Approved for Reprint 11 April 1984.

WESTERN AUSTRALIA.

LOCAL COURTS ACT 1904-1982.

(No. 51 of 1904.)

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Approved for Reprint 11 April 1984.

WESTERN AUSTRALIA.

LOCAL COURTS.

No. 51 of 1904.

(Affected by Acts No. 36 of 1935, No. 43 of 1964 and No. 113 of 1965.)

[As amended by Acts:—
No. 19 of 1909,[1] assented to 6 February 1909;
No. 5 of 1912,[2] assented to 9 January 1912;
No. 21 of of 1921, assented to 6 December 1921;
No. 35 of 1930,[3] assented to 22 December 1930;
No. 31 of 1931,[3] assented to 17 November 1931;
No. 13 of 1938, assented to 30 November 1938;
No. 10 of 1953, assented to 10 November 1953;
No. 26 of 1954,[4] assented to 28 October 1954;
No. 73 of 1954,[5] assented to 4 January 1955;
No. 10 of 1957,[6] assented to 29 August 1957;
No. 56 of 1958, assented to 23 December 1958;
No. 9 of 1964, assented to 2 October 1964;
No. 8 of 1970,[7] assented to 29 April 1970;
No. 46 of 1972,[8] assented to 18 September 1972;
No. 94 of 1972 (as amended by No. 19 of 1973[9] and No. 42 of 1975[10]);
No. 69 of 1976,[11] assented to 6 October 1976;
No. 111 of 1976, assented to 25 November 1976;
No. 93 of 1981,[12] assented to 4 December 1981;
No. 118 of 1981,[13] assented to 14 December 1981;
No. 127 of 1982,[14] assented to 10 December 1982,
and reprinted pursuant to the Amendments Incorporation Act 1938.]

AN ACT to consolidate and amend the Law relating to Local Courts.

[*Assented to 24 December 1904.*]

BE it enacted—

PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as the *Local Courts Act 1904-1982*.

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[1] Effective as from commencement of principal Act.
[2] Came into operation on 20 May 1912. See *Gazette* 14/4/12, p. 1512.
[3] No. 35 of 1930 as amended by No. 31 of 1931, came into operation on 25 December 1931. See *Gazette* 18/12/31, p. 2582.
[4] Came into operation on 1 January 1955. See *Gazette* 10/12/54, p. 2013.
[5] Came into operation on 1 March 1955. See *Gazette* 18/2/55, p. 343.
[6] Came into operation on 7 July 1958. See *Gazette* 20/6/58, p. 1295.
[7] Came into operation on 14 February 1972. See *Gazette* 10/12/71, p. 5169.
[8] Came into operation on 1 November 1972. See *Gazette* 13/10/72, p. 4069.
[9] Metric Conversion Act 1972-1973. The relevant amendments included in this reprint effective from 1 January 1974. See *Gazette* 2/11/73, p. 4109.
[10] Metric Conversion Act Amendment. The relevant amendments effective from 5 December 1975. See *Gazette* 5/12/75, p. 4367.
[11] Sections 9, 21, 22, 23 came into operation on 17 June 1977. See *Gazette* 17/6/77, p. 1811, the balance came into operation on 1 January 1977. See *Gazette* 24/12/76, p. 5028.
[12] Came into operation 28 days after assent, i.e., 2 January 1982. See section 2.
[13] Came into operation on 1 February 1982. See *Gazette* 22/1/82, p. 175.
[14] Sections 11 and 12 came into operation on 28 February 1983. See *Gazette* 25/2/83, p. 638. Sections 7, 8 and 9 came into operation on 1 March 1984. See *Gazette* 20/1/84, p. 120.

Commencement.

2. This Act shall come into operation on the first day of January, One thousand nine hundred and five.

Interpretation.
Amended by No. 5 of 1912, s. 3; No. 35 of 1930, s. 2; No. 26 of 1954, s. 3; No. 69 of 1976, s. 9.

3. In this Act, unless the context otherwise indicates—

"Action" includes suit, and means a civil proceeding commenced as prescribed by plaint;

"Bailiff" includes deputy bailiff, and persons appointed in the prescribed manner to assist bailiffs;

"Clerk" means clerk of a Local Court, and includes assistant clerk acting in the absence of the clerk or when the clerk is for any reason not available;

"Court" means a Local Court established under this Act;

"District Court" means The District Court of Western Australia established under the District Court of Western Australia Act 1969;

"Goods" includes money or bank-notes of any banking company established in Western Australia or elsewhere, and cheques, bills of exchange, promissory-notes, specialities, or other securities for money, and stock and shares, and other personal property of every kind;

"Judge" means a judge of the Supreme Court, and includes any Commissioner appointed under the Supreme Court Act 1935;

"Judgment" includes a judgment, order, or other decision or determination of a magistrate;

"Land" includes land of any tenure, and any estate therein, and the houses, buildings, and structures thereon;

"Landlord" means the person entitled to the immediate reversion of land, or, if it is held in joint tenancy, coparcenary, or tenancy in common, all or any one of the persons entitled to the reversion;

"Magistrate" means a magistrate of a Local Court, and includes any stipendiary magistrate or justices of the peace sitting in the place of the magistrate;

"Matter" means a proceeding in the court which is commenced as prescribed otherwise than by plaint;

"Minister" means the responsible Minister of the Crown for the time being charged with the administration of this Act;

"Party" includes a person served with notice of or attending a proceeding, although not named on the record;

"Prescribed" means prescribed by this Act, or the rules of court;

"Proclamation" means a proclamation by the Governor published in the *Government Gazette;*

"Return Day" means the day fixed by a notice of trial or appointed in a summons or proceeding for the trial or hearing of an action or matter;

"Rules of court" means rules of court made as by this Act prescribed.

