

## WESTERN AUSTRALIA.

ANNO VICESIMO SEPTIMO

## VICTORIÆ REGINÆ.

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No. XXI.

AN ORDINANCE for the recovery of Small Debts and Demands.

[22nd July, 1863.]

**W**HEREAS it is expedient to facilitate proceedings for the recovery of small debts and demands; Be it therefore enacted by His Excellency The Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

Preamble.

**1** ON and after the date on which this Ordinance shall come into operation, the Ordinances of the Governor and Legislative Council, 6th William IV., No. 2 of 1836, and the 6th Victoria, No. 13, of 1842, shall be, and the same are hereby respectively repealed, save and except so far as relates to anything heretofore lawfully done in pursuance thereof; all proceedings which shall have been commenced and shall be still pending in any court under the said recited Ordinances shall be continued, heard, and determined under the provisions hereof, and all records and all papers connected with

6 Wm. 4th, No. 2 of 1836,  
and 6 Vic., No. 13 of 1842,  
repealed.

the proceedings of the said courts shall, within three months after the date on which this Ordinance shall come into operation, be deposited with the Registrar of the Supreme Court, and remain in his custody and keeping.

Governor may by notice constitute local courts.

**2** IT shall be lawful for the Governor from time to time, and at any time by proclamation published in the "*Western Australian Government Gazette*," to constitute local courts for the recovery of small debts and demands, to be holden at such times and places and within such districts throughout the said Colony as may be most fit and convenient, and as may be specified in such proclamation, and likewise by proclamation to alter the time or place or manner of holding any such courts, which courts respectively shall be, and are hereby declared to be courts of record.

Magistrates to be appointed.

**3** IT shall be lawful for the Governor from time to time to nominate and appoint such and so many Justices of the Peace as may be deemed fit and proper to exercise the powers conferred on them by this Ordinance: and the term "The Magistrate," wheresoever occurring in this Ordinance, shall be understood to mean the magistrate so nominated and appointed.

Definition of term "The Magistrate."

Clerks and officers.

**4** SUCH courts shall have such clerks, bailiffs, and other ministerial officers as shall be necessary for the administration of justice and the execution of the judgments, orders, and process of such courts; and all such officers shall be appointed and removable by the Governor at pleasure, and shall execute such other duties as shall be assigned to them respectively by this Ordinance, or the general rules and orders to be made in pursuance thereof.

Duties of clerks, and their accounts.

**5** EVERY clerk of such court shall issue all summonses, warrants, and writs of execution, and register all orders, judgments, and proceedings of court, and shall take charge of and keep an account of all court fees and fines payable or paid into court, and of all moneys paid into and out of court, and shall enter such account in a book belonging to such court, to be kept by him for that purpose, and shall from time to time, whensoever, and in such form and manner as he shall be ordered by the Governor, submit his accounts to be audited or settled by the Auditor General.

Power of the court may be exercised by "The Magistrate" alone, or in conjunction with one or more ordinary Justices.

**6** IN every case cognizable under this Ordinance, it shall be lawful for The Magistrate alone, or associated with any other Justice or Justices of the Peace attending at the prescribed time and place in open court, to exercise the powers of such court, such magistrate

*Small Debts.*

presiding thereat; and in all cases of issuing any summons or warrant, taking any recognizance, or enlarging, continuing, or adjourning any proceedings, and in all incidental or interlocutory proceedings under this Ordinance, or any general rule or order made and confirmed in pursuance thereof, it shall be lawful for any one or more Justice or Justices of the Peace attending at the prescribed time and place, and in open court, to exercise the powers of such court. Provided that when two or more Justices of the Peace and The Magistrate shall form such court, the decision of the major part of them shall be taken and recorded as the judgment of the court. And provided, that during the unavoidable absence of The Magistrate, or in any case in which he shall be personally interested, it shall be competent for any two or more Justices of the Peace to exercise the powers of the court.

7 WHERE, by reason of the death or unavoidable absence of The Magistrate or Justices of the Peace aforesaid, such court cannot be held, the clerk, or in the event of his absence, the bailiff, shall adjourn the court to such day as he may deem convenient, and enter in the minute book the cause of such adjournment.

In case of death clerk may adjourn the court.

8 ALL pleas of personal actions where the debt or damage claimed is not more than Fifty pounds, whether on a balance of account or otherwise, may be holden in a court constituted under this Ordinance, and shall be heard and determined in a summary way. Provided that no such court shall have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments or to any toll fare market or any fee of office shall be in question, or in which the validity of any devise, bequest or limitation under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or breach of promise of marriage.

Definition of the jurisdiction of the court.

9 ON the application of any person desirous to bring a suit under this Ordinance, the clerk of the court shall enter in a book to be kept for that 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 shall be entered; and thereupon a summons, stating the substance of the action and bearing the number of the plaint in the margin thereof, shall be issued according to such form, and be served on the defendant so many days before the day on which the court shall be holden at which the cause is to be tried as shall be

Suits to be by plaint.

directed by the rules made for regulating the practice of the court as hereafter provided; and delivery of such summons to the defendant, or in such other manner as shall be specified in the rules of practice, shall be deemed good service; 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 as to be commonly known.

Summons to the nearest court.

**10** SUCH summons may issue in any district in which the defendant or one of the defendants shall dwell or carry on his business at the time of the action brought; or, by leave of The Magistrate for the district in which the defendant or one of the defendants shall have dwelt or carried on his business at some time within six calendar months next before the time of the action brought, or by leave of The Magistrate for the district in which the cause of action arose, such summons may issue in either of such last mentioned districts.

Demands not to be divided for the purpose of bringing two or more suits.

**11** IT shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said courts; but any plaintiff having cause of action for more than the sum for which a plaint might be entered under this Ordinance may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding the sum competent to be awarded by such court; and the judgment of the court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

Minors may sue for wages.

**12** IT shall be lawful for any person under the age of twenty-one years to prosecute any suit in any court holden under this Ordinance, for any sum of money within the amount competent to be awarded as aforesaid, which may be due to him for wages or piece work, or for work as a servant, in the same manner as if he were of full age.

Partnership and intestacy.

**13** THE jurisdiction of the court holden under this Ordinance shall extend to the recovery of any demand not exceeding the sum of Fifty pounds, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy, or of a legacy under a will.

Executors may sue and be sued.

**14** IT shall be lawful for any executor or administrator to sue and be sued in any court holden under this Ordinance in like

## 27° VICTORIÆ, No. 21.

### *Small Debts.*

manner as if he were a party in his own right; and judgment and execution shall be such as in the like case would be given or issued in any superior court.

**15** NO privilege, except as herein excepted, shall be allowed to any person to exempt him from the jurisdiction of any court holden under this Ordinance. No privilege allowed.

**16** WHERE any plaintiff shall have any demand recoverable under this Ordinance against two or more persons jointly answerable, it shall be sufficient if any of such persons be served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued, or may not be within the jurisdiction of the court; and every such person against whom judgment shall have been obtained under this Ordinance, and who shall have satisfied such judgment, shall be entitled to demand and recover in the courts holden under this Ordinance, contribution from any other person jointly liable with him. One of several persons liable may be sued.

**17** WITHIN the time named on the day in that behalf named in the summons, 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 court shall proceed, without further pleadings or formal joinder of issue, in a summary way to try the cause without a jury, and give judgment. Proceeding on hearing the plaint.

**18** NO evidence shall be given by the plaintiff on the trial of any such case as aforesaid, of any demand or cause of action, except such as shall be stated in the summons hereby directed to be issued. No evidence to be given of any demand that is not in summons.

**19** NO defendant in any court holden under this Ordinance 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 any statute of limitations, or of his discharge under any statute or law relating to bankrupts or to insolvents, without the consent of the plaintiff, unless such notice thereof as shall be directed by the said rules of practice shall have been given to the clerk of the court; and in every case in which the practice of the court shall require such notice to be given, the clerk of the court shall, as soon as conveniently may be, after receiving 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 that such notice was communicated to the plaintiff by the clerk. Notice to be given to clerk of special defences, who shall communicate the same to the plaintiff.

Suits may be settled by arbitration.

**20** THE court may in any case, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the court in dispute between such parties, to be referred to arbitration to such person or persons, and in such manner, and on such terms, as the court shall think reasonable and just; and such reference shall not be revocable by either party, except by consent of the court, and the award of the arbitrator or arbitrators or umpire shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the court. Provided that the court may, if it think fit, on application at the first sitting thereof held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in manner aforesaid.

Proceedings when plaintiff does not appear.

