“Claim” includes debt, demand, claim, or damage :

“Clerk” means the Clerk of a Court or the deputy of such Clerk :

“Counter-claim” includes a set-off :

“Court” means a Court constituted under this Act, and includes a Court held before Justices of the Peace in any case where such Justices may lawfully hold such Court under this Act :

“Landlord” means the person entitled to the immediate reversion of tenements, or, if the property be held in joint tenancy, coparcenary, or tenancy in common, includes any one of the persons entitled to such reversion ; and includes the agent of such landlord or of any of the said persons :

“Magistrate” means a Stipendiary Magistrate appointed under this Act :

“Natives” includes all aboriginal natives of New Zealand and of other islands of the Pacific Ocean, and all half-castes and other persons of mixed race living as members of any Native tribe :

“Nearest Court” means the Court whose place of sitting, or one of whose places of sitting, is nearest in distance by the most available method of travelling by road or railway :

“Prescribed” means prescribed by this Act, or by any rules or regulations thereunder :

“Tenements” means only lands, houses, or other hereditaments of a corporeal nature :

“This Act” includes all rules and regulations made thereunder :

“Within the jurisdiction of the Court,” or any similar phrase, means within the jurisdiction of the Stipendiary Magistrate or Justices, as the case may be, for the time being presiding in the Court.

REGULATIONS.

9. The Governor may by Order in Council from time to time prescribe, alter, vary, suspend, or rescind rules or regulations—

(1.) Regulating, in all cases not herein specially provided for, the practice and forms of all proceedings in Courts under this Act, and prescribing the various functions and duties of Magistrates which it shall not be necessary to perform or discharge in open Court ; and generally for giving effect to the provisions of this Act ;

Regulations prescribing practice, forms of procedure, &c.

(2.) Prescribing forms to be adopted and used in all proceedings to be taken under this Act: In practice such variations from such forms may be made as the circumstances of any case may require;

Costs. (3.) Prescribing, according to the nature of any action and the amount involved therein, the costs and charges to be paid by one party or the parties in such action to the other party or parties, in addition to moneys paid out of pocket; and

Fees. (4.) Prescribing the fees to be payable in respect of any proceedings taken, or for service of any summons or other process under this Act.

All Orders in Council so made shall be gazetted, and shall take effect as from a day to be therein fixed; and the rules or regulations therein respectively prescribed shall have the same force and effect as if the matter thereof had been set out in the enacting part of this statute.

Existing forms,
rules, fees, &c.,
continued in force.

All forms of summons, notice, or other process in use under any of the Acts hereby repealed shall continue in force and may be used for like purposes under this Act, with such variations as may be necessary to adapt them for such purposes.

All rules, regulations, and tables of fees in force at the commencement of this Act shall, so far as not inconsistent with this Act, continue in force until revoked hereunder.

Translation to be
added for Natives.

10. Every form of summons, order, notice, or warrant, and every statement of claim or counter-claim intended to be served upon an aboriginal native, shall be accompanied by a translation thereof into the Maori language. But the execution of any warrant against any such Native shall not be illegal by reason only of its not being accompanied by such a translation.

CONSTITUTION OF COURTS.

Courts constituted.

11. There shall be within the colony Courts of record, possessing civil jurisdiction, to be called "Magistrates' Courts."

Any power, authority, function, or discretion vested in a Court shall be possessed and may be exercised by a Magistrate thereof having adequate jurisdiction, or by any two or more Justices of the Peace if not in excess of their jurisdiction.

Courts located.

12. Such Courts shall respectively be held on such days and at such times and places as shall be deemed most convenient by the Magistrate thereof, or at such places as may from time to time be appointed by the Governor, who may also at any time direct that sittings of the Court at any place may be discontinued.

All appointments of days, times, and places for holding such Courts at present in operation shall continue in force until altered respectively under this Act.

All appointments for the sitting of a Magistrate's Court shall be deemed to include sittings of the said Court at which Justices of the Peace may sit in cases to which their jurisdiction extends.

Appointment of
Magistrates.

13. The Governor may, by warrant under his hand, from time to time appoint fit and proper persons to be Magistrates within the colony, who shall preside in such Courts, and who shall be called "Stipendiary Magistrates," and shall exercise the ordinary or the

Their powers.

extended or the special jurisdiction of the Court, or all or any two of those jurisdictions, as the Governor shall appoint in each case.

14. Every Resident Magistrate appointed before the commencement of this Act, and exercising limited or extended jurisdiction within the limits of a Resident Magistrate's district existing before the said commencement, shall be a Stipendiary Magistrate as if appointed under this Act, and may, subject to this Act, exercise the ordinary jurisdiction respectively in the Magistrate's Court under this Act which takes the place of the Resident Magistrate's Court of the aforesaid Resident Magistrate's district, or of the larger part of such district.

Tenure of office of Magistrates having ordinary jurisdiction.

All Magistrates appointed to exercise the ordinary jurisdiction of the Court only shall hold office at the pleasure of the Governor.

15. No person shall be appointed to exercise the extended jurisdiction of a Court under this Act who is not a barrister or solicitor of the Supreme Court, or who has not for a period of five years at the least been continuously and in a competent manner exercising the extended jurisdiction of a Court under the Acts hereby repealed, or the ordinary jurisdiction under this Act, or the one and the other during such period.

Tenure of office of Magistrates having extended or special jurisdiction.

No person other than a Magistrate appointed to exercise the extended jurisdiction of a Court, and who is a barrister of the Supreme Court, shall be appointed to exercise the special jurisdiction of the Court.

Notwithstanding anything in this section contained, any person who has been appointed a District Court Judge under "The District Courts Act, 1858," and is acting as such Judge at the time of the commencement of this Act, may be appointed to exercise the extended or special jurisdiction of a Court under this Act.

All Magistrates appointed to exercise the extended jurisdiction of the Court shall hold office at the pleasure of the Governor.

But the Governor may remove any such Magistrate who shall be absent from New Zealand without leave granted by the Governor, or who shall become incapable, or who shall neglect to perform the duties of his office or offices, or for misbehaviour, or upon the address of both Houses of the Legislature; and also the Governor may from time to time suspend any such Magistrate for good cause.

16. Any Magistrate, at the request of a Magistrate usually presiding in a Court, may preside in his place and otherwise act in his stead, but cannot in any such case exercise any jurisdiction beyond that to which he is himself limited.

Magistrate may sit for another.

Any Justice or Justices of the Peace may sit in a Court with a Magistrate, but cannot in any such case act with the Magistrate or exercise any jurisdiction whatever at such sitting.

The office of Magistrate may be held in conjunction with any other office which the Governor shall not deem incompatible.

No Magistrate shall practise as a barrister or solicitor.

Each Magistrate shall take the oath of allegiance and judicial oath set forth in "The Promissory Oaths Act, 1873," before any Justice of the Peace.

17. Each Magistrate, by virtue of his office,—

(1.) Shall be a Justice of the Peace for the colony :

Ex officio functions of Magistrates.

(2.) Shall, though sitting alone, have all such powers, functions, and discretions, unless otherwise specially provided, as now are or hereafter may be exercised by two Justices of the Peace :

(3.) Shall have full power to do alone whatever is authorised to be done by two Justices under "The Justices of the Peace Act, 1882," or under any other Act now or hereafter to be in force within the colony :

(4.) Shall be a Coroner for the colony.

Appointment of Clerk.

18. There shall be for each Court a Clerk, who shall be appointed by and hold office during the pleasure of the Governor ; but the Magistrate of the Court if he think fit may suspend the Clerk of such Court from the exercise of his office until the Governor's pleasure shall be known.

The Clerks of the Resident Magistrates' Courts in office at the time of the commencement of this Act shall be the Clerks of the Courts taking the place of such Resident Magistrates' Courts respectively as if their appointments had been made under this Act.

Duties of Clerk.

19. The Clerk shall perform and exercise the following general duties and powers :—

(1.) Issue all summonses, warrants, writs, and other process required to be issued out of the Court, and keep a record thereof, and of all returns thereto, and of all orders and judgments and other proceedings of the Court, whether done in or out of Court :

(2.) Receive and keep account of all moneys paid into or out of Court :

(3.) And generally do all other acts and duties incident to the office of Clerk.

Records to be kept by Clerk.

20. The record and account of the several matters and things hereinbefore required to be kept by the Clerk shall be kept by entries in books belonging to the Court, in manner as may be prescribed.

Appointment of bailiffs.

21. There shall be a bailiff or such bailiffs for each Court as may be necessary, who shall be appointed by and hold office during the pleasure of the Governor. Section nine of "The Civil Service Reform Act, 1886," shall not apply to bailiffs, but no person shall be appointed permanently as any bailiff unless he has passed an examination equivalent to that of the Sixth Standard of education provided under "The Education Act, 1877," or any Act passed in amendment thereof, or has held some other permanent office in the Civil Service, or is a member of the Police Force.

The bailiffs of Resident Magistrates' Courts in office at the time of the commencement of this Act shall be the bailiffs of the Courts taking the place of such Resident Magistrates' Courts respectively as if their appointments had been made under this Act.

A Magistrate may, notwithstanding anything in this Act contained, appoint a member of the Police Force to act for a particular occasion as bailiff at any Court or place.

Deputies to Clerk or bailiff.

22. A Magistrate may appoint from time to time a deputy to act for a Clerk or bailiff (as the case may be) when he shall be prevented by illness or other cause from acting in his office ; and, in the case of the death of a Clerk or bailiff, may appoint a deputy to act

in the place of such Clerk or bailiff till the Governor's pleasure shall be known, and remove any such deputy at his pleasure.

Any deputy appointed as aforesaid, while acting under such appointment, shall have the like powers and privileges, and shall perform the same duties, and be subject to like provisions and penalties, as if he were Clerk or bailiff (as the case may be) for the time being.

23. Every bailiff shall—

Powers and duties of bailiffs.

- (1.) Have the powers of a constable, and shall take the oath prescribed by "The Justices of the Peace Act, 1882," for special constables, or to the like effect, before any Justice of the Peace :
- (2.) Attend each sitting of the Court to which he is appointed for such time as shall be required, unless his presence be excused by the Court :
- (3.) Serve all summonses and orders and execute all warrants issued out of any Court and coming to his hands for the purpose of such service or execution, or, with the written consent of the party requiring such service or execution, may authorise any person to act for him in effecting any such service or execution :
- (4.) Conform to all rules and regulations affecting the execution of his office, and in other respects be subject to the directions of the Magistrate :
- (5.) Be answerable for all acts and defaults of himself and those acting under him and by his authority, in like manner as any Sheriff in New Zealand is responsible for the acts and defaults of himself and his officers: and
- (6.) Shall give security for the due performance of his duties in such form and to such amount as shall, from time to time, be required by the Minister of Justice or the Magistrate appointing him.

In executing any process of the Court the bailiff shall have such powers and be subject to such liabilities as a Sheriff hath or is subject to in like cases in executing the process of the Supreme Court, notwithstanding that such bailiff has been appointed to his office by the Governor.

24. If a bailiff, or any person acting under his authority, shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of a Court, the person so offending shall be liable to a penalty not exceeding twenty pounds, to be recovered by order of the Court or before any two Justices of the Peace in a summary way; and such bailiff or any constable in any such case may take the offender into custody, with or without warrant, and bring him before such Court or Justices accordingly; and the jurisdiction of such Court or Justices shall not be ousted by any question of title that may arise.

Protection of bailiffs.

25. In case a bailiff, or any person acting under his authority, employed to levy an execution, shall, by neglect, connivance, or omission, lose the opportunity of so levying either wholly or partially, then, upon complaint of the party aggrieved by reason of such neglect, connivance, or omission (and the fact alleged being proved to its satisfaction), the Court shall order such bailiff to pay such

Neglect by bailiffs.

damages as it shall appear the complainant has sustained, not exceeding in any case the sum for which the execution issued, and the expenses of such execution, and, on his refusal or neglect so to do, such order may be enforced by such ways and means as are provided for enforcing a judgment of the Court.

Extortion, &c., by officers.

Inquiry by Court.

26. If any bailiff, or any person acting under his authority, or other officer of the Court, acting under colour or pretence of the process of the Court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied or received by him under the authority of this Act, the Court may inquire into such matter in a summary way, and for that purpose may summon and enforce the attendance of all necessary witnesses in like manner as the attendance of witnesses in an action may be enforced.

Order of Court thereupon.

27. The Court may make such order thereupon for the payment of any money extorted, or for the due payment of any money so levied or received as aforesaid, and for the payment of such damages and costs, as it shall think just, and also, if it shall think fit, may impose such penalty upon the bailiff or officer, not exceeding ten pounds for each offence, as it shall deem adequate, and, in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are provided for enforcing a judgment of the Court.

JURISDICTION.

Jurisdiction.

28. The jurisdiction of the Court is classed into "ordinary," "extended," and "special."

The Court or a Magistrate thereof shall have jurisdiction in any matter within the limits of its jurisdiction notwithstanding that jurisdiction in such matter may have been specially granted by any particular statute to a District Court or a Judge thereof.

Ordinary jurisdiction.

