

No. , 1898.

A BILL

To consolidate and amend the law relating to District Courts.

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 :—

The Courts and Judges.

1. Every District Court shall be a Court of record.
2. Every Judge of a District Court appointed before the commencement of this Act, and every Judge appointed after such commencement, is hereby constituted a Judge of District Courts for New South Wales. Court to be of record.
22 Vic. No. 18, s. 4.
Judges' Commissions
to extend to entire
Colony.
3. There shall be a district to each Court. The limits of the district of a Court shall be such as are defined by the Governor by notice in the Gazette made before or after the commencement of this Act. Limits of districts.
22 Vic. No. 18, s. 3.

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The Governor by notice in the Gazette may alter the limits of a district; but such alteration shall not take effect until the expiration of three months after such notification; and proceedings commenced in a Court shall not be affected by any subsequent alteration in the limits of the district of such Court. 29 Vic. No. 11, s. 2.

4. The Governor, by proclamation in the Gazette, may appoint places within the several districts at which Courts shall be holden, and appoint the intervals of time in each case within which a Court must be holden at any such place, and may alter the place for holding any such Court, or order the holding of any such Court to be, and the same shall thereupon be, discontinued. Governor may proclaim courts within districts. 22 Vic. No. 18, ss. 2 and 45.

But two or more separate Courts may be holden at the same place appointed as aforesaid.

And where the holding of a Court is discontinued, all proceedings commenced or had in that Court may be continued and enforced in the Court holden at the same place, or if there is no Court holden at such place, in the Court holden at the place nearest to that at which the Court in which the proceedings were commenced or had before such discontinuance was holden. 29 Vic. No. 11, s. 1.

5. No writ of mandamus shall issue to a Judge of District Courts for refusing to do any act relating to the duties of his office; but any party requiring such act to be done may apply to the Supreme Court or a Judge thereof upon an affidavit of the facts for a rule or summons calling upon the Judge of District Courts, and also the party to be affected by such act to show cause why such act should not be done. Rule or order in place of mandamus to District Court Judge. Ibid. s. 93.

One Judge and one Judge only shall preside and act in a Court at the hearing of every action or proceeding and the making of every order in relation thereto; and shall determine all questions of law, and unless a jury be summoned all questions also of fact. 30 Vic. No. 9, s. 4. 22 Vic. No. 18, s. 47.

But where by reason of the death or absence of a Judge a Court cannot be holden 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. Provision for Judge's absence. Sec. 22 Vic. No. 18, s. 45.

And where, after a Court has been opened, no Judge is present to adjourn the Court, the registrar, or, in the event of his death or absence, the bailiff may adjourn the Court to such day as he may deem convenient.

A Judge sitting in chambers at any place may in any action make any order which he could lawfully make in Court and which he considers may be properly made in chambers. Judge may sit in chambers.

If after the service of such rule or summons good cause is not shown, the Supreme Court or a Judge thereof may, by rule or order, direct the act to be done, and the Judge of District Courts, upon being served with such rule or order, shall obey the same upon pain of attachment;

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attachment; and in any event the Supreme Court or Judge thereof may make such order with respect to costs as to such Court or Judge seems fit.

Jurisdiction in actions.

6. (1) A Court shall have jurisdiction in any action other than an action for the recovery of land when the defendant or one of two or more defendants resides, or carries on business within the limits of the district of such Court, or within two miles of such limits and within an adjoining district. Jurisdiction when defendant resides in district. 22 Vic. No. 18, s. 5.

But where the defendant has given an engagement or promise in writing to pay any debt or sum at a place specified, the plaintiff may, if he thinks fit, cause such defendant to be summoned to the Court which would have jurisdiction if the defendant were resident at such specified place. Ibid. s. 6.

And if any defendant, after having in one place contracted a debt or become liable for any damages recoverable in any Court, by removal to and residence in another place previously to the issuing of a summons for the recovery of such debt or damages, becomes subject to the jurisdiction of any other Court, it shall be lawful for the plaintiff, if he thinks fit, to cause such defendant to be summoned to the Court which would have jurisdiction if the defendant continued to reside at the first-mentioned place: Where defendant removes after contracting liability. Ibid. s. 6.

Provided that in respect of claims for amounts not exceeding ten pounds and within the jurisdiction of Courts of Petty Sessions under the Act of Council tenth Victoria number ten, no defendant, so long as such jurisdiction as last aforesaid continues, shall be compelled to appear at a Court holden under this Act at a place not included within the Petty Sessions District in which he is resident. Proviso. Ibid. s. 5.

(2) In any action for the recovery of land a Court shall have jurisdiction if the land in dispute, or some part thereof, is situate within the limits of the district of such Court, or within two miles of such limits and within an adjoining district: Special provisions as to ejectment actions. English County Courts Act, 1888.

7. (1) The jurisdiction of a Court holden at Sydney shall extend to every claim or cause of action cognizable on the common law side of the Supreme Court, in which the property sought to be therein recovered does not exceed two hundred pounds in value, or the amount therein claimed, whether on balance of account or after an admitted set off or otherwise, does not exceed that sum; and the jurisdiction of every other Court shall extend to every such claim or cause of action in which such property or amount does not exceed five hundred pounds. Jurisdiction as to claim and amount of District Courts.

Provided that the jurisdiction in cases of replevin shall not extend where the alleged rent for or in respect of which the distress has been made exceeds fifty pounds. Replevin.

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(2) It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more actions in a Court; but any plaintiff, having a cause of action for more than the amount for which an action might be brought in such Court, may abandon the excess and recover to an amount not exceeding the amount for which an action might be brought as aforesaid.

Splitting demands.
22 Vic. No. 18,
ss. 12 and 13.

And where any defendant has given two or more bills of exchange, promissory notes, bonds, or other securities for any debt or sum originally exceeding the amount for which an action might be brought as aforesaid, it shall be lawful for the plaintiff to sue upon each of such securities, not exceeding the said amount, as forming a distinct cause of action.

(3) A set-off not exceeding two hundred pounds may be allowed in an action brought in a Court holden at Sydney, and a set-off not exceeding five hundred pounds may be allowed in an action brought in any other Court.

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

8. The jurisdiction of a District Court shall also extend to every action and issue ordered by the Supreme Court to be tried in such District Court.

Supreme Court causes and issues.

9. If both parties to an action which might be brought in the Supreme Court by a memorandum signed by them or by their attorneys, and filed with the plaint, and stating that the persons so signing knew that the action could not without such consent be tried in the District Court, agree that a District Court holden at any particular place shall have power to try such action, the said District Court shall have jurisdiction to try such action.

Consent jurisdiction.
Ibid. s. 9.

10. The jurisdiction of any Court shall, subject to the limitation as to amount hereinbefore in this Act specified, extend to the recovery of the whole or part of the unliquidated balance of a partnership account or the amount or part of the amount of the distributive share of any person under an intestacy or of any legacy under a will.

In cases of partnership intestacy and legacy.
Ibid. s. 8.

11. Any doctor of medicine or other legally-qualified practitioner in medicine may sue for and recover any fees or other remuneration as such practitioner in like manner as any debt or other demand may be sued for and recovered by any surgeon or other person under this Act.

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

12. Where any plaintiff has a demand recoverable under this Act against two or more persons jointly answerable, and has obtained a judgment against one or more of such persons, every such person against whom judgment has been so obtained and who has satisfied the whole or any part of such judgment shall be entitled to demand and recover in a District Court contribution from any other person jointly liable with him.

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

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

14. In every action under this Act in which the defendant is allowed to set off any debt or demand claimed or recoverable by him from the plaintiff, such defendant shall, whether the plaintiff is nonsuit or has judgment given against him, be entitled to recover in such action the amount, if any, by which the debt or demand so set off exceeds the debt or demand claimed and proved by the plaintiff, and shall have judgment and execution for the same accordingly : Proceedings where defendant's set-off exceeds the plaintiff's claim. *Ibid.* s. 70.

Jurisdiction in other matters.