Repeal.

4. The Acts specified in the Schedule are hereby repealed.

All Local Courts established, and all magistrates and officers appointed under any Act hereby repealed shall, so far as may be necessary, be deemed to have been established and appointed respectively under this Act, and shall continue subject to the provisions of this Act.

All proceedings commenced before the coming into operation of this Act shall be carried on, as far as practicable, according to the provisions of this Act, and, subject to this Act, according to the provisions of the repealed Acts, which for that purpose shall be deemed to continue in force.

All rules of court and orders made under the authority of any Act hereby repealed, and in force at the commencement of this Act, shall be deemed to have been made under the authority of this Act, and all references in any such rules or orders shall be construed as references to the corresponding provisions of this Act.

Saving. Inserted by No. 69 of 1976, s. 10.

4A. The Chairman of Judges of the District Court may make an order, at any time after hearing the parties concerned, remitting to a Local Court any action that—

(a) is commenced under the District Court of Western Australia Act 1969;

(b) is pending on the date of the coming into operation of Part II of the Acts Amendment (Jurisdiction of Courts) Act 1976;

(c) could have been commenced under this Act in a Local Court if those sections had been in operation when the action was so commenced,

unless a party to the action satisfies the Chairman of Judges of the District Court that for good cause shown the action should not be remitted.

PART II.—COURTS, MAGISTRATES, AND OFFICERS.

Courts.

Appointment of Local Courts.

5. The Governor may, by proclamation, order that courts to be called Local Courts shall be held at such places as he thinks fit; and may, in like manner, alter the place for the holding of a court, or order that the holding of any court be discontinued.

When the holding of a court is discontinued, all proceedings pending in the court shall be transferred to and continue in such other court as the Governor may direct by the proclamation, and all records of the court, the holding of which is discontinued, shall be transferred to such other court.

Courts to be courts of record.

6. Every Local Court shall be a court of record, and shall have the jurisdiction provided by this Act.

Seal of the court.

7. For every court there shall be a seal; and plaints, summonses, warrants, and other process shall be sealed or stamped with the seal.

Magistrates.

Appointment of magistrates.

8. The Governor may appoint magistrates of Local Courts, and may assign to a magistrate such courts as he thinks fit; but the jurisdiction of a magistrate shall not be deemed thereby to be limited to the courts assigned to him.

Every magistrate shall, by virtue of his office, be a justice of the peace for the State.

Magistrates may act throughout State.

9. Every magistrate shall be appointed for the whole State, and shall be empowered to act in any Local Court in the State.

Place and times of sittings.

10. The magistrate to whom a court is assigned shall attend to hold the court, at the place appointed by the Governor, at such times as are appointed by the Minister, but so that the court is held in the place once at least in such period of time as the Governor directs by proclamation.

Notice of the days on which the court is appointed to be held shall be published in the *Government Gazette*, and posted in a conspicuous place at the court-house and also in the office of the clerk.

When by reason of the absence of a magistrate the court cannot be held at the time appointed, the clerk, or, in his absence, the bailiff, shall adjourn the court, and enter in the minute-book the cause of the adjournment.

Jurisdiction in chambers.

11. A magistrate may sit in chambers at any time and at any place; and, subject to the rules of court, may exercise in chambers any jurisdiction of the court, except the trial of actions and the hearing of applications for new trials.

Deputy magistrate.

12. In the case of the illness or absence of a magistrate, or if a magistrate is interested in an action or matter pending in a court assigned to him, another magistrate, or any stipendiary magistrate, or any two justices of the peace may, at the request of the first-mentioned magistrate, or of the Minister, sit for the first-mentioned magistrate, and may exercise all the powers and perform all the duties which that magistrate might have exercised or performed.

Whenever such request shall be made by a magistrate, he shall immediately report the matter to the Minister, and shall state the reason of the request, the name of the magistrate or the names of the justices sitting for him, and such other particulars as may be prescribed.

Clerks.

Appointment of clerk. Amended by No. 10 of 1953, s. 2.

13. (1) For every court the Governor may subject to the provisions of subsection (2) of this section appoint a clerk and assistant clerks, who shall be paid by salary.

(2) Where the person who is to be appointed a clerk or assistant clerk is not subject to the provisions of the Public Service Act 1904-1950[1], he shall be appointed clerk or assistant clerk by the Minister.

[1] Now Public Service Act 1978.

(3) The Minister may during the absence or temporary incapacity of a clerk or an assistant clerk appoint a substitute to discharge the duties of the clerk or assistant clerk.

Duties of clerk.

14. The clerk shall sign and issue summonses and warrants, and register the records and judgments, and keep minutes of the proceedings of the court, and shall take charge of and keep an account of the court fees and fines payable or paid into court, and of the moneys paid into and out of court, and shall enter an account of the fees, fines, and moneys in a book to be kept by him for that purpose, and shall, when required, submit his accounts to be audited by the Auditor General or his officers.