29. The ordinary jurisdiction shall include the following cases:—

- (a.) Breach of contract, or tort, where the amount claimed does not exceed one hundred pounds, excepting in actions for false imprisonment, or illegal arrest, or for malicious prosecution, or for libel or slander, or for seduction, or for breach of promise of marriage :
- (b.) Debt, where the sum claimed does not exceed one hundred pounds, whether such sum be the original amount of the debt, or a balance after allowing payment on account, or credit for goods supplied, or the amount of any other admitted set-off :
- (c.) The recovery of any demand not exceeding one hundred pounds which is the whole or part of the unliquidated balance of a partnership account :
- (d.) The attachment of debts not exceeding in amount the sum of one hundred pounds :
- (e.) The enforcement of claims upon and the recovery of possession of some specific movable property the value whereof does not exceed one hundred pounds :
- (f.) The recovery of possession of tenements, with or without arrears of rent or mesne profits,—

(1.) Where the claim is alleged to have arisen on the determination of a tenancy or occupation at a rental not exceeding the rate of one hundred and five pounds by the year ;

(2.) In other cases, where the value of the tenement does not exceed one hundred pounds :

(g.) Interpleader cases generally, where the value of the subject-matter in dispute does not exceed one hundred pounds :

(h.) Where the parties agree, by writing signed by them or their solicitors, that, whatever the amount or value of the subject-matter, but not in excess of two hundred pounds (provided the case be otherwise within the jurisdiction), the Court shall have jurisdiction :

(i.) The granting a writ of arrest for holding to bail any person about to quit the colony leaving unsettled a claim within the ordinary jurisdiction of the Court.

30. The extended jurisdiction shall include the following cases :— Extended jurisdiction.

(a.) Breach of contract, or tort, where the amount claimed does not exceed two hundred pounds ;

Excepting in actions for false imprisonment or illegal arrest, or for malicious prosecution, or for libel or slander, or for seduction, or for breach of promise of marriage :

(b.) Debt, where the sum claimed does not exceed two hundred pounds, whether such sum be the original amount of the debt, or a balance after allowing payment on account, or credit for goods supplied, or the amount of any other admitted set-off :

(c.) The recovery of any demand not exceeding two hundred pounds which is the whole or part of the unliquidated balance of a partnership account :

(d.) The attachment of debts not exceeding in amount the sum of two hundred pounds :

(e.) The enforcement of claims upon and the recovery of possession of some specific movable property the value whereof does not exceed two hundred pounds :

(f.) The recovery of possession of tenements, with or without arrears of rent or mesne profits,—

(1.) Where the claim is alleged to have arisen on the determination of a tenancy or occupation at a rental not exceeding the rate of two hundred and ten pounds by the year ;

(2.) In other cases, where the value of the tenement does not exceed two hundred pounds :

(g.) Interpleader cases generally, when the value of the subject-matter in dispute does not exceed two hundred pounds :

(h.) Where the parties agree by writing, signed by them or their solicitors, that, whatever the amount or value of the subject-matter, but not in excess of five hundred pounds (provided the case be otherwise within the jurisdiction), the Court shall have jurisdiction :

- (i.) The granting a writ of arrest for holding to bail any person about to quit the colony leaving unsettled a claim within the ordinary or extended jurisdiction of the Court :
- (j.) The settlement of disputes between any building society and its members, where the amount involved does not exceed two hundred pounds, and the recovery of moneys or enforcement of claims by or against any building society, and all other matters arising under "The Building Societies Act, 1880," not exceeding in amount or value the sum of two hundred pounds.

Special jurisdiction.
Partnership.

31. The special jurisdiction shall include the following matters :—

(1.) (a.) Partnership accounts, or disputes between partners, where the amount involved does not exceed two hundred pounds :

(b.) The recovery of any pecuniary compensation not exceeding two hundred pounds for false imprisonment or illegal arrest, or for malicious prosecution, or for libel or slander, or for seduction, or for breach of promise of marriage :

Actions for illegal
arrest, libel,
slander, &c.

Bequests.

(c.) The recovery of a specific or pecuniary legacy or share of residue not exceeding in value or amount two hundred pounds, where the validity of the bequest, or the construction of the testamentary dispositions in regard thereto, are not disputed :

For injunctions.

(d.) The granting and dissolution of injunctions to prevent irreparable injury to property, being the subject-matter of an action within the jurisdiction of the Court, and where the value of such property does not exceed five hundred pounds, or being land, where the rental thereof does not exceed two hundred and ten pounds per annum : and

For arrest.

(2.) The exercise of all the powers of a Judge of the Supreme Court under section fifteen of "The Imprisonment for Debt Abolition Act, 1874," for the arrest of persons about to quit the colony.

The Governor may from time to time appoint a Magistrate, to exercise special jurisdiction in addition to the original or extended jurisdiction, in respect of all or one or more of the aforesaid matters, and may at any time revoke or cancel any such appointment as to any or all the aforesaid matters, and on such revocation or cancellation being gazetted the powers conferred by such appointments shall cease either wholly or partially as may be the case.

32. Any two or more Justices of the Peace may hold a sitting of a Court, without any Magistrate,—

(1.) At any place where a sitting of a Magistrate's Court has been appointed, and there is no Magistrate for such place, or no Magistrate can visit the place ; or

(2.) As substitutes for the Magistrate usually presiding in the Court in case of his absence on the day appointed for the sitting of a Court, or when from any unavoidable cause he is unable to attend such sitting, and when no other Magistrate is present on the aforesaid day :

Powers of Justices
of Peace to hold a
Court.

And in any of the aforesaid instances may hear and determine the following matters, but no other :—

- (1.) Breach of contract, or tort, where the amount claimed does not exceed twenty pounds, excepting in actions for false imprisonment, or illegal arrest, or for malicious prosecution, or for libel or slander, or for seduction, or for breach of promise of marriage :
- (2.) Actions for debt, where the sum claimed does not exceed twenty pounds, whether such sum be the original amount of the debt, or a balance after allowing payment on account, or credit for goods supplied, or the amount of any other admitted set-off :
- (3.) Actions for the enforcement of claims upon and the recovery of possession of some specific movable property the value whereof does not exceed twenty pounds :
- (4.) Interpleader cases generally, when the value of the subject-matter in dispute does not exceed twenty pounds :
- (5.) Applications in relation to any such aforesaid cases either already heard and determined or about to be heard in the Court :

And the said Justices may hear, and by a majority of their number may determine, and may make any order or do any act, matter, or thing in relation to any such matters which the Court or Magistrate is empowered by this Act to make or do.

The said Justices shall sit and act together without a Chairman, and no one of them shall have a casting vote.

In the event of no decision being arrived at in consequence of the Justices being equally divided in opinion, the matter shall, if the plaintiff so requires, be set down for hearing at a subsequent sitting of the Court, to be agreed upon between the parties, or as the Clerk shall appoint.

33. No Court shall have cognizance of any action in which the validity of any devise or bequest shall be in question, or the limitations under any will or settlement, or the title to any corporeal or incorporeal hereditaments, shall be disputed, save as provided in the next following section.

Matters not within jurisdiction.

34. If in an action in a Court in its ordinary extended or special jurisdiction any question of title to corporeal or incorporeal hereditaments shall incidentally arise, the Court shall have power to decide the claim which it is the immediate object of the action to enforce ; but the judgment of the Court thereon shall not be evidence of title between the parties or their privies in any other proceeding in that or any other Court.

Title to land incidentally in question.

35. A cause of action may not be divided for the purpose of bringing two or more actions or any counter-claim.

Division of a cause of action not allowed.

36. A person having a cause of action which, but for the largeness of the amount claimed, might have been tried in a Court, may bring it within the jurisdiction of such Court by alleging in his statement of claim annexed to the summons that he abandons the excess, or that he admits that the defendant has a counter-claim against him to the amount of such excess, and that he is willing to give credit to the defendant for such amount.

Claim may be reduced to jurisdiction.

The judgment of the Court thereupon shall be a full discharge of all demands in respect of such cause of action.

A Magistrate may sue or be sued in his own Court before another Magistrate, or two Justices, or in another Court.

37. A Magistrate may sue or be sued in any Court wherein he presides before any other Magistrate having adequate jurisdiction, or before any two or more Justices when the cause of action is within the limit of the jurisdiction of such Justices, and, in cases beyond their jurisdiction, in the nearest Court whose sittings are presided over by any other Magistrate.

No privilege to solicitors.

38. No privilege shall be allowed to any solicitor or other person to exempt him from the jurisdiction of a Court, saving as may be provided by any Act for the time being in force relating to the privileges of members of the General Assembly of New Zealand.

Judgment of Supreme Court not to be sued on.

39. In any action or proceeding in the Supreme Court in which execution may be issued upon a judgment or order of the Supreme Court for the payment of a sum of money, a certificate under the seal of the Supreme Court setting forth the particulars of such judgment or order may be obtained from the Supreme Court and filed in a Magistrate's Court having jurisdiction to the amount of such sum of money and of any interest thereon, and, upon the filing of such certificate, execution may be issued and enforced in and by such Magistrate's Court for the amount recoverable under such judgment or order as fully and effectually as if such judgment or order had been a judgment of the Magistrate's Court signed and entered up at the time of filing such certificate. After the issue of such certificate no further proceedings shall be had in the Supreme Court upon such judgment or order.

Saving as aforesaid no action shall be brought in a Court on a judgment of the Supreme Court.

Action against absent defendant.

40. The Court shall not determine any action against a defendant absent from the colony until it is satisfied that such defendant has a duly-appointed agent within the colony authorised to sue and be sued on his behalf, and that legal service of a summons has been effected on such agent.

PROCEDURE.

Seal of Court

41. Each Court shall have a seal, which shall be kept by the Clerk, and all summonses and processes shall be sealed therewith by the person issuing the same.

Taking of affidavits.

42. All affidavits and declarations to be used in a Court, including affidavits of service of any summons or other process, may be sworn or taken before any solicitor of the Supreme Court not engaged in the action, or before any Justice of the Peace, or before the Clerk of any Magistrate's Court.

Affidavits by company, corporation, &c.

43. Affidavits and declarations required to be made by any corporation or incorporated company may be made on their behalf by any officer, attorney, or agent of such corporation or incorporated company; and

Affidavits and declarations may be made on behalf of any party to an action by his solicitor or duly-appointed agent, or other person having cognizance of the facts.

Adjournment of matters beyond jurisdiction.

44. Any matter standing for hearing on a Court-day when the Magistrate usually presiding in the Court is absent, and when some

other Magistrate or two or more Justices of the Peace shall be sitting in his stead, shall, if beyond the respective jurisdictions of the Magistrate or Justices so sitting but within the jurisdiction of the Magistrate usually presiding in such Court, stand adjourned to the next sitting thereof, unless the parties shall agree to an adjournment to some other sitting of such Court, in which case the Magistrate or Justices shall adjourn the matter in question to such last-named sitting. No fee shall be charged for such adjournment.

45. If for any cause a sitting of a Court cannot be held upon a day appointed, the Clerk may adjourn it to such day as the Magistrate shall direct, or, in the absence of such direction, to such day as the Clerk may deem expedient.

Clerk may adjourn Court.

46. In case of any action founded upon a promissory note, bill of exchange, or other negotiable instrument, declared upon the affidavit of the plaintiff to be lost, if an indemnity be given by the plaintiff to the satisfaction of the Court against the claims of any other person upon such instrument, the Court may give judgment therefor as if the same were produced.

Actions on lost instruments.

47. Any infant may sue by his next friend, and defend by a guardian *ad litem*.

Infants may sue by next friend.

48. The Court may summarily admit any person to act as next friend to an infant plaintiff or defendant, and the person so admitted shall be liable for costs in all respects as if he had been originally a party to the action.

Summary admission of next friend.

The summons being served upon an infant defendant, no further step shall be taken in the action until a guardian *ad litem* is admitted.

If no application be made for admission of a guardian *ad litem* to any infant defendant before the day preceding the day appointed for the hearing, the Court may, on application of the plaintiff, order that a solicitor who will consent thereto do act as guardian *ad litem* to such defendant, and such defendant shall be liable to pay to the solicitor so appointed his costs of defending the action; or,

If no solicitor be willing to act, that the Clerk of the Court do so act: Provided that no responsibility for costs shall attach to such solicitor or Clerk acting under such orders.

49. Notwithstanding anything in the last-preceding section contained,—

Minor may sue for wages or on a contract to his benefit.

(1.) Any minor may sue in a Court for wages or piecework, or for work as a servant, as if of full age;

(2.) Any minor above the age of eighteen years may sue or be sued without a next friend or guardian upon any cause of action arising either from breach of contract or tort in respect of which he might sue or be sued by a next friend or guardian; and judgment may be given in any such action, and such proceedings may be had and taken to enforce such judgment as if the minor were of the full age of twenty-one years.

50. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action.

Actions by or against trustees, executors, &c.

The Court may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to, or in lieu of, the previously existing parties thereto.

Actions by or against partners or single firm.

51. Two or more persons claiming or being liable as partners may sue, or be sued, in the name of their respective firms (if any), and the opposite party may in such case apply for the names of the persons who are partners in any such firm, and the Court may order an affidavit to be filed stating the names and addresses of such partners.

Any person carrying on business in the name of a firm, apparently consisting of more than one person, may be sued in the name of such firm.

Party may sue on behalf of others having common interest.

52. When there are numerous parties having the same interest in an action, one or more of such parties may sue or be sued, or may be authorised by the Court to defend in such action, on behalf of or for the benefit of all parties so interested.

Plaintiff may claim jointly against several parties.

53. A plaintiff may, at his option, join all or any of the persons severally or jointly and severally liable on any one contract, including parties to bills of exchange and promissory notes.

Plaintiff may claim jointly against parties when in doubt against whom his remedy lies.

54. When in an action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants to the intent that in such action the question as to which (if any) of the defendants is liable, and to what extent, may be determined as between all the parties.

Joinder of plaintiffs jointly, severally, or alternatively.

55. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative.

Judgment may be given for such one or more of the plaintiffs for such relief as he or they may be entitled to, without any amendment.

If any person or persons so joined shall not be found entitled to relief, the defendant, though unsuccessful against the remainder of the persons so joined, shall be entitled to his costs occasioned by so joining such first-mentioned person or persons, unless the Court, in disposing of the costs of the action, shall otherwise direct.

Joinder of defendants jointly, severally, or alternatively.

56. All persons may be joined as defendants against whom the right to relief is alleged to exist, whether jointly, severally, or in the alternative.