15. The jurisdiction and powers which by the Act twenty-second Victoria number six, intituled "*An Act to amend the Act for the Maintenance of Deserted Wives and Children*" are vested in and conferred on the Supreme Court, and the Judges thereof severally for protecting in certain cases the property of married women deserted by their husbands may be equally exercised by any Court and the Judge or Deputy Judge thereof, and every order made in that behalf shall, while in force, have the same validity and effect as a similar order made under the same Act by the Supreme Court. Powers under Deserted Wives and Children's Act Amendment Act. *Ibid.* s. 31.

16. Any Court may hear and determine in its mining jurisdiction appeals from any complaint or proceeding in a Warden's Court under the Mining Act, 1874, and may reverse or vary the decision of the warden or dismiss the appeal or make such order as may to the Court appear just, and may, if necessary, order the payment of any money or the delivery of the possession of any claim, land, race, drain, dam, reservoir, water, gold, or other property to the complainant before the Warden, or the restitution of any claim, land, or water, gold or other minerals or metal or other property as the case may require, and may make such order as to the costs of the appeal and of the proceeding appealed from as such Court may think fit. Jurisdiction under Mining Act. 37 Vic. No. 13, s. 106.

17. (1) Any Court holden in a district wherein a company is registered under the Act twenty-fourth Victoria number twenty-one, intituled "*An Act to limit the liability of Mining Partnerships*" may, upon the petition of a creditor of such company order the company by a day to be named in the order to pay or secure payment to the petitioning creditor of all moneys proved to be due to him, and if at the expiration of such time such payment is not made or such security given the Court may there upon order the winding-up of the company. Jurisdiction under Mining Partnership Act. 24 Vic. No. 21, ss. 16-19.

Or the Court may on the hearing of the petition order the winding-up of the company forthwith, or make such order as appears just.

(2) Any Court may, upon the petition of shareholders of any such company order the winding-up of the company forthwith, or may make such order as appears just. *Ibid.* s. 20.

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18. Any Court may hear and determine any matters which by any statutes now or hereafter to be passed are authorised to be heard and determined by a district Court. Jurisdiction under statutory authority.

Removal of causes from a District Court.

19. The defendant in any action for the recovery of land, 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 a District Court holden at Sydney) would be affected by the decision in the action. Ejectment may be ordered to be tried in the Supreme Court.

On the hearing of the summons, any Judge of the Supreme Court, 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.

20. Any plaint entered in any District Court may be removed by certiorari into the Supreme Court by order of any Judge thereof, upon such terms as to payment of costs, giving security for the amount claimed or costs, or such other terms as such Judge thinks fit, if it appears to such Judge to be a case proper to be tried in the Supreme Court: Certiorari. 22 Vic. No. 18, s. 89.

Provided that no plaint shall be removed when the amount claimed does not exceed ten pounds, unless the defendant gives security to the satisfaction of such Judge for the amount claimed and also for the costs in the Supreme Court not exceeding one hundred pounds, or deposits in the hands of the Prothonotary of the said Court the amount claimed, together with the sum of one hundred pounds by way of security for the said costs.

21. No judgment, order, or determination given or made under this Act by any Judge, nor any cause or matter brought before him or pending in a Court presided over by him, shall be removed by appeal, motion, writ of error, certiorari, or otherwise into any other Court whatsoever, save and except in the manner and according to the provisions in this Act mentioned. Removal of causes. Ibid. s. 99.

Reference to arbitration.

22. In any action in a District Court, the Judge with the consent of both parties to the action, or where the amount claimed exceeds twenty pounds, without the consent of such parties, may order the same, with or without other matters in dispute between such parties, within Power to refer to arbitration by consent. See Ibid. s. 105.

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within the jurisdiction of the Court, to be referred to arbitration to such person or persons, and in such manner and on such terms as he may think reasonable and just; and where the reference is by consent of the parties such reference shall not be revocable by either party except by leave of the Judge, but where the reference is without such consent such reference may be revoked by the Judge.

The arbitrator, arbitrators, or umpire shall hear and determine the action and matters so referred, and the award given by him or them shall be entered as the judgment in the action, and shall be as binding and effectual to all intents as if given by the Judge:

Provided that the Judge if he thinks fit may set aside any such award so given as aforesaid, or refer such award back to the arbitrator, arbitrators, or umpire, or may, with the consent of both parties where the reference has been made by the consent of the parties, and without such consent, where the reference has been made without the consent of the parties, revoke the reference or order another reference to be made in the manner aforesaid.

Judgment to be final.

23. Except where in this Act otherwise provided every judgment of a Court shall be final and conclusive between the parties. Judgments to be final unless new trial granted.

But the Judge may nonsuit the plaintiff where satisfactory proof is not given that the plaintiff is entitled to the judgment of the Court, and shall also in every case whatever have the power if he thinks fit to order a new trial to be had upon such terms as he thinks reasonable, and in the meantime to stay the proceedings. Ibid. s. 71.

Appeal.

24. If either party—

- (a) to any action of replevin where the alleged rent for or in respect of which the distress has been made exceeds ten pounds; or Appeal on special case stated. In what cases appeal allowed.
- (b) to any action for the recovery of land where the value of the land in dispute in the action exceeds fifty pounds; or 22 Vic. No. 18, s. 94. 44 Vic. No. 30, s. 2.
- (c) to any proceedings in interpleader where the money claimed or the value of the subject matter in dispute in the proceedings exceeds ten pounds; or
- (d) to any other action or proceeding in which the amount claimed in the action exceeds ten pounds

is dissatisfied with the decision or direction of a Judge in point of law or upon the admission or rejection of any evidence, such party may appeal from the same to the Supreme Court; and the Supreme Court may either order a new trial on such terms as it thinks fit, or may order

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order judgment to be entered for either party, as the case may be, and make such order with respect to the costs of the said appeal as such Court may think proper; and such orders shall be final:

Provided that no appeal shall lie from the decision of a Judge if before such decision is pronounced both parties agree, in writing signed by themselves or their attorneys or agents, that the decision of the Judge shall be final. Parties may agree not to appeal. 22 Vic. No 18, s. 95.

25. If the appellant or respondent in an appeal to a Court sitting in its mining jurisdiction— Appeal under Mining Act. 37 Vic. No. 13, s. 115.

(a) is dissatisfied with the decision or direction of such Court in point of law or upon the admission or rejection of evidence where the amount of the claim before the warden is the value of the property involved exceeds fifty pounds;

(b) is dissatisfied with such decision or direction on any ground where such amount or value exceeds five hundred pounds,

such appellant or respondent may appeal from the same to the Supreme Court; and the Supreme Court may either order a new trial before the District Court sitting in its mining jurisdiction on such terms as it thinks fit, or may order judgment to be entered for either party, as the case may be, and make such order with respect to the costs of the said appeal as such Court may think proper; and such orders shall be final:

Provided that no such appeal shall lie if, before the hearing of the complaint, the parties thereto agree to accept the decision of the warden as final.

Rules of Court and Orders-in-Council.

26. The rules of Court in the Schedule to this Act shall come into operation at the commencement of this Act, and as to all matters to which they extend shall thenceforth regulate the proceedings in District Courts. Rules in Schedule. 38 & 39 Vic., c. 77, s. 16.

But such rules of Court, and also all such other rules of Court as may be made after the passing and before the commencement of this Act, under the authority of the next section, may be annulled or altered by the authority by which new rules of Court may be made after the commencement of this Act.

27. The Governor may at any time after the passing and before the commencement of this Act by Order-in-Council made upon the recommendation of the Judges or any three of them make any further or additional rules of Court for carrying this Act into effect, and in particular for all or any of the following matters, so far as they are not provided for by the rules in the Schedule to this Act, that to say— Provision as to making rules before or after the commencement of this Act. Ibid. s. 17.

(a) for regulating the sittings of the Courts and of the Judges thereof sitting in chambers, and

(b) for regulating the pleading, practice, and procedure in the Courts, and

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- (c) generally for regulating any matters relating to the practice, and procedure of the Courts or to the duties of the officers thereof, or of the costs of proceedings therein.

