

59^o VICTORIA, 1896.

A BILL

To amend the Law relating to District Courts and Courts of Quarter Sessions.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act shall take effect on the day of Short title, commencement, and interpretation of Act.
 one thousand eight hundred and ninety-six (hereinafter referred to as the commencement of this Act), and may be cited as the "District Courts Act of 1896," and in its construction the expression "Governor" shall mean the Governor, with the advice of the Executive Council; "Minister" the Minister charged with the administration of this Act; "Principal Act" the District Courts Act of 1858; "Prescribed" prescribed by this or the Principal Act or by general rules made thereunder. The expressions "the Judge," "the Registrar," "the Bailiff," shall mean, when they occur in connection with a particular District Court, the Judge attached to the Circuit within which that Court is held, or the Registrar or Bailiff of that Court.

The words "admitted set off" shall in the construction of this and the Principal Act mean a set off which is admitted by the plaintiff at the time he brings the action.

2. Nothing herein contained shall apply to any proceeding Pending proceedings not affected.
 pending at the commencement of this Act.

District Courts.

2

3. The Acts specified in Schedule A to this Act are hereby **Repeal.** repealed, but, save as hereinafter otherwise enacted, without prejudice to the past operation thereof, or to the effect of any proclamation, notice, or act made, given, or done thereunder.

Courts, Judges, Officers.

4. Every District Court Judge whether appointed before or after the commencement of this Act shall be a Judge of District Courts and Chairman of Quarter Sessions for New South Wales, and shall be so constituted by the Governor by commission in Her Majesty's name. **Judges' Commissions to extend to entire Colony.**

5. It shall be lawful for the Governor from time to time, by notice in the *Gazette*, to define the limits within which any District Court shall have jurisdiction within the meaning of the fifth section of the Principal Act, and to alter such limits: Provided always that no alteration in any such limits shall take effect until after three months from notice thereof in the *Gazette*. **Governor may appoint districts for each Court. 22 Vic. No. 25, s. 6.**

6. The Governor shall, by proclamation under his hand, appoint District Court Circuits and Quarter Sessions Circuits, and may, in like manner from time to time alter or vary the same respectively as he may think fit, and may by notice in the *Gazette* attach any one or more of the District Court Judges to any such Circuit as aforesaid, and in like manner, transfer a Judge from one Circuit to another; but any Judge may preside at any sitting of a District Court or Court of Quarter Sessions, and in case of emergency, any Judge may, by mutual consent, and shall, if required by writing under the Minister's hand, act temporarily in all respects for and instead of another. **Proclamation of circuits.**

7. Two or more Judges may preside at the same time in separate Courts, either at a District Court or a Court of Quarter Sessions, at any place appointed or proclaimed for the holding of such Court. **Two or more Judges may preside at same time in separate Courts.**

8. (I) The Judge attached to each Circuit shall attend and hold the Court at the place within such Circuit where the Governor has ordered that the Court shall be holden, at such times as the Judge shall appoint for that purpose, so that a District Court shall be holden in each place once at least in such interval as the Governor shall order, and notice of the days on which the Court will be holden shall be posted in some conspicuous place in the Court-house and in the office of the Registrar, and shall be otherwise published as the Judge may direct. **Judge to hold Court where directed and to give notice thereof. 22 Vic. No. 18, s. 45.**

(II) A District Court Judge shall have power to appoint the time for holding any District Court that is not at the time of such appointment, but will be from the taking effect of a proclamation under the Principal Act, within the Circuit to which he is attached. **29 Vic. No. 11, s. 3.**

(III) Where by reason of the death or absence of the Judge a District Court cannot be held at the time appointed, the Registrar, or, in the event of his death or absence, the Bailiff, shall adjourn the Court to such day as he may deem convenient, and enter in the minute-book the cause of such adjournment. **Provision for Judge's absence.**

(IV) Where, after a District Court has been opened, the Judge is not present to adjourn the Court, it may be adjourned by the Registrar, or, in the event of his death or absence, by the Bailiff, to such time as may seem convenient.

9. In the case of any Judge being prevented by illness or other accident from performing his duties as Chairman at any Court of Quarter Sessions, it shall be lawful for the Governor to appoint as a deputy chairman some person duly qualified to be appointed a District Court Judge, and every such deputy chairman shall have the same power, authority, and jurisdiction as if he had been appointed Chairman of **In absence of Chairman of Quarter Sessions deputy may be appointed. 23 Vic. No. 1, s. 1.**

of

District Courts.

3

of Quarter Sessions under the Principal Act. Where, after a Court of Quarter Sessions has been opened, the Judge is not present to adjourn the Court, any Magistrate may adjourn it to such time as may seem convenient.

Adjournment when Judge is absent.