Judgment may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities, without any amendment.

The Court, in disposing of the costs of the action, may award costs against any defendant who shall be unsuccessful, and in favour of any other of the defendants, as it shall think right.

Defendants severally not interested in relief.

57. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action alleged.

The Court may make such order as may appear just, to prevent any defendant being embarrassed or put to expense by being required to attend any proceedings in the action in which he may have no interest, or to reimburse him his expenses if he so attend.

58. Every person against whom a judgment is obtained under this Act, and who has satisfied the whole or a part of the judgment, shall be entitled to demand and recover, in a Court under this Act, contribution from any other person jointly liable with him.

Contribution from persons jointly liable.

59. Claims by or against husband and wife may be joined with claims by or against either of them separately.

Joinder of actions by or against husband and wife.

60. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

Joinder of actions by or against executor, &c.

Claims by or against a married executrix or administratrix as such shall not be joined with claims by or against her husband personally, unless the claims by or against him arise with reference to the estate in respect of which his wife sues or is sued as executrix or administratrix.

Exception.

61. An application to add, strike out, or substitute a plaintiff or defendant may be made at any time before or at the hearing in a summary manner.

Application for joinder of parties.

The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as to payment of costs or otherwise as may appear just, order that the name or names of any party or parties, whether plaintiffs or defendants, improperly joined, be struck out, and that the name or names of any party or parties who ought to have been joined, whether as plaintiffs or defendants, or whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added.

Order for adding or striking out parties.

62. Subject to the preceding sections, a plaintiff may unite in the same statement of claim several causes of action; but, if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may order separate hearings, or may make such other order as may be necessary or expedient for the separate disposal thereof.

Joinder of causes of action.

63. No action shall be defeated by reason of misjoinder, and the Court may, in every action, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Misjoinder of parties not to defeat action.

64. No misnomer, or inaccurate description of any person or place, in any plaint or summons, or in any subsequent proceeding, shall vitiate the same, provided that the person or place be therein described so as to be commonly known.

Misnomer not to vitiate process, &c.

The Court shall have power to amend any misnomer or inaccurate description on such terms as to adjournment and payment of costs as it shall think fit.

And the Court shall also have power to set aside any summons, order, or warrant which has been erroneously issued, or issued against good faith, on such terms as to the Court shall seem meet.

65. No action in a Magistrate's Court shall become abated by reason of the death, bankruptcy, or marriage of any of the parties, if

No abatement of action.

the cause of action survive and continue; but the Court may make such order as may be necessary for change of parties.

PARTNERSHIP ACCOUNTS.

66. Any Court appointed to exercise special jurisdiction in partnership matters may order the partnership assets in any firm to be realised and converted into money, and by the same or any other order or orders may appoint such person (hereinafter called "the Receiver"), and at such rate of remuneration, to be specified in any of the said orders, as the Court shall deem fit, to take possession of all the partnership assets and property, and of all books, deeds, documents, and papers relating to the partnership.

(1.) All the assets of the partnership, including real and personal property, rights, privileges, claims, and demands to or in respect of personal property, shall, from the date of the order appointing a Receiver, vest absolutely in the person so appointed Receiver, subject and without prejudice to any lien or security affecting the same.

(2.) The said Receiver shall, in the name of "the Receiver of the assets of the firm of [*name of firm*], in the Magistrate's Court," have full power and authority to ask, demand, sue for, collect, get in, receive, recover, and take possession of all the said assets, and enforce all the said rights, privileges, claims, and demands of the partnership from and against all persons whomsoever, including the members of the partnership, and to realise and convert into money the said assets: Provided that the said Receiver shall exercise the said powers and authorities subject to, and in accordance with, any orders or directions of the said Court which from time to time may be made or given.

(3.) The said Receiver shall, subject to any order or direction of the Court, pay and discharge out of the moneys arising from the realisation of the said assets all the lawful debts and liabilities of the partnership firm, and all the costs, charges, and expenses in connection with the taking possession, getting in, recovery, sale, realisation, and conversion into money of the said assets or relating thereto, including the personal costs, charges, and actual expenses of the said Receiver, and shall pay the balance of such moneys into the Court.

(4.) The said balance so paid into Court shall be paid out of Court in such manner, at such time or times, to such persons, and for such purposes as the Court shall have ordered or shall from time to time order or direct.

(5.) The said Receiver shall not pay or discharge any alleged liabilities of or claims against the partnership which any member of the partnership declares or which the Receiver deems not to be lawful, and shall report to the Court, when paying into Court the said balance, what, if any, outstanding disputed liabilities or claims exist against the partnership.

Court may order partnership assets to be realised, and appoint a Receiver.

Assets of partnership to vest in Receiver.

Receiver may demand, sue for, and recover partnership assets in the name of "the Receiver of the assets of the firm of," &c.

Receiver to pay debts of partnership and costs of realising assets.

Balance of assets to be paid out as Court orders.

Receiver not to pay disputed debts or claims.

- (6.) The Court, if it shall deem it just, may order that the said balance, or any part thereof paid into Court by the said Receiver, shall remain in Court for a period not exceeding three months, to abide the event of any actions or suits against the partnership firm in respect of such disputed liabilities or claims. Court may order moneys not to be paid out pending settlement of disputed claims.
- (7.) If the aforesaid liabilities and claims be not sued upon and enforced by judgment and execution within the time limited by the Court for detaining the said balance, the said Court shall, upon the application of any person entitled to receive the said balance, or a part thereof, order that the moneys so detained shall be paid out of Court. If disputed claims, &c., not promptly settled, Court may order moneys to be distributed.
- (8.) No such order or proceeding shall prevent any creditor from petitioning an adjudication of bankruptcy against any such firm, or any member or members thereof. Creditor's right to petition in bankruptcy not affected.

APPEARANCE.

67. A party to any action may appear and act personally or by a barrister or solicitor of the Supreme Court, and not otherwise; but nevertheless, under special circumstances, the Court may permit any party to appear by an agent authorised in writing by the party himself, if within the colony, or, if absent therefrom, by any person holding a power of attorney from such party authorising such person to sue and be sued for and in the name of such party; but such agent, unless he be a barrister or solicitor, shall not be entitled to receive any fee or reward for so appearing or acting. Parties to appear personally or by solicitor. Court may permit appearance by agent. Absentee may appear by attorney.

A corporation or an incorporated company may appear by any officer, attorney, or agent of such corporation or incorporated company on behalf thereof. Officer may appear for corporation, &c.

COMMENCEMENT OF ACTION. CLAIM.

68. Upon the application of any person desirous of prosecuting an action in a Magistrate's Court, the Clerk of the Court shall enter in a book, to be kept for the purpose in his office, a plaint in writing, which shall state the names and the last-known places of abode of the parties and the substance of the action intended to be brought, every one of which plaints shall be numbered in every year according to the order in which it shall be entered. Action to commence by lodging plaint and statement of claim.

The intending plaintiff shall, at the same time, deliver to the Clerk of the Court a full and explicit statement in writing of the particulars of his claim, to be filed for the use of the Court, together with as many copies of such statement as there are defendants to the action; one copy of such statement shall be annexed to and served with each summons, and be deemed a part thereof. Particulars required to be stated.

No plaint shall be entered until the applicant has filed a plaint-note in the prescribed form, signed by the applicant or his solicitor, or by his agent duly authorised in writing, and giving the particulars above stated.

The statement of claim shall give such particulars of time, place, names of persons, amount, dates of instruments, expressed either in figures or in words, and other circumstances as may suffice to fully and fairly inform the Court and the opposite party of the cause of action.

If the plaintiff sue, or the defendant is sued, in a representative capacity, the statement of claim and the summons shall state such capacity.

If a plaintiff claim to recover special damage, the statement of claim shall state so, and shall show the nature thereof.

69. Every application as aforesaid shall be made at the Court office nearest to the place where the cause of action arose in the whole or some material part, or to the place where the defendant, or the defendant first named in the summons if there be more than one, or, in the case of an absent defendant, where his attorney or agent, resides or carries on his business. But with the consent of the defendant a plaintiff may apply for a summons to any Court office.

70. The Magistrate or Clerk of the Court may refuse to grant or issue any summons where the application appears to have been made to the wrong Court.

No objection shall be taken at the hearing, or at any subsequent proceeding, on the ground that the Court is not such nearest Court.

71. A summons, which shall be signed by the Magistrate or by the Clerk of the Court, subject, however, to the exception mentioned in section seventy-three, shall thereupon be issued by the Clerk for each defendant.

Such summons shall state the date, time, and place of hearing, and shall be issued and served three clear days in a case within an ordinary jurisdiction, and seven clear days in all other cases, at least before the day on which the defendant is to appear, or, in special cases, at such longer interval before such day as the Magistrate or Clerk issuing the same may appoint.

72. A summons may issue and be served at any time before the holding of the Court,—

(1.) If the defendant or his solicitor agree to accept service, and the Magistrate so order; or

(2.) If the Magistrate, or in his absence the Clerk granting or issuing the summons, is satisfied, by affidavit or otherwise, that the defendant is about to remove to more than fifty miles' distance from the Courthouse whence the summons is issued;

but in every such case the Court may, at its discretion, and on such terms as it shall think fit, adjourn the hearing.

73. Where a person who resides more than ten miles from any office of the Clerk of a Court desires to enter a plaint in accordance with section sixty-eight, he may, instead of attending in person or by agent at such office, transmit by post to the Clerk of the Court the plaint-note, accompanied by the particulars mentioned in section sixty-eight and the fees of Court; and, upon the receipt of such plaint-note, particulars, and fees, the Clerk of the Court shall enter the plaint, and forward by post to such applicant a notice of the day fixed for the hearing of the case.

DEFENCE. COUNTER-CLAIM.

74. Every defendant may set off, by way of defence, any claim or demand whatsoever that he may have in the capacity in which he

Plaint to be lodged in nearest Court.

Application refused if not made to the proper Court.

Issue of summons.

When summons to be served.

Summary service.

Plaint in certain cases may be transmitted by post to Clerk of Court.

Set-off by way of defence.

is sued against the plaintiff in the capacity in which he sues, and which the Court would have jurisdiction to hear and determine if the same were a claim or demand by a plaintiff in such Court.

If the defendant has a counter-claim against the plaintiff alone, he may file a statement of such counter-claim, giving such particulars thereof as would be necessary in case of a claim.

Defendant may file counter-claim as set-off without issuing summons.

(1.) Such statement shall be headed with the word "Counter-claim," but shall in all other respects conform to the provisions of this Act as to statements of claim.

(2.) A copy of such counter-claim shall be filed in the office of the Court and served upon the plaintiff at least two clear days before the time appointed for the hearing, and all further proceedings thereon shall be taken in the same manner as if the defendant had commenced an independent action against the plaintiff; and the said counter-claim shall be tried at the same place as the claim in the original action, together with or immediately after the trial of the original action.

(3.) The Court may order the claim and counter-claim to be heard together, if it be made to appear that such claim and counter-claim can be disposed of more conveniently together than separately.

(4.) The Court may adjourn the hearing of a counter-claim if it be made to appear that the plaintiff will be prejudiced by the hearing taking place as hereinbefore provided.

(5.) A counter-claim cannot be set up against any one of two or more joint plaintiffs.

75. Except by special leave of the Court, no defendant shall be allowed to set up a defence of infancy, coverture, Statute of Limitations, tender, or a discharge in bankruptcy unless notice thereof shall have been filed in the Court and served upon the plaintiff by the defendant at least twenty-four hours before the day appointed for the hearing.

Plea of coverture, &c., not admitted unless notice given.

But in cases where by any Act of Parliament an infant's contracts are declared void it shall not be necessary to serve such notice as aforesaid.

76. Either party may at any time before the hearing file an amended statement of claim or counter-claim, and serve a copy thereof on the opposite party; and the Court may at any stage of the proceedings amend any statement of claim or counter-claim.

Claim or counter-claim may be amended.

When a statement of claim or of counter-claim has been so amended, the Court may, either before or at the hearing, adjourn the hearing for such time, to such place, and upon such terms as to payment of costs by the party amending, as may appear just.

Hearing may be adjourned.

77. If at the hearing it appear to the Court that either party is taken by surprise by the nature of the case set up by the opposite party, the Court may adjourn the hearing to such time and place as shall seem just, and upon such terms as to the payment of costs as the Court may think just.

Court may adjourn hearing of any case if either party taken by surprise.

CHANGE OF VENUE.

78. A defendant may, if he do so without delay and before filing any counter-claim, apply to change the venue of an action on the ground

Court may adjourn hearing to another place if necessary.

that the Court is not the Court in which the action, having regard to all the circumstances of the case, should be brought, and the costs of such application and change (if any) shall be in the discretion of the Court; or, if the Court shall be satisfied by either party to an action pending therein that such action can be more conveniently, properly, or fairly tried in some other Court, it may make an order that the cause be sent for hearing to such other Court.

The Clerk of the Court in which the plaint was entered shall forthwith transmit to the Clerk of the Court to which the same is to be sent a certified copy of the plaint, with the plaint-note, summons, and statement of claim, and the order for changing the place of hearing; and the last-named Clerk shall enter the same in his plaint-book.

The Magistrate of the Court to which the cause is sent shall appoint a day for the hearing, notice whereof shall be given to both parties in such manner as such Magistrate shall direct.

After the removal of a plaint as aforesaid, all further proceedings thereon shall be had in the Court into which it has been removed as if it had been originally lodged therein.

SERVICE.

79. Service of a summons may be effected in manner as herein-after mentioned on each defendant by delivering to him personally a duplicate of the summons, with copy of the statement of claim annexed, or by bringing the same to his notice if he refuse to receive it.