**21** IF upon the day of the return of any summons, or at any continuation or adjournment of the said court, or of the cause for which the said summons shall have been issued, the plaintiff shall not appear, the cause shall be struck out; and if he shall appear, but shall not make proof of his claim or demand to the satisfaction of the said court, it shall be lawful for the court to nonsuit the said plaintiff, or to give judgment for the defendant: and in either case where the defendant shall appear and shall not admit the claim or demand, to award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the court in its discretion shall think fit; and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same court can be recovered. Provided always, that if the plaintiff shall not appear when called upon, and the defendant or some one duly authorised on his behalf should appear and admit the cause of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff, the court may, if it shall think fit, proceed to give judgment as if the plaintiff had appeared.

Proceedings if no appearance entered.

**22** IF on the day so named in the summons, or at any continuation or adjournment of the court or cause in which the summons was issued, the defendant shall not appear, or sufficiently excuse his absence, or shall neglect to answer when called in court, the court, upon due proof of service of the summons, may proceed to the hearing or 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 always, that the court in any such case, at the same or any subsequent sitting, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and

# 27° VICTORIÆ, No. 21.

## *Small Debts.*

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 it may think fit, on sufficient cause shewn for that purpose.

**23** THE court may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit, and also may from time to time continue or adjourn any court, or the hearing or further hearing of any cause in such manner as to the court may seem best. Court may grant time.

**24** IT shall be lawful for the defendant in any action brought under this Ordinance within such time as shall be directed by the rules made for regulating the practice of the court, to pay into court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment; and notice of such payment shall be communicated by the clerk of the court to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business, and the said sum of money shall be paid to the plaintiff; but if he shall elect to proceed, and if the plaintiff shall recover no further sum in the action than shall have been so paid into court, the plaintiff shall pay to the defendant the costs incurred by him in the said action after such payment; and such costs shall be settled by the court, and an order shall thereupon be made by the court for the payment of such costs by the plaintiff. Payment into court.

**25** ALL the costs of any action or proceeding in the court not herein otherwise provided for shall be paid by or apportioned between the parties in such manner as the court shall think fit, and in default of any special direction shall abide the event of the action; and execution may issue for the recovery of any such costs in like manner as for any debt adjudged in the said court. Costs to be apportioned or to abide the event of the action.

**26** EVERY order and judgment of any court holden under this Ordinance, except as herein provided, shall be final and conclusive between the parties; but the court shall have power to non-suit the plaintiff in every case in which satisfactory proof shall not be given to the court entitling either the plaintiff or defendant to the judgment of the court, and shall also in every case whatsoever have the power, if the court shall think fit, to order a new trial or hearing to be had on such terms as the court shall think reasonable, and in the meantime to stay the proceedings. Judgments how far final.

**27** NO plaint, cause, or matter pending in any court under this Ordinance shall be removed or removable from the said court into the Supreme Court but on certain conditions. No action to be removed into the Supreme Court but on certain conditions.

*Small Debts.*

court into the Supreme Court by any writ or process, unless by leave of the Chief Justice of the Supreme Court in cases which shall appear to such Chief Justice fit to be tried in the Supreme Court, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as he shall think fit.

Judgment not to be removed by certiorari, &c.

**28** NO judgment, order, or determination given or made by The Magistrate or in any such local court shall be removed by appeal, motion, writ of error, certiorari, or otherwise, into any other court whatever, save and except in the manner and according to the provisions herein mentioned.

Judgment may be removed by certiorari if there are no goods to be taken under it.

**29** IF the Chief Justice shall be satisfied that the party against whom a judgment for an amount exceeding Twenty pounds, exclusive of costs, has been obtained in a local court, has no goods or chattels which can be conveniently taken to satisfy such judgment, he may, if he shall think fit, and on such terms as to costs as he may direct, order a writ of certiorari to issue to remove the judgment of the local court into the Supreme Court, and when removed it shall have the same force and effect, and the same proceedings may be had thereon, as in the case of a judgment of such Supreme Court; but no action shall be brought upon such judgment.

Who may appear for any parties in the Court.

**30** IT shall be lawful for the party to the suit or other proceeding, or for an attorney of Her Majesty's Supreme Court being an attorney acting generally in the action for such party but not an attorney retained as an advocate by such first-mentioned attorney, or for a barrister retained by or on behalf of the party, on either side, but without any right of exclusive or pre-audience, or by leave of the court, for any other person allowed by the court to appear instead of the party, to address the court, but subject to such regulations as The Magistrate may from time to time prescribe for the orderly transaction of the business of the court. And no person, not being an attorney admitted to Her Majesty's Supreme Court, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said court; and no attorney shall be entitled to have or recover therefor any sum of money unless the debt or damage claimed shall be more than forty shillings, or to have or recover more than ten shillings for his fees and costs unless the debt or damage claimed shall be more than five pounds, or more than fifteen shillings unless the debt or damage claimed shall be more than twenty pounds, and in no case where the debt or damage claimed shall not exceed twenty pounds shall any fee exceeding one pound three shillings and

Costs where claim exceeds forty shillings, but does not exceed twenty pounds.

*Small Debts.*

sixpence be allowed for employing a barrister as counsel in the cause, and the expense of employing a barrister or an attorney, either by plaintiff or defendant, shall not be allowed on taxation of costs in the case of a plaintiff where less than five pounds is recovered or in the case of a defendant where less than five pounds is claimed, or in any case unless by order of The Magistrate.

**31** WHERE in any action the debt or damage claimed shall not exceed Twenty pounds, an attorney shall not be entitled to recover from his client any further costs or charges in the conduct of such suit than those mentioned in the last preceding section, unless upon taxation of costs The Magistrate be satisfied, by writing under the hand of the client, that he has agreed to pay further costs or charges; and in such case The Magistrate may allow any costs and charges not exceeding the amount which may have been so agreed to be paid.

Where claim shall not exceed Twenty pounds attorney shall not recover from his client further costs than set forth in the 30th section.

**32** WITH respect to proceedings in the local courts in actions where the debt or damage claimed exceeds Twenty pounds, the Attorney General, as provided in the 74th section, shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys, and from time to time to amend such scale; and such scale or amended scale shall be submitted to the Governor, who with the advice of the Executive Council may allow or disallow or alter the same; and the scale or amended scale so allowed or altered shall, from a day to be named by the Governor, be in force in every local court. Provided, always, that until such scale shall be so framed and approved, and in force as aforesaid, the scale of costs framed under the provisions of the 19th and 20th Victoria, chapter 108, respecting similar proceedings in the County Courts in England, shall be taken and received as the scale applicable to proceedings in the said local courts of the Colony.

Scale of costs to be allowed where claim exceeds twenty pounds.

**33** WITH respect to such proceedings as are specified in the last preceding section, all costs and charges between party and party shall be taxed by The Magistrate of the court in which such costs and charges were incurred, and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in force.

Costs between party and party where claim exceeds Twenty pounds shall be taxed by magistrate.

**34** WITH respect to such proceedings as are last hereinbefore specified, all costs and charges between attorney and client shall, on the application either of the attorney or client, but not otherwise, be taxed by The Magistrate of the court in which such costs and charges were incurred; and no costs or charges shall be allowed on

Costs between attorney and clients where claim exceeds Twenty pounds shall on application of attorney or client be taxed by magistrates.

such taxation which are not sanctioned by the scale then in force, unless The Magistrate shall be satisfied that the client has agreed in writing to pay them, in which case they may be allowed; and no attorney shall have a right to recover from his client any costs or charges in respect of such proceedings, unless they shall have been allowed either on such taxation, or on the taxation of the master of the Supreme Court.

Costs not recoverable in certain cases in Supreme Courts.

**35** IF in any action commenced after the passing of this Ordinance in Her Majesty's Supreme Court, in covenant, debt, detinue, or assumpsit, not being an action for breach of promise of marriage, the plaintiff shall recover a sum not exceeding Twenty pounds, or if in any action commenced after the passing of this Ordinance in Her Majesty's Supreme Court, in trespass, trover, or case not being an action for malicious prosecution, or for libel, or for slander, or for criminal conversation, or for seduction, the plaintiff shall recover a sum not exceeding five pounds, the plaintiff shall have judgment to recover such sum only, and no costs, except in the cases hereinafter provided; and it shall not be necessary to enter any suggestion on the record to deprive such plaintiff of costs, nor shall any such plaintiff be entitled to costs by reason of any privilege as attorney or officer of such court or otherwise.

Chief Justice may certify for costs.

**36** PROVIDED, always, and be it enacted, that if the plaintiff shall in any such action as aforesaid recover a sum not exceeding the sum in that behalf hereinbefore mentioned, by verdict, and the Chief Justice or other presiding officer before whom such verdict shall be obtained shall certify on the back of the record that it appeared to him at the trial that the cause of action was one for which a plaint could not have been entered in any such local court as aforesaid, or that it appeared to him at the trial that there was a sufficient reason for bringing the said action in the Supreme Court, the plaintiff in such case shall have the same judgment to recover his costs that he would have had if this Ordinance had not been passed.

Power to Supreme Court or Judge at chambers to make an order for costs.