10. The power of appointing bailiffs heretofore vested in the District Court Judges shall be exercised exclusively by the Governor. But a District Court Judge may nevertheless suspend any bailiff or assistant bailiff on sufficient ground appearing to him, and may appoint an acting bailiff in his place during the suspension of such bailiff or assistant bailiff, and such acting bailiff shall receive such remuneration as the Governor may direct. And it shall be lawful for the Governor to amalgamate the office of any bailiff of a District Court with that of any Sheriff's bailiff, and to assign to the united offices such salary as Parliament may allow therefor, with or without such fees of office as the Governor may see fit to sanction in any case.

Appointment of bailiffs.

Amalgamation of offices of Sheriff's and District Court Bailiffs.

29 Vic. No. 11, s. 3.

11. District Court Registrars and Bailiffs appointed after the commencement of this Act shall give security for such sum, and in such manner and form as the Judge may from time to time direct, for the due performance of their duties, and the accounting for and payment of moneys received by them, or which they may become liable to pay for any misbehaviour in their office.

Registrar and Bailiff to give security to satisfaction of Judge.

12. All proceedings commenced or had in any District Court, the holding of which is discontinued at any time under a proclamation under the Principal Act, may be continued, executed, and enforced against all persons liable thereto in the District Court holden in the nearest place at which a District Court is holden, and in the same manner as nearly as possible as if such proceedings had been commenced or had in the Court holden at such nearest place. And the records of the Court, the holding of which is so discontinued, shall, on the order of the Judge attached to the Circuit within which such Court is included, be removed to the Court holden at such nearest place as aforesaid.

As to proceedings commenced or had in any District Court which has been discontinued

29 Vic. No. 11, s. 1.

13. Proceedings commenced in a District Court shall not be affected by any subsequent alteration of the limits within which the Court has jurisdiction or of the Circuit within which it is included.

Proceedings not affected by alteration of limits of Court or Circuit.

29 Vic. No. 11, s. 2.

14. Where two or more Judges are attached to the same Circuit, only one of them shall sit, preside, or act at any trial, civil or criminal, or at the hearing of any application or the making of any order, but in the appointment of the times for holding District Courts, and in the discharge of other administrative duties imposed by this or the Principal Act the whole of such Judges shall concur.

Judges to act separately in judicial but together in administrative matters.

30 Vic. No. 9, s. 4.

Extension of Jurisdiction.

15. (I) The jurisdiction of every District Court (except the District Court holden at Sydney) shall extend to every claim or cause of action which is now or hereafter may be cognizable on the common law side of the Supreme Court, in which the property sought to be recovered does not exceed five hundred pounds in value, or the amount claimed does not exceed that sum, whether on balance of account or after an admitted set off or otherwise; and the provisos to section seven of the Principal Act are repealed. And the seventh, eighth, twelfth, thirteenth, fifteenth, twentieth, and twenty-first sections of the Principal Act are hereby amended, so that those sections shall, in their application to District Courts other than that holden at Sydney, be read as if each contained the words "five hundred pounds" instead of the words "two hundred pounds," and in such Courts the limit within which a set-off shall be allowed shall be five hundred pounds.

Extension of jurisdiction of District Courts out of Sydney.

(II)

District Courts.

4

(II) The jurisdiction of the District Court holden at Sydney shall extend to every such claim or cause of action as aforesaid in which the property sought to be recovered does not exceed two hundred pounds in value or the amount claimed does not exceed that sum, whether on balance of account or after an admitted set-off or otherwise, and in the Court so holden as aforesaid the limit within which a set-off shall be allowed shall be two hundred pounds. And the proviso to section seventy of the Principal Act is hereby repealed.

Jurisdiction of
Sydney District
Court.

(III) If any question arise as to amount or value under this section, the decision thereon of the Judge shall be conclusive.

16. No action of ejectment shall be brought, under the jurisdiction given by the preceding section, except in a Court within the jurisdiction of which the land in dispute or some part thereof is situate; and the defendant in such action of ejectment, or his landlord, may within one month from the day of service of the summons, apply to a Judge of the Supreme Court at chambers, for a summons to the plaintiff to show cause why the action should not be tried in the Supreme Court on the ground that the title to land of greater value than five hundred pounds (or two hundred pounds where the action is brought in the District Court holden at Sydney) would be affected by the decision in the action; and on the hearing of the summons, the Judge, if satisfied that the title to land of such greater value would be so affected, may order the action to be tried in the Supreme Court, and thereupon all proceedings in the District Court in the action shall be discontinued.

Special provisions as
to ejectment actions.
English County
Courts Act, 1888,
s. 59.

Nothing in this section shall apply to proceedings under sections nineteen, twenty, twenty-one, or twenty-two of the Principal Act.