(a.) When a defendant cannot conveniently be found, the summons and statement of claim may be served by leaving the same at his usual place of abode with some inmate thereof appearing to be above the age of fourteen years:

(b.) Before personal service is dispensed with proof by affidavit shall first be given, to the satisfaction of the Magistrate, or Clerk of the Court, or any Justice of the Peace, that reasonable efforts have been made to effect such personal service; and, in every case where personal service on a defendant is dispensed with, service at his usual place of abode shall be effected at least fourteen days before the day fixed for the hearing.

Service of a counter-claim may be effected on each plaintiff by delivering to him personally a copy of such claim, or by bringing the same to his notice if he refuse to receive it, or, if he cannot conveniently be found, by leaving the same at his usual place of abode with some inmate thereof appearing to be above the age of fourteen years, or, if the plaintiff has a solicitor acting for him, by leaving such copy at the office of such solicitor.

Service of any summons or counter-claim as aforesaid, or of any other summons or notice, or process issued out of any Court, to the parties to a suit—

(1.) May be effected by the bailiff, or by any person whom the bailiff shall appoint to act for him, or by any constable, or,

with leave of the Magistrate, or of the Clerk, by the party at whose instance the same was issued, or by any one appointed by him :

- (2.) May be effected by any person authorised by the Magistrate specially in that behalf, as occasion requires :
- (3.) May be effected anywhere within but not out of the colony, and must be effected within twelve months after the issue thereof :
- (4.) May be proved by an affidavit of the person effecting such service, setting forth the fact and mode thereof, which shall be filed in the office of the Court ; or such service may be proved upon oath at the hearing :
- (5.) May be effected by the party or his solicitor, or by any person employed by such party or solicitor.

Where personal service cannot be effected, and the person to be served has left or abandoned his usual place of abode, or quitted the neighbourhood, or is avoiding service, then legal service on such person may be effected in such manner as the Magistrate in each case may think fit to direct, on the application of any person seeking to have the service effected.

When a party appears by a solicitor, service of any notice at the office of such solicitor shall be deemed sufficient service on the said party.

In any case not provided for in this section, or otherwise not provided for by law, service shall be effected in such manner as may be prescribed from time to time by regulations.

80. Where persons are served as partners in a firm, the summons or counter-claim shall be served either upon any one or more of the partners, or at the principal place of business of the partnership upon any person having at the time of service the control or management of the partnership business there ; and such service shall be accounted good service on the firm.

Service on members of a firm.

81. Where service of a summons has not been effected within twelve months after the issue thereof, if application be made to the Court within such period of twelve months, successive summonses may issue by leave of the Court without filing a new plaint. Each such summons shall remain in force for a period of six months, and shall be available to prevent the operation of any Act or statute whereby the time of the action may be limited.

Revivor of summons in bar of limitation of time.

82. When, having regard to the place where a summons is required to be served, the Clerk may consider that service may be more conveniently effected by an officer of another Court, he shall transmit the same with the Court-copy to the Clerk of such other Court for service.

Service at a distance may be effected through another Court.

The Clerk of such other Court shall indorse upon the said Court-copy the date and time when the same shall be received by him, and shall forthwith deliver the same to the bailiff of his Court, who is hereby authorised and required to serve the summons.

The bailiff required to serve such summons shall return the Court-copy to the Clerk of his Court, accompanied by an affidavit setting forth the fact and mode of service, or a note that he has been unable to effect such service and from what cause as the case may

be, and such Clerk shall forthwith transmit the same with the affidavit or note so received by him to the Clerk of the Court from which he received it.

WITNESSES. SUBPŒNAS.

83. Evidence at the hearing of an action shall be given by witnesses, first duly sworn, examined *viva voce* in open Court, except as in this Act otherwise provided.

84. Either party may obtain at the office of the Court summonses to witnesses, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or under their control, to be served at the option of such party either by himself or his agent or by the bailiff.

Any such summons may be signed either by the Magistrate, or by a Justice of the Peace, or by the Clerk of the Court.

85. A witness in a civil suit, attending a Court upon such a summons, shall be entitled to a sum for his expenses and loss of time, according to the prescribed scale.

86. Every person on whom a witness-summons shall be served, and to whom at the same time payment or tender of his expenses shall be made on the scale prescribed, and who shall refuse or neglect, without sufficient cause, to appear or to produce any books, deeds, papers, or writings required by such summons to be produced at the sitting of the Court for which he shall have been summoned, or at any adjournment of the Court or of the action, and also every person present in Court who shall be required to give evidence and who shall refuse to be sworn and give evidence, shall be liable to such penalty not exceeding twenty pounds as the Court shall direct, or in default of payment to be imprisoned for any term not exceeding fourteen days.

Such penalty may be imposed upon any such person by the Court after he shall have been afforded an opportunity to show cause why he should not be so punished, and shall have failed to satisfy the Court in that behalf. But the payment of any such penalty or the undergoing any such term of imprisonment shall not exempt such person from any action for disobeying such summons.

87. Upon the application of either party, the Court may make such order as it shall think just for the production by the opposite party of any document in his possession or control.

Where it is shown to the satisfaction of the Court that certain parts of books or documents do not relate to the matters in dispute, the person producing the same may be allowed to close up such parts.

88. Either party may call upon the opposite party—

- (1.) To produce any document or instrument for inspection, and on refusal or neglect the Court on the day of hearing may adjourn the cause and make such order as to costs as it shall think fit; or
- (2.) To admit any document, saving all just exceptions, and on refusal or neglect the Court may make such order as it shall think fit as to the costs of proving any such document.

Evidence to be taken *viva voce*.

Summonses to witnesses.

Expenses.

Penalty on witness for refusing to be sworn or give evidence.

Production of documents.

Parts of books may be sealed.

Inspection and admission of documents.

89. A deed may be proved and given in evidence in a Court in the same manner as a document which does not require attestation.

Proof of deeds without attesting witness.
Records kept by Clerk to be evidence.

90. The books to be kept by the Clerk, and any entry therein or extract therefrom bearing the seal of the Court, and purporting to be signed and certified as true copies or correct extracts by the Clerk, shall be admitted in all Courts and places as evidence of such books and entries, and of the proceedings thereby referred to, and of the regularity of such proceedings, without further proof.

If the existence of a record of the Court is in dispute, the existence of such record shall be determined by the Court.

WITNESSES RESIDENT AT A DISTANCE.

91. Where an action shall have been commenced, and a person, whether a party to such action or not, shall—

Where witness resides more than twenty miles from Court party may apply for examination.

Be resident more than twenty miles from the Courthouse where the hearing of the action is appointed to be held; or

Be about to go and remain beyond such distance until after the hearing,

the party desiring to use the evidence of himself or of such person at the hearing may give notice of such desire to the Clerk of the Court in which it is intended that the examination hereinafter mentioned shall take place, and which Court is hereafter referred to as "the Court for examination." Such notice shall specify the name or names of the person or persons intended to be examined.

92. Immediately upon receiving such notice the Clerk receiving the same shall appoint a time and place for such examination, and, if the summons shall not have issued out of his Court, shall transmit a copy of such notice, with a memorandum of the time and place appointed for the taking of such examination, to the Clerk of the Court (hereafter mentioned as "the Court for hearing") out of which the summons issued.

Time and place for examination to be appointed and notices given.

Notice of the intention to hold such examination, and of the time and place of holding the same, shall forthwith, after appointing the same or receiving notice of such application, be given by the Clerk of the Court for hearing to the party against whom such evidence is intended to be used.

The last-mentioned Clerk shall forthwith, after service on such party last-mentioned, transmit to the Court for examination a copy of the last-mentioned notice, with an affidavit of service thereof, together with the claim and counter-claim.

Summonses to witnesses to attend such examination, and to produce books, papers, deeds, documents, and writings, may issue, and the procedure on such examination shall be the same in all respects as if such examination were the hearing of an action, except as may be otherwise prescribed by regulations from time to time.

Procedure at examination.

93. All evidence given at such examination shall be reduced into writing and signed by the Magistrate before whom it is taken and by the persons giving such evidence respectively, and such writing shall be forwarded by the Clerk of the Court for examination to the Clerk of the Court for hearing, together with all books, deeds,

Transmission of evidence to place of hearing.

documents, papers, writings, and things admitted in evidence, or copies thereof respectively.

In case no Magistrate is present at the time appointed for the examination, any two Justices of the Peace may act in his place and hold such examination, notwithstanding that the matter under examination is beyond the jurisdiction of such Justices.

94. The costs of such examination, together with the allowances for solicitors and witnesses, in accordance with the prescribed scale, shall be fixed by the Court for examination; and the same allowances for solicitors and witnesses may be made as if such examination as aforesaid had been the hearing of an action.

Such costs and allowances may in all cases be dealt with by the Court for hearing as if the same were incurred in and about the hearing of the said action.

95. Every person giving evidence at any such examination shall be deemed to have given his evidence in such action, and in any indictment and information it shall be sufficient to allege that such examination was held under the provisions of this Act; and proof of the summons having been issued in such action, and of the evidence of any person having been given at such examination, shall, without proof of any of the notices herein mentioned, be sufficient evidence of the authority of the Court for examination to hold the same and of such examination having been so held; and the signature of every Magistrate or Justice of the Peace to such written evidence shall be judicially noticed without any proof thereof.

HEARING.

96. The Court shall determine all questions, as well of fact as of law.

97. The Court in all actions shall have full power to examine witnesses on oath or affirmation, and to give judgment between the parties, either at once or after taking time for consideration; and the Court may, in any judgment, prescribe such terms and conditions as to the time and mode of satisfying such judgment as it shall deem just and reasonable.

In all cases where the amount claimed does not exceed twenty pounds the Court shall be at liberty to receive any such evidence as to it may seem fit, whether the same shall be strictly legal evidence or not, and to give such judgment between the parties as it shall find to stand with equity and good conscience.

98. The Court shall have power, at any time either before, at, or after the hearing, to amend all defects and errors in the proceedings, whether there be anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not.

Such amendments shall be made with or without costs, and upon such terms as to the Court may seem fit, and all amendments shall be made that may be necessary for the purpose of determining the real controversy between the parties in the action; but nothing herein shall be deemed to authorise the substitution of one cause of action in the place of another.

Costs of examination in discretion of Magistrate.

Evidence given at examination deemed to have been given in the action.

Indictment and evidence.

Court to determine both fact and law.

Court to decide matters not beyond ordinary jurisdiction according to equity and good conscience.

Court may amend errors in proceedings.

99. The Court shall have full power, either before or during the hearing, to postpone or adjourn the hearing of any case from time to time, and for such time, to such place, and upon such terms (if any) as the Court may think fit.

Court may postpone or adjourn hearing.

100. If at the time and place of hearing or at any continuation or adjournment of the Court or action the plaintiff shall fail to appear, and if the defendant admit the cause of action to the full amount claimed, the Court may proceed to give judgment as if the plaintiff had appeared; but if the defendant shall appear and shall not admit the demand, the action shall be struck out, and the Court may adjudge to the defendant by way of costs such sum as the Court in its discretion shall think fit:

Proceedings when plaintiff does not appear.

But the Court, at the same or any subsequent sitting thereof, may order any such action to be reinstated, if it shall think fit, upon such terms as to adjournment of the hearing thereof, and service of notice thereof, and as to costs, as the Court may think fit.

101. If at the time and place of hearing, or at any continuation or adjournment of the Court or action, the defendant shall not appear, or sufficiently excuse his absence, or shall neglect to answer when called, the Court, upon due proof of the service of the summons, may proceed to the hearing of the case on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended, or may give judgment for the plaintiff without requiring him to give any evidence of his claim where such claim shall be for a liquidated demand.

If defendant does not appear, Magistrate may determine case *ex parte*.

But the Court may in any such case, on the same or any subsequent day, on sufficient cause shown to it for that purpose, set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new hearing of the action, upon such terms (if any) as to the payment of costs, giving security for or paying into Court debt and costs, or any part thereof, or upon such other terms as to giving notice or otherwise as it may think fit.

102. If, at the time and place of hearing, or at any continuation or adjournment of the Court or action, the plaintiff shall appear but not make proof of his demand or of some part of it to the satisfaction of the Court, the Court may nonsuit the plaintiff as to the whole or a part of his claim, or give judgment in his favour for the whole or a part of his claim, or give judgment for the defendant, and, if the defendant shall appear and shall not admit the demand, may adjudge to the defendant by way of costs such sum as the Court in its discretion shall think fit.

When Magistrate may nonsuit plaintiff, or give costs to defendant.

103. The plaintiff may, at any time before judgment is pronounced, elect to be nonsuited. After a nonsuit the plaintiff shall not be debarred from having the action heard again on the same statement of claim or any amended statement of claim, all the costs of the first hearing having been first paid, and the Clerk of the Court, on application of the plaintiff, shall issue a new summons as if the case had not been previously heard; and thereafter, should there be a second hearing in any case, judgment shall be given thereat either for the plaintiff or defendant without any election of nonsuit.

Plaintiff may elect a nonsuit.

The Court may nonsuit the plaintiff without his consent.

In case of nonsuit the Court may award to the defendant such costs as to it shall seem reasonable; and the amount so awarded may be recovered in the same manner as if judgment had been given for the said amount.

JUDGMENT.

104. If a counter-claim to a claim be proved—

- (1.) To an amount less than that proved on the claim, the plaintiff shall have judgment for the balance of his claim after deducting the amount proved on the counter-claim; and the defendant, in respect of his counter-claim or any part thereof, may be either nonsuited or have judgment given against him, as the Court shall think fit.
- (2.) To an amount exceeding that proved to the claim, or if the claim be not proved, the defendant shall have judgment for the excess.

105. Judgment may be entered and signed by the Clerk of the Court on the application of the plaintiff, and upon a written confession of the cause of action given by the defendant or his solicitor to the plaintiff, or lodged with the Clerk, with or without condition annexed as to the time for satisfying the claim, whether by instalments or otherwise. No condition shall be embodied in the judgment unless consented to by the plaintiff in writing.