After the commencement of this Act the Judges or any three of them may alter and annul any rules of Court for the time being in force, and have and exercise the same power of making rules of Court as is by this section vested in the Governor on the recommendation of the judges before the commencement of this Act.

All rules of Court made in pursuance of this section shall regulate all matters to which they extend, until annulled or altered in pursuance of this section.

28. Nothing in this Act or in the Schedule hereto or in any rules of Court to be made under this Act, save so far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials, or the rules of evidence, or the law relating to jurymen or juries.

Provision as to Act not affecting rules of evidence or juries.
Ibid. s. 20.

29. When any provisions in respect of the practice or procedure of Courts are contained in any Act of Parliament, rules of Court may be made for modifying such provisions to any extent that may be deemed necessary.

Additional power as to regulation of practice and procedure by rules of Court.
Ibid. s. 24.

30. Every Order-in-Council and rule of Court required by this Act to be laid before each House of Parliament shall be so laid within forty days next after it is made, if Parliament is then sitting, or if not, within forty days after the commencement of the then next ensuing session: And if an address is presented to the Governor by either House of Parliament within the next subsequent forty days praying that any such rule or order may be annulled, the Governor may thereupon by Order-in-Council annul the same; and the rule or order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Orders and rules to be laid before Parliament, and may be annulled on address by sitting House.
Ibid. s. 25.

31. The Judges, or any three of them, may either before or after the commencement of this Act, by order, fix the fees and percentages to be taken in Courts or in any office which is connected with any Court, or in which any business connected therewith is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any such Court or the Judge thereof, and may from time to time by order increase, reduce, or abolish all or any of such fees and percentages, and appoint new fees and percentages to be taken in such courts or offices or any of them by any such officer as aforesaid.

Fixing and collection of fees.
Ibid. s. 26.

Any order made in pursuance of this section shall be binding on all the offices and officers to which it refers in the same manner as if it had been granted by Parliament.

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All such fees and percentages shall (save as otherwise directed by the order) be paid into the Consolidated Revenue Fund, and with respect thereto the following rules shall be observed :—

- (a) The fees and percentages shall, except so far as the order may otherwise direct, be taken by stamps, and if not taken by stamps shall be taken, applied, accounted for, and paid over in such manner as may be directed by the order.
- (b) Such stamps shall be impressed or adhesive as the Governor in Council may from time to time direct.
- (c) Any document which ought to bear a stamp in pursuance of this Act or any rule or order made thereunder shall not be received, filed, used, or admitted in evidence unless and until it is properly stamped within the time prescribed by the orders under this section regulating the use of stamps, but if any such document is through mistake or inadvertence received, filed, or used without being properly stamped, the Court or a Judge may, if they or he think fit, order that the same be stamped as in such order may be directed.
- (d) Any person who forges or counterfeits any such stamp, or uses any such stamp knowing the same to be forged or counterfeit, or to have been previously cancelled or used shall be guilty of forgery, and be liable, on conviction, to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years.

An order under this section may abolish any existing fees and percentages which may be taken in the said Court or offices or any of them, or by the said officers or any of them, but subject to the provisions of any order made in pursuance of this section the existing fees and percentages shall continue to be taken, applied, and accounted for in the existing manner.

Repeal, saving clauses, and definitions.

32. After the commencement of this Act all enactments inconsistent therewith shall be repealed. Repeal.

33. Save as by this Act or by any rules of Court may be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in Courts under or by virtue of any law, custom, general order, or rules whatsoever, and which are not inconsistent with this Act or with any rules of Court may continue to be used and practised in Courts in such and the like cases and for such and the like purposes as those to which they would have been applicable if this Act had not passed. Saving of existing procedure of Courts when not inconsistent with this Act or rules of Court. 38 & 39 Vic., c. 77, s. 21.

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34. Nothing in this Act or in the rules of Court contained shall extend to or affect any cause or matter pending at the commencement of this Act, but every such cause or matter shall proceed and be determined in the same manner as if this Act had not been passed. Not to affect pending actions.

35. In this Act, unless the context otherwise requires:— Definitions.

“Court” means District Court.

“Existing” means existing at the commencement of this Act.

“Judge” means judge of District Courts for New South Wales.

“Landlord” means the person entitled to the immediate reversion of the premises, or if the property is held in joint tenancy, coparcenary or tenancy in common, means any one of the persons entitled to such reversion.

“Matter” includes every proceeding in a Court not in an action.

“Order” includes rule.

“Pleading” includes any petition, plaint, or summons, and also includes the statements in writing of the claim or demand of any plaintiff and of the defence of any defendant thereto, and of the answer of the plaintiff to any set off or contention of a defendant.

“Rules of Court” includes forms.

36. This Act shall take effect on the day of , one thousand eight hundred and , in this Act referred to as the commencement of this Act, and may be cited as the “District Courts Act, 1898.” Commencement and short title.

THE SCHEDULE.

RULES OF COURT.

ORDER I.—PLAINT AND SUMMONS.

1. On the application of any person desirous of bringing an action in a Court the registrar of the Court shall enter in a book to be kept for this purpose in his office, a plaint in writing stating the names and the last known places of abode of the parties, and the substance of the action intended to be brought, every one of which plaints shall be numbered in every year according to the order in which it is entered; and thereupon a summons stating the substance of the action, and bearing the number of the plaint on the margin thereof, shall be issued under the seal of the Court, and be served on the defendant; and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same so that the person or place be therein described so as to be commonly known. Proceedings in civil suits. 22 Vic. No. 18, s. 46.

2. A plaint may be entered and a summons may be issued in the name of a person under the age of twenty-one years, to recover any money due to such person for wages or piecework, or for work or services as a clerk, servant, mechanic, or labourer in the same manner as if he were of full age. Infants. Ibid. s. 15.

3. In all actions 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 a special summons in lieu of an ordinary summons. Such summons, together with a statement of the particulars of the plaintiff's claim shall, when possible, be personally served on the defendant. In respect of certain demands plaintiff may require defendant to file statement of defence. See 48 Vic. No. 7, s. 1.

4. A summons in an action for the recovery of land may be served like any other summons to appear to a plaint, and if the defendant cannot be found, and his place of dwelling is not known or admission thereto cannot be obtained for serving such summons, a copy of the summons shall be posted on some conspicuous part of the land sought to be recovered, and such posting shall be deemed good service on the defendant. Service of summons to recover possession of premises. 22 Vic. No. 18, s. 160.

5. Where personal service 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.

(a) that the summons has come to the knowledge of the defendant; or

(b) that he wilfully evades service; or

(c) 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.

ORDER II.—JOINDER OF ACTION.

1. In any proceedings by a man and his wife for an injury done to the wife, in respect of which she is necessarily joined as a co-plaintiff or complainant, it shall be lawful for the husband to add thereto claims in his own right, provided that in the case of the death of either of them such suit or complaint, so far only as relates to the causes of action (if any) which do not survive, shall abate. Proceedings by husband and wife. 22 Vic. No. 18, s. 10.

2. Two or more causes of action, provided they be by and against the same parties and in the same rights, may be joined in the same action; but the Court shall have power to prevent the trial of different causes of action together, if such trial would in the opinion of the Court be inexpedient or inconvenient, and in such cases may order separate trials to be had. Joinder of causes of action. Ibid. s. 11.

ORDER III.—DEFENCES AND SUBSEQUENT PLEADINGS.

1. No defendant shall be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff or to set up by way of defence and to claim and have the benefit of infancy, coverture, or of the Statute of Frauds, or of any Statute of Limitations, Notice of special defences. Ibid. s. 59.

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Limitations, or of his discharge under any statute relating to bankrupts or any Act for relief of insolvent debtors or to plead a justification in any action of tort without the consent of the plaintiff, unless notice thereof has been given to the registrar of the Court; and in every case in which the practice of the Court requires such notice to be given, the registrar shall as soon as conveniently may be after such notice communicate the same to the plaintiff by the post or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the registrar.