17. The jurisdiction of a District Court shall extend to all cases of replevin as to distresses for rent where the rent for or in respect of which any distress has or ought to have been made does not exceed fifty pounds in amount, and the decision of the Judge as to such amount shall be conclusive.

Jurisdiction in
replevin.

18. All powers and authorities at present exercisable by a District Court, or District Court Judge, in relation to any matter heretofore cognizable in any District Court, may be exercised by the Court or Judge in or with respect to any matter falling within the enlarged jurisdiction conferred by this Act.

All powers, &c.,
exercisable under
prior jurisdiction
may be exercised
under extended
jurisdiction.

19. A District Court shall have jurisdiction when the defendant or one of two or more defendants, as the case may be, carries on business within the district for which the Court is held.

Jurisdiction when
the defendant carries
on business in the
district.

*Procedure.**(a) Actions for liquidated amount.*

20. (I) In all actions commenced in any District Court for a debt or liquidated demand in money, with or without interest, arising upon a contract, express or implied, the plaintiff may, upon filing his plaint, cause to be issued, in lieu of an ordinary summons, a summons in the form or to the effect of Schedule B to this Act.

In respect of certain
demands plaintiff
may require defend-
ant to file statement
of defence.

See 48 Vic. No. 7,
s. 1.

(II) Such summons, together with a statement of the particulars of the plaintiff's claim, shall be personally served on the defendant.

(III) If the defendant do not within eight days, if resident within the jurisdiction of the Court from which such summons issued, or if not so resident then within ten days after such service, inclusive in each case of the day of service, file with the Registrar a statement of the grounds of his defence (including in that term matters of

set-

District Courts.

5

set-off or cross action) with an affidavit verifying the same, the plaintiff, at any time within three months after the expiration of such time as aforesaid, upon filing—

- (a) an affidavit of due service of such summons (or an order for leave to proceed as if personal service had been effected) and
- (b) an account of what is justly due to him, verified by the oath of the plaintiff, his attorney, or agent,

may have judgment entered up against the defendant for the amount of his claim together with interest to the date of judgment, and such sum as may be prescribed for costs, unless the plaintiff claims more than that sum, in which case the costs shall be taxed by the registrar *ex parte*: Provided always that the defendant may file such statement and affidavit as aforesaid at any time before judgment is entered up against him as aforesaid.

21. Such judgment shall be for payment forthwith or at such time or times and by such instalments, if any, as the plaintiff or his attorney at the time of entry of the plaint or at any time up to judgment consents in writing to take, and it shall be lawful for the plaintiff in default of payment in accordance with such judgment to issue execution forthwith for the full amount thereof, and in any case in which judgment has been entered up for payment by instalments execution may be had for the whole amount due upon the judgment if default be made in payment of any such instalment. Judgment thereon:
48 Vic. No. 7, s. 3.

22. The plaintiff may, at any time before the trial of the action, apply for a summons calling upon the defendant to show cause why such statement as aforesaid should not be removed from the file as disclosing no defence to the action; and upon the hearing of the summons the Judge may order the statement to be removed as aforesaid, and may strike out any part thereof, and may give judgment for the whole or any part of the amount claimed, and may make such order as to costs as he may think fit. Plaintiff may call upon defendant to show cause why statement of defence should not be set aside.

23. (I) If the defendant within the time limited as aforesaid files a statement of the grounds of his defence with an affidavit verifying the same, the action shall, subject to the provisions of the last preceding section, come on for trial at the next sitting of the Court held not less than eight days after the last day for service of the statement of the grounds of defence, and the Registrar, on receipt of such statement, shall forthwith communicate the contents thereof, and the time and place at which the action is to be tried, to the plaintiff or his attorney, either by post or by leaving the same at his residence or usual place of business. Proceedings where statement of defence is filed.
48 Vic. No. 7, s. 3.

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

24. Where the personal service required by section twenty cannot be effected, and the Judge or Registrar is satisfied by affidavit that reasonable efforts have been made to effect such service, and either— Where personal service dispensed with.
48 Vic. No. 7, s. 5.

- (i) that the summons has come to the knowledge of the defendant; or
- (ii) that he wilfully evades service; or
- (iii) that the summons has been served in the manner directed by the District Court rules in respect of an ordinary summons;

it shall be lawful for the Judge or Registrar to order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as the Judge or Registrar may think fit.

25.

(b) General.

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

Matter of cross action may be pleaded.
48 Vic. No. 7, s. 6.

(II) If the amount found to be due to the defendant on his cross action exceeds the amount found to be due to the plaintiff the defendant may have judgment and execution for the excess.

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

Equitable defence may be pleaded.
48 Vic. No. 7, s. 7.

27. A defendant shall not, except with the consent of the plaintiff or by leave of the Judge, be allowed to object to the jurisdiction of a District Court on any ground personal to the plaintiff, unless notice of such objection be given as is required in respect of the special defences enumerated in clause fifty-nine of the Principal Act.