- (1.) The confession may be of part only of the alleged cause of action, in which case the plaintiff can have judgment entered for the part confessed, or if he refuse to accept the confession as to a part he may proceed with the case as if no confession had been entered; but it shall not be necessary for the plaintiff to prove any portion of the claim so confessed.
- (2.) A confession may be with or without costs. If costs are not included in the confession, and the plaintiff declines to accept the amount paid into Court without costs, then the Court may order the defendant to pay such costs as it may deem reasonable.
- (3.) A confession may be given at any time after the summons is issued; but, if lodged with the Clerk of the Court, notice thereof must be served upon the other party or his solicitor not later than twelve o'clock (noon) of the day preceding the day of hearing.

106. Judgment may be entered and signed by the Clerk of the Court by consent upon a written agreement between the plaintiff and the defendant as to the amount of the claim so agreed upon between them, and the terms and conditions upon which the same shall be paid or satisfied, or, with the authority of the parties, by their solicitors.

107. A confession or a consent for judgment may be signed in the presence of any Magistrate, Clerk of any Court, or any Justice of the Peace, or any solicitor of the Supreme Court not engaged in the action.

108. If the claim be for money the defendant may at any time before the hearing pay into Court a sum of money by way of satisfac-

Judgments in cases
of set-off.

Judgment by con-
fession.

Judgment by con-
sent.

Signing of confes-
sion or consent.

Payment into Court.

tion or amends, together with the costs incurred by the plaintiff up to the time of such payment. A tender of money made to the plaintiff shall not be available as a defence to the action.

If the relief claimed be possession of land or possession of chattels, the defendant may, at any time before the hearing, deliver, or offer to deliver, possession of the land or of the chattels claimed, or any part thereof, to the plaintiff, and pay into Court a sum of money by way of compensation for the detention thereof, or damage thereto, together with the costs incurred by the plaintiff up to the time of such payment.

Delivery of land or chattels.

109. In paying money into Court the defendant shall specify the cause of action or particular part of the plaintiff's claim in respect of which the money is paid in, and the Clerk shall enter a memorandum of such payment accordingly.

Notice of payment.

Notice of such payment or delivery or offer of delivery shall be served by the defendant upon the plaintiff or his solicitor at least forty-eight hours before the time appointed for the hearing, failing which the Court may order the defendant to pay such reasonable costs as the plaintiff shall have incurred in preparing for trial before such notice was received by him, or in the attendance of himself or witnesses at the Court.

Costs to plaintiff up to time of payment.

110. All sums of money and costs paid into Court as aforesaid shall be paid to the plaintiff, and as to any such payment, or delivery or offer of delivery of land or chattels,—

No further costs to plaintiff if he recover no further.

(1.) If the plaintiff shall accept the same in satisfaction of the cause of action in respect of which the payment is made, he shall forthwith and before the hearing give notice thereof to the defendant, failing which the Court shall allow the defendant his costs of the action subsequently to such payment or delivery or offer of delivery; but

(2.) If the plaintiff do not accept the same in satisfaction, and shall elect to proceed, but shall fail at the hearing to recover a greater sum of money than the sum paid into Court, or to recover other land or chattels than those delivered or offered to be delivered, or if the Court shall be of opinion that the relief offered was adequate relief, though not the precise relief the plaintiff may be awarded, the Court may allow the defendant his costs of the action subsequently to such payment or delivery or offer of delivery or relief, as the case may be.

111. The plaintiff may, at any time before the hearing, discontinue his action, either wholly or as to any cause or part of a cause of action, by filing in the office of the Court a memorandum thereof and serving a copy of such memorandum upon the defendant or his solicitor at least forty-eight hours before the time fixed for the hearing. A plaintiff so discontinuing wholly shall pay to the defendant the costs incurred by him in defending the action up to the time of serving such copy of memorandum of such discontinuance, and in default the Court may enter judgment for the same.

Plaintiff may discontinue action.

The discontinuance of an action shall not be a defence to any subsequent action on the cause of action or part of a cause of action discontinued.

Not a defence to subsequent action.

The Court may stay proceedings in any such subsequent action until the costs of the former action have been paid.

112. Subject to the right of appeal hereinafter contained, every order and judgment shall be final and conclusive between the parties :

But the Court may, in its discretion,—

Nonsuit a plaintiff, or a defendant on a counter-claim, when satisfactory proof has not been given entitling either plaintiff or defendant to judgment ;

Alter or vary its judgment during the sitting of the Court at which it was given ;

Grant a rehearing in manner as hereinafter mentioned.

113. No order, judgment, or other proceeding in a Court shall be quashed or vacated for want of form.

114. Any Magistrate may delay, so long as he shall deem it expedient to do so, the enforcing of any judgment obtained in a Magistrate's Court against a person of the Native race.

115. No warrant of distress or for seizure of goods or chattels shall, without leave of the Court, issue on a judgment more than six years old, unless some payment has been made into Court under such judgment within twelve months previously ; but no notice to the defendant previous to applying for such leave shall be necessary ; and such leave shall be expressed on the warrant under the seal of the Court.

116. In any action or proceeding in a Magistrate's Court the Magistrate may, if he think fit, reserve his decision on any question of fact or law.

Where a Magistrate has so reserved his decision, he may give the same at any adjournment or subsequent sitting of the Court or of any other Court where he may exercise jurisdiction, or he may draw up such decision in writing, and, having signed the same, forward it to the Clerk of a Court, and such Clerk, on receipt thereof, may either read the same in open Court at its next sitting or may, after giving due notice to the parties or their solicitors, appoint a special time to read the same, and may read the same accordingly : and, unless settled by the decision in writing, may then and there settle the costs between the parties. And such decision and order as to costs shall be entered up and signed by the Clerk, and shall have the same force and effect as if given by the Magistrate at the hearing of the action or proceeding.

EXECUTION.

117. In every case heard and determined under the authority of this Act, when judgment shall have been given or an order made for the payment of any sum of money, and the amount thereof shall not be paid within forty-eight hours, or at the time or times or in the manner thereby directed, the Magistrate or any Justice of the Peace, at the request of the party prosecuting such judgment or order, and upon receiving a certificate from the Clerk of the Court or other person authorised to receive such money that the same or some part thereof remains unpaid, shall, if the time allowed for giving notice of appeal has expired, grant a warrant of distress, or successive

Judgment to be final except the Court order a nonsuit or a rehearing, or vary its judgment.

Proceedings not to be quashed for want of form.

Execution against a Native may be delayed.

Judgment to expire in six years.

Court may reserve judgment, and deliver judgment at subsequent sitting, or transmit written judgment for delivery by Clerk.

In civil suits distress warrants may issue.

warrants of distress, under his hand directed to the bailiff of the Court, or of some other Court, or to some other fit person to be named in such warrant, authorising and requiring him to levy or cause to be levied such sum of money as shall be ordered or adjudged to be paid, or so much thereof as shall then remain unpaid, and also the costs of the execution, and of previous executions (if any), by distress and sale of the goods and chattels of the party against whom such judgment shall have been given or order made.

Notwithstanding anything in this section contained, any Magistrate may grant immediate execution on cause being shown to his satisfaction in that behalf.

118. Except within boroughs and town districts respectively, it shall not be lawful to make distraint of the goods of any person of the Native race under any warrant of distress issued under the authority of this Act, unless such warrant shall be signed or indorsed by a Magistrate.

Distress warrants against Natives to be signed by Magistrate.

119. No goods or chattels taken in execution shall be sold until after the end of five clear days next following the day on which they shall have been so taken, unless they be of a perishable nature, or upon the request in writing of the party whose goods or chattels have been taken.

Sale of distress.

Until such sale the said goods and chattels shall be deposited by the bailiff in some fit place, or they may remain upon tenements occupied by the owner thereof at his request, in the custody of a fit person to be put in possession by the bailiff.

Any bailiff or other person authorised to execute any warrant of distress may sell by auction the goods and chattels seized thereunder without having taken out an auctioneer's license, anything in any law or Act to the contrary notwithstanding.

Bailiff may act as auctioneer.

120. If it shall at any time appear to the satisfaction of the Court, by the oath or declaration of any person or otherwise, that any defendant is unable from sickness or other cause to pay or discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid, the Magistrate of the Court may in his discretion suspend any judgment, order, or execution for such time and on such terms as he shall think fit, and so from time to time until it shall appear by the like proof as aforesaid that such cause of inability has ceased.

In case of illness of defendant time may be granted.

121. If the Court shall have made an order for payment by instalments, execution upon such order shall not issue until after default in payment of some instalment according to such order, and execution or successive executions may then be issued for the whole sum and costs then remaining unpaid, unless the Court, upon the application of the party liable, shall otherwise order.

Execution when money ordered to be paid by instalments.

122. If there shall be cross-judgments between the parties execution shall be taken out by that party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the remainder shall be entered as well as satisfaction on the judgment for the smaller sum, and, if both sums shall be equal, satisfaction shall be entered upon both judgments.

Execution, how to issue when there are cross-judgments.

123. The Magistrate, Justice of the Peace, or Clerk of the

Time of application.

for warrant to be noted.

Priority of execution of writs and warrants issuing from different Courts.

What property may be seized under warrant.

Disposal of property seized.

Court shall note upon the application and upon the warrant of distress the precise time when application shall be made to issue such warrant; and, when more than one such warrant shall be issued, they shall be executed in the order of the times so noted.

124. When a writ or warrant against the goods of a party has issued from the Supreme Court or any District Court, and a warrant of distress against the goods of the same party has issued under the provisions of this Act, the right to the goods seized shall be determined, as the case may be, by the priority of the time of the delivery of the writ to the Sheriff to be executed, or of the application to the Clerk of the District Court for the issue of the warrant to be executed, or of the application to the Magistrate or Justice of the Peace for such warrant of distress; and the Sheriff on demand shall, by writing signed by him, inform the bailiff or other person to whom such warrant of distress shall be directed of the precise time of such delivery of the writ; and the bailiff of the District Court on demand shall show his warrant to the bailiff or other person to whom such warrant of distress shall be directed, and the bailiff of the Magistrate's Court or other person to whom such warrant of distress shall be directed shall on demand show such warrant to any Sheriff's officer, or to the bailiff of the District Court, and such writing, purporting to be so signed, and the indorsements on such warrant, shall respectively be sufficient justification to any Sheriff or bailiff acting thereon.

125. A warrant of distress shall authorise the bailiff—

To seize all the goods, including money, cheques, bills of exchange, promissory notes, bonds, or other securities for money, of the person against whom it is issued, except the personal and family clothing, the bedclothes, bedding, and tools or implements of trade, not exceeding in all twenty-five pounds in value:

To give notice to any Court or to the proper officer of any Court requiring it and him not to part with any moneys in the possession of the said Court or officer belonging to the party against whom execution shall have issued:

To apply to the Court *ex parte* for an order for the payment of such last-mentioned moneys by such officer to him. The Court may make any such order accordingly, and upon notice thereof the officer in whose custody such money may be shall pay the same accordingly.

126. The bailiff shall deliver all cheques, bills of exchange, promissory notes, bonds, specialities, or other securities for money which have been seized or taken, and all moneys received from any officer of the Court as in the last section respectively mentioned, to the Clerk of the Court, for the benefit of the party upon whose application such execution shall have issued, as security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised; and the said party may sue in the name of the person against whom execution shall have issued, or in the name of any person in whose name the person against whom execution shall have issued might have sued, for the recovery of the sum or sums secured or made payable thereby when the time of payment thereof arrives.

127. Upon application of the plaintiff who has obtained a judgment for the recovery of specific goods, and damages for their detention, the Magistrate may grant a warrant to the bailiff requiring him to demand and seize the specific goods claimed, if they can be found by him, and to deliver them to the plaintiff. If the bailiff shall not find and seize the said goods, the Magistrate, if he shall see fit, on the application of the plaintiff, may order the immediate return thereof; and, if such order be not obeyed, by warrant may commit the defendant to some convenient prison, there to be imprisoned for any time not exceeding one month, unless he shall in the meantime cause the goods so detained to be returned to the plaintiff.

Court may order delivery of chattels to be made.

And if such demand be refused, or such order be not obeyed, the Magistrate may at any time thereafter, on application of the plaintiff, grant a warrant of execution for the value of the goods, such value to be assessed in such manner as the Magistrate may direct, without prejudice to the plaintiff's right to obtain execution, either before or after or concurrently therewith, for his costs of suit and the damages awarded for the detention of the goods.

128. When a warrant is required to be executed by the bailiff of a Court other than the Court issuing the warrant, the Clerk of the last-named Court may, except under special circumstances, cause the same to be transmitted to the Clerk of the first-named Court, and such Clerk shall indorse thereupon the time when the same shall be received by him, and shall forthwith deliver the same to the bailiff of his Court, or to such other person, in case of the absence of the bailiff, as such Clerk shall think to be a fit and proper person for the purpose, who is hereby authorised and required to execute the same. Such bailiff or other person shall certify to the last-mentioned Clerk what he has done, and, if he has received any money or fees, shall, after deducting therefrom the fees allowed to him, pay over the same to such Clerk, who shall forthwith return the warrant to the Clerk of the Court whence it issued, together with any moneys which may have been received by him in manner aforesaid.

Execution of process at a distance.

129. No warrant of distress shall continue in force for more than six months from the date of the issue thereof.

Distress warrant in force for six months only.

REPLEVIN AND INTERPLEADER.

130. The landlord of a tenement in which goods shall be taken in execution under this Act, or his agent, may claim the rent thereof at any time within five days from the date of such taking, or before the removal of the goods, by delivering to the bailiff a writing signed by such landlord or his agent stating the amount of rent claimed to be in arrear and the time in respect of which such rent is due.