**37** IN any action in which the plaintiff shall not be entitled to recover his costs by reason of the provisions of the thirty-fifth section, whether there be a verdict in such action or not, if the plaintiff shall make it appear to the satisfaction of the Supreme Court in which such action was brought, or to the satisfaction of the Chief Justice at chambers, upon summons, that such action was brought for a cause in which no plaint could have been entered in any such local court, or that such action was removed from a local court by certiorari, or that there was sufficient reason for bringing

## 27° VICTORIÆ, No. 21.

### *Small Debts.*

such action in the Supreme Court, then and in any of such cases the Supreme Court, or the Chief Justice at chambers, shall thereupon, by rule or order, direct that the plaintiff shall recover his costs, and thereupon the plaintiff shall have judgment to recover his costs.

**38** ANY person against whom a plaint shall be entered in any such court may, if he think fit, whether he be summoned upon such plaint or not, in the presence of the clerk of the court in which such plaint shall have been entered, or in the presence of an attorney of the Supreme Court, 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 shall have been entered, and such clerk shall, as soon as conveniently may be after receiving such statement, send notice thereof to the plaintiff, by the post or by causing the same to be delivered at his usual place of abode or business, and thereupon it shall not be necessary for the said plaintiff to prove the debt or demand so confessed and admitted as aforesaid, but the court at the next sitting thereof, 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 clerk, 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 the court had tried the cause, and given judgment thereupon. Defendant may admit debt.

**39** IF the person against whom a plaint shall be entered in any court can agree with the person on whose behalf such plaint shall have been entered upon the amount of the debt or demand in respect of which such plaint shall have been entered, and upon 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 clerk of the court in which such plaint shall have been entered, or in the presence of an attorney of the Supreme Court, to sign a statement of the amount of the debt or demand so agreed upon between such persons respectively, and of the terms and conditions upon which the same shall be paid or satisfied; such clerk shall receive such statement, and shall thereupon, upon proof by affidavit, of the signature of the party, if such statement were not made in the presence of the clerk, enter up judgment for the plaintiff for the amount of the debt or demand so agreed on, and upon the terms and conditions mentioned in such statement; and such judgment shall to all intents and purposes be the same, and have the same effect, and shall be enforced and enforceable in the same manner, as if it had been a judgment of the said court. Parties may agree to amount due and enter judgment therefor.

If plaintiff do not appear, costs may be given by magistrate.

**40** IN every case where the plaintiff shall not appear, either by himself or his attorney, upon the day of the return of any summons for hearing, or at any continuation or adjournment of the said hearing, and the defendant shall appear either by himself or his attorney upon such day of hearing, continuation, or adjournment, it shall be lawful for the court to award to the defendant or his attorney, by way of costs of his attendance and satisfaction for his trouble, such sum as the court shall think fit; and the sum so awarded shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same court can be recovered.

Either party may appeal.

**41** IF either party in any cause, action, or proceeding in which jurisdiction is given to the local courts shall be dissatisfied with the determination or direction of the said courts in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to the Supreme Court, provided that such party shall, within ten days after such determination or direction, give notice of such appeal to the other party, or his attorney, and also give security, to be approved by The Magistrate or by the court, for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment, if he be the defendant and the appeal be dismissed; provided nevertheless, that such security, so far as regards the amount of the judgment, shall not be required in any case where the local court shall have ordered the party appealing to pay the amount of such judgment into the hands of the clerk of the local court in which such action shall have been tried, and the same shall have been paid accordingly; and the said court of appeal may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, as the case may be, and make such order with respect to the costs of the said appeal as such court may think proper; and such orders shall be final.

Form of appeal.

**42** SUCH appeal shall be in the form of a case agreed on by both parties, or their attorneys, and if they cannot agree, The Magistrate, upon being applied to by them or their attorneys, shall settle the case and sign it; and such case shall be transmitted by the appellant to the office of the Registrar of the Supreme Court.

Parties may agree not to appeal.

**43** NO appeal shall lie from the decision of a local court, if before such decision is pronounced both parties shall agree, in writing, signed by themselves or their attorneys or agents, that the decision of the said court shall be final.

# 27° VICTORIÆ, No. 21.

## *Small Debts.*

**44** THE Chief Justice may from time to time make general orders for regulating the proceedings on appeals, which orders shall be as valid as if included in this Ordinance.

Chief Justices to make general orders to regulate appeals.

**45** IF any party shall sue another in any local court for any debt or other cause of action for which he hath already sued him, and obtained judgment, in any other court, the proof of such former suit having been brought and judgment obtained may be given, and the party so suing shall not be entitled to recover in such second suit, and shall be adjudged to pay three times the costs of such second suit to the opposite party.

Not to sue a second time in any court, after judgment obtained.

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

Court may make orders for payments by instalments.

Cross judgments.

**47** WHENEVER the court shall have made an order for the payment of moneys, the amount shall be recoverable, in case of default or failure of payment thereof forthwith, or at the time or times and in manner thereby directed, by execution against the goods and chattels of the party against whom such order shall be made; and the clerk of the said court, at the request of the party prosecuting such order, shall issue a writ of *fiery facias* as a warrant of execution to the bailiff of the court, who by such warrant shall be empowered to levy or cause to be levied by distress and sale of the goods and chattels of such party such sum of money as shall be so ordered, wheresoever the same may be found, and also the costs of the execution; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant. Provided that two or more such warrants issued out of such court against the same defendant shall have priority one over the other according to the time they shall have been issued.

Court may award execution against goods.

**48** IF the court shall have made an order for payment of any sum of money by instalments, execution upon such order shall not issue against the party until after default in payment of some instalment, according to such order, and execution or successive executions may then issue for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the court shall order either at the time of making the original order or at any subsequent time.

Execution not to issue till after default in payment of some instalment, and then it may issue for the whole sum due.

What goods may be taken  
in execution.

**49** EVERY bailiff or officer executing any process of execution issuing out of the said courts against the goods and chattels of any person may by virtue thereof seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of five pounds, which shall to that extent be protected from such seizure), and may also seize and take any money or bank notes (whether of the Bank of England or any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to any such person against whom any such execution shall have issued as aforesaid.

Securities seized to be held  
by bailiffs.

**50** THE bailiff shall hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money which shall have been so seized or taken as aforesaid as a security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised for the benefit of the plaintiff, and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby when the time of payment thereof shall have arrived.

Summons on charge of  
fraud, how obtained.

**51** IT shall be lawful for any party who has obtained any unsatisfied judgment or order in any court held by virtue of this Ordinance, or any Ordinance hereby repealed, for the payment of any debt or damages or costs, to obtain a summons from the court nearest to which any other party shall then dwell or carry on his business, such summons to be in such form as shall be directed by the rules made for regulating the practice of the courts as herein provided, and to be served personally upon the person to whom it is directed, requiring him to appear at such time as shall be directed by the said rules, to answer such things as are named in such summons; and if he shall appear in pursuance of such summons, he may be examined upon oath touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which is the subject of the action in which judgment has been obtained against him; and as to the means and expectation he then had, and as to the property and means he still hath of discharging the said debt or damages or liability, and as to the disposal he may have made of any property; and the person obtaining such summons as aforesaid, and all other witnesses whom the court shall think requisite may be examined

## 27° VICTORIÆ, No. 21.

### *Small Debts.*

upon oath touching the enquiries authorised to be made as aforesaid, and the costs of such summons and all proceedings thereon shall be deemed costs in the cause.

**52** IF the party so summoned shall not attend as required by such summons, and shall not allege a sufficient excuse for not attending; or shall, if attending, refuse to be sworn or to disclose any of the things aforesaid; or if he shall not make answer touching the same to the satisfaction of such court, and in any or either of such cases it shall further appear to such court, either by the examination of the party or any other evidence, that such party, if a defendant, in incurring the debt or liability which is the subject of the action in which judgment has been obtained, has obtained credit from the plaintiff under false pretences, or by means of fraud, or breach of trust, or has wilfully contracted such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same, or shall have made or caused to be made, any gift, delivery, or transfer of any property, or shall have charged, removed, or concealed the same with intent to defraud his creditors or any of them, or if it shall appear to the satisfaction of the court that the said party so summoned has then or has had since the judgment obtained against him sufficient means and ability to pay the debt or damages or costs so recovered against him, either altogether or by any instalment or instalments which the court in which the judgment was obtained shall have ordered, and shall have refused or neglected to pay the same, it shall be lawful for such court, if such court shall think fit, to order that any such party may be committed to the gaol or lock-up nearest to the place in which the party summoned is resident, or to any prison which shall be provided as the prison of the court, for any period not exceeding forty days. Commitment for fraud.

**53** IT shall be lawful for any court before whom such summons shall be heard, if the court shall think fit, whether or not it shall make any order for the committal of the defendant, to rescind or alter any order that shall have been previously made against any defendant so summoned before such court for the payment, by instalments or otherwise, of any debt or damages recovered, and to make any further or other order, either for the payment of the whole of such debt or damages and costs forthwith, or by any instalments, or in any other manner as such court may think reasonable and just. Power to rescind or alter orders.