Minutes of proceedings to be kept.

15. The clerk shall cause a note of the plaints and summonses, and of the judgments and executions, and returns thereto, and of the fines, and of all 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.

In any action or other proceeding, the books and any entries therein, or copies of the books or entries under the seal of the court, and purporting to be signed and certified by the clerk, shall, upon production, be *prima facie* evidence of the contents of the books, or of the entries, and of the proceedings referred to in them, and of the regularity of the proceedings.

Bailiffs.

Appointment of bailiffs.

Amended by No. 9 of 1964, s. 2.

16. For every court there shall be one or more bailiffs. who shall be appointed by the Minister.

The bailiff may, by writing under his hand, with the approval of the magistrate, appoint a sufficient number of fit persons to assist him, and may dismiss all or any of them and appoint others in their place.

An officer so appointed may also be suspended by the magistrate, or suspended or dismissed by the Minister.

The bailiff shall be responsible for the acts and defaults of the officers appointed to assist him.

Bailiff's assistants may act after the death or removal of bailiff.

17. The death or removal of a bailiff shall not invalidate the acts of the officers so appointed, but they shall continue to act until they are dismissed by the successor to the bailiff or by the Minister.

They shall receive for their services, while they so act after the death or removal of the bailiff, the same remuneration as they were receiving at the date of the death or removal, and such remuneration shall be paid out of the salary, fees, or allowances attached to the office of bailiff.

Duties of bailiffs.

18. The bailiffs, or one of them, shall, if required by the magistrate, attend every sitting of the court, and shall, by themselves or their officers, serve all summonses, and execute all warrants issued out of the court; and the bailiffs and officers shall, in the execution of their duties, conform to the rules of court, and subject thereto to the order and direction of the magistrate of the court for which they are appointed:

Provided that a summons or other process issued out of any court—

(a) may be transmitted by the clerk of the court to, and may be served by the bailiff of any other court, or his officer; or

(b) may be served by the plaintiff or his solicitor, or by any person employed by the plaintiff or his solicitor, or by a police officer, or any other person authorized by the magistrate.

Bailiff not required to take out auctioneer's licence.

19. A bailiff or other officer duly authorized to execute a warrant of execution issued under the authority of this Act may sell land or goods without taking out an auctioneer's licence.

Remuneration of bailiffs.

20. A bailiff may be paid a salary on account of his general duties, and shall be entitled to receive and retain for his own use the prescribed bailiff's fees, unless the Minister in any case otherwise orders. The bailiff shall, out of such fees, provide for the performance of the duties for which the fees are allowed, and for the payment of the officers appointed to assist him.

Provided that, if in any court the fees allowed to be taken by a bailiff appear to be more than sufficient to afford him a reasonable remuneration, the Minister may order that a certain specified part only of such fees shall be retained by him, and in that case, and so long as the order is in force, the amount of the residue of the fees shall be accounted for, paid, and applied, in the same manner as fees payable to the Clerk are accounted for, paid, or applied.

Bailiff answerable for escape and neglect to levy execution. Cf. 51 and 52 Vict., c. 43, s. 49.

21. If a bailiff who is directed to levy execution loses by neglect, connivance, or omission, the opportunity of levying the execution, the magistrate may upon complaint of the party aggrieved, inquire into the matter in a summary way, and for that purpose may summon and enforce the attendance of the necessary parties in the same manner in which the attendance of witnesses in an action may be enforced, and may order the bailiff to pay such damages as it appears that the plaintiff has sustained; and the bailiff shall be liable to pay the same.

Upon demand made, and on his refusal to pay and satisfy the damages, payment may be enforced in the manner provided by this Act for enforcing a judgment.

Bailiff to give security.

22. Every bailiff shall give security for such sum and in such manner as the Minister orders for the due performance of his office, and for the due accounting for and payment of the moneys received by him under this Act, or which he is liable to pay for misbehaviour in his office.

General provisions relating to officers.

Disabilities. Amended by No. 113 of 1965, s. 8. Cf. 51 and 52, Vict., c. 43, s. 41.

23. An officer of the court shall not be, directly or indirectly, concerned as agent for a party to any proceeding in the court.

Any officer committing an offence against this section shall be liable to pay the sum of two hundred dollars and full costs of action to any person who sues for the same.

Remedies against and penalties on bailiffs and other officers for misconduct. Amended by No. 113 of 1965, s. 8. Cf. 51 and 52 Vict., c. 43, ss. 50, 51.

24. If a clerk, bailiff, or other officer, acting under or under colour or pretence of the process of the court, is charged with extortion or misconduct, or with not duly paying or accounting for money levied by him under the authority of this Act, the magistrate may inquire into the matter in a summary way, and for that purpose may summon and enforce the attendance of the necessary parties in the manner provided by this Act for enforcing the attendance of witnesses, and may make such order for the repayment of the money extorted, or for the due payment of the money so levied, and for the payment of such damages and costs as he thinks just.

The magistrate may also impose a fine upon the clerk, bailiff, or other officer not exceeding twenty dollars for each offence, and, in default of payment of the money so ordered to be paid, payment may be enforced in the manner provided by this Act for enforcing a judgment.