Landlord may claim rent to a limited extent.

If such claim be made, the bailiff shall, in addition to the levy under the warrant, distrain for the rent so claimed and the cost of such distress; and in the exercise of such power the bailiff shall be deemed to be the agent of the landlord.

The bailiff shall afterwards sell such of the goods under the execution and distress as shall satisfy, first, the costs of and incident to the sale; next, the claim of such landlord, not exceeding the rent of eight weeks where the tenement is let by the week, the rent of two

terms of payment where the tenement is let for any other term less than a year, and the rent of one year in any other case; and, lastly, the amount for which the warrant issued.

131. If any replevin be 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, and in any event the overplus of the sale (if any) and the residue of the goods shall be returned to the person whose goods shall have been so taken in execution, and the fees and expenses of the bailiff for keeping possession and sale under such distress shall be the same as would have been payable if the distress had been under a warrant of distress out of the Court, and no other fees shall be demanded or taken in respect thereof.

132. When goods taken in execution under the process of a Court are claimed by any person not being the party against whom the warrant has been issued, the bailiff shall deliver possession of the goods so seized to the person claiming the same or his agent, upon such person or agent paying into Court or to the bailiff the amount of the sum to be levied under the warrant, and the fees and expenses of execution, or giving security to the satisfaction of the bailiff for such amount.

The amount so paid or secured shall be subject to the decision of the Court on the claim of such person: Provided—

If the value of the goods seized is less than the amount of the sum to be levied under the warrant and the fees and expenses of execution, the person claiming such goods may obtain the delivery thereof on paying into Court or to the bailiff, or securing as aforesaid, the value of such goods, such value in case of dispute to be settled by the appraisement of some indifferent person to be appointed by the Magistrate, and the expenses of such appraisement shall be costs in the interpleader action;

Or the person so claiming any goods as aforesaid may pay to the bailiff the amount of the fees he is entitled to charge for keeping possession of the goods seized until a decision of the Court as to the claim of such person can be obtained, and the bailiff shall thereupon keep possession of such goods until such decision can be obtained.

133. When goods seized under a warrant of distress, or the proceeds or value thereof, are claimed by any landlord for rent, or by any party not being the party against whom such process was issued, the bailiff may, before or after the return of the warrant, and whether an action has been commenced against him for such seizure or not, obtain a summons to the party issuing such warrant and the person making such claim to appear at the Court nearest to the place where the goods are seized.

On the hearing of such summons the Court may, for the adjustment of such claim and the relief of such bailiff, exercise all or any of the powers conferred by this Act, and may make such orders between the parties as to any moneys paid into Court or secured, or any goods retained by the bailiff, and in respect of the costs of the

In case of replevin, bailiff to sell sufficient to pay costs.

In cases of interpleader, amount of debt and costs to be paid into Court.

Procedure on claim to goods seized in execution.

proceedings, as shall appear just according to the circumstances of the case.

It shall be competent to any Magistrate to hear such summons, whether granted by himself or any other Magistrate or any Justice of the Peace.

134. When goods have been seized under a warrant of distress, and some third person claims under a bill of sale or otherwise to be entitled to such goods by way of security for a debt, the Magistrate may order a sale of the whole or part of such goods upon such terms as to payment of the whole or part of such secured debt or otherwise as he shall think fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as to him may seem just.

Procedure when goods seized are secured under a bill of sale.

ATTACHMENT OF DEBTS.

135. The Court in which a creditor has obtained judgment may, on his application, order his judgment debtor to be examined as to what debts are owing or accruing to him, and may order that all or any of such debts be attached to answer the judgment debt.

Court may order examination of judgment debtor.

On any such order being made the examination thereunder may be oral, and may be had before a Magistrate or such other person as the Court may appoint.

Examination to be as Magistrate may order.

136. The Court may, by such order or any subsequent order, command the attendance of the judgment debtor before the person appointed to take such examination for the purpose of being examined, and the production of any writings or other documents to be mentioned in such order, and may impose such terms therein as to such examination, and the costs of the application and of the proceedings thereon, and otherwise, as to the Court shall seem just.

Attendance of judgment debtor.

137. Upon the *ex parte* application of the judgment creditor, either before or after such examination, and upon affidavit by himself or his solicitor, stating—

Attachment order.

That judgment has been recovered ;

Is still unsatisfied, and to what amount ;

That any other person is indebted to the judgment debtor—

the Court may order that all debts owing or accruing from such third person (hereinafter called "the sub-debtor") to the judgment debtor shall be attached to answer the judgment debt ; and, on the making of such order of attachment, all rights of the judgment debtor in the debt of the sub-debtor shall pass to the judgment creditor as if such debt had been assigned to him by deed :

Provided that under any such attachment the debt due from the sub-debtor shall not be paid to the judgment creditor, but into the Court issuing the attachment ; and the excess of such attached debt, if any, over the judgment debt, after paying the costs of the recovery thereof from the sub-debtor, shall be held by the Clerk of the said Court to the credit of the judgment debtor.

138. By the same or any subsequent order it may be ordered that the sub-debtor shall appear before a Magistrate, or such other person as the Court shall appoint, to show cause why he should not pay 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.

Attendance of sub-debtor.

Service of attachment order.

139. Service of an order that debts due or accruing to the judgment debtor be attached shall, on notice thereof to the sub-debtor in such manner as the Court directs, bind such debts in his hands.

Execution may issue against sub-debtor.

140. If the sub-debtor do not—

Forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt; or

Dispute the debt due or claimed to be due from him to the judgment debtor; or

Appear upon summons—

the Court may order execution to issue forthwith to levy the amount due from such sub-debtor towards satisfaction of the judgment debt.

Judgment creditor may sue sub-debtor.

141. If the sub-debtor dispute his liability, the Court, instead of ordering execution to issue, may order that the judgment creditor be at liberty to sue the sub-debtor for the debt alleged to be due by him to the judgment debtor if less than the judgment debt, or, if greater, then for the amount of the judgment debt, with costs of suit. In any such action the sub-debtor shall plead as if sued by the judgment debtor, and not otherwise.

Payment by sub-debtor a discharge of amount of debt paid.

142. Payment made by or execution levied upon the sub-debtor under any proceeding aforesaid shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although such proceeding may be set aside or the judgment reversed.

Costs in attachment in discretion of Court.

143. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court.

JUDGMENT DEBTORS RESIDENT AT A DISTANCE.

Judgment debtor may be ordered to appear at most convenient Court.

144. When a judgment creditor issues out of a Court a summons under section six of "The Imprisonment for Debt Abolition Act, 1874," against his judgment debtor, such summons may call upon the said debtor to attend and be examined either at the Court issuing the summons, or at another Court to be named in such summons, being the one nearest to the residence of the judgment debtor.

Procedure when examination held at a distant Court.

(1.) The Clerk of the Court issuing the summons shall, when such examination is to be had in any Court other than his Court, transmit the summons, on the issuing thereof, for service, with the duplicate, to the Clerk of such other Court, who shall appoint the day upon which such examination shall be had.

(2.) Upon an examination in a Court other than the Court issuing the summons, such order may be made and the matter may be dealt with by the examining Court in like manner in all respects as if the summons had issued out of such Court; and such of the provisions of this Act relative to "witnesses resident at a distance" as may be applicable shall apply to the procedure on any such summons.

WRIT OF ARREST.

Absconding debtors may be held to bail.

145. When it is made to appear to the satisfaction of any Magistrate, having jurisdiction to the amount of the claim, by affidavit

of any plaintiff or his authorised agent that he has a good cause of action against a defendant for a sum within the jurisdiction of such Magistrate, for which a summons has been issued under this Act, and that there is probable cause, the grounds of which shall be stated in such affidavit, for believing that such defendant is about to leave the colony and to evade the payment of such sum, such Magistrate may issue a writ of arrest under his hand, returnable immediately, and, if payment of the said sum be not made before execution of the writ, may thereupon cause such defendant to be brought before him, and, upon investigation of the case, may either discharge such defendant or hold him to bail for any sum not exceeding the amount sworn to in such affidavit, with costs :

Provided always that, if the claim is for a debt or amount long overdue, the Magistrate may, before issuing such writ, require the person asking for the issue thereof to lodge in the Court any sum of money not exceeding twenty pounds, or to give security therefor to the satisfaction of the Magistrate, to abide the decision of the Court under subsection two of section one hundred and forty-six.

In default of bail being given, or the amount with costs deposited with the Clerk, as hereinafter provided, the Magistrate may order such defendant to be detained in some prison or lock-up, and to be brought from there to a Magistrate's Court at a time to be stated in such order, being not more than four clear days from the date of such order, unless he shall sooner give the prescribed security or make the said deposit.

In default may be imprisoned.

A defendant against whom such writ has issued for any amount may deposit with the officer executing such writ, or with the Clerk, in lieu of bail, such amount, with three pounds for costs in a case not exceeding fifty pounds, or five pounds when such amount exceeds fifty pounds; and the sum so deposited shall be paid, applied, and disposed of according to the final judgment of the Court.

Deposit in lieu of bail.

A Magistrate before whom a defendant is brought under authority of any writ to be issued as aforesaid may, with the consent in writing of the defendant, summarily hear and finally adjudicate upon the claim of the plaintiff, or may fix the time mentioned in the summons as the time for hearing the said claim by the Court.

146. Where a Magistrate hears and finally adjudicates upon the claim of a plaintiff under the power contained in the preceding section,—

If plaintiff succeed, entitled to execution.

(1.) If judgment is given for the plaintiff, he may make an order for the immediate payment of the amount of such judgment, with costs not exceeding the sums in the last aforesaid section mentioned, and execution may be at once issued, and such other proceedings may be had thereon as if the same were a judgment obtained in the ordinary course of procedure.

(2.) If judgment is given for the defendant, he may, at his discretion, award to such defendant, by way of compensation, any sum not exceeding twenty pounds, and such award shall be deemed to be a judgment of the Court, and execution may issue thereon.

If defendant succeed, entitled to compensation.

Two Justices may exercise limited jurisdiction in the absence of Magistrate.

147. In cases not exceeding twenty pounds in amount, any two Justices of the Peace, acting together, may exercise the jurisdiction conferred upon a Magistrate by the last two preceding sections in case of the absence, illness, or other cause preventing such Magistrate from acting, or in any place where no Magistrate may be resident :

Provided always that in cases exceeding twenty pounds, and not exceeding the amount of jurisdiction of the Magistrate before whom the claim may be heard, any two or more Justices of the Peace, in the case of absence or illness of the Magistrate, may exercise the jurisdiction conferred upon Magistrates by the last two preceding sections so far only as the provisions refer to issuing a writ of arrest and holding a defendant to bail to appear before the Magistrate having jurisdiction to hear the claim.

ARBITRATION.

Reference to arbitration.

148. The Court may, with the consent of both parties, order any action, with or without other matters within its jurisdiction in dispute between the parties, to be referred to arbitration to such persons and in such manner and on such terms and subject to such costs as it shall think reasonable, and may appoint an arbitrator in case any party neglects to appoint one, or in the place of any arbitrator who may refuse to act.

Revocation.

Such reference shall not be revocable by either party except by the consent of the Court, and the award shall be entered on the application of either party, and be binding and effectual as a judgment of the Court, and there shall be no appeal therefrom.

But in any case, if the award of the arbitrators, or their umpire, is not given within one month of the date of the order of reference, either party may, by giving notice to the opposite party or his solicitor, apply to the Court to revoke such order of reference.

Awards may be set aside.

149. The Court may, on application of either party, at the first sitting held after the expiration of ten days after the entry of any such award as a judgment of the Court, set aside such award and judgment so entered, or may, with the assent of both parties, revoke the reference, or order another reference to be made in manner aforesaid. Execution on a judgment so entered shall not issue until after such first sitting shall have been held.

On the hearing of applications to set aside or vary an award and judgment entered thereupon, the Court shall take evidence if offered, or may of its own accord call for evidence ; and the decision of the Court given after hearing such applications shall be entered as a judgment of the Court, and shall be final.

REMOVAL OF JUDGMENTS INTO SUPREME COURT.

Certificate of judgment may be obtained.

150. Whenever any sum of money exceeding twenty pounds is recovered in any one action by the judgment of a Magistrate's Court, the Clerk, upon the application of the judgment creditor or of any person on his behalf, shall grant and deliver to the person making such application a certificate in the form or to the effect thereof in the prescribed form, and shall register in his office a minute or memorandum thereof.

(1.) No such certificate shall be granted before the expiration of the time allowed for giving notice of appeal, or before the time at which execution could be issued out of the last aforesaid Court; and, if any execution against the goods and chattels shall have been issued out of such Court, no such certificate shall be granted until after the return of the warrant of execution.

Not to be granted before execution might issue.

After any such certificate shall have been granted no further proceeding shall be had or taken in such action in the said Court.

(2.) The person obtaining the said certificate may file the same in the Supreme Court by delivering it for such purpose at the office of the Registrar of the Supreme Court which is nearest to the Magistrate's Court aforesaid; and thereupon, without any previous process, may sign final judgment in the said Supreme Court in the form or to the effect thereof in the prescribed form (on which judgment no appeal shall lie) for the sum mentioned in such certificate to be unpaid, together with the interest thereon at the rate of six pounds per centum per annum from the day named in such certificate until the date of the said final judgment, and the fee paid for the said certificate to the Clerk of the Magistrate's Court, as well as all prescribed fees paid in the Supreme Court in respect of or in connection with the signing of the said final judgment.

Certificate may be filed in Supreme Court.

Final judgment signed.

(3.) Upon such final judgment execution may be forthwith issued, and all other remedies had thereon in the same manner as on any other judgment of the Supreme Court.

Execution thereon may issue forthwith.