Notice must be given of objection to the jurisdiction.

28. If a defendant has signed a statement confessing and admitting the amount of the debt or demand, or part thereof, as provided in section ninety-six of the Principal Act, it shall not be necessary to apply for judgment at the next sitting of the Court, but judgment may at any time be entered up by the Registrar upon proof to him by affidavit (if the statement was not signed in his presence) of the signature of the defendant.

Judgment on confession may be entered up by Registrar.

29. A set-off, cross action, or defence, of which notice is required to be given by this or the Principal Act may, by leave of the Judge, or with the consent of the plaintiff, be set up by the defendant although notice thereof was not given, anything in this or the Principal Act to the contrary notwithstanding.

Special defence, &c., may be set up by consent or by leave of the Judge, though notice was not given.

30. (I) In any action on a bill of exchange or promissory note it shall be competent for a Judge to order the bill or note to be deposited with the Registrar, and further to order all proceedings to be stayed until the plaintiff has given security for the costs thereof.

Bill or note may be ordered to be deposited with Registrar, and the plaintiffs to give security for costs.

(II) When judgment has been recovered in an action upon a bill of exchange or promissory note, the bill or note shall be retained by the Registrar, and shall remain in his custody until required for the purposes of another action.

After judgment to be retained by the Registrar.

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

Provisions for, and in reference to, payment into Court of money by defendant.

(II) Notice of such payment shall be forthwith communicated by the Registrar to the plaintiff, or his attorney, in the prescribed manner, and the said sum shall be paid over by the Registrar to the plaintiff, or his attorney, if he elect to accept same in full satisfaction as aforesaid, and notice of such acceptance shall be forthwith communicated by the Registrar to the defendant, or his attorney, in the prescribed manner; but if the plaintiff elect to proceed, the defendant shall be at liberty, notwithstanding such payment, to rely upon any ground of defence which he might otherwise have relied upon, and the said sum of money shall remain in Court to abide the order of the Judge.

(III)

(III) If the plaintiff recover a sum not larger than that so paid into Court the plaintiff shall pay to the defendant the costs incurred by him after such payment into Court, and judgment shall be given for the defendant for such costs, and they shall be a first charge on the sum paid into Court.

32. Section ninety-eight of the Principal Act is hereby amended by the omission of the words "one hundred" wherever they occur therein and the substitution therefor of the words "five hundred," but a cause shall not under this section be ordered to be tried in the District Court holden at Sydney if the amount claimed exceeds the jurisdiction of that Court.

Amendment of section 98 of Act of 1858. (22 Vic. No. 18.)

33. (I) Where an action of tort is brought in the Supreme Court (whatever may be the amount claimed) a Judge of the Supreme Court shall, on affidavit by the defendant or his attorney that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff, have power to make an order that unless the plaintiff, within a time to be therein mentioned, gives full security for the defendant's costs to the satisfaction of the Prothonotary, or satisfies a Judge of the Supreme Court that he has a cause of action fit to be prosecuted in the Supreme Court, all proceedings in the action shall be stayed, or that, in the event of the plaintiff being unable or unwilling to give such security, and failing to satisfy a Judge as aforesaid, the action be remitted for trial to a District Court to be named in the order.

Actions of tort in the Supreme Court may be remitted to District Court. English County Courts Act, 1888, s. 66.

(II) If the order for the remission of the action becomes operative the plaintiff shall lodge the original writ and the order with the Registrar of such District Court, and the Judge of the District Court shall appoint a day for the trial of the action, notice whereof shall be sent by post or otherwise by the Registrar to both parties or their attorneys, and the action and all proceedings therein shall be tried and taken in such District Court as if the action had been originally commenced therein; and the costs of the parties in respect of the proceedings subsequent to the order of the Judge of the Supreme Court shall be allowed according to the scale of costs for the time being in use in the District Courts, and the costs of the order and all proceedings previous thereto shall be allowed according to the scale of costs for the time being in use in the Supreme Court.

34. The right of appeal given by section ninety-four of the Principal Act shall extend to all actions of replevin where the amount of rent in respect of which any distress was or might have been made exceeds ten pounds; to all actions for the recovery of tenements where the yearly rent or value of the premises exceeds ten pounds; to all actions of ejectment where the value of the land in dispute exceeds fifty pounds; and to all proceedings in interpleader where the money claimed or the value of the subject matter in dispute exceeds ten pounds; and to all other causes in which the amount claimed exceeds ten pounds.

In what cases appeal allowed. 44 Vic. No. 30, s. 2.