**54** IN every case where the defendant in any suit brought in any court shall have been personally served with the summons Power to examine and to commit at hearing of the cause.

*Small Debts.*

to appear, or shall personally appear at the trial of the same, the court at the hearing of the cause, or at any adjournment thereof, if judgment shall be given against the defendant, shall have the same power and authority of examining the defendant and the plaintiff and other parties touching the several things hereinbefore mentioned, and of committing the defendant to prison, and of making an order as the court might have and exercise under the provisions hereinbefore contained in case the plaintiff had obtained a summons for that purpose after the judgment obtained as hereinbefore mentioned.

Mode of issuing and executing warrants of commitment.

**55** WHENEVER any order of commitment shall have been made as aforesaid, a warrant of commitment, under the hand of The Magistrate or of one of the Justices forming the court in which such order was made, shall issue, directed to the bailiffs, who by such warrant shall be empowered to take the body of the person against whom such order shall be made, and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant; and the gaoler or keeper of every gaol and prison mentioned in any such order shall be bound to receive and keep the defendant therein until discharged under the provisions of this Ordinance, or otherwise by due course of law.

Imprisonment not to operate as a satisfaction for the debt, &c.

**56** NO imprisonment under this Ordinance shall in anywise operate as a satisfaction or extinguishment of the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being anew summoned and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this Ordinance, or deprive the plaintiff of any right to take out execution against the goods and chattels of the defendant in the same manner as if such imprisonment had not taken place.

How execution may be had at a distance from the court.

**57** IN all cases where a warrant of execution shall have issued against the goods and chattels of any party or an order for his commitment shall have been made under this Ordinance, and such party, or his goods and chattels, shall be at a distance from the court, it shall be lawful for the court to issue such warrant of execution or of commitment to the bailiff of any other court constituted under this Ordinance, nearest to the place where such party or his goods and chattels shall then be or be believed to be, requiring execution of the same; and thereupon such last-mentioned bailiff shall be authorised and required to act in all respects as if the warrant of execution or commitment had been directed to him by the court of which he is the bailiff, and shall, within

*Small Debts.*

such time as shall be specified in the rules of practice, return to the court from which the same issued what he shall have done on the execution of such process, and in case a levy shall have been made shall, within such time as shall be specified in the rules of practice, pay over all monies received in pursuance of the warrant to the court from which the same shall have issued; and where any order of commitment shall have been made and the person apprehended, he shall be forthwith conveyed in custody of the bailiff or officer apprehending him to the nearest gaol or lock-up, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of this Ordinance; and all constables and other peace officers shall be aiding and assisting in the execution of such warrant.

**58** IF it shall at any time appear to the satisfaction of the court, by the oath or affirmation of any person, or otherwise, that any defendant is unable from sickness or other sufficient cause to pay and discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the court in its discretion to suspend or stay any judgment, order, or execution given, made, or issued in such action for such time and on such terms as the court shall think fit, and so from time to time until it shall appear, by the like proof as aforesaid, that such temporary cause of disability has ceased.

Power to court to suspend execution in certain cases.

**59** NO sale of any goods which shall be taken in execution as aforesaid shall be until after the expiration of five days at least next following the day on which such goods shall have been so taken, unless such goods be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and until such sale the goods shall be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person approved by the bailiff to be put in possession by the bailiff; and no goods taken in execution under this Ordinance shall be sold for the purpose of satisfying the warrant of execution except by auction.

Regulating the sale of goods taken in execution.

**60** IT shall be lawful for any such court by order to authorise any of the bailiffs appointed under this Ordinance to act as auctioneers for the purpose of selling any goods, chattels, or effects taken in execution under this Ordinance; and the bailiff so authorised may without other license in this behalf do and perform all the duties of auctioneers.

Bailiffs may act as appraisers or auctioneers.

**61** SECTION 1 of the 8th Anne, chapter 14, shall not apply to goods taken in execution under a warrant of a local court, but the

When goods seized under process, landlord may claim certain rent in arrears.

*Small Debts.*

landlord of any tenement in which any such goods shall be 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 an 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 shall have been taken; and the bailiff shall afterwards sell such of the goods under the execution and distress as shall satisfy, first, the costs of and incident to the sale, next, the claim of such landlord not exceeding the rent of four weeks where the tenement is let by the week, the rent of two terms of payment where the tenement is let for any other term less than a year, and the rent of one year in any other case, and lastly, the amount for which the warrant issued; 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 keeping possession, appraisement, and sale under such distress, shall be the same as would have been payable if the distress had been an execution of the local court, and no other fees shall be demanded or taken in respect thereof.

No execution shall be stayed by writ of error.

**62** NO judgment or execution shall be stayed, delayed, or reversed, upon or by any writ of error or supersedeas thereon to be sued for the reversing of any judgment given in any court holden under the provisions of this Ordinance.

Execution to be superseded on payment of debt and costs.

**63** IN or upon every warrant of execution issued against the goods and chattels of any person whomsoever, the clerk of the court shall cause to be inserted or endorsed the sum of money and costs adjudged, with the sums allowed by this Ordinance as increased costs for the execution of such warrant; and if the party against whom such execution shall be issued shall, before an actual sale of the goods and chattels, pay or cause to be paid or tendered unto the bailiff or other officer holding the warrant of execution such sum of money and costs as aforesaid, or such part thereof as the person entitled thereto shall agree to accept in full of his debt or damages

# 27° VICTORIÆ, No. 21.

## *Small Debts.*

and costs, together with the fees herein directed to be paid, the execution shall be superseded, and the goods and chattels of the said party shall be discharged and set at liberty.

**64** ANY person imprisoned under this Ordinance who shall have paid or satisfied the debt or demand or the instalments thereof payable, and costs remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such order, and all subsequent costs, shall be discharged out of custody upon certificate of such payments or satisfaction, signed by the bailiff or other officer aforesaid to the court in which the order of imprisonment was made.

Persons imprisoned satisfying debt and costs to be discharged.

**65** IF any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any court holden under this Ordinance, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, it shall be lawful for the clerk of the court, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to issue a summons calling before the said court as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in the Supreme Court or any other court in respect of such claim shall be stayed, and the court in which such action shall have been brought, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of the proceedings had upon such action after the issue of such summons, and the court issuing such summons shall adjudicate upon such claim, and make such order between the parties in respect thereof and of the costs of the proceedings as to such court shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such court.

Claims as to goods taken in execution to be adjudicated in court.

**66** ALL actions of replevin in cases of distress for rent in arrear or damage feasant shall and may be brought without writ in a court held under this Ordinance.

Actions of replevin may be brought without writ.

**67** IN every such action of replevin the plaint shall be entered in the court holden under this Ordinance nearest to the place where the distress was taken.

Plaints where to be entered.

**68** THE powers and responsibilities of the sheriff with respect to replevin bonds and replevins shall henceforth cease; and The Magistrate of the local court of the district in which any distress

How replevin may be granted; power of sheriff to cease.

subject to replevin shall be taken, shall be empowered, subject to the regulations hereinafter contained, to approve of replevin bonds, and to grant replevins, and to issue all necessary process in relation thereto, and such process shall be executed by the bailiff.

Magistrate may grant replevins.

**69** THE Magistrate shall, at the instance of the party whose goods shall have been distrained, cause the same to be replevied to such party, on his giving one or other of such securities as are mentioned in the next two succeeding sections.

Replevins may be commenced in Supreme Court.

**70** AN action of replevin may be commenced in the Supreme Court in the form applicable to personal actions therein, and such court shall have power to hear and determine the same; and if the replevisor shall wish to commence proceedings in the Supreme Court, he shall at the time of replevying give security, to be approved of by The Magistrate, for such an amount as such magistrate shall deem sufficient to cover the alleged rent or damage in respect of which the distress shall have been made, and the probable costs of the cause in the Supreme Court, conditioned to commence an action of replevin against the distrainor in the Supreme Court within one week from the date thereof, and to prosecute such action with effect and without delay, and, unless judgment thereon be obtained by default, to prove before such Supreme Court that he had good ground for believing either that the title to some corporeal or incorporeal hereditament, or to some toll, market, fair, or franchise, was in question, or that such rent or damage exceeded Twenty pounds, and to make return of the goods, if a return thereof shall be adjudged.

Conditions of security to be given in such cases.

Conditions of security to be given when replevin brought in local court.

**71** IF the replevisor shall wish to commence proceedings in a local court, he shall, at the time of replevying, give security, to be approved by The Magistrate, for such an amount as such magistrate shall deem sufficient to cover the alleged rent or damage in respect of which the distress shall have been made, and the probable costs of the cause in the local court, conditioned to commence an action of replevin against the distrainor in the local court of the district in which the distress shall have been taken, within one month from the date of the security, and to prosecute such action with effect and without delay, and to make return of the goods, if a return thereof shall be adjudged.