(4.) Notwithstanding anything in this section contained, any certificate or final judgment signed under the provisions of the said section may be set aside or amended by a Judge of the Supreme Court, upon such terms as to costs or otherwise as to him may seem just.

151. An action may be brought on a judgment of a Magistrates' Court in the Supreme Court, but no costs shall be allowed in such action to the plaintiff unless the Judge of the Supreme Court shall certify that the action was necessary and proper for the enforcement of the judgment of such Magistrate's Court against the person or property of the defendant.

Action may be brought in Supreme Court on a judgment of a Court.

ENFORCEMENT OF JUDGMENTS OF ABOLISHED COURTS.

152. Any Magistrate exercising jurisdiction within any area comprised within the limits of a Resident Magistrate's district constituted under any Act hereby repealed which has been altered in its boundaries or altogether abolished, or within the limits of a Magistrate's Court established under this Act which has been abolished, on receiving from the late Clerk of the Resident Magistrate's Court of the district so altered or abolished, or from the Clerk of the Magistrate's Court so abolished, or from the Clerk or officer having custody of the records of such Court, if abolished, a certificate of any judgment or order of such last-mentioned Court, and that the same has not been satisfied, may issue a distress or execution and

Judgments of abolished Courts may be enforced by any Magistrate having jurisdiction.

order such proceedings therein to enforce satisfaction of such judgment or order as if the same had been originally obtained in his own Court.

Judgment summons may be obtained in Court other than where judgment obtained.

153. When a judgment creditor desires to apply for a judgment summons to a Court other than the Court in which the order or judgment was obtained, he shall obtain from the Clerk of the last-mentioned Court, or, if abolished, from the Clerk or officer having custody of the records of such Court, a certified copy of the order and judgment in the cause in the form prescribed by any regulations for the time being in force, and shall file the same with his application; and upon such application the same proceedings may be had in the Court herein first above mentioned as could be had in the Court herein secondly mentioned.

Proceedings pending in abolished districts.

154. All proceedings pending in the Resident Magistrate's Court of any district which is altered or abolished may be continued to conclusion in any Court the Magistrate whereof exercises jurisdiction within any area comprised in the district so altered or abolished; and for such purpose the said Magistrate shall be deemed to have all the jurisdiction of a Resident Magistrate of the Court of the original district as existing previous to its alteration or abolition, as the case may be, and may issue any distress, execution, or warrant, and make such orders to enforce satisfaction of any judgment or order, and do all things necessary for the purpose of completing to their end or concluding any such proceedings pending as herein above first mentioned.

SATISFACTION OF JUDGMENT.

Entry of satisfaction of judgment.

155. When a judgment is satisfied by payment, levy, or otherwise, the judgment debtor shall be entitled to have satisfaction for the same entered up; and when a judgment is satisfied by payment into Court or otherwise through the Court, it shall be the duty of the Clerk of the Court, without any application, to enter up satisfaction thereof on the record of the judgment.

REHEARING.

Court may order rehearing on such terms as it thinks fit.

156. Any Court before which a civil case or any interlocutory application has been heard, in its discretion, may grant a rehearing of such case or application, upon such terms as the Court shall think reasonable, if application for the purpose be made within fourteen days after judgment is given, and in the meantime stay proceedings.

Such rehearing shall not necessarily take place before the same person or persons by whom the case was originally heard.

REMOVAL OF ACTIONS INTO SUPREME COURT.

Actions may be removed into Supreme Court.

157. In all actions where the amount claimed exceeds one hundred pounds, and in all actions for libel or slander, either party shall have the right to remove the action into the Supreme Court. And such removal shall be obtained *ex parte* by an order from a Judge in Chambers after the security for costs hereinafter mentioned has been given. In all other actions, where the amount claimed exceeds twenty pounds, a Judge of the Supreme Court may by order remove any action for trial to the Supreme Court, and may make such order

on such terms both as to costs and as to security for the amount claimed as to the Judge may seem just.

In all actions for libel or slander, if an application for removal is made, and in all actions where the removal is of right, due security for the costs of the trial in the Supreme Court to an amount of twenty pounds shall, before such removal be granted, be given to the satisfaction of the Court.

158. If application be made for an order removing an action into the Supreme Court, the Court may from time to time adjourn the hearing of such action to such day as it shall think fit, until such application be disposed of.

Procedure on removal.

If notice of such application having been made be not served by the party applying upon the opposite party and on the Clerk three days before the day fixed for the hearing of the action, the Court may in its discretion order the party applying to pay the costs incurred by the opposite party in preparing for trial, or so much thereof as it may think fit, unless the Supreme Court or a Judge thereof shall have made some order respecting such costs.

APPEAL.

159. Either party may appeal to the Supreme Court against any final determination or direction of the Court in any action—

Right to appeal given.

- (1.) On any matter of fact, only where the amount of the claim exceeds fifty pounds :
- (2.) On a point of law, with the leave of the Court where the amount of the claim does not exceed twenty pounds, and without such leave where the amount of the claim exceeds twenty pounds :

Provided as follows :—

- (a.) That the parties had not before the determination or direction agreed, in writing signed by them or their solicitors or agents, that the judgment of the Court should be final :
- (b.) That the appellant give notice of appeal within seven days after such determination or direction ; and that within such seven days he give security to abide the event of the appeal in such form and to such amount as may be approved by the Court, not being less than will be sufficient to cover the costs of the appeal as well as the amount of the judgment appealed against and its costs.

Notice.
Security for costs.

Notice of appeal shall be given by leaving with the Clerk and serving on the opposite party a notice in writing briefly stating the grounds of appeal.

160. The appeal, when it is on point of law only, shall be in the form of a case agreed on by both parties or their solicitors, or, if they do not agree, to be settled by the Magistrate or Justices hearing the case.

On point of law.

161. The appeal, when it is on point of fact only, or on point of law and matter of fact, shall consist of a copy of the proceedings and of the notes of evidence taken by the Magistrate ; but the Supreme Court shall have power to take additional evidence, either orally or by affidavit, or to rehear the whole case.

On fact and law.

Form of appeal.

162. The provisions following shall apply in respect of appeals on point of law :—

Notice.

- (1.) An appellant shall, within seven days after the latest day on which he could have properly given notice of appeal, deliver to the respondent a draft of the case on appeal for his approval. The respondent within five days after the receipt thereof shall return the draft either approved or altered as he may desire to the appellant, who, if the draft is approved or the alterations accepted, shall cause it to be engrossed in triplicate; and one copy of the engrossments shall be signed by the parties or their solicitors before it is delivered to the Clerk, as herein provided.
- (2.) If the parties do not thereon agree as to the form of the draft, it shall be forthwith forwarded by the appellant to the Clerk, and the Magistrate or Justices shall, after hearing the parties, if he think fit, or either of them, or their solicitors, settle the draft and return it to the appellant, by whom it shall be engrossed in triplicate, as settled.
- (3.) Within seven days after the draft has been agreed upon or settled by the Magistrate or Justices, as the case may be, the engrossments thereof shall be delivered to the Clerk, who shall procure one of them to be signed by the Magistrate or Justices, and sealed with the seal, which shall thereon be the "case on appeal."
- (4.) Each of the other two engrossments shall be made by the Clerk into a correct copy of the case on appeal, and he shall file one copy, and forward the other to the respondent.
- (5.) The Clerk shall transmit or deliver case on appeal to the Registrar of the Supreme Court at the place where the appeal is to be heard, and such Registrar shall within seven days after the receipt thereof enter the same on the list of cases for hearing at the next practicable sitting of the Supreme Court.
- (6.) If at such hearing the appellant does not appear to prosecute such appeal, it shall be deemed abandoned and shall be struck off the list.

How case dealt with by Supreme Court.

163. The Supreme Court may order a new trial on such terms as it thinks fit, or that judgment be entered for either party as the case may be, or that the case be referred back to the Court below for amendment, or, in case where an order has been made for the delivery of possession of any tenement, may order redelivery thereof to be made; and may make such order with respect to costs as such Court shall think proper.

Order as to costs.

No sum exceeding ten pounds, over and above the fees of Court, shall be allowed by the Supreme Court as costs of appeal in any case where the question is on a point of law only, and the amount claimed does not exceed one hundred pounds; and in no other case shall the sum exceed twenty pounds over and above the fees of Court and the expenses of witnesses.

Decision on appeal.

164. The Registrar of the Supreme Court shall transmit to the Clerk of the Magistrate's Court from which the appeal was brought

a memorandum of the decision of the Supreme Court, and such proceedings shall be had thereupon as if such decision had been given by the Magistrate's Court.

165. Within the districts of the District Courts of Nelson and Westland all appeals shall be, not to the Supreme Court, but to the District Court having jurisdiction within the place where the Magistrate's determination or direction was given, unless the aforesaid Magistrate be himself a Judge of the District Court, in which case the appeal shall be to the Supreme Court.

Special provision as to Nelson and Westland Districts.

166. If before notice of appeal is given execution shall have issued the Clerk shall, upon the appellant giving the required security, forthwith give notice to the bailiff, and proceedings on such execution shall be thereupon stayed; and if any sum shall have been paid or levied, but not paid over to the successful party, the same shall remain in Court to abide the order of the Supreme Court.

Stay of execution pending appeal.

167. If the appellant does not appear at the time appointed for hearing the appeal it shall stand dismissed, and if he do not prosecute his appeal with due diligence the respondent may apply to the Court for leave to proceed on the judgment, and leave for that purpose may be granted accordingly if the Court shall think fit; and the successful party shall also be entitled to such costs as he shall have incurred in consequence of the appellant's proceedings, which shall be fixed by the Court, and added to the judgment.

If appeal not prosecuted, judgment may be enforced.

COSTS AND FEES.

168. A party having a judgment carrying costs shall, for his solicitor's charges in the action, be entitled, as against the other party, to charge on such judgment, in addition to any moneys paid out of pocket by the solicitor for fees of Court or other necessary payments or disbursements, such fees as may be prescribed by Order in Council.

Scale of costs to solicitors.

The disallowance of all or any part of any costs shall be in the discretion of the Court.

169. All the costs of an action, or of any application or other proceeding in any Court, shall be paid or apportioned between the parties in such manner as the Court shall think fit; but, in default of any special direction, such costs shall abide the event of the action.

Allowance in discretion of Court.

When costs are allowed to a plaintiff they shall be computed on the amount for which judgment is given; when allowed to a defendant they shall be computed on the amount sued for; unless in either case the Court shall specially order otherwise.

The amount of costs awarded shall be ascertained and stated in the judgment.

170. The Court may, if it think fit, award to either party reasonable costs for their attendance to prosecute or defend any action, and costs of service of any summons, notice, or other process in connection with the action, where such service has been effected by the parties to the action.

Court may award costs of service of process, &c.

171. If an action be brought or a counter-claim set up which the Court has not jurisdiction to try, the Court shall, unless the parties consent in manner as provided by this Act to the Court assuming jurisdiction, order the action or counter-claim to be struck

Though cause of action not within jurisdiction, costs may be allowed.

out, but may award costs to the same extent and recoverable in the same manner as if the Court had jurisdiction and the claim or counter-claim had not been established.

Court fees to be prepaid, except in Crown cases.

172. All fees, except such as may be payable in respect of keeping possession, storing, removing, or selling goods seized under a warrant of distress shall be paid in the first instance by the party on whose behalf any proceedings shall be taken.

A table of all fees shall be posted in some conspicuous place in every Clerk's office.

A Magistrate or any officer of the Court shall not do any act for which a fee is demandable unless such fee be first paid; but no such act, if done, shall be invalid by reason only of the omission or neglect to collect such fee.

But in any proceedings in which Her Majesty, or any officer of Her Majesty's Government in the colony, on her behalf or on behalf of the said Government, is seeking to recover any debt, or other sum of money, or any fine or penalty due to the Crown or to the aforesaid Government, no fees of Court need be prepaid on behalf of Her said Majesty or officer, but such fees shall nevertheless be recoverable from the defendant with costs if judgment be given against him.

In any case in which a Magistrate is satisfied, by affidavit or otherwise, that an intending plaintiff has a meritorious cause of action, but is unable to pay the prescribed fees, he may direct that all or any portion of such fees need not be prepaid; but such fees shall nevertheless be recoverable from the defendant if judgment be given against him.

Court may order increased fee in certain cases.

173. Notwithstanding anything contained in any prescribed table or schedule of fees, a Magistrate may authorise the payment of such charges or fees as he shall think reasonable to enable any summons or process to be served or executed without pecuniary loss to the person intrusted with the service or execution thereof, in any case where such Magistrate shall be satisfied that the prescribed fee is not sufficient for the purpose.

Fines and fees to be paid to the Public Account.

174. All moneys which shall be payable under or by virtue of this Act by way of fines, fees, or penalties shall form part of the Consolidated Fund.

All fees payable in respect of keeping possession, storing, removing, or selling goods seized under a warrant of distress shall be excepted from this provision, and such last-mentioned fees shall be paid to the bailiff or person charged with the execution of the warrant, to be paid by him to the person entitled thereto.

RECOVERY OF POSSESSION OF TENEMENTS.

175. When the term and interest of the tenant of any tenement held by him at will, or for any term, whether such tenant is or is not liable to the payment of any rent, has ended, or been determined, either by the landlord or tenant, by a legal notice to quit or demand of possession, and such tenant, or (if such tenant do not actually occupy the premises, or only a part thereof) any person by whom the same or any part thereof shall be then actually occupied, neglects or refuses to quit and deliver up possession of the premises, or of such part thereof respectively, the landlord of

Landlord, on determination of lease, may sue for possession.

the said premises or his agent may enter a plaint, at his option, either against such tenant or against the person so neglecting or refusing to quit and deliver up possession, in the Court nearest to the locality in which the premises are situate, for the recovery of the same; and thereupon a summons, in the prescribed form, shall issue to such tenant or such person so refusing.