The Minister may, in his discretion, direct that the clerk, bailiff, or other officer shall be dealt with under the provisions of any Act for the regulation of the public service in force for the time being, and in such case the provisions of this section shall not apply.

No officer to be deemed a trespasser by reason of irregularity. Amended by No. 113 of 1965, s. 8. Cf. 51 and 52 Vict., c. 43, s. 52.

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

Indemnity to persons acting under this Act. Cf. 51 and 52 Vict., c. 43 s. 55.

26. If an action is brought against a person for anything done under a warrant issued in pursuance of this Act, the production of the warrant under the seal of the court shall be deemed sufficient proof of the authority of the court previous to the issuing of the warrant, and if the plaintiff in the action has a verdict given against him, is nonsuited, or discontinues the action, the defendant shall be allowed full costs as between solicitor and client.

[*Section 27 repealed by No. 73 of 1954, s. 8.*]

Legal Practitioners.

Privilege. Cf. 27 Vict., No. 21, s. 15; 51 and 52 Vict., c. 43, s. 175.

28. No privilege shall be allowed to a solicitor or other person to exempt him from the provisions of this Act.

Appearance may be in person or by a legal practitioner. Amended by No. 21 of 1921, s. 2. Cf. 51 and 52 Vict., c. 43, s. 72.

29. A party to an action or other proceeding under this Act, or a legal practitioner retained by or on behalf of the party on either side, or any person allowed by special leave of the magistrate in any case to appear instead of the party, may address the court and examine and cross-examine the witnesses, but subject to the rules of court and the orders of the magistrate for the orderly transaction of the business of the court.

Provided that on the hearing of an application under this Act or the Debtors Act 1871, by a judgment creditor for the committal of a judgment

debtor, the judgment creditor shall be entitled to be represented by any clerk or servant in the employ or subject to the control or direction of the judgment creditor or his solicitor.

PART III.—JURISDICTION.

As to Subject-matter.

In personal actions. Amended by No. 35 of 1930, s. 3; No. 26 of 1954, s. 4; No. 113 of 1965, s. 8; No. 69 of 1976, s. 11; No. 118 of 1981, s. 13. Cf. 51 and 52 Vict., c. 43, ss. 56, 57; 3 Edw. VII., c. 42, s. 3.

30. All personal actions in which the amount claimed is not more than six thousand dollars whether on a balance of account or after an admitted set-off or otherwise, may be commenced in a Local Court; and in an action for recovery of a balance of account, the court shall have jurisdiction, if the original claim is reduced to six thousand dollars or less, by payment or otherwise, or by deducting any sum for which the plaintiff gives the defendant credit upon the plaint being entered:

But, except as hereinafter provided, a Local Court shall not have jurisdiction to hear and determine any action in ejectment, or in which the title to land, or the validity of a devise, bequest, or limitation under a will or settlement is in question, or for libel or slander, or for seduction, or for breach of promise of marriage.

Cf. ibid., s. 61.

If the title to land incidentally comes in question in an action, the court shall have power to decide the claim which it is the immediate object of the action to enforce, but the judgment of the court shall not be evidence of title between the parties or their privies in another action in that court, or in any proceedings in any other court.

In case of partnership, intestacy, and legacy. Amended by No. 35 of 1930, s. 4; No. 26 of 1954, s. 5; No. 113 of 1965, s. 8; No. 69 of 1976, s. 12; No. 118 of 1981, s. 14. Cf. 51 and 52 Vict., c. 43, s. 58; 3 Edw. VII, c. 42, s. 3.

31. The jurisdiction of a Local Court shall extend to the recovery of any demand not exceeding six thousand dollars, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of the distributive share under an intestacy or of a legacy under a will.

Equitable claims.
Amended by No. 35 of 1930, s. 4; No. 26 of 1954, s. 6; No. 113 of 1965, s. 8; No. 69 of 1976, s. 13; No. 118 of 1981, s. 15.
Cf. 51 and 52 Vict., c. 43, s. 67; 3 Edw. VII., c. 42, s. 3.

32. In any case in which a person has an equitable claim or demand against another person in respect of which the only relief sought is the recovery of a sum of money or of damages, whether liquidated or unliquidated, and the amount claimed is not more than six thousand dollars, the person seeking to enforce the claim or demand may sue for and recover it in a Local Court.

Powers of court.
36 and 37 Vict., c. 66, s. 89.

33. A Local Court shall, as regards all causes of action within its jurisdiction, have power to grant, in any proceeding before such court, such relief, redress, or remedy, and in every such proceeding to give such and the like effect to every ground of defence or counterclaim, equitable or legal (subject to the provision next hereinafter contained) in as full and ample a manner as might be done in the like case by the Supreme Court.

Counter-claims.
36 and 37 Vict., c. 66, s. 90.

34. (1) Where any defence or counterclaim of the defendant involves matter beyond the jurisdiction of the court, such defence or counterclaim shall not affect the competence or the duty of the court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but, except as provided in subsection (2), no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counterclaim:

Provided always, that in such case it shall be lawful for the Supreme Court or a Judge thereof, if it is thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred to the Supreme Court; and in such case the record in such proceeding shall be transmitted by the clerk to the Supreme Court; and the same shall thenceforth be continued and prosecuted in the Supreme Court as if it had been originally commenced therein.