Replevins shall, at the instance of defendant, be removed into Supreme Court by certiorari in certain cases.

**72** ANY action of replevin brought in a local court shall be removed into the Supreme Court by writ of certiorari, if the defendant shall apply to such Supreme Court for such writ, and shall give security, to be approved of by the master of such Supreme Court, for such amount, not exceeding One hundred and fifty pounds,

## 27° VICTORIÆ, No. 21.

### *Small Debts.*

as such master shall think fit, conditioned to defend such action with effect, and unless the replevisor shall discontinue or shall not prosecute such action, or become nonsuit therein, to prove before such Supreme Court that the defendant had good ground for believing either that the title to some corporeal or incorporeal hereditament, or to some toll, market, fair, or franchise, was in question, or that the rent or damage in respect of which the distress shall have been taken exceeded Twenty pounds; and such Supreme Court shall have power to determine the same action.

**73** IT shall be lawful for any person arrested under the provisions of the Ordinance of the Legislative Council, 20th Victoria, "No. 9 of 1856," intituled "*An Ordinance to enlarge the remedies of Creditors against the persons of their Debtors,*" to apply on affidavit to the Court nearest to the place of arrest for an order or rule on the plaintiff, to shew cause why the person so arrested should not be discharged out of custody on the ground that such arrest was illegal, vexatious, or oppressive, and that it shall be lawful for such court or for The Magistrate to make absolute or discharge such rule or order, and to direct the costs of the application to be paid by either party, or to make such other order therein as to such court or such magistrate shall seem fit.

Court may be moved for discharge of debtor arrested under 20 Vict, No. 9.

**74** IT shall be lawful for the Attorney General to frame such general rules and orders as to him shall seem expedient for and concerning the practice and proceedings of the courts holden under this Ordinance, and for the execution of the process of the courts, and generally for carrying this Ordinance into effect, and the same from time to time to annul, vary and amend; and the Governor, with the advice of the Executive Council may approve or disallow or alter or amend such rules and orders or any of them; and such of the rules as shall be so approved shall forthwith be notified in the *Government Gazette* for public information, and shall commence and have the force of law after the expiration of fourteen days from such publication. Provided always, that until such rules shall be so framed as aforesaid, and also in cases where no such rules shall apply and no such rules shall be prescribed by Ordinance of the said Colony, the rules and practice of the county courts in England shall be in force and govern the proceedings as far as the same can or may be applicable.

General rules and orders of practice and proceedings.

**75** NO defence or objection shall be allowed to the jurisdiction of any such court on the ground of its not being the nearest court within the meaning of this Ordinance, unless such defence or

Nearest court how determined.

## 27° VICTORIÆ, No. 21.

### *Small Debts.*

objection be stated in writing at or before the time for appearance; and the determination of the court on such matter shall be final and conclusive.

Summons may be served by any Police Constable of the Colony.

**76** ANY summons or process of the court, not being writs of execution, may be served by any Police Constable of the Colony or any other person authorised by such court, and such service shall be as valid as if the same had been made by a bailiff or officer of the court out of which such summons or other process shall have issued.

Service of summons or other process may be proved by affidavit before a magistrate.

**77** SERVICE of any summons or other such process of the court may be proved by affidavit purporting to be sworn before any magistrate of the Colony; and if such affidavit purport to be signed by the Justice by or before whom the same purports to be taken, it shall be sufficient evidence of service without further proof.

Summons to witnesses.

**78** ANY party to a proceeding under this Ordinance may obtain at the office of the clerk of the court summonses to witnesses, with or without a clause requiring the production of books, deeds, papers and writings in their possession or control, and in such summons any number of names may be inserted, and such summons may be served by any person on behalf of the party taking out the same, and such service may be proved in manner aforesaid.

Penalty on witnesses neglecting summons.

**79** EVERY person on whom any such summons shall have been served, either personally or in such other manner as shall be directed by the general rules of practice of the courts, and to whom at the same time payment or a tender of payment of his expenses shall have been made on such scale of allowance as shall from time to time be settled by the general rules of practice of the court, and who shall refuse or neglect, without sufficient cause, to appear or produce any books, papers, or writings required by such summons to be produced, and also every person present in court who shall be required to give evidence and who shall refuse to be sworn and give evidence, shall forfeit and pay such fine, not exceeding Ten pounds, as the court shall set on him; and the whole or any part of such fine, in the discretion of the court, after deducting the costs (if any) shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form a part of the general revenue of the Colony.

Fines how to be enforced and accounted for.

**80** PAYMENT of any fine imposed by any court under the authority of this Ordinance may be enforced upon the order of the

## 27° VICTORIÆ, No. 21.

### *Small Debts.*

court in like manner as payment of any debt adjudged in the said court, and shall be accounted for as herein provided.

**81** WHERE the time within which or where the mode in which any proceeding should be taken in the local court is not prescribed, such time and mode shall be appointed by the rules of practice, orders, and forms to be made as herein provided.

Time how regulated.

**82** IF The Magistrate shall be satisfied by either party to a cause pending in his court that such cause can be moved conveniently or more fairly tried in some other court, he shall order that the venue be changed, and that the cause be sent for hearing to such other court; and in such case the clerk of the court in which the plaint was entered shall forthwith transmit by post to the clerk of the court to which the cause 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 Magistrate of such court shall appoint a day for the hearing, notice whereof shall be sent by the post or otherwise by the clerk to both parties.

Cause may be removed to another court, under certain circumstances.

**83** WHERE in any action the debt or demand claimed consists of a balance not exceeding Fifty pounds after an admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, the court shall have jurisdiction to try such action.

Balance of account not exceeding £50.

**84** IN any action in the local court in which the title to any corporeal or incorporeal hereditament, or to any toll, fair, market, or fee of office, shall incidentally come in question, such court shall have power to decide the claim which it is the immediate object of the action to enforce, if both parties at the hearing shall consent, in any writing signed by them or their attorneys, to the court having such power; but the judgment of the court shall not be evidence of title between the parties or their privies in any other action in that court or in any proceeding in any other court; and such consent shall not prejudice or affect any right of appeal of either of the parties to such first-mentioned action.

Title to real property, toll, &c.

**85** WHERE in any action of contract brought in the Supreme Court the claim endorsed on the writ does not exceed fifty pounds, or where such claim though it originally exceeded fifty pounds is reduced by payment into court, payment, an admitted set-off, or otherwise, to a sum not exceeding fifty pounds, the Chief Justice of the Supreme Court, on the application of either party, after issue

In certain cases Chief Justice may order cause to be tried in local court.

joined, may in his discretion, and on such terms as he shall think fit, order that the cause be tried in any local court which he shall name; and thereupon the plaintiff shall lodge with the clerk of such court such order and the issue, and The Magistrate of such court shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the clerk to both parties or their attorneys; and after such hearing the clerk shall certify the result to the master's office of such Supreme Court, and judgment in accordance with such certificate may be signed in such Supreme Court.

**86** NO action shall be brought in a local court on any judgment of the Supreme Court.

No action on judgment of Supreme Court.

**87** IN any action in a local court for a debt or liquidated money demand exceeding Twenty-pounds, the plaintiff may, at his option, cause to be issued either a summons in the ordinary form, or a summons in the form or to the effect given in Schedule A to this Ordinance numbered 1; provided that if such last-mentioned summons be issued, it shall be personally served on the defendant twelve clear days before the return day thereof, and then if the defendant shall not at least six clear days before such return day give notice in writing signed by himself, his attorney or agent, to the clerk of his intention to defend, the plaintiff may, on or within one month after such return day, without giving any proof of his claim, have judgment entered up against the defendant for the amount of his claim and costs, such costs to be taxed by The Magistrate, and the order upon such judgment shall be for payment forthwith, or at such time or times, and by such instalments (if any) as the plaintiff, or his attorney or agent, shall in writing have consented to take at the time of the entry of the plaint.

If debt or liquidated money demand exceeds £20.

**88** IF the defendant shall give such notice as in the last preceding section is specified, the action shall be heard in the ordinary course, but in any event the clerk shall immediately after the last day for giving such notice send a letter to the plaintiff by post, stating therein whether the defendant has or has not been served with such summons, and whether he has or has not given notice of his intention to defend.

On notice to defend action heard in ordinary course.

**89** IF in any action of contract the plaintiff shall claim a sum exceeding Twenty pounds, if in any action of tort the plaintiff shall claim a sum exceeding Five pounds, the defendant shall give notice that he objects to the action being tried in the local court, and shall give security to be approved of by the magistrate for the amount

In certain cases defendant may object to cause being tried in local court.

claimed, and the costs of trial in the Supreme Court, not exceeding in the whole the sum of one hundred and fifty pounds, all proceedings in the local court in any such action shall be stayed; but if in any such action the defendant do not object to the same being tried by the local court, or shall fail to give the security aforesaid, the local court shall dispose of the cause in the usual way; and the entry of the plaint in such action shall be sufficient commencement of the suit to prevent the operation of any statute of limitation applicable to such claim: provided that nothing herein contained shall prevent the removal of any cause from a local court by writ of *certiorari* in the cases and subject to the conditions in and subject to which such cause may now be removed.