If the said tenant or occupier shall not appear at the time named in the summons, or, if appearing, shall not show to the satisfaction of the Court reasonable cause why possession should not be given of the premises, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, then, upon proof of the facts of the case being clearly made, the Court may issue a warrant to the bailiff or to any constable commanding him, on or before a day named in the warrant, to enter by force if needful into the premises, and to give possession of the same to such landlord or his agent.

Court may give possession.

In any such plaint against a tenant or occupier the plaintiff may add a claim for rent or mesne profits, or both, down to the day appointed for the hearing, or to any preceding day named in the plaint, so as the amount of such claim shall not exceed the jurisdiction of the Court; and any misdescription in the nature of the claim may be amended at the trial.

Landlord suing for possession may add claim for rent or mesne profits.

176. If any tenant holding any tenement by the week, or month, or quarter, under any demise or agreement, either written or verbal, shall be in arrear for ten days' rent in the case of a weekly tenancy, or for twenty-one days' rent in the case of a monthly tenancy, or for forty-two days' rent in the case of a quarterly tenancy, and the landlord has a right by law to enter for the non-payment thereof, he may, without any formal demand or re-entry, enter a plaint in the Court nearest to the locality in which the premises are situate for the recovery thereof, and thereupon a summons shall issue to the tenant, the service whereof shall stand in lieu of a demand or re-entry.

Landlord having power of re-entry may sue for possession.

If the tenant shall, five clear days before the day appointed for the hearing of the case, pay into Court all the rent in arrear, and the costs, the said action shall cease.

Upon payment of rent and arrears action to cease.

If he shall not make such payment, and shall not appear at the time named in the summons, or, if appearing, shall not show reasonable cause why the premises should not be recovered, then, on proof of the facts of the case being clearly made, the Court may issue a warrant to the bailiff or any constable commanding him, on or before a day named in the warrant, to enter by force if needful into the premises, and to give possession of the same to the plaintiff; and the plaintiff shall, from the time of the execution of the warrant, hold the premises discharged of the tenancy, and the defendant and all persons claiming by, through, or under him shall, so long as the order of the Court remains unreversed, be barred from all relief in equity or otherwise.

Upon non-payment of arrears Court may give possession discharged of tenancy.

177. If any tenant holding any tenement under any demise or agreement, either written or verbal, at a rack-rent, or where the rent reserved shall be full three-fourths of the yearly value of the demised premises, who shall be in arrear for two months' rent shall desert the premises, leaving the same uncultivated or unoccupied so as no

When rent in arrear and land deserted without distress, landlord may recover possession.

sufficient distress can be had to countervail the arrears of rent, the Court nearest to the locality in which the premises are situate, although no right of entry be reserved or given to the landlord in case of non-payment of rent, and at the request of the landlord, or his attorney, solicitor, or agent, and upon proof of the facts of the case being clearly made, the Court may issue a warrant to the bailiff or any constable to go upon and view the premises, and to affix upon the most conspicuous part of the premises notice in writing notifying on what day (at the distance of fourteen days at least) he will return to take a second view thereof: and if upon such second view the tenant or some person on his behalf shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premises, then the Court may grant a warrant to the bailiff or any constable requiring him, on or before a day to be named in such warrant, to enter upon the premises and put the landlord or lessor into possession of the same; and the lease thereof to such tenant as to any demise contained therein only shall, upon the execution of such last-mentioned warrant, and upon the registration of such warrant in the Registry of Deeds or of Lands for the district in which the premises are situate, thenceforth become void.

Lease voided on delivery of possession.

Recovery of possession may be registered.

The Registrars of Deeds and District Land Registrars are hereby authorised and required to register such warrants, subject to the same rules and regulations as for the time being apply to the registration of deeds or memoranda of lease: Provided that no such warrant shall be registered until after the expiration of the time herein allowed for giving security on appeals.

Action to recover land held without right, title, or license.

178. If any person shall, without right, title, or license, be in possession of any tenement, the owner may enter a plaint in the Court nearest to the locality in which the premises are situate to recover possession thereof; and thereupon a summons in the prescribed form shall issue to the person so in illegal occupation.

If the said person shall not appear at the time named in the summons, or, if appearing, shall not show reasonable cause why possession should not be given of the premises, and upon proof of the facts of the case being clearly made, the Court may issue a warrant to the bailiff or any constable commanding him, on or before a day named in the warrant, to enter, by force if needful, into the premises, and to give possession of the same to the aforesaid owner.

If such owner shall have given to the person in occupation notice in writing to quit, he may, in the same plaint, insert a claim, to an amount not exceeding one hundred pounds, for damages for such occupation subsequently to the service of such notice.

179. Every sub-tenant on whom any summons for the recovery of a tenement shall be served, or to whose knowledge it shall come, shall forthwith give notice thereof to his immediate landlord, under penalty of forfeiting not exceeding three years' rack-rent of the premises held by such sub-tenant to such landlord, to be recovered by action of debt in the Court from which such summons shall be issued; and such landlord, on the receipt of such notice, if not originally a defendant, may be added or substituted as a defendant to defend possession of the premises in question.

Sub-tenant to give notice of action to his immediate landlord.

180. A summons for the recovery of a tenement may be served like other summonses to appear to plaintiffs in Court, and if the defendant cannot be found, or his place of dwelling shall either not be known or admission thereto cannot be obtained for serving any such summons, or, if from any cause it shall be impracticable to serve such summons, a copy of the summons may be posted, on some conspicuous part of the premises sought to be recovered, not less than ten days before the day fixed for the hearing, and such posting shall be deemed good service on the defendant.

Service of summons in action for possession of tenement.

181. Any warrant under the hand of a Magistrate to a bailiff or constable to give possession of a tenement shall justify him in entering, by force if needful, upon the premises named therein, with such assistants as he shall deem necessary, and in giving possession accordingly; but no entry under any such warrant shall be made except between the hours of nine in the morning and four in the afternoon.

Warrant sufficient authority to bailiff for entering premises.

182. If any person by whom a warrant for the recovery of possession of any tenement shall be sued out in a Court had not, at the time of suing out the same, lawful right to the possession of the premises, the suing-out of such warrant shall be deemed a trespass by him against the tenant or occupier of the premises although no entry shall be made by virtue of the warrant.

Suing out warrant without right deemed a trespass.

183. Nothing herein contained shall be deemed to protect any person on whose application and to whom any such warrant shall be granted from any action which may be brought against him by any such tenant or occupier for or in respect of such entry and taking possession, where such person had not at the time of the granting the same lawful right to the possession of the said premises; and nothing herein contained shall affect any rights to which any person may be entitled as outgoing tenant by the custom of the country or otherwise.

Persons illegally obtaining warrant not protected from action.

184. In case any such tenant or occupier will become bound with two sureties as hereinafter provided, to be approved of by the Court, in such sum as to the Court shall seem reasonable (regard being had to the value of the premises and to the probable costs of an action), to sue the person to whom such warrant was granted with effect and without delay, and to pay all the costs of the proceedings in such action in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action, or become nonsuit therein, execution of the said warrant shall be stayed until judgment shall have been given in such action of trespass. And if upon the trial of such action a verdict shall pass for the plaintiff, such verdict and the judgment thereupon shall supersede the warrant so granted, and the plaintiff shall be entitled to his costs in his said action.

Execution of warrant stayed on bond given to bring action.

185. Every such bond shall be made to the landlord or his agent at the cost of the landlord or his agent, and shall be approved of and signed by the Magistrate; and if the bond so taken be forfeited, or if upon the trial of the action for securing the trial of which such bond was given the Judge by whom it shall be tried shall not indorse upon the record in Court that the condition of the bond has been fulfilled, the party to whom the bond shall have been so made may bring an

The bond, to whom made, and actions thereon.

action and recover thereon ; and the Court where such last-mentioned action shall be brought may, by rule of Court, give such relief to the parties upon such bond as may be agreeable to justice ; and such rule shall have the nature and effect of a defeasance to such bond.

186. No action or prosecution shall be brought against any Magistrate by whom such warrant aforesaid shall have been issued, or against any bailiff or constable by whom any warrant may be executed, for issuing such warrant or executing the same respectively, by reason that the person on whose application the same shall be granted had not lawful right to the possession of the premises.

187. Where a person by whom a warrant for the recovery of possession of any tenement shall be sued out had, at the time of suing out the same, lawful right to the possession of the premises, neither he nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act ; but the party aggrieved may, if he think fit, bring an action in any Court of competent jurisdiction and recover for special damage.

If special damage be not proved the defendant shall be entitled to a verdict, and if proved, but assessed by the last-mentioned Court at any sum not exceeding five shillings, the plaintiff shall recover no more costs and damages, unless the Judge or Magistrate of the Court before whom the trial shall have been holden shall certify that in his opinion full costs ought to be allowed.

PROTECTION OF OFFICERS.

188. No officer of a Court in executing any warrant, and no person at whose instance any such warrant shall be executed, shall be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such warrant depends, or in the form of such warrant, or in the mode of executing it ; but the party aggrieved may bring an action for any special damage he may have sustained by reason of such irregularity or informality or mode of execution, and in such action he shall recover no costs unless the damages awarded shall exceed forty shillings.

189. All proceedings against any person for anything done in pursuance of this Act shall be commenced within three months after the act committed and not afterwards, and notice in writing of any such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action.

A plaintiff shall not recover in such action if tender of sufficient amends shall have been made before such action be brought, and if, after action brought, a sufficient sum of money shall have been paid into Court with costs.

In any such action the warrant under the seal of the Court being produced in evidence shall be deemed sufficient proof of the authority of the Court previous to the issuing of such warrant.

190. It is hereby declared that Part IV. of "The Justices of the Peace Act, 1882," relating to the protection of Justices, so far as not repugnant to this Act and as far as the nature of the case will allow, shall extend to Magistrates and Justices of the Peace acting in their civil jurisdiction.

Protection of
Magistrate issuing
warrant.

Irregularity in
execution of warrant
can only be sued for
as special damage.

Costs in actions for
special damage.

Actions against
officers.

Within three
months, and one
month's notice to be
given.

Action to cease if
amends tendered.

In such actions,
warrant evidence of
previous authority.

Part IV. of "The
Justices of the
Peace Act, 1882,"
to apply.

CONTEMPT.

191. If any person shall wilfully insult a Magistrate or Justice of the Peace, or any Clerk, bailiff, or officer of a Court, during his attendance in or going to or returning from the Court, or a witness in Court, or shall wilfully interrupt the proceedings of any Court, or otherwise misbehave in Court, any bailiff or officer of the Court, with or without the assistance of any other person, by order of the Magistrate or Justices, may take such offender into custody, and detain him until the rising of the Court.

Penalty for insulting Magistrate, &c.

192. The Magistrate or Justices may, if he or they shall think fit, by a warrant under his or their hand or hands and the seal of the Court, commit any such offender to prison for any time not exceeding ten days, or impose upon him a penalty not exceeding ten pounds for every such offence, and, in default of payment thereof, commit him to prison for any time not exceeding fourteen days unless the said penalty be sooner paid.

Power to imprison or fine for contempt.

MISCELLANEOUS.

193. All constables shall, within their several jurisdictions, aid and assist any Magistrate or Justice of the Peace in the execution of all and any of the duties imposed upon such Magistrate or Justice by this Act; and if any such constable shall neglect or refuse so to do he shall be liable to a penalty not exceeding five pounds.

Penalty on constables, &c., for neglect of duty.

194. When a lawful order is made by a Court or by a Magistrate, not for the payment of money, but for the doing of some other act, or for ceasing either for a time or permanently to do some act, or for the production of any document, any person acting in disobedience to such order shall be liable, at the discretion of the Magistrate who adjudicates upon such disobedience, to a penalty not exceeding ten pounds for each offence, and to be imprisoned in default of payment, or to be imprisoned in the first instance, and the said Magistrate may issue a warrant of commitment accordingly.

Penalty for disobeying injunction or other order of Court.

The person so offending shall be taken to some convenient prison, to be named in such warrant, and delivered to the keeper thereof, and he shall be there detained until he give security to the satisfaction of the Magistrate that he will cease to do the act prohibited or will do the act required, or until the Magistrate shall make an order for his release.

No person shall be imprisoned under this section for any term exceeding three months; but such imprisonment shall not release the person imprisoned from the obligation to conform with the terms of any such order as aforesaid.

195. The payment of any fine or penalty imposed by any Court may be enforced, upon the order of a Magistrate or Justice of the Peace, in like manner as payment of any penalty may be enforced in summary proceedings before Justices of the Peace by distress or imprisonment under "The Justices of the Peace Act, 1882."

Payment of penalties, how enforced.

196. Nothing in this Act contained shall be construed to nullify or overrule any of the provisions of "The Married Women's Property Act, 1884."

Saving of Married Women's Property Act.

Schedule.

SCHEDULE.

Repeals.

ACTS AND PARTS OF ACTS REPEALED.

- 1867, No. 13.—The Resident Magistrates Act, 1867.
- 1868, No. 46.—The Resident Magistrates Act, 1868.
- 1870, No. 24.—The Resident Magistrates Evidence Act, 1870.
- 1872, No. 27.—The Resident Magistrates Act Amendment Act, 1872.
- 1879, No. 28.—The Resident Magistrates Act 1867 Amendment Act, 1879.
- 1878, No. 46.—The Financial Arrangements Act, 1878. *In part, namely—*
section fourteen.
- 1885, No. 45.—The Enforcement of Judgments Act, 1885. *In part, namely—*
so much thereof as relates to judgments recovered in
Resident Magistrates' Courts.
- 1888, No. 23.—The Local Courts Proceedings Act, 1888. *In part, namely—*so
much thereof as relates to Resident Magistrates' Courts.