Cf. 47 and 48 Vict., c. 61, s. 18.

(2) The jurisdiction of a Local Court, in cases of counterclaim, shall not be excluded by reason—

(a) that, where the counterclaim involves more than one cause of action, as to each of which the defendant might have maintained a separate action, each such cause of action being within the jurisdiction of the court, the aggregate amount of the counterclaim exceeds the jurisdiction of the court; or

(b) that the counterclaim is for an amount of money exceeding the jurisdiction of the court, provided that the plaintiff does not object in writing, within the prescribed time, to the court giving relief exceeding that which the court would otherwise have jurisdiction to administer.

Ibid.

(3) In any case where the counterclaim involves matter beyond the jurisdiction of the court, notwithstanding the provisions of this section, the court may, on such terms (if any) as the court thinks just, either adjourn the hearing of the case, or stay execution on the judgment, for such time as may be necessary to enable any party to apply to remove the proceedings into the Supreme Court or to enable the defendant to prosecute in that court an action for the purpose of establishing his counterclaim; and in default of any such application being made, or action brought, the court shall, after the expiration of the time limited, have jurisdiction to hear and determine the whole matter in controversy, to the same extent as if all parties had consented thereto.

Rules of law to apply to all Local Courts. Amended by No. 26 of 1954, s. 7. Cf. 36 and 37 Vict., c. 66, s. 91.

35. The several rules of law enacted and declared by the Supreme Court Act 1935-1950[1], shall be in force and receive effect in Local Courts, so far as the matters to which such rules relate shall be respectively cognisable by such courts.

[1] Now Supreme Court Act 1935-1982.

As to Locality.

Where action may be commenced.
Amended by No. 5 of 1912, s. 4.
Cf. 58 Vict., No. 13, s. 4; 51 and 52 Vict., c. 43, s. 74.

36. Every Local Court shall have jurisdiction throughout the State:

But, except as hereinafter provided, every action shall be commenced—

(a) in the court held nearest to the place where the defendant, or one of the defendants, resides or carries on business; or

(b) in the court held nearest to the place where the defendant, or one of the defendants, resided or carried on business at any time within six months next before the entry of the plaint; or

(c) in the court held nearest to the place where the cause of action or claim wholly or in part arose.

Plaintiff to be permitted to choose court.
Inserted by No. 5 of 1912. s. 5.

36A. (1) Notwithstanding anything in the proviso to section thirty-six, a person desirous of bringing an action, of a kind to which the proviso applies, in a Local Court, shall be permitted to commence the action in any court, and in the absence of any objection to the jurisdiction he shall be deemed to have selected a proper court.

Choice of court by plaintiff.

(2) The jurisdiction of the court chosen by the plaintiff for the commencement of such an action, provided the action is as regards subject-matter within the jurisdiction of the Local Courts of the State, shall not be questioned by any person or by the Supreme Court or any other court save as is in this section provided.

Objection by defendant.

(3) A defendant who has been sued in a court which is not the nearest to his place of residence may, if he contends that the action has not been commenced in a proper court, object to the jurisdiction by adding to his notice of defence words to the

effect following:—"I object to the jurisdiction of this court, and say that I reside at (naming the place), and I require this action to be transferred to the court nearest to that place." .

Notice of objection and transfer of action. Second Schedule. Form 1.

(4) On receipt of a notice of defence containing such an objection the clerk shall give the plaintiff a notice according to Form 1 in the Second Schedule, and unless the plaintiff, before the expiry of the prescribed time, shall file in the court an affidavit according to the prescribed form justifying his choice of court, or discontinue the action, the clerk shall transfer the action in the prescribed manner in accordance with the requisition of the defendant, and the clerk of the court to which the action is transferred shall forthwith give the parties the prescribed notice of trial.

Answering affidavit and disallowance of objection.

(5) If the plaintiff shall in due time file such an affidavit, the clerk shall duly consider the facts disclosed thereby, and shall decide whether the action has been commenced in a proper court, and so ought to continue in his court or not, and if he shall decide that it ought to continue he shall give notice of trial as if the notice of defence contained no objection; but if he shall decide that it ought not to so continue, then the action shall be transferred and shall proceed as if no such affidavit had been filed.

Contents of affidavit and by whom to be made.

(6) Such affidavit may be made by the plaintiff or any other person, but shall not be deemed sufficient unless it appears that the matters deposed to therein are within the personal knowledge of the deponent, and that the facts disclosed thereby show that the plaintiff has commenced the action in a proper court.

Procedure where more defendants than one.

(7) If there are more defendants than one, no notice of any objection shall be sent to the plaintiff till every defendant has either given notice of defence or made default in so doing, and in such case, if more than one objection has been made, and each objection does not require a transfer to the same court, then in the event of a transfer being necessary, the action shall be transferred to such one

of the courts to which a transfer has been required as the plaintiff shall, within one week after the receipt by him of the notice, select or, in default of such selection as the clerk shall determine.

Powers of magistrate.

(8) The magistrate may exercise any power or discretion of the clerk under this section, and may in specific cases give directions to the clerk as to the exercise of any such power or discretion, and the clerk shall observe every such direction.

Decision of clerk or magistrate final.