**90** IT shall be lawful for the Chief Justice to hear and determine applications for writs of prohibition directed to the magistrates or local courts aforesaid, and to make rules or orders for the issuing of such writs.

Writs of Prohibition.

**91** THE granting of a rule or summons to shew cause why a writ of *certiorari* or prohibition should not issue to a local court shall, if the Supreme Court or Chief Justice so direct, operate as a stay of proceedings in the cause to which the same shall relate until the determination of such rule or summons, or until such Supreme Court shall otherwise order; and the local court shall from time to time adjourn the hearing of such cause to such day as it shall think fit until such determination or until such order be made; but if a copy of such rule or summons shall not be served by the party who obtained it on the opposite party and on the clerk of the local court two clear days before the day fixed for the hearing of the cause, the local court may, in its discretion, order the party who obtained the rule or summons to pay all the costs of the day, or so much thereof as it shall think fit, unless the Supreme Court or Chief Justice shall have made some order respecting such costs.

Rules or summons to shew cause why a writ of *certiorari* or prohibition should not issue to be a stay of proceedings.

**92** WHERE a writ of *certiorari* or of prohibition addressed to a local court shall have been granted on an ex-parte application, and the party who obtained it shall not lodge it with the clerk, and give notice to the opposite party that it has issued, two clear days before the day fixed for hearing the cause to which it shall relate, the local court may, in its discretion, order the party who obtained the writ to pay all the costs of the day, or so much thereof as it shall think fit, unless the Supreme Court or Chief Justice shall have made some order respecting such costs.

Notice of writ of *certiorari* or prohibition having been obtained to be sent to clerk.

Application for writ of prohibition to a judge shall be finally disposed of by rule or order.

**93** WHEN an application shall be made for a writ of prohibition addressed to a local court, the matter shall be finally disposed of by rule or order, and no declaration or further proceedings in prohibition shall be allowed.

Rule or order substituted for writ of mandamus to a magistrate or officer of court.

**94** NO writ of mandamus shall henceforth issue to The Magistrate or any other officer of the local court for refusing to do any act relating to the duties of his office; but any party requiring such act to be done may apply to the Supreme Court, upon an affidavit of the facts, for a rule or summons calling upon such magistrate or officer of a local court, and also the party to be affected by such act, to shew cause why such acts should not be done; and if after the service of such rule or summons good cause shall not be shewn, the Supreme Court may by rule or order direct the act to be done, and The Magistrate or officer of the local court, upon being served with such rule or order, shall obey the same upon pain of attachment; and in any event the Supreme Court may make such order with respect to costs as to such court shall seem fit.

Where judgment does not exceed £20 court may order payment by instalments; in other cases consent of plaintiff necessary.

**95** WHERE judgment has been obtained in a local court for a sum not exceeding Twenty pounds, exclusive of costs, the court may order such sum and the costs to be paid at such time or times, and by such instalments, if any, as it shall think fit, and all such monies shall be paid into court; but in all other cases it 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, will consent that the same shall be paid by instalments, in which case the court shall order the same to be paid at such time or times, and by such instalments, if any, as shall be consented to, and all such monies, whether payable in one sum or by instalments, shall be paid into court.

Priority of executions issuing out of local court.

**96** THE precise time when any application shall be made to any clerk to issue a warrant against the goods of a party shall be entered by him in the execution book and on the warrant; and when more than one such warrant shall be delivered to the bailiff to be executed he shall execute them in the order of the times so entered.

Priority of executions issuing out of Supreme Court and local court.

**97** WHEN a writ against the goods of a party has issued from the Supreme Court, and a warrant against the goods of the same party has issued from a local court, the right to the goods seized shall be determined by the priority of the time of the delivery of the

## 27° VICTORIÆ, No. 21.

### *Small Debts.*

writ to the sheriff to be executed, or of the application to the clerk for the issue of the warrant to be executed; and the sheriff, on demand, shall, by writing signed by him, inform the bailiff of the precise time of such delivery of the writ, and the bailiff, on demand, shall shew his warrant to any sheriff's officer, and such writing purporting to be so signed, and the endorsement on the warrant, shall respectively be sufficient justification to any bailiff or sheriff acting thereon.

**98** A JUDGMENT summons authorised by the 51st section may, by leave of The Magistrate, be obtained from the court in which judgment was obtained, although the judgment debtor shall not then dwell or carry on business within the district of such court, if such magistrate shall think fit, in the exercise of his discretion, to grant such leave.

Summons for commitment may, by leave of court, issue in court in which judgment was obtained.

**99** WHEN the term and interest of the tenant of any corporeal hereditament, where neither the value of the premises nor the rent payable in respect thereof shall have exceeded fifty pounds, by the year, and upon which no fine or premium shall have been paid, shall have expired, or shall have been determined either by the landlord or the tenant by a legal notice to quit, and such tenant, or any person holding or claiming by, through, or under him, shall neglect or refuse to deliver up possession accordingly, the landlord may enter a plaint, at his option, either against such tenant or against such person so neglecting or refusing, in the local court of the district in which the premises lie, for the recovery of the same, and thereupon a summons shall issue to such tenant or such person so neglecting or refusing; and if the defendant shall not, at the time named in the summons, shew good cause to the contrary, then, on proof of his still neglecting or refusing to deliver up possession of the premises, and of the yearly value and rent of the premises, and of the holding, and of the expiration or other determination of the tenancy, with the time and manner thereof, and of the title of the plaintiff, if such title has accrued since the letting of the premises, and of the service of the summons if the defendant shall not appear thereto, the court may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff, either forthwith or on or before such day as the court shall think fit to name; and if such order be not obeyed, the court, whether such order can be proved to have been served or not, shall at the instance of the plaintiff issue a warrant authorising and requiring the bailiff of the court to give possession of such premises to the plaintiff.

Possession of small tenements may be recovered in local courts by landlords where term has expired or been determined by notice.

*Small Debts.*

In plaint for recovery of possession plaintiff may claim for rent and mesne profits.

**100** IN any such plaint against a tenant as in the last preceding section is specified the plaintiff may add a claim for rent or mesne profits, or both, down to the day appointed for the hearing, or to any preceding day named in the plaint, so as the same shall not exceed fifty pounds, and any misdescription in the nature of such claim may be amended at the trial.

Possession of small tenements may be recovered in local court by landlords for non-payment of rent.

**101** WHEN the rent of any corporeal hereditament, where neither the value of the premises nor the rent payable in respect thereof exceeds fifty pounds by the year, shall for one half year be in arrear, and the landlord shall have right by law to re-enter for the non-payment thereof, he may, without any formal demand or re-entry, enter a plaint in the local court of the district in which the premises lie, for the recovery of the premises, and thereupon a summons shall issue to the tenant, the service whereof shall stand in lieu of a demand and re-entry; and if the tenant shall five clear days before the return day of such summons pay into court all the rent in arrear, and the costs, the said action shall cease; but if he shall not make such payment, and shall not at the time named in the summons shew good cause why the premises should not be recovered, then, on proof of the yearly value and rent of the premises, and of the fact that one half year's rent was in arrear before the plaint was entered, and that no sufficient distress was then to be found on the premises to countervail such arrear, and of the landlord's power to re-enter, and of the rent being still in arrear, and of the title of the plaintiff if such title has accrued since the letting of the premises, and of the service of the summons if the defendant shall not appear thereto, the court may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff on or before such day, not being less than four weeks from the day of hearing, as the court shall think fit to name, unless within that period all the rent in arrear and the costs be paid into court; and if such order be not obeyed, and such rent and costs be not so paid, the clerk shall, whether such order can be proved to have been served or not, at the instance of the plaintiff, issue a warrant authorising and requiring the bailiff of the court to give possession of such premises to the plaintiff, and the plaintiff shall from the time of the execution of such warrant hold the premises discharged of the tenancy, and the defendant, and all persons claiming by, through, or under him, shall, so long as the order of the court remains unreversed, be barred from all relief in equity or otherwise.

Sub-tenant served with summons to recover posses-

**102** WHERE any summons for the recovery of a tenement as hereinbefore specified shall be served on or come to the knowledge

## 27° VICTORIÆ, No. 21.

### *Small Debts.*

of any sub-tenant of the plaintiff's immediate tenant, such sub-tenant being an occupier of the whole or of a part of the premises sought to be recovered, he shall forthwith give notice thereof to his immediate landlord, under penalty of forfeiting three years' rack-rent of the premises held by such sub-tenant to such landlord, to be recovered by such landlord by action in the court from which summons shall have issued, and such landlord, on the receipt of such notice, if not originally a defendant, may be added or substituted as a defendant to defend possession of the premises in question.

sion must give notice to his immediate landlord, who may come in and defend.