35. (I) In any cause, tried or heard in any District Court in which any party has a right of appeal under this or the Principal Act, it shall be lawful for any person aggrieved by the ruling, order, direction, or decision of the Judge, at any time within eight days after the same has been made or given, to appeal against such ruling, order, direction, or decision by motion to the Supreme Court, instead of by special case.

Appeal may be made within eight days without stating special case. 44 Vic. No. 30 s. 1.

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

(III)

(III) At the trial or hearing of any such cause, the Judge at the request of either party shall make a note of any question of law raised at such trial or hearing, and of the facts in evidence relating thereto, and of his decision thereon, and of his final decision of the cause, and he shall at the expense of any party who may require the same for the purpose of appeal furnish a copy of such note or allow a copy thereof to be taken, and such copy shall be used and received on such motion and at the hearing of the appeal, and the costs thereof shall be in the discretion of the Court.

36. It shall be lawful for the Judge upon *ex parte* application by the plaintiff at any time during the sitting of the Court at which a cause has been struck out pursuant to section sixty-three of the Principal Act, to order the said cause to be restored to the cause list upon such terms (if any) as to payment of costs, giving security for costs, or otherwise, as he may think fit, and thereupon the cause shall be proceeded with as if the plaintiff had duly appeared at the time and place named for such appearance or at the continuation or adjournment of the Court or cause.

Cause may be restored to cause list. 48 Vic. No. 7, s. 10.

37. Every process whatsoever shall be good, notwithstanding that a place or time which ought to be named therein as the place or time where or when a Court is to be held is not stated therein: Provided that in such case the prescribed notice be given to the person upon whom the original process was served, informing him of such place or time, within the time provided for service of such process, and that the original process be worded "at a place [or "at a time"] hereafter to be appointed [or "ascertained"], notice whereof will be given to you by letter or otherwise," or to the like effect.

When process of Court good, &c.

38. Any summons or subpoena, order, or notice may be served by any District Court Bailiff or Sheriff's Bailiff, or by any party interested, or by any person employed by such party, and such party shall, if successful in the action, be entitled to recover the actual costs incurred in such service.

Service of process.

39. It shall be lawful for the Judge to set aside judgment in any cause, and if necessary to stay or set aside execution and to give leave to the defendant to file a statement of the grounds of his defence, to give all necessary notices, and to file all necessary affidavits and documents, on such terms as to costs and otherwise as may seem just.

Judge may set aside judgment in any cause.

40. The bailiff shall hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money seized or taken by him in execution, as a security for the amount directed to be levied, or so much of such amount as has not been otherwise levied or raised, for the benefit of the judgment creditor; and the judgment creditor may sue in any competent Court in his own name, but setting out in his process that he sues by virtue of the right of the judgment debtor, or of any person in whose name the judgment debtor might have sued, for the recovery of the sum or sums secured or made payable thereby when the time of payment thereof arrives, and the person sued shall be entitled to any defence which he might have set up if he had been sued by the judgment debtor.

Securities seized to be held by bailiff.

English County Courts Act, 1868, s. 143.

41. A District Court Judge, in any case where he thinks fit, upon an application on an affidavit by either party, may issue an order under his hand and the seal of the Court for bringing up before such Court any prisoner or person confined in any gaol, prison, or place, under any sentence or under commitment for trial or otherwise, to be examined as a witness in any action or matter depending or to be inquired of or determined in or before such Court; and the person required by any such order to be brought before the Court shall be so brought under the same care and custody, and be dealt with in like manner in all respects, as a prisoner required by any writ of *habeas corpus* awarded by the Supreme Court to be brought before such Court to be examined as a witness in any action or matter

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

English County Courts Act of 1868, s. 112.

pending

District Courts.

9

pending before such Court is by law required to be dealt with: Provided always that the person having the custody of such prisoner or person shall not be bound to obey such order unless a tender be made to him of a reasonable sum for the conveyance and maintenance of a proper officer or officers and of the prisoner or person in going to, remaining at, and returning from such Court.

42. It shall be lawful for any District Court Judge, from time to time, to vary or annul any order authorising the issue of a writ of *capias ad satisfaciendum*, or to make the operation of any writ of *capias ad satisfaciendum* conditional on non-compliance with any order for payment of the judgment debt by instalments or otherwise that such Judge may think fit to make, and to issue a writ in the nature of a *habeas corpus* to a gaoler to produce the person detained before him, and thereupon the gaoler shall produce such person as aforesaid, and the Judge may discharge him or remit him to the custody of such gaoler as the circumstances may require.

Judge may vary or annul order authorizing *ea ss.* and other provisions relating to such writs.

43. Whenever a cause is commenced over which the Court has no jurisdiction, the Judge shall have power to award costs in the same manner, to the same extent, and recoverable in the same manner as if the Court had jurisdiction therein, and the plaintiff had not appeared, or had appeared and failed to prove his demand or complaint, and the defendant shall not, by appearing in such cause, be deemed to have waived any objection he may have on the ground of want of jurisdiction, or be precluded from setting up such objection thereafter.