(9) The decision of a clerk or magistrate as to the due filing or default in filing of such affidavit as aforesaid or as to whether an action ought to continue in his court or not shall be final.

Court where magistrate can sue and be sued.
Cf. 51 and 52 Vict., 43, s. 43.

37. A magistrate proposing to sue any person, and any person proposing to sue a magistrate, by an action which should be commenced in a court assigned to such magistrate, may bring his action in the nearest court which is not assigned to such magistrate.

Action against officer.
Cf. 51 and 52 Vict., c. 43, s. 43.

38. Any person proposing to sue an officer of the court in which the action should be commenced may, if he so desires, bring his action in the nearest court of which the defendant is not an officer.

Power of Judge to remove action or matter from one Court to another.
Inserted by No. 5 of 1912, s. 6.

38A. (1) If it shall be made to appear to a Judge of the Supreme Court that it is just or expedient that any action or matter in a Local Court should be tried or determined or should proceed in another Local Court, he may order the whole action or matter to be transferred to such other court, upon such terms (if any) as to payment of costs, giving security for costs, or otherwise as he thinks fit; and in such case all proceedings in such action or matter, or certified copies thereof, shall be transmitted to such other court, and the action or matter shall thereafter be continued and proceed therein in the same way, so far as may be, as if it had been commenced therein.

Judge's decision final.

(2) The decision of the Judge making or refusing to make an order hereunder shall be final.

Consent Jurisdiction.

Consent jurisdiction. Cf. 58 Vict., No. 13, s. 5; 51 and 52 Vict., c. 43, s. 64.

39. If both parties agree, by a memorandum signed by them or by their solicitors, that any specified Local Court shall have jurisdiction to try any action which might be brought in the Supreme Court, that Local Court shall have jurisdiction to try the action.

The memorandum shall state that the parties signing it know that the action is not within the jurisdiction of the court without such consent, and shall be filed with the clerk at the time when the plaint is entered.

PART IV.—PROCEDURE.

Plaint and Summons.

Action commenced by plaint. Substituted by No. 5 of 1912, s. 7.

40. (1) Any person intending to bring a personal action in a Local Court shall inform the clerk of the names and places of abode or business of the proposed parties to the action and of the amount claimed and of the general nature of the cause of action.

(2) The clerk shall thereupon enter in a book to be kept for that purpose a plaint in the prescribed form, setting forth the information aforesaid.

(3) A misnomer or inaccurate description of a person or place in a plaint, summons, or other document shall not vitiate the same if the person or place is named or described as commonly known.

(4) In the case of a claim for property other than money, the value of the property shall be deemed to be the amount claimed.

Summons to issue. Second Schedule. Form 2. Substituted by No. 5 of 1912, s. 7.

41. (1) The clerk shall then issue in duplicate a summons according to the Form 2 in the said Second Schedule, and bearing the number of the plaint in the margin thereof, and where there are more defendants than one he shall issue as many additional duplicates as there are additional defendants.

(2) The plaintiff shall indorse on or annex to such summons and every duplicate thereof a statement (which shall be called the claim), setting out concisely the cause of action alleged and the amount or value of the money or property claimed, and the nature of any other relief claimed. Claim to be indorsed or annexed.

(3) The clerk shall retain one such summons and claim, and shall hand over the duplicates for service.

42. (1) Every such summons shall be served personally, except in those cases wherein a different method of service is prescribed, or shall as hereinafter provided be ordered or allowed by the magistrate or clerk. Service. Substituted by No. 5 of 1912, s. 7.

(2) Where the magistrate or clerk is satisfied that to effect personal service of a summons would involve undue expense, he may allow service by post.

(3) Service by post may be effected by the clerk despatching the summons through the post as a prepaid registered letter addressed to the party to be served at his place of abode or business.

43. Where personal service of a summons or other process or service in the prescribed manner of any summons or process has not been effected, and the magistrate is satisfied that reasonable efforts have been made to effect such service, he may order that the plaintiff be at liberty to proceed as if personal service or service in the prescribed manner had been effected, subject to such conditions (if any) as he may think fit. Substituted service. Substituted by No. 5 of 1912, s. 7.

44. (1) Proof of service may be given in the prescribed manner by the certificate of a bailiff or police officer, or the affidavit of any other person who has served any summons or process. Proof of service. Substituted by No. 5 of 1912, s. 7.

(2) Any false statement in any such certificate shall render the person making the same liable on summary conviction to imprisonment with or without hard labour for any period not exceeding six months.

(3) Provision may be made by rules of court for special methods of proving service in special cases.

(4) The provisions herein or made by any such rules relating to service of summonses or to proof of such service may be extended by rules of court to any other process.

Notice of defence. Substituted by No. 5 of 1912, s. 7.

45. A defendant shall be allowed to give notice that he intends to defend an action (which notice is herein called "notice of defence") within the time limited for that purpose in the summons or at any time before a proceeding in default has been taken.

Procedure where notice of defence given. Notice of trial. Substituted by No. 5 of 1912, s. 7. Amended by No. 26 of 1954, s. 8; No. 10 of 1957, s. 3; No. 113 of 1965, s. 8; No. 118 of 1981, s. 16; No. 127 of 1982, s. 4.