2. All matters the subject of a cross action between the parties shall be pleadable by way of set-off, provided that notice thereof be given as is required by these rules in respect of special defences. Matter of cross action may be pleaded. 48 Vic. No. 7, s. 6.

3. 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, beginning with the words "for defence on equitable grounds," be given as is required by these rules in respect of special defences. 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.

4. A defendant may 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. Notice of such payment shall be forthwith communicated by the registrar to the plaintiff or his attorney. Payment into Court of money.

5. If the plaintiff or his attorney elects to accept the sum paid in as full satisfaction as aforesaid, the registrar shall pay over the same to the plaintiff or his attorney, and shall give notice of such acceptance to the defendant or his attorney. But if the plaintiff elects 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. And taking out by the plaintiff.

6. A set-off, cross action, or defence of which notice is required to be given 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. Special defence, &c., though notice not given. 48 Vic. No. 7, s. 4.

7. The plaintiff may, at any time before the trial of the action, apply for a summons calling upon the defendant to show cause why the statement of the grounds of his defence 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, or 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.

8. 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 rule, 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. 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. Proceedings where statement of defence is filed. 48 Vic. No. 7, s. 3.

9. 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 the Court on any ground of objection to the personal to the plaintiff, unless notice of such objection be given as is required by these rules in respect of a special defence. Notice must be given of objection to the jurisdiction.

10. When a suit is commenced over which the Court has no jurisdiction, the defendant shall not, by appearing in such suit, 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. No waiver of want of jurisdiction by appearance of defendant.

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ORDER IV.—TRANSFER OF CAUSES FROM SUPREME COURT.

1. Where an order is made that an action brought in the Supreme Court be tried in a District Court, the plaintiff shall lodge with the registrar of such Court such order, and the issue or the writ for the assessment of damages; and the Judge of such Court shall appoint a day for the hearing of the cause, notice whereof shall be sent by the registrar to both parties or their attorneys; and after such hearing the registrar shall certify the result to the prothonotary of the Supreme Court; and judgment in accordance with such certificate may be signed in the Supreme Court.

Proceedings on transfer of cause from Supreme to District Court.
22 Vic. No. 18, s. 98.

ORDER V.—CERTIORARI AND PROHIBITION.

1. The granting by the Supreme Court or by any Judge thereof of a rule or summons to show cause why a writ of certiorari or prohibition should not issue to a District Court shall, if the Supreme Court or a Judge thereof so direct, operate as a writ of certiorari or stay of proceedings in the action or matter to which the same relates until the determination of such rule or summons or until the Supreme Court or Judge otherwise orders; and the Judge of the District Court shall from time to time adjourn the hearing of such action or matter to such day as he thinks fit until such determination or until such order is made.

Rule or summons to show cause why a writ of certiorari or prohibition should not issue to be a stay of proceedings.
Ibid. s. 90.

ORDER VI.—CHANGE OF VENUE.

1. If a Judge is satisfied that any action pending in his Court can be more conveniently or fairly tried in some other District Court he shall order that the venue be changed, and that the action be sent for hearing to such other Court, or if the Judge is interested in any action pending in his Court he shall order that the venue be changed, and that the action be sent for hearing to the nearest District Court of which he is not the Judge. In either case the registrar of the Court in which the plaintiff was entered shall forthwith transmit by post to the registrar of the Court to which the action is to be sent a certified copy of the plaint as entered in the plaint book, the duplicate copy of the summons and particulars served on the defendant, and a certified copy of the order for changing the venue; and the Judge of such last-mentioned Court shall appoint a day for the hearing, notice whereof shall be sent by post or otherwise by the registrar to both parties.

Power to Judge to change venue.
Ibid. s. 58.

ORDER VII.—BILLS AND NOTES.

1. In any action on a bill of exchange or promissory note it shall be competent for the 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 of the action.

2. 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.

Bill or note may be ordered to be deposited with registrar, and the plaintiffs to give security for costs.
After judgment bill or note to be retained by the registrar.

ORDER VIII.—AMENDMENT.

1. A Judge may at all times amend all defects and errors in any proceeding in his Court, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made with or without costs, and upon such terms as to the Judge may seem fit; and all such amendments as may be necessary for the purpose of determining in the suit the real question in controversy between the parties shall be so made.

As to amendment of defects and errors of proceedings, &c.
22 Vic. No. 18, s. 109.

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ORDER IX.—AFFIDAVITS.

1. All affidavits to be used in any Court may be sworn before any Judge of the Supreme Court, or any commissioner for taking affidavits in that Court, or before any Judge or any justice of the peace.

Affidavits, before whom sworn.
Ibid. s. 104.

ORDER X.—PROCESS.

1. The fact that a place or time which ought to be named in any process as the place or time where or when a Court is to be held is not stated therein itself invalidate the process: Provided that the 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, and that the prescribed notice be given to the person upon whom the process was served, informing him of such place or time, within the time provided for service of such process.

When process of Court good, &c.

2. Any summons, 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.

ORDER XI.—TRIAL BY JURY.

1. In all actions where the amount claimed or the value of the property sought to be recovered 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.

2. In all actions where such amount or value does not exceed twenty pounds it shall be lawful for the Judge, on the application of either of the parties, ex parte or otherwise, to order that a jury be summoned to try the action.

48 Vic. No. 7, s. 9.
When amount does not exceed £20.

3. In all actions, whether such amount or value 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, a notice thereof, signed by both plaintiff and defendant or by their respective attorneys.

By consent.

4. The plaintiff, in cases coming within Rules 1 or 3 of this order, and in cases coming within Rule 2, the party making the application shall pay to the registrar the sum of two pounds, which shall be costs in the cause unless the Judge otherwise orders.

Jury fees.

5. 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.

ORDER XII.—PROCEEDINGS AT TRIAL.

1. At the time and place in that behalf named in any summons issued out of any Court the plaintiff shall appear, and thereupon the defendant shall be required to appear to answer such plaint, and on answer being made in Court the Judge shall proceed to try the action and give judgment without any further pleading or formal joinder of issue.

Proceedings at the trial where both parties appear.
22 Vic. No. 18, s. 61.

2. It shall be lawful for every party to an action or other proceeding in a District Court, or a barrister or attorney of the Supreme Court retained by or on behalf of the party on either side (but without any right of exclusive audience or pre-audience), or for any other person allowed by special leave of the Judge in each case to appear instead of the party to address the Court and examine and cross-examine the witnesses, but subject to such regulations as the Judge may from time to time prescribe for the orderly transaction of the business of the Court: Provided that no person not being a barrister or attorney of the Supreme Court shall be entitled to receive or recover, or shall receive directly or indirectly any sum of money or other remuneration for appearing or acting on behalf of any other person in the said District Court.

Appearance to be in person, or by counsel or attorney, or other person allowed by the Judge.
Ibid. s. 62.

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3. If at the time and place so named as aforesaid, or at any continuation or adjournment of the Court or of the cause for which the summons has been issued the plaintiff does not appear, the cause shall be struck out: Provided that if the plaintiff does not appear when called upon, and the defendant or some one duly authorised on his behalf appears and admits the cause of action to the full amount claimed and pays the fees payable in the first instance by the plaintiff, the Court if it thinks fit may proceed to give judgment as if the plaintiff had appeared.

Proceedings where plaintiff does not appear.
Ibid. s. 63.

4. 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 the last preceding rule, 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.

5. If at the time and place named in the summons, or at any continuation or adjournment of the Court or cause, the defendant does not appear or sufficiently excuse his absence, or neglects to answer when called in Court, the Judge, upon due proof of service of the summons, may proceed to the trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended: Provided that the Judge in any such case, at the same or any subsequent Court, may set aside any judgment so given in the absence of the defendant and the execution thereupon, and may grant a new trial of the cause upon such terms (if any) as to payment of costs, giving security for debt or costs, or such other terms as he may think fit on sufficient cause shown to him for that purpose.

Proceedings where defendant does not appear.
22 Vic. No. 18, s. 64.