Court may award costs where action or matter is struck out for want of jurisdiction.

English County Courts Act, 1888, s. 114.

44. It shall be lawful for a District Court Judge sitting in Chambers, whether within or beyond the circuit to which he is attached, and whether attended by an officer or not, to make any order in respect of any cause pending in a District Court holden or to be holden in such circuit as aforesaid that he could lawfully make in Court and which he considers may be properly made in Chambers.

Power of Judge sitting in Chambers.

45. The power conferred upon a Judge by section sixty-nine of the Principal Act to take the examination of a witness *de bene esse*, or to authorise such examination to be taken, shall extend to all cases in which it is shown to the satisfaction of the Judge that there is a probability of the testimony of the witness being lost if his evidence is not so taken, although the matters mentioned in that section have not been established.

Examination *de bene esse*.

46. In any proceeding under this or the Principal Act, the Judge may order to be paid to a witness, as part of his expenses, a reasonable sum as remuneration for any work he may have done in preparing evidence or otherwise.

Judge may order payment to witness of work done in preparing evidence, &c.

47. If the amount claimed exceeds twenty pounds, the Judge may, without the consent of the parties, exercise the powers of reference to arbitration conferred upon him by section one hundred and five of the Principal Act, and thereupon all the provisions of that section shall apply. In references under this section the amount of the arbitrator's fee shall be fixed by the Judge, and shall be costs in the cause.

Judge may refer case to arbitration.

(c) *Interpleader.*

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

By whom application may be made.

(a) by a defendant in a District Court action brought for or in respect of any debt, money, goods, or chattels to which some third party makes a claim;

(b) by an officer charged with the execution of the process of a District Court, if claim is made to any money, goods, or chattels taken or intended to be taken in execution under any such process, or to the proceeds or value of any such goods or chattels, by any person other than the person against whom the process issued.

(II) The application must be made to the Registrar of the Court in which the action is brought or from which the process issued, as the case may be, and must be supported by an affidavit showing—

To be made to the Registrar.

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

49. (I) The Registrar shall thereupon issue a summons calling upon the person claiming as aforesaid, hereinafter called the claimant, to state the nature and particulars of his claim within such time as may be prescribed; and upon the issue of the summons all proceedings in the action and in any other action which may have been brought in the Supreme Court or a District Court in respect of such claim shall be stayed.

Registrar to issue summons and enter interpleader plaint.

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

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

(IV) Section eighty-six of the Principal Act is hereby repealed.

50. (I) If the applicant is an officer charged with the execution of the process of a District Court the Registrar may, upon application by the claimant, order the subject matter in dispute to be brought into Court or placed in some other safe custody, or may order it to be handed over to the claimant upon payment by him of the value thereof into Court to abide the event, or upon execution by him of a bond, with or without sureties as the Registrar may direct, and to such amount as the Registrar may consider sufficient, conditioned for the disposal of the said subject matter as the Judge may order.

The Registrar may order the subject matter to be handed over to the claimant.

(II) Such application shall be made in such form and within such time as may be prescribed, and notice thereof shall be given to the officer who is applying for relief by way of interpleader.

Provisions relating to jurors and juries.

51. (I) Sections fifty-one and fifty-two of the Principal Act are hereby repealed and the following enactments substituted in place thereof:—The qualification of jurors in the District Court shall be the same as that from time to time provided as the qualification of jurors in the Supreme Court, and jury lists shall be prepared, published, and corrected at such times and in such manner as may from time to time be enacted with respect to the preparation, publication, and correction of the lists of common jurors for the Supreme Court, and the jury lists when corrected shall be transmitted by the clerks of the benches to the Registrar of the District Court, who shall thereupon prepare a jurors' book for the Court according to the Act of Council eleventh Victoria number twenty, but containing only the names of jurors who reside not more than ten miles from the Court-house.

Qualification of jurors.

See Act of 1858 (22 Vic. No. 18) s. 51.

(II)

(II) A copy of the Supreme Court jurors' book for a Circuit Court at any place may, if approved by the Judge of the District Court, be taken as the District Court jurors' book, but no person shall be liable to serve as a juror at two District Courts for the sole reason that his name is on the jurors' book for both.

Supreme Court jurors' book may be taken for District Court.

(III) For the purpose of the establishment of jurors' districts, every District Court (now or hereafter to be appointed) shall be deemed a Court for the trial of issues and the assessment of damages within the meaning of the Act eleventh Victoria number twenty; and if a District Court is ordered to be holden at any place where provision has not been already made for the preparing and settling of the jury lists the Governor may direct the Bench of Magistrates of the district wherein the town is situate to cause jury lists to be prepared; and thereupon the lists shall be prepared at the same times and in the same manner as may from time to time be provided with regard to the preparation in similar cases of lists of common jurors for the Supreme Court: Provided that if any jury list take effect at any time between the months of April and October in any year it shall continue in force until the month of October in the year following, and until then no new list shall, in that case, be prepared.