46. (1) If a defendant gives notice of defence, the clerk shall, on application being made to him to list the action for trial by any party, list the action accordingly, and shall give the plaintiff and such defendant the prescribed notice of trial. In case there are more defendants than one such notice shall not be given till the notices of defence have been received from all the defendants, or the time for the giving of every such notice has expired, unless the magistrate otherwise orders, nor unless any of the parties has applied to the clerk to list the action.

Procedure where notice of defence not given. Judgment by default.

(2) If a defendant has not given notice of defence, and the time limited for that purpose in the summons has expired, the following rules shall, according to the nature of the case, have effect:

(a) The plaintiff may, in so far as the claim is for a debt or liquidated demand in money or for delivery of goods, apply for and obtain final judgment against such defendant for the amount claimed or for the delivery of the goods and for costs and, in so far as the claim is for pecuniary

damages, he may set the case down for the assessment of such damages by the Court, and shall be entitled to final judgment for the amount assessed with costs, or may, in so far as the claim is for pecuniary damages not exceeding five hundred dollars in the case of a claim in respect of damage to a motor vehicle or three hundred dollars in the case of other claims, apply for and obtain final judgment against the defendant for the amount not exceeding five hundred dollars or three hundred dollars, as the case may be, claimed for pecuniary damages without the necessity of the case being set down for assessment of the damages by the court.

(b) Notice of every assessment of damages shall be given to the parties, and the defendant shall be at liberty to attend thereon.

(c) All notices and other documents intended for any defendant who has not given notice of defence may, in lieu of being served on or given to him be screened or exhibited for the prescribed time in the office of the court.

(d) Any judgment hereunder shall not be entered after one year from the service of the summons, unless by leave of the magistrate, but, subject to this provision, may be entered at any time by the magistrate or the clerk, and the clerk shall have such power to determine any question necessary to be determined for that purpose as the magistrate would have.

[*Paragraphs (e) and (f) repealed by No. 26 of 1954, s. 8.*]

Setting aside judgment by default. Substituted by No. 5 of 1912, s. 7.

47. Any judgment by default may be set aside by the magistrate upon such terms as to costs or mode or time of trial or otherwise as the magistrate may think fit.

Leave to sign judgment or defend where claim for debt or liquidated demand in money. Inserted by No. 21 of 1921, s. 3. Amended by No. 26 of 1954, s. 9.

47A. (1) When the claim in any action is for a debt or liquidated demand in money only, and the defendant has given notice of defence, the plaintiff may, on affidavit, made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed and stating that in the deponent's belief there is no defence to the action, apply to the magistrate for judgment for the amount claimed and costs, and the magistrate may thereupon, unless the defendant by affidavit or otherwise shall satisfy him that he has a good defence to the action on the merits or ought for any reason to be allowed to defend, give judgment for the plaintiff accordingly.

Third Schedule.

(2) The application for judgment hereunder shall be made by interlocutory summons returnable in the chambers of the magistrate. Such summons may be according to the form in the Third Schedule to this Act and shall be served on the defendant, with a copy of the verifying affidavit and any exhibits referred to therein, not less than two clear days before the day on which it is returnable.

(3) If it appears that the defence set up by the defendant applies to a part only of the plaintiff's claim or that any part of the claim is admitted, the plaintiff shall have judgment forthwith for such part of the claim as the defence does not apply to or as is admitted, subject to such terms (if any) as the magistrate may see fit to impose, and the defendant may be allowed to defend as to the residue of the plaintiff's claim.

(4) If it appears to the magistrate that any defendant has a good defence to or ought to be allowed to defend the action, and that any other defendant has not such defence and ought not to be allowed to defend, the former may be allowed to defend, and judgment may be given for the plaintiff against the latter, and subject to any stay imposed by the magistrate he may issue execution thereon without prejudice to his right to proceed with his action against the former.

(5) A defendant may be allowed to defend unconditionally or subject to such terms as the magistrate may see fit to impose.

(6) There shall be no appeal against an order giving unconditional leave to defend or on the part of the plaintiff against any order giving leave to defend on terms.

(7) The magistrate may, with the consent of all parties, dispose of the action finally and without appeal in a summary manner.

Particulars of defence. Inserted by No. 21 of 1921, s. 3. Amended by No. 26 of 1954, s. 10; No. 10 of 1957, s. 4; No. 8 of 1970, s. 3.

47B. (1) Where a defendant has given notice of intention to defend an action the plaintiff may by written notice served on the defendant require particulars in writing of the defence and if the particulars are not furnished by the defendant within seven days of the service of the notice he may, by summons returnable to the chambers of the magistrate, apply for an order that the defendant furnish the particulars of his grounds for defence within the time named in such order.

(2) Should the defendant, without reasonable cause, neglect to supply particulars of his grounds of defence, he shall be liable to pay the plaintiff's costs of the proceedings in any event.

(3) The defendant may at any time before judgment amend his grounds of defence upon such terms as to costs or otherwise as the magistrate may order.

Special Defences and Counterclaims.

Notice of special defence. Cf. 27 Vict., No. 21, s. 19; 51 and 52 Vict., c. 43, s. 82.