6. A Judge may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the action, and may also from time to time adjourn the Court or the trial or further trial of any action in such manner and upon such terms as to the Judge may seem fit.

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

7. At the trial or hearing of any action, 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 action, 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.

Judge to take note of question of law raised at hearing.
44 Vic. No. 30, s. 1.

8. In any action, the defendant's counsel or advocate may reserve his address to the Judge or jury if he thinks fit so to do until the close of the evidence for the defence; and the right of reply shall be the same as at present.

Defendant's counsel or advocate may reserve his address.
24 Vic. No. 6, s. 1.

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

Evidence in reply.
Ibid. s. 2.

10. In cases where the counsel or advocate for the defendant begins, the counsel or advocate for the plaintiff shall be entitled to reserve his address to the Judge or jury in like manner and subject to the same conditions as hereinbefore provided with respect to the counsel or advocate for the defendant.

Plaintiff's counsel or advocate may reserve his address.

ORDER XIII.—EVIDENCE.

1. No evidence shall be given by the plaintiff of any demand or cause of action except such as is stated in the summons issued in the action.

Proof to be limited to matter in the summons.

2. The provisions of sections ten, eleven, twelve, thirteen, fourteen, fifteen, and twenty-three of the Common Law Procedure Act of 1857 shall extend and apply to this Act and all proceedings thereunder.

22 Vic. No. 18, s. 66.

Evidence. Certain provisions of 20 Vic. No. 31 to apply to this Act.

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Ibid. s. 48.

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ORDER XIV.—WITNESSES.

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

2. Every person on whom such subpœna has been served, and to whom at the same time payment or a tender of payment of his expenses has been made, and who refuses or neglects, without sufficient cause, to appear, or to produce any books, papers, or writings required by such subpœna to be produced, and also every person present in Court who is required to give evidence and who refuses to be sworn and give evidence shall forfeit and pay such fine, not exceeding fifty pounds, as the Judge sets on him; and the whole or any part of such fine, in the discretion of the Judge, after deducting the costs, shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the general fund of the Court in which the fine was imposed; but no such fine shall exempt such person from any action for disobeying such summons. *Ibid.* s. 68.

3. A Judge at any time after plaint filed on the application of either party, supported by affidavit, that the evidence of any specified witness, including in that term either of the parties, is material in the cause, and that such witness is absent from the Colony, or above one hundred miles from the place of trial, or is expected to die, or to be unable from sickness or infirmity to attend at the hearing, or is about to quit the Colony or go to some place beyond the said distance, or that there is a probability that the testimony of the witness will be lost if his evidence is not taken de bene esse before the cause can be heard, may take in Court or chambers, or authorise the registrar of any Court or any Commissioner of the Supreme Court or justice of the peace, or practising barrister or attorney, to take at some convenient place the examination of such witness de bene esse; and all evidence so taken shall be admissible at the hearing, subject to all just exceptions, unless it be proved that such witness is at the time of the hearing within a convenient distance of the said Court and able to attend: Provided that in every such case the opposite party shall have sufficient notice of the time and place appointed for taking such examination, and may cross-examine such witness in the usual manner: Provided also that the judge may either direct the whole costs of taking such evidence to be paid by the party applying or make the same costs in the cause. *Examination de bene esse. See Ibid.* s. 69.

4. A Judge, in any case where he thinks fit, upon an application on affidavit by either party, may issue an order under his hand and the seal of the Court for bringing up before such Court any 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 pending before such Court is by law required to be dealt with: Provided 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. *Judge may issue warrant for bringing up a prisoner to give evidence. English County Courts Act of 1888, s. 112.*

5. In any proceeding before a Court, 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. *Payment to witness of work done in preparing evidence, &c.*

ORDER XV.—COSTS.

1. All the costs of any action or proceeding not herein or otherwise provided for Costs. shall be paid by or apportioned between the parties in such manner as the Judge 22 Vic. No. 18, s. 73. thinks fit, and in default of any special direction shall abide the event of the action or result of the decision, and such costs may be recovered in like manner as any debt adjudged by the Court to be paid can be recovered.

2. Where the defendant appears to a summons and does not admit the demand, Defendant's costs it shall be lawful for the Judge to award to the defendant by way of costs and satisfaction where plaintiff does not appear. for his trouble and attendance such sum as the Judge in his discretion may think fit, and such sum shall be recoverable from the plaintiff in the same way as any debt adjudged by Ibid. s. 63. the Court to be paid can be recovered.

3. The fees to be allowed to barristers and attorneys practising in any Court for Fees to barristers and appearing or acting on behalf of any person in any suit in such Court, and the expenses attorneys, and to be paid to witness, shall be fixed by scale: Provided that no such fees to barristers or attorneys shall be allowed in any case where the sum sued for or the property sought expenses to witnesses. Ibid. s. 74. to be recovered does not exceed ten pounds.

4. All costs and charges between party and party shall be taxed by the registrar Taxation of costs. of the Court in which such costs and charges were incurred; but this taxation may be Ibid. s. 75. reviewed by the Judge of the Court on the application of either party; and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in force.

5. When a suit is commenced over which the Court has no jurisdiction, the Costs when Court Judge shall have power to award costs in the same manner, to the same extent, and has no jurisdiction. 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.

6. If the plaintiff recovers a sum not larger than that paid into Court, the plain- Costs where plaintiff tiff shall pay to the defendant the costs incurred by him after such payment into Court; recovers no more and judgment shall be given for the defendant for such costs, and they shall be a first than money paid charge on the sum paid into Court. into Court.

7. Where an order has been made by a Judge of the Supreme Court remitting an Costs of action action of tort brought in that Court to be tried in a District Court, the costs of the remitted from parties in respect of the proceedings subsequent to the order of the Judge of the Supreme to District Supreme Court shall be allowed according to the scale of costs for the time being in use Court. 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.

8. Where a copy of a rule or summons to show cause why a writ of certiorari Certiorari or prohibi- or prohibition should not issue to a District Court is not served by the party who obtained tion; costs of day. it on the opposite party and on the registrar of the District Court within a reasonable 22 Vic. No. 18, s. 90. time, the Judge of the District Court may in his discretion order the party who obtained the rule or summons to pay all the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court or a Judge thereof has made some order respecting such costs.

9. Where a writ of certiorari or of prohibition addressed to a District Court Where no notice of Judge has been granted by the Supreme Court or a Judge thereof on an ex parte appli- writ of certiorari or cation, and the party who obtained it does not within a reasonable time lodge it with prohibition sent to the registrar and give notice to the opposite party that it has issued, the District Court registrar. Judge may in his discretion order the party who obtained the writ to pay all the costs Ibid. s. 91. of the day, or so much thereof as he thinks fit, unless the Supreme Court or a Judge thereof has made some order respecting such costs.

10. Whenever an order is granted for the removal of a plaint from a Court or Costs in certiorari to for the issuing of a certiorari for such removal, and no provision is made with respect the District Court. to the costs of the proceedings in the Court, the costs of such proceedings shall be costs Ibid. s. 92. in the cause.

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ORDER XVI.—JUDGMENT.

1. In an action by an executor or administrator judgment shall be such as in the like case would be given in the Supreme Court. Suit by executor or administrator.

2. When judgment has been obtained for a sum not exceeding twenty pounds exclusive of costs, the Judge may order such sum and costs to be paid at such time or times and by such instalments, if any, as he thinks fit, and all such moneys shall be paid into Court; but in all other cases he shall order the full amount for which judgment has been obtained to be paid either forthwith or within fourteen clear days from the date of the judgment unless the plaintiff or his counsel, attorney, or agent consents that the same be paid by instalments, in which case the Judge shall order the same to be paid at such times and by such instalments as have been consented to; and all such moneys whether payable in one sum or by instalments shall be paid into Court. Ibid. s. 14.
Where judgment does not exceed twenty pounds Judge may order payment by instalments.
Ibid. s. 76.