**103** A SUMMONS for the recovery of a tenement may be served like other summonses to appear to plaintiffs in local courts; and if the defendant cannot be found, and his place of dwelling shall either not be known or admission thereto cannot be obtained for serving any such summons, a copy of the summons shall be posted on some conspicuous part of the premises sought to be recovered, and such posting shall be deemed good service on the defendant.

In plaintiffs to recover possession of premises, how summonses may be served.

**104** ANY warrant to a bailiff to give possession of a tenement shall justify the bailiff named therein in entering upon the premises named therein, with such assistants as he shall deem 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 on premises.

**105** EVERY such warrant shall, on whatever day it may be issued, bear date on the day next after the last day named by the court in the order for the delivery of possession of the premises in question, 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 for three months from the date named for delivering possession.

**106** THE court may at all times amend all defects and errors in any proceedings in such 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 court may seem fit; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made, if duly applied for.

As to amendment of defects and errors of proceedings, &c.

**107** ANY affidavit to be used in a local court may be sworn before The Magistrate without the payment of any fee, or before any other Justice of the Peace.

Before whom affidavits may be sworn.

Warrants of commitment,  
how long to be in force.

**108** EVERY warrant of commitment which shall issue from a local court shall, on whatever day it may be issued, bear date on the day on which the order for commitment was made, and shall continue in force for one year from such date, and no longer, but no order for commitment shall be drawn up or served.

No officer or party shall be  
deemed a trespasser by  
reason of irregularity.

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

Judgment summonses and  
warrants of commitment  
sufficient, if in form given  
in schedule.

**110** ANY judgment summons issued out of a local court under any warrant of commitment in respect of an unsatisfied judgment or order of a local court, may respectively be in the form or to the effect given in Schedule A to this Ordinance, numbered respectively 2 and 3; and all such summonses or warrants shall be deemed sufficient to justify proceedings under them without any further statement of facts to shew jurisdiction.

Bankruptcy and insolvency  
of plaintiff not to cause ac-  
tion to abate, if assignees  
elect to continue it.

**111** THAT the bankruptcy or insolvency of the plaintiff in any action in a local court, which the assignees might maintain for the benefit of the creditors, shall not cause the action to abate, if the assignees shall elect to continue such action, and to give security for the costs thereof, within such reasonable time as The Magistrate shall order, but the hearing of the cause may be adjourned until such election is made; and in case the assignees do not elect to continue the action and to give such security within the time limited by the order, the defendant may avail himself of the bankruptcy or insolvency as a defence to the action.

How securities under local  
court Ordinances to be  
given.

**112** WHERE, by this Ordinance, a party is required to give security, such security shall be at the cost of the party giving it, and in the form of a bond, with sureties, to the other party or intended party in the action or proceeding: Provided always that the court in which any action on the bond shall be brought may, by rule or order, give such relief to the obligors as may be just, and such rule or order shall have the effect of a defeasance of such bond.

*Small Debts.*

**113** WHERE, by this Ordinance, a party is required to give security, he may in lieu thereof deposit with The Magistrate if the security is required to be given in a local court, or with the master of the Supreme Court if the security is required to be given in such court, a sum equal in amount to the sum for which he would be required to give security, together with a memorandum, to be approved of by The Magistrate or master, and to be signed by such party, his attorney or agent, setting forth the conditions on which such money is deposited, and The Magistrate or master shall give to the party paying, a written acknowledgment of such payment; and The Magistrate when the money shall have been deposited in the local court, or the judge of the Supreme Court when the money shall have been deposited in the Supreme Court, may, on the same evidence as would be required to enforce or avoid such bond as in the last preceding section is mentioned, order such sum so deposited to be paid out to such party or parties as to him shall seem just.

Where security is required to be given, a deposit of money may be given in lieu thereof.

**114** WHERE any claim shall be made under section 65, to or in respect of any goods taken in execution under the process of a local court, the claimant may deposit with the bailiff either the amount of the value of the goods claimed, such value to be fixed by appraisement in case of dispute, to be by such bailiff paid into court, to abide the decision of the court upon such claim, or the sum which the bailiff shall be allowed to charge as costs for keeping possession of such goods until such decision can be obtained, and in default of the claimant so doing the bailiff shall sell such goods as if no such claim had been made, and shall pay into court the proceeds of such sale, to abide the decision of the court as aforesaid.

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

**115** THE clerk of every court holden under this Ordinance shall cause a note of all complaints and summonses, and of all orders and of all judgments and executions and returns thereto, and of all informations, sentences, and other proceedings of the court to be fairly entered from time to time in books belonging to the court, which shall be kept at the office of the court; and such entries in the said books and copies thereof and purporting to be signed and certified as true copies by the clerk of the court, shall at all times be admitted in all courts and places whatsoever, as evidence of such entries, and of the proceeding referred to by such entry or entries; and of the regularity of such proceeding, without any further proof.

Minutes of proceedings to be kept.

**116** IF any person shall wilfully insult the court or any clerk or officer of the court for the time being during the sittings or

Power of committal for contempt.

attendance in such court, or in going or returning from such court, or shall wilfully interrupt the proceedings of such court or otherwise misbehave in court, it shall be lawful for any bailiff or officer of the court, with or without the assistance of any person, by the order of the court to take such offender into custody and detain him until the rising of the court; and the court shall be empowered, if such court shall think fit, by a warrant of the said court to commit any such offender to any prison to which the court has power to commit offenders under this Ordinance, for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding Five pounds for every such offence, and in default of payment thereof to commit the offender to any such prison aforesaid for any time not exceeding seven days, unless the fine be sooner paid.

Penalty for assaulting officer, or rescue.

**117** IF any officer or bailiff of any court holden under this Ordinance shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the court, the person so offending shall be liable to a fine not exceeding Twenty pounds, to be recovered by order of the court, or before a Justice of the Peace in a summary way; and it shall be lawful for the bailiff of the court or for any peace officer in any such case to take the offender into custody (with or without warrant), and bring him before such court or Justice accordingly.

Court to determine charges against its officers.

**118** IF any clerk, bailiff, or officer of the court acting under color or pretence of process of the said court shall be charged with extortion, or with not duly paying or accounting for any money levied by him under the authority of this Ordinance, or with any neglect, connivance, or omission, or misconduct in his office, it shall be lawful for the court to enquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, or for the payment of such damages and costs as the court shall think just; and also, if the court shall think fit, to impose such fine upon the clerk, bailiff, or officer, not exceeding Twenty pounds for each offence, as shall be deemed adequate; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court.

*Small Debts.*

**119** THE several fees specified in Schedule B hereto shall be payable on proceedings in the local courts, and, except bailiffs' fees, shall be handed over by The Magistrates so nominated and appointed as aforesaid, into the colonial treasury from time to time, for the public uses of the Colony, and in support of the Government thereof; and all such fees shall, except in interpleaders, or where such fees shall be payable in respect of keeping possession, or selling goods seized, be paid in the first instance by the party in whose behalf any such proceeding is to be taken; and in default of payment of any fees, payment thereof shall by order of The Magistrate be enforced by such means as might be employed to recover any debt adjudged by the said local court to be paid; and a table of all fees shall be posted in some conspicuous place in every court house, and in every clerk's office; provided that the Governor with the advice of the Executive Council from time to time may vary, lessen, or increase the fees of court payable under this Ordinance and substitute other fees in lieu thereof, and may order entirely new fees in proceedings hereafter authorised in such courts.

Fees in proceedings.

**120** NO order, verdict, or judgment or other proceeding made concerning any of the matters aforesaid shall be quashed or vacated for want of form.

No proceedings vacated for want of form.

**121** SECTION G of "The Shortening Ordinance, 1853," shall be incorporated with and taken to form a part of this Ordinance, to all intents and purposes and in as full and ample a manner as if the said section had been introduced and fully set forth in this Ordinance.

Shortening Ordinance.

**122** THIS Ordinance shall come into operation from and after the first day of January next after the passing thereof.

**123** THAT this Ordinance may be cited as "The Small Debts Ordinance, 1863."

J. S. HAMPTON,  
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Legislative Council,  
this 22nd day of July, 1863.*

G. E. HAMPTON,  
*Clerk of the Council.*



SCHEDULES REFERRED TO.

Schedule A.

No. 1.

*Summons to obtain judgment by default on personal service.*

No. [of *plaint*].

In the [title of court issuing summons].

[Seal].

Between A.B., plaintiff,

and

C.D., defendant.

[Name, description and address of defendant].