Establishment of jurors' districts.
Ibid. sec. 52.

52. It shall be lawful for the Governor from time to time to order by proclamation in the *Gazette* that the provisions of the Act of Council eleventh Victoria number twenty, as amended by the Act of Council eighteenth Victoria number eighteen, shall extend and apply to such Districts as may from time to time be proclaimed under the Principal Act, or to Circuits appointed under this Act, and thereupon jurors' lists shall be prepared, published, and corrected for the several towns in such Districts or Circuits respectively at which District Courts are ordered to be holden, and all the other provisions contained in the said Acts of Council which are applicable to the Districts already proclaimed shall extend and apply *mutatis mutandis* to such first-mentioned Districts and Circuits, and the towns and places therein.

Application of Juries Acts to Districts and Circuits.
22 Vic. No. 25, s. 5.

53. The plaintiff and defendant shall be entitled to challenge for cause as in the case of the trial of civil issues in the Supreme Court, and the validity of such challenge shall be decided by the Judge.

Challenge for cause.

54. In every case in which a jury has been summoned, if the number of jurors in attendance be more than eight, the names of such jurors shall, at the time of trial, be placed in a box to be provided for that purpose, and the Registrar shall, in open Court, draw therefrom the names one after another, until eight names have been so drawn and remain after all causes of challenge allowed, or until the names of the jurors summoned are exhausted; and, in case of a deficiency of jurors, the necessary number of persons to complete such eight jurors shall be nominated by the Judge from the bystanders (whether their names are on the jurors' book or not), and if any person so nominated refuse to act as a juror, without an excuse allowed by the Judge, he shall be liable to the penalty to which a juror is liable for not attending after having been summoned.

Jury how chosen.

55. (I) The Registrar shall deliver a list containing the names of the eight jurors to the plaintiff or his counsel, or attorney, by whom two names may be struck off; the list shall then, if the defendant appears, be delivered to the defendant or his counsel or attorney, by whom two names may be struck off.

Striking and empanelling jury.

(II) The jurors whose names remain upon the list, or the first four jurors whose names appear thereon (as the case may require) shall be the jurors for the trial, and shall be sworn and empanelled accordingly.

56. The jurors shall give their verdict or may be discharged as in the case of the trial of civil issues in the Supreme Court.

Verdict or discharge of jury.

57. (I) In all actions where the amount claimed exceeds twenty pounds the Judge may at any time order that a jury be summoned to try the action.

When jury may be summoned to try action.

48 Vic. No. 7, s. 9.

(II) In all actions where the amount claimed does not exceed twenty pounds it shall be lawful for the Judge, on the application of either of the parties, *ex parte* or otherwise, if made at least five clear days before the day named in the summons for the hearing of such action, to order that a jury be summoned to try the action.

(III) In all actions, whether the amount claimed exceeds twenty pounds or not, it shall also be lawful for the plaintiff and defendant to require a jury to be summoned to try the action, upon giving the Registrar or leaving at his office, at least five clear days before the day named in the summons for the hearing of such action, a notice thereof, signed by both plaintiff and defendant or by their respective attorneys.

The plaintiff, in cases coming within subsections (I) and (III), and in cases coming within subsection (II) the party making application, shall, within such time as may be prescribed, pay to the Registrar the sum of two pounds, which shall be costs in the cause unless the Judge otherwise order.

Miscellaneous Provisions.

58. No Judge of a District Court shall practise as a Crown Prosecutor.

Judges not to practise as Crown Prosecutor.

22 Vic. No. 25, s. 3.

59. (I) Every Chairman of Quarter Sessions shall be and be deemed to have been a Judge having continuous jurisdiction over all matters within his cognizance as such Chairman, whether at Common Law or by Statute, at all times during his holding of such office.

Chairman of Quarter Sessions to have continuous jurisdiction.

22 Vic. No. 25, s. 3.

(II) Any act or power which may be done or exercised by a Chairman of Quarter Sessions may be done or exercised by him whether any Court of Quarter Sessions is at the time actually sitting and presided over by him or not, and all acts heretofore done and powers heretofore exercised by a Chairman of Quarter Sessions when the Court was not sitting shall be as valid as if the Court had been sitting when the acts were done and the powers exercised as aforesaid.

60. Payment of any fine imposed by any Court under this or the Principal Act may be enforced upon the order of any District Court Judge in like manner as payment of any debt adjudged in such Court, and shall be accounted for as directed in the Principal Act.

Fines how to be enforced and accounted for.