3. In any action the defendant may, if he thinks fit, whether he be summoned upon the plaint entered in the action or not, in the presence of the registrar of the Court in which such plaint has been entered, or in the presence of an attorney of the Supreme Court or a justice of the peace, sign a statement confessing and admitting the amount of the debt or demand, or part of the amount of the debt or demand for which such plaint has been entered, and such registrar shall as soon as conveniently may be after receiving such statement send notice thereof to the plaintiff, and thereupon it shall not be necessary for him otherwise to prove the debt or demand so confessed and admitted as aforesaid, 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, or, if judgment has not previously been entered up as aforesaid by the registrar, the Judge of such Court at the next sitting of such Court (whether the parties or either of them attend such Court or not) shall upon proof by affidavit of the signature of the party if such statement were not made in the presence of the registrar, proceed to give judgment for the debt or demand so confessed and admitted in the same manner and subject to the same conditions as if he had tried the cause and given judgment thereupon under the provisions of this Act. Confession of debts or parts of debts and judgment thereupon.
Ibid. s. 96.

4. If the defendant in any such action agrees with the plaintiff as to the amount of the debt or demand claimed, and the terms and conditions upon which the same shall be paid or satisfied, it shall be lawful for such persons respectively, in the presence of the registrar of the Court in which the plaint in the action has been entered, or in the presence of an attorney of the Supreme Court or a justice of the peace, to sign a statement of the amount so agreed upon, and of the terms and conditions upon which the same shall be paid or satisfied; and the registrar shall receive such statement, and shall thereupon upon proof by affidavit of the signature of the defendant (if such statement was not made in the presence of the registrar) enter up judgment for the plaintiff for the amount, and upon the terms and conditions agreed upon; and such judgment shall to all intents and purposes be the same as if it had been a judgment of the Judge of the same Court. Agreement as to the amount of debt and conditions of payment.
Ibid. s. 97.

5. If the defendant, served with a special summons, 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-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— Proceedings on special summons under O.I.R. 2. See 48 Vic. No. 7, s. 1.

(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, if no statement or affidavit as aforesaid has been filed, have judgment entered up against the defendant for the amount of his claim, together with interest to the date of judgment and costs. 6.

6. Such judgment shall be for payment forthwith or at such time or times and by Judgment thereon. such instalments, if any, as the plaintiff or his attorney at the time of entry of the plaint *Ibid.* s. 2. or at any time up to judgment consents in writing to take.

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

ORDER XVII.—ATTACHMENT OF DEBTS.

1. Any creditor who has obtained a judgment in any Court may apply to Examination of the Court in which he has obtained such judgment for an order that the judgment debtor as debtor be orally examined as to whether any and what debts are owing to him; and the to debts due to him. Court may thereupon make an order for the examination of such judgment debtor and 45 Vic. No. 27, s. 2. for the production of any books or documents, and shall cause him to be orally examined touching the premises; and every judgment debtor who refuses or neglects to obey such order shall be subject to all the penalties to which a witness duly subpoenaed to attend at such Court and failing to appear at the time appointed would be subject.

2. Any Court upon the ex parte application of any creditor who has obtained a Court may order an judgment in that Court or in any other District Court either before or after such oral attachment of debts. examination as is provided in the last preceding rule, and upon affidavit by such judgment *Ibid.* s. 3. creditor or his attorney or agent stating that the judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor and resides within the district of the Court to which such application is made, may order that all debts due, owing, or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; and by the same or any subsequent order the Court may summon the garnishee to appear to show cause why he should not pay to the officer on behalf of 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.

3. Service of an order on the garnishee that debts due, owing, or accruing to the Attachment order to judgment debtor shall be attached, or notice to the garnishee of the making of such bind debts. order shall attach in the hands of the garnishee all debts due, owing, or accruing from *Ibid.* s. 4. him to the judgment debtor.

4. If the garnishee does not forthwith pay to the officer on behalf of the judg- Proceedings to levy ment creditor the amount due from him to the judgment debtor or an amount equal to amounts due from the judgment debt, and does not dispute the debt due or claimed to be due from him to garnishee to judg- the judgment debtor, or if he does not appear upon summons, then the Court may order- ment debtor. execution to issue, and it may be sued for accordingly without any other previous writ *Ibid.* s. 5. or process to levy the amount due from such garnishee in payment of the judgment debt or towards satisfaction of the same.

5. If the garnishee appears upon summons and disputes his liability, the Court, Where judgment instead of making an order that execution shall issue, may order the hearing of such creditor to sue summons to stand adjourned until some day to be appointed for that purpose, and may garnishee. direct that upon such adjourned hearing any question necessary for determining the *Ibid.* s. 6. liability of the garnishee be tried and determined; and the order for such adjournment shall be served upon the garnishee, and shall operate as a plaint entered against him to obtain payment of the sum claimed to be due from him to the judgment debtor.

6. The costs of any application for an attachment of debt and of any proceedings No costs when arising from or incidental to such application shall be in the discretion of the Court; garnishee pays. but where the garnishee pays all debts due, owing, or accruing from him to the judgment *Ibid.* s. 7. debtor, or so much thereof as is sufficient to satisfy the judgment debt into Court five clear days before the return day of the summons, he shall not be liable for any costs incurred by the judgment creditor.

7. Payment made by, or execution levied upon, the garnishee under any proceeding Garnishee dis- herein provided shall be a valid discharge to him as against the judgment debtor to the charged. amount paid or levied, although such proceeding may be set aside or the judgment *Ibid.* s. 8. reversed.

8. In any proceedings to obtain an attachment of debts as herein in this order Court may refuse to provided, the Court may, in its discretion, refuse to interfere where, from the smallness of interfere in proceed- the judgment debt or of the amount to be recovered or of the debt sought to be attached ings to attach debt. or otherwise, the remedy sought would be inadequate, worthless, or vexatious ; and, *Ibid.* s. 9. subject to any other provisions contained in this order, the costs of any application for an attachment of debt under this order, and of any proceeding arising from or incidental to such application, shall be in the discretion of the Court.

9. In each Court the officer shall keep a debt attachment book in which book Attachment book to entries shall be made of all attachments and proceedings thereon, with names, dates, be kept. and statements of the amounts recovered ; and copies of any entries made therein may *Ibid.* s. 10. be taken by any person upon application to the officer and upon payment of the fee provided.

ORDER XVIII.—EXECUTION.

1. In an action by an executor or administrator execution shall be such as in the Suit by executors or administrators. 22 Vic. No. 18, s. 14. like case would be issued in the Supreme Court.

2. In any case in which payment by instalments is ordered, and default is made In case of payments by instalments. Ibid. s. 76. in payment of one such instalment, execution may be had for the whole amount due upon the judgment.

3. If there are cross judgments between the parties, execution shall be taken out Cross judgments to be set off. Ibid. s. 72. by that party only who has obtained judgment for the larger sum and for so much only as remains after deducting the smaller sum ; and satisfaction for the remainder shall be entered as well as satisfaction on the judgment for the smaller sum, and if both sums are equal, satisfaction shall be entered upon both judgments.

4. In any case where an order, decision, judgment, or adjudication for the Registrar to issue writs of fieri facias. Ibid. s. 77. payment of money has been made by any Court or the Judge thereof, the registrar of the said Court, on the application of the party in whose favour such order, decision, judgment, or adjudication has been made, may issue a writ of fieri facias, which writ shall be directed to the bailiff or registrar of the said Court as the case may be.

5. It shall be lawful for the registrar of every such Court by himself or his Registrar to take execution. Ibid. s. 78. deputies, to be by him appointed and duly authorised under his hand and seal, and for whose acts he shall be accountable during his continuance in such office and their employment by him, to seize and take under any writ of execution whereby he is directed to levy any sum of money, and to cause to be sold all and singular the lands, tenements, and hereditaments of or to which the person named in the said writ is or may be seized or entitled, or which he can either at law or in equity assign or dispose of.