Take notice, that unless at least six clear days before the [day of appearance to summons], you return to the clerk of this court at [place of office] the notice given below, dated and signed by yourself, or your attorney, or your agent, you will not afterwards be allowed to make any defence to the claim which [name, description, and address of plaintiff] makes on you, as per margin, the particulars of which are hereunto annexed; but the plaintiff may, without giving any proof in support of such claim, proceed to judgment and execution. If you return such notice to the clerk within the time specified, you must appear at a local court to be holden at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 186\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, to answer the above claim, which will be heard on that day.

	£	s.	d.
Claim .....			
Fee for plaint .....			
Attorney's costs .....			
Total amount of debts and costs } .....			

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

Clerk of the Court.

(See back).

27° VICTORIÆ, No. 21.

*Small Debts.*

*Notice of intention to defend.*

No. [of *plaint*].

In the [title of *court*].

A.B. v. C.D.

I intend to defend this cause.

Dated this        day of        , 18 .

.....(\*) defendant.

\* Here must be signed the name of defendant, or of his attorney or agent, and in either of the last two cases the words "Attorney for" or "Agent for" must be added.

[*To be endorsed on the summons*].

If you pay the debt and costs, as per margin on the other side, into the clerk's office, before the day of hearing, and without returning the notice of intention to defend, you will avoid further costs.

If you do not return the notice of intention to defend, but allow judgment against you by default, you will *save half the hearing fee*, and the order upon such judgment will be to pay the debt and costs forthwith, [*or, by instalments, to be specified, as in plaintiff's written consent*].

If you admit a part only of the claim, you must return the notice of intention to defend within the specified time; and you may, by paying into the clerk's office the amount so admitted, together with costs proportionate to the amount you pay in, six clear days before the day of hearing, avoid further costs, unless the plaintiff at the hearing shall prove a claim against you exceeding the sum so paid.

If you intend to rely on a set-off, infancy, coverture, a statute of limitations, or a discharge under a bankrupt or insolvent ordinance, as a defence, you must, in addition to the notice of intention to defend, give to the clerk notice of such special defence six clear days before the day of hearing; and such last-mentioned notice must contain the particulars required by the rules of the court, and you must deliver to the clerk as many copies of such notice as there are plaintiffs, and an additional copy for the use of the court. If your defence be a set-off, you must, with the notice thereof, also deliver to the clerk a statement of the particulars thereof. If your defence be a tender, you must pay into court, before or at the hearing, the amount tendered.

Summonses for witnesses and the production of documents may be obtained gratis at the office of the clerk of this court.

# 27° VICTORIÆ, No. 21.

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## *Small Debts.*

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Hours of attendance at the office of the clerk of this court at [*place of office*] from ten till four.

This summons must be served *personally* on the defendant twelve clear days before the day appointed for the hearing.

—  
No. 2.

### *Summons for Commitment.*

In the [*title of court issuing summons.*]

[*Seal.*]

No. [*of summons.*]

No. [*of judgment or order.*]

Between A.B., plaintiff,

and

C.D., defendant.

Whereas the plaintiff obtained a judgment [*or, if no judgment has been obtained, or if a fresh order has been obtained upon a judgment, an order*] against you in the local court of , on the day of , 186 , for the payment of £ for debt [*or, damages*], and £ for costs, upon which judgment [*or, order*], and the subsequent process issued thereon, the sum of £ is now due: you are therefore hereby summoned to appear personally in this court at [*place where court holden*], on the day of , 18 , at the hour of o'clock in the noon, to be examined by the court touching your estate and effects, and the circumstances under which you contracted the said debt [*or, incurred the said damages*], and as to the means and expectation you then had, and as to the means you still have of discharging the said debt [*or, damages*], and as to the disposal you may have made of any property. And take notice, that if you disobey this summons the court may commit you to prison.

Dated this day of , 18 .

Clerk of the court.

Hours of attendance at the office of the clerk of this court [*place of office*] from ten till four.

*When issued under this Ordinance, insert*

“Issued by leave.”

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27° VICTORIÆ, No. 21.

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*Small Debts.*

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No. 3.

*Warrant of Commitment.*

In the [*title of court ordering committal.*]

[*Seal.*]

No. [*of commitment.*]

No. [*of judgment summons.*]

Between A.B., plaintiff,

and

C.D., defendant.

To the bailiffs of the said court, and all peace officers within the jurisdiction of the said court, and to the governor or keeper of the [*prison used by the court.*]

Whereas the plaintiff obtained a judgment [*or, order*] against the defendant in the local court of on the day of , 186 , for the payment of £ for debt [*or, damages*] and costs, upon which judgment [*or, order*], and the subsequent process issued thereon, the sum of £ was at the date of the issuing of the summons hereinafter mentioned and still is, due :

And whereas a summons was, at the instance of the plaintiff, duly issued out of this court, by which the defendant was required to appear at this court on the day of , 186 , to answer such questions as might be put to him pursuant to Section 51 of the Ordinance, 27 Vict., No. 21, of 1863, in relation to such debt [*or, damages*], which summons was proved to this court to have been personally and duly served on the defendant.

# 27° VICTORIÆ, No. 21.

## *Small Debts.*

And whereas this court, at the hearing of the said summons, ordered that the defendant should be committed to prison for \_\_\_\_\_ days, for [*as the case may be*] not appearing pursuant to such summons, or alleging a sufficient excuse for not so appearing.

[*or*, for refusing to be sworn];

[*or*, for refusing to answer such questions as aforesaid to the satisfaction of the \_\_\_\_\_];

[*or*, for contracting the said debt under false pretences, *or* by means of fraud, *or* breach of trust, *or* without reasonable expectation of being able to pay the same];

[*or*, for making a gift or transfer of part of his property, with intent to defraud his creditors];

[*or*, for having charged, *or* removed, *or* concealed part of his property with intent to defraud his creditors];

[*or*, for not having satisfied the said judgment and costs, having had sufficient means and ability so to do];

These are therefore to require you, the said bailiffs and others, to take the defendant, and to deliver him to the governor or keeper of the [*prison used by the court*], and you, the said governor or keeper, to receive the defendant, and him safely keep in the said prison for \_\_\_\_\_ days from the arrest under this warrant, or until he shall be sooner discharged by due course of law.

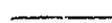
Dated this [*insert date of order*] day of \_\_\_\_\_ 18 .

E. F. The Magistrate, or two other Justices forming the court.

	£	s.	d.
Amount remaining due . . . . .	.....	.....	.....
Poundage for issuing this warrant . . . . .	.....	.....	.....
Total. . . . .	.....	.....	.....

This warrant *remains in force one year* from the date thereof.

This form to be applicable to all judgments recovered at the hearing, or by default, or by consent, and to all orders within the jurisdiction of the court.



# 27° VICTORIÆ, No. 21.

## Small Debts.

### B.

#### *List of Fees to be taken in Proceedings in Court.*

MAGISTRATE'S FEES:—	Under £10	Up to £30	Up to £50
	£ s. d.	£ s. d.	£ s. d.
For trial of any action ..	0 5 0	0 15 0	1 0 0
„ Interlocutory hearing ..	0 2 6	0 5 0	0 10 0
„ Hearing on any appli- cation and Order thereon	0 2 6	0 5 0	0 10 0
Taxing costs .. ..	0 1 0	0 1 6	0 2 0

CLERK'S FEES:—	Under £10	Up to £30	Up to £50
	£ s. d.	£ s. d.	£ s. d.
Entering every action or plaint, filing particulars, issuing summonses, and copy for service }	0 1 0	0 2 0	0 3 0
Entering appearance ..	0 1 0	0 1 6	0 2 0
Filing any document ..	0 0 6	0 1 0	0 1 6
Every search .. ..	0 0 6	0 0 6	0 0 6
Issuing summons and copy for witness }	0 1 0	0 1 0	0 1 0
Entering cause for trial ..	0 1 0	0 2 0	0 3 0
Trial of cause and entering judgment }	0 2 0	0 2 6	0 3 6
Order, rule, or notice ..	0 1 0	0 1 6	0 2 0
Writ of execution, commit- ment or arrest }	0 1 0	0 1 6	0 2 0
Receiving and paying money out of Court }	0 1 0	0 1 0	0 1 0
Replevin Bond ..	0 2 6	0 5 0	0 7 6

## 27° VICTORIÆ, No. 21.

### *Small Debts.*

BAILIFF'S FEES:--	Under £10	Up to £30	Up to £50
	£ s. d.	£ s. d.	£ s. d.
Serving any summons, rule, notice, or order in town- site	0 1 0	0 1 6	0 2 6
Executing writ of execution, commitment, or arrest	0 5 0	0 7 0	0 10 6
Poundage, 3 per cent. on the amount raised and paid into Court			
All other incidental expen- ses of seizure, keeping possession and sale, sub- ject to review of The Magistrate			
Mileage 1s. per mile one way only.			

In all cases not herein provided for, such fees as the Magistrates shall allow, in accordance with the rules of Practice of the said Courts.