22 Vic. No. 25, s. 4.

61. After the commencement of this Act it shall not be necessary for the Registrar to submit his accounts to be audited or settled by the Judge, or for the Judge to audit or settle such accounts; and so much of section thirty-five of the Principal Act as provides that the Registrar shall submit such accounts to be audited and settled by the Judge is hereby repealed.

Registrar's accounts need not be submitted to the Judge.

22 Vic. No. 25, s. 4.

62. Sections one hundred and one hundred and one of the Principal Act are hereby amended by the omission of the words "thirty pounds" wherever they occur and the substitution of the words "fifty pounds."

Costs in Supreme Court. Act of 1858

(22 Vic. 18), ss. 100,

101, amended.

63. The returns to be transmitted under section one hundred and three of the Principal Act shall specify such only of the matters enumerated in that section as the Minister may from time to time direct, provided always that in the absence of any such direction by the Minister the returns shall, as heretofore, specify all the matters so enumerated.

Returns transmitted by Registrar.

64. The District Court Judges, or any three of them, shall have power to make such general rules as they shall think fit for regulating the practice of District Courts and forms of proceedings therein, and scales of costs to be paid to counsel and attorneys in proceedings within the enlarged jurisdiction conferred by this Act, and from time to time to amend such rules. This power of making rules shall extend to all matters of procedure or practice, or relating to or concerning the effect or operation in law of any procedure or practice, or the enforcement of judgments or orders in causes within the jurisdiction of District Courts. The rules shall be published in the *Gazette*, and shall thereupon, if not inconsistent with the provisions of this or the Principal Act, have the force of law. In any case, not expressly by this or the Principal Act or in pursuance thereof provided for, the general principles of practice in the Supreme Court may be adopted so far as they are applicable. The rules made under the Principal Act shall, except in so far as they are inconsistent with the provisions of this Act, remain in force until superseded by rules made under this section.

General rules.
English County
Courts Act, 1888,
sec. 164.

District Courts.

14

SCHEDULES.

SCHEDULE A.

22 Vict. No. 25.
23 Vict. No. 1.
29 Vict. No. 11.
30 Vict. No. 9.
44 Vict. No. 30.
48 Vict. No. 7.

SCHEDULE B.

Summons to obtain judgment by default on personal service.

In the [title of Court issuing summons].

No. [of plaint].

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

TAKE notice that unless within _____ days after service of this summons on you, inclusive of the day of service, you file with the Registrar of this Court at [place of office], a statement of the grounds of your defence, with an affidavit verifying the same, you will not afterwards be allowed to make any defence to the claim which the plaintiff makes on you as per margin, the particulars of which are hereunto annexed, but the plaintiff may proceed to judgment and execution without giving further notice. If you file the statement and affidavit as aforesaid, within the time specified, the action will be tried at the District Court to be holden at _____ on the _____ day of _____ A.D. 189____, [or, at a time hereafter to be appointed, notice whereof will be given to you by registered letter at such address as you may give to the Registrar]. A statement of the grounds of your defence may be filed by filling up the form set out below, and sending it to the Registrar. The statement must be verified by affidavit.

Dated this _____ day of _____ A.D. 189____.

Registrar of Court.

Seal of Court.

| | |
|-----------------------------------|----------|
| Claim | \$ s. c. |
| Fee for plaint .. | |
| Attorney's costs. | |
| <hr/> | |
| Total amount of debt and costs | <hr/> |

Notice of defence.

In the [title of Court].

No. [of plaint].

Between A.B., plaintiff, and C.D., defendant.

TAKE notice that I intend to defend this action, and to rely upon the following grounds of defence:—

[Here enumerate grounds of defence.]

[or that I intend to object to the jurisdiction of the Court.]

C.D. defendant (or _____ defendant's attorney).

(To be endorsed on summons.)

If you pay the debt and costs as per margin on the other side into the Registrar's office within the time specified for filing a statement of the grounds of defence, and without filing such statement you will avoid further costs.

If you confess the plaintiff's claim you should sign and deliver your confession to the Registrar of the Court within the like time. You and the plaintiff may agree in writing at any time up to judgment as to the amount due and mode of payment.

If you wish to defend the action you must, within the time specified in the summons, file with the Registrar a statement of the grounds of your defence, with an affidavit verifying the same.

If you admit part of the claim you must file a statement of defence and affidavit in the manner specified above as to the remainder, and pay to the Registrar the sum admitted together with proportionate costs. If at the trial the plaintiff recovers no more than you have paid to the Registrar you may then avoid further costs, and may apply for your own costs of defending the action.

If you intend to rely upon a cross action or set-off you must include it in the statement, and must also give particulars thereof to the Registrar. If your defence be a tender you must pay the amount tendered into Court before or at the hearing.