6. In case of any sale by the said registrar, by himself or his deputy, of the Registrar to execute bill of sale. Ibid. s. 79. right, title, and interest of any person of, to, or in any lands or hereditaments, the said registrar is hereby required to execute a proper deed of bargain and sale thereof to the purchaser, which deed of bargain and sale shall operate and be effectual as a conveyance of the estate, right, title, and interest of such person : Provided that no such deed of bargain and sale shall so operate and be effectual as aforesaid until the same has been duly registered in the proper office for the registration of deeds, and be indexed in the index book thereof in the name of the person whose interest in such lands and hereditaments is intended to be thereby conveyed.

7. It shall be lawful for a bailiff of any of the said Courts, by himself or his Bailiff to seize personal property. Ibid. s. 80. deputies to be by him appointed and duly authorised under his hand and seal, to seize and take under any writ of execution whereby he is directed to levy any sum of money and to cause to be sold all and singular the goods, chattels, and other personal property of, or to which the person named in the said writ is, or may be possessed or entitled, or which he can either at law or in equity assign or dispose of : Provided that the wearing apparel, bedding, tools, and implements of trade of the defendant and his family to the value of ten pounds in the whole shall be protected from seizure.

8. The bailiff shall hold any cheques, bills of exchange, promissory notes, bonds, Securities seized to be held by bailiff. English County Courts Act, 1888, s. 148. specialities, 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 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 sums secured

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.

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

10. The provisions of the first section of the Act of Council thirteenth Victoria number thirteen, enabling bailiffs of the courts of requests to sell by auction without a license, shall apply to registrars and bailiffs of Courts, and to their assistants.

11. The precise time when any application is made to a registrar to issue a warrant or writ of execution against the lands or goods of a party shall be entered by him in the execution book, and on such warrant or writ, and when more than one such warrant or writ has been delivered to any registrar or bailiff to be executed he shall execute them in the order of the times so entered.

12. When a writ against the lands or goods of a party to any action has issued out of the Supreme Court, and a warrant or writ of execution against the lands or goods of the same party has issued out of any District Court, the right to the property seized shall be determined by the priority of the time of the delivery of the writ so issued out of the Supreme Court as aforesaid to the sheriff to be executed, or of the application to the registrar for the issue from such District Court of the warrant or writ of execution.

13. Where a writ against the lands or goods of a party to any action has issued out of the Supreme Court, and a warrant or writ of execution against the lands or goods of the same party has issued out of any District Court, the sheriff on demand shall inform the registrar of the precise time of such delivery of the writ so issued out of the Supreme Court as aforesaid, and the registrar on demand shall inform the sheriff or any sheriff's officer of the precise time of the application to such registrar for the issue from such District Court of the warrant or writ of execution. And any warrant granted in pursuance of any writ of execution issued out of the Supreme Court or any District Court, and the endorsement thereon, and any warrant issued by the registrar of any District Court authorising the bailiff of such District Court to give possession of premises as hereinbefore mentioned, shall respectively be sufficient justification to any registrar, bailiff, or sheriff's officer acting thereon.

14. The landlord of any tenement in which any such goods have been so taken may claim the rent thereof at any time within five clear days from the date of such taking, or before the removal of the goods, by delivering to the bailiff or officer making the levy any writing signed by himself or his agent, which shall state the amount of rent claimed to be in arrear and the time for and in respect of which such rent is due; and if such claim be made, the bailiff or officer making the levy shall in addition thereto distrain for the rent so claimed and the costs of such distress, and shall not within five days next after such distress sell any part of the goods taken unless they be of a perishable nature, or upon the request in writing of the party whose goods have been taken; and the bailiff shall afterwards sell such of the goods under the execution and distress as will satisfy, first the costs of and incident to the sale, next the claim of such landlord not exceeding the rent of four weeks when the tenement is let by the week, the rent of two terms of payment when the tenement is let for any other term less than a year, and the rent of six months in any other case, and lastly the amount for which the warrant issued; and 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 either event the overplus of the sale, if any, and the residue of the goods shall be returned to the defendant; and the poundage of the bailiff and broker for appraisement and sale under such distress shall be the same as would have been payable if the distress had been an execution of the District Court; and no other fees shall be demanded or taken in respect thereof.

15. Whenever any sum of money has been recovered by the judgment of any District Court, and the judgment creditor shows to the satisfaction of a judge of the Supreme Court or of any District Court that such sum of money has been recovered and that

Executions not to bind land unless registered.

22 Vic. No. 18, s. 81.

Registrars and bailiffs may sell by auction without license.

Ibid. s. 82.

Priority of executions issuing out of District Court.

Ibid. s. 83.

Priority of execution issuing out of Supreme Court and District Court.

Ibid. s. 84.

Procedure on issue of execution in Supreme and District Courts against the same person.

Ibid. s. 84.

When goods seized under process

landlord may claim certain rent in arrear.

Ibid. s. 85.

Execution against the person.

Ibid. s. 87.

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that the debt was fraudulently contracted, or that the judgment debtor conceals any goods, chattels, or valuable securities, or that he has any income, salary, or means whereby, in the opinion of such Judge, he can satisfy such judgment or any part thereof, or is about to leave the Colony, or to remove any of his property with intent to evade payment of the said judgment debt, such Judge may authorise the registrar of the said District Court to issue a writ of capias ad satisfaciendum; and any bailiff of the District Court and the keeper of any gaol to whom such writ or any warrant in pursuance thereof is directed shall respectively execute and obey the same respectively; and all constables and other peace officers within their several jurisdictions shall aid and assist in the execution thereof.

16. Any person arrested or imprisoned under this Act by virtue of any such warrant as last aforesaid shall be entitled to his discharge on payment of the amount named in such warrant as due for such judgment and the costs of obtaining and executing such warrant; and the bailiff making the arrest and the keeper of the gaol to whom the warrant is directed are hereby empowered and required to receive the amount so paid, and to transmit the same to the registrar of the District Court in which the judgment was recovered. Discharge on payment of debt and costs. Ibid. s. 88.

17. It shall be lawful for any Judge 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. He may also issue a writ in the nature of a habeas corpus to a gaoler to produce before him the person detained, 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 authorising ca. sa. and other provisions relating to such writs.

ORDER XIX.—WARRANT TO GIVE POSSESSION OF TENEMENTS.

1. If a judgment in an action for the recovery of land be not obeyed, the registrar of the Court shall, at the instance of the plaintiff, issue a warrant authorising and requiring the bailiff of the Court to give possession to the plaintiff. Execution of order to give possession. See 22 Vic. No. 18, s. 19.

2. Any warrant to a bailiff to give possession shall justify the bailiff named therein in entering upon the land named therein with such assistants as he deems necessary, and in giving possession accordingly; but no entry upon any such warrant shall be made, except between the hours of nine in the morning and four in the afternoon. Warrants to bailiffs sufficient to justify them for entering. See Ibid. s. 107.

3. Every such warrant shall, on whatever day it may be issued, bear date on the day next after the last day named in the judgment for the delivery of possession, and shall continue in force for three months from such date and no longer, but no order for delivery of possession need be drawn up or served. Such warrants to be in force three months. See Ibid. s. 108.

ORDER XX.—INTERPLEADER.

Interpleader.

1. Application may be made for relief by way of interpleader—
 - (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.
 2. 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—
 - (a) that the applicant claims no interest in the subject matter in dispute other than for charges or costs;
 - (b)
- By whom application may be made. See Ibid. s. 86.
- To be made to the registrar.

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- (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.

3. 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 ; and upon the issue of the summons all proceedings in the action and in any other action which may have been brought in a Court in respect of such claim shall be stayed. Registrar to issue summons.

4. 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. Interpleader plaint.

5. 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. On failure of claimant to proceed.

6. If the applicant is an officer charged with the execution of the process of a 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. Notice of the application shall be given to the officer who is applying for relief by way of interpleader. The registrar may order the subject matter to be handed over to the claimant.

ORDER XXI.—FINES.

1. Payment of any fine imposed by any Court under this Act may be enforced upon the order of any Judge in like manner as payment of any debt adjudged in such Court. Fines how to be enforced and accounted for. 22 Vic. No. 25, s. 4.

ORDER XXII.—APPEAL.

1. An appeal to the Supreme Court may be by special case. The party so appealing shall give notice of such appeal to the other party or his attorney, and also give security to be approved by the registrar of the said Court for the costs of the appeal and the amount of the judgment, or in lieu of giving such security deposit in the hands of such registrar the amount of the judgment, together with thirty pounds in addition to such amount to answer the costs of the appeal, if the appeal be dismissed. Appeal by special case. 22 Vic. No. 18, s. 94.

The appeal shall be in the form of a case agreed upon by both parties or their attorneys, and if they cannot agree, the Judge of the Court on being applied to by them or their attorneys shall settle the case and sign it ; and such case shall be transmitted by the appellants to the prothonotary.

2. An appeal to the Supreme Court may also be by motion. The party so appealing shall within eight days after the decision, or direction appealed against has been given move ex parte in the first instance, and such motion may be granted on such terms as to costs, security, or stay of proceedings as to the said Court seems fit ; and if pending such eight days or at the time of their expiration, the Court is not sitting in banco, such motion may be made before any Judge thereof. Appeal may be made within eight days without stating special case. 44 Vic. No. 30, s. 1.

ORDER XXIII.—MINING JURISDICTION.

1. The person appealing from the decision of a Warden shall within seven days from the day of the making of such decision deposit with the registrar of the Court to which the appeal is made, at the place where the appeal is to be heard, a notice of appeal together with the sum of £10, or such less sum as the Warden may order, to abide the costs of the appeal. Deposit on appeal. 37 Vic. No. 13, s. 106.

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2. On such deposit being made, the registrar shall issue out of the Court a summons directed to the persons interested in supporting the decision of the Warden, or to such of them as appear to the Judge sufficiently to represent all the parties interested, requiring them to show cause to the Court at a time and place to be named in the summons why the decision should not be reversed or varied. Every such summons shall be made returnable at the next sitting of the Court at the place nearest to the place at which the decision was made.

Issue of summons.
Ibid. s. 106.

3. The summons shall be served seven days before the same is returnable upon the person aforesaid, or in case no such person can be found, upon the Warden who made the decision.

Service of summons.
Ibid. s. 106.

4. A copy of the minute of the decision appealed against, certified under the hand of a Warden, shall be produced to the Court hearing the appeal.

Copy of decision of Warden to be produced to Court.

5. Every such appeal shall be in the nature of a rehearing of the whole matter.

Ibid. s. 106.

6. An appeal shall be heard and determined by a Judge alone, or (at the option of either party to an appeal) by the Judge and mining assessors.

Appeal a rehearing.
Ibid. s. 109.

7. Such mining assessors shall determine any matter of fact material to the issue which either the appellant or respondent or the Judge may require to be so determined, and the verdict of a majority of such assessors as to any such matter of fact shall in all cases be received: Provided that before any assessors shall be so summoned there shall be paid to the registrar of the Court, seven clear days before the sitting of the Court, the sum of two pounds by the party demanding assessors. Any part of any such sums not required for the payment of assessors shall be returned to the appellant, and the residue thereof shall eventually be paid as part of the costs of the appeal by such of the parties as the Judge may in that behalf direct.

The hearing of the appeal.

Ibid. s. 109.

8. No grounds of appeal except those stated in the notice of appeal shall be entered upon unless the Judge, either before or at the hearing, allows other grounds to be added upon such terms as to adjournment, costs, or otherwise as he may think fit.

Trial by assessors.
Ibid. s. 110.

9. The Judge of a Court before which an appeal is pending may, on the application of any of the parties interested in such appeal, make such order for any injunction or receiver or payment of money into Court to abide the event of the appeal, or for stay of proceedings or otherwise, and upon such terms as he may think proper, and may vary or rescind any such order, or order the payment out of any such money paid into Court in pursuance of any such order.

Grounds of appeal at hearing.
Ibid. s. 109.

Ibid. s. 109.

10. If the appeal is dismissed, the warden may proceed to enforce the decision appealed against as if no such appeal had been brought. If the decision is varied in appeal, the warden may enforce the decision as so varied in the same manner as if it were the original decision and no appeal had been brought.

Interim orders for stay of proceedings, &c.
Ibid. s. 111.

Ibid. s. 111.

11. But if any decision of the warden, so affirmed or varied, contains an award of debt, damages, and costs, or either of them, and the same has not been previously paid or satisfied, or in case any decision of a Court reversing the decision of the warden contains no award of debt, damages, and costs, or either of them, or any order for payment or repayment of money, and the same has not forthwith, or within the time limited for such payment in the adjudication on appeal, been paid or satisfied, the Registrar of the Court, on the application of the person entitled to such debt, damages, and costs, or either of them, or to such money, and without any summons or notice to the person required to pay the same may forthwith issue execution for the amount thereof in the same manner as if the same had been recovered by an original proceeding before the Court sitting as a District Court.

Proceedings after decision of appeal.
Ibid. s. 112.

Ibid. s. 112.

12. And in case such Court orders that any money received by any respondent under the decision appealed against shall be paid into Court, and the same is not forthwith or within the time limited as aforesaid paid into Court, or in case such Court decrees costs against any party to such appeal, and the same is not paid within the time so limited, the Registrar of such Court (upon the application of the person entitled to receive the same, and without any summons or notice to the person required to pay the same) may forthwith issue execution for the amount thereof in the same manner as upon any decree of the Court for payment of money.

Proceedings in Court after appeal.
Ibid. s. 112.

Ibid. s. 112.

12. In case the Court orders that possession of any such land, race, drain, dam, reservoir, or water as is hereinbefore mentioned, or of any gold, or of any share or interest therein respectively shall be delivered or restored to any party to the appeal, then it shall be lawful for any Warden, and he is hereby required to cause possession thereof to be delivered or restored to such party, and, if necessary for that purpose, to cause to be removed from any such land, race, dam, reservoir, or water any other person, his servant, goods, and chattels, and all constables and other peace officers shall assist him in doing so. *Ibid.* s. 112.

13. The provisions of these rules with respect to appeals to the Supreme Court from a District Court shall apply to appeals to the Supreme Court from a Court sitting in its mining jurisdiction. Appeals to Supreme Court. *Ibid.* s. 115.

ORDER XXIV.—MINING PARTNERSHIPS.

1. A petition under the Mining Partnership Act, 24 Vic. No. 21, may be presented— Creditor's petition. 24 Vic. No. 21, s. 16.

(a) by a creditor in whose favour execution has issued on a judgment, decree, or order in any action, suit, or other legal proceeding instituted by the creditor against the company, and returned unsatisfied in whole or in part by the person appointed to execute the same; or

(b) by a creditor to whom the company is indebted in a sum exceeding £50, and who has served on the company a demand under his hand requiring the company to pay the sum so due, and to whom the company has for three weeks succeeding such demand neglected to pay such sum or secure or compound for the same to the satisfaction of the creditor.

2. A petition under the said Act may be presented by shareholders of the company under the following conditions:— Shareholders petition.

(a) At a meeting of the shareholders of the company assembled and called by fourteen days' notice, advertised in some newspaper published in the district, a majority of the shareholders, being not less than two-thirds in number and value in the company, may pass special resolutions requiring the company to be wound-up under the said Act. *Ibid.* s. 20.

(b) On the passing of such resolution the petition signed by the shareholders, concurring therein, may be presented by some person appointed at such meeting.

3. Any petition shall be verified by affidavit filed or lodged when the petition is presented. Petition to be verified.

4. On the hearing of a petition under the Mining Partnership Act, 24 Vic. No. 21, the Court may receive proof of debts and examine witnesses, and shall proceed therein in the same manner or as near as may be as the chief Judge in bankruptcy. *Ibid.* s. 17. Powers of Court on hearing petition.

5. Where a Court makes any order or decree under the same Act for the winding-up of a company, he shall appoint a competent person to act as official agent therein. 24 Vic. No. 21, s. 21. Appointment of official agent.

Ibid. s. 22.