48. Subject to the power of amendment conferred by this Act, no defendant shall be allowed—

(a) to set off or set up by way of counterclaim any debt or demand claimed or recoverable by him from the plaintiff; or

(b) to set up by way of defence, and to claim and have the benefit of—

(i) infancy; or

(ii) coverture; or

(iii) the Statute of Frauds; or

(iv) any Statute of Limitations; or

(v) his discharge or release under any Statute relating to bankruptcy or insolvency,

without the consent of the plaintiff, unless the prescribed notice thereof is given to the clerk of the court.

The clerk of the court shall forthwith communicate any notice under this section to the plaintiff or his solicitor, by post or otherwise; but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the clerk.

Payment into Court.

Payment into court. Amended by No. 5 of 1912, s. 8. Cf. 27 Vict., No. 21, s. 24; 51 and 52 Vict., c. 43, s. 107.

49. (1) A defendant may, within the prescribed time, pay into court, with or without a denial of liability, a sum of money as full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of payment in so far as such costs are sanctioned by the scale applicable to the sum paid in.

Notice of the payment into court shall be given by the defendant to the plaintiff or his solicitor, at least three clear days before the return day, and if the plaintiff accepts such sum of money in satisfaction, it shall be paid to the plaintiff; but if the plaintiff elects to proceed, such sum of money shall remain in court, and shall not be paid out of court except in pursuance of an order of the magistrate, and if the

plaintiff does not recover a further sum in the action than is paid into court, the plaintiff shall pay to the defendant the costs incurred by him in the action after the payment, and an order shall be made by the court for the payment of such costs by the plaintiff.

(2) A plaintiff may, in answer to a counterclaim, pay money into court in satisfaction thereof, subject to the like conditions as upon payment into court by a defendant.

Confession of Debt.

Confession of or agreement as to debt.
Amended by No. 26 of 1954, s. 11.
Cf. 27 Vict., No. 21, s. 38; 51 and 52 Vic., c. 43, s. 98.

50. (1) Upon a plaint being entered in a Local Court, whether the defendant is summoned upon such plaint or not—

(a) the defendant may sign a statement confessing the amount of the debt or demand for which such plaint has been entered or any part thereof; or

(b) the plaintiff and defendant may sign a statement of any agreement upon the amount of such debt or demand, and of the terms and conditions upon which the same is to be paid or satisfied.

Any such statement shall be signed in the presence of the clerk of a court, a solicitor, a Commissioner for Declarations, a member of the Commonwealth or the State Parliament, a Town Clerk, a member of the Police Force, a Shire Clerk, an Electoral Registrar, a Postmaster, a classified officer in the Commonwealth or State Public Service, a classified State School teacher, or a justice of the peace.

(2) Where the time required by a summons for giving notice of defence has expired and a notice of defence has not been given, if the magistrate of the Local Court in which the summons was issued is satisfied that any document in writing addressed to the Court, magistrate or clerk of the court, containing an admission of the claim set out in the summons or part of it, was in fact signed by the

defendant or signed for and on his behalf by his authority, the magistrate or clerk may notwithstanding that the document has not been signed in the presence of any one of the persons referred to in subsection (1) of this section or is unwitnessed, accept the document as an admission of the claim or the part and thereupon the provisions of section fifty-one of this Act apply.

Judgment on such confession or agreement. Cf. 27 Vict., No. 21, s. 39; 51 and 52; Vict., c. 43, s. 99.

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

(2) The clerk, in case of any such statement of confession or agreement, shall enter up judgment for the plaintiff for the debt or demand so confessed, or for the part thereof so confessed if the plaintiff is willing to accept such part in satisfaction of his claim, or for the amount and upon the terms and conditions agreed upon, as the case may be, and such judgment shall to all intents and purposes be the same as if it had been a judgment of the court.

Parties.

[*Section 52 repealed by No. 26 of 1954, s. 12.*]

Bankruptcy not to cause action to abate if trustee elects to continue it. Cf. 27 Vict., No. 21, s. 111; 51 and 52 Vict., c. 43, s. 94.

53. The bankruptcy of the plaintiff in an action which the trustee might maintain for the benefit of the creditors shall not cause the action to abate, if the trustee elects to continue the action and to give security for the costs thereof within such reasonable time as the magistrate orders, but the hearing of the action may be adjourned until the election is made.

If the trustee does not elect to continue the action and to give the security within the time limited by the order, the defendant may avail himself of the bankruptcy as a defence to the action.

One of several persons jointly liable may be sued. Cf. 27 Vict., No. 21, s. 16; 51 and 52 Vict., c. 43, s. 97.

54. When a plaintiff has a demand recoverable under this Act against two or more persons jointly answerable, it shall be sufficient if any one or more of the persons is or are served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable are not served or sued, or are not within the jurisdiction of the court.

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

Partners. Cf. 58 Vict., No. 13, s. 21.

55. Any two or more persons claiming or being liable as partners may sue or be sued in the name of the respective firms, if any, of which such persons were partners at the time of the accruing of the cause of action; and in any such case any party to the action may apply for the names of the partners in any such firm, and the magistrate may order an affidavit to be filed stating the names and addresses of such partners.

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

Executors. Cf. 27 Vict., No. 21, s. 14; 51 and 52 Vict., c. 43, s. 95.

56. An executor or administrator may sue and be sued in the same manner in which a person may sue or be sued in his own right, and in any such case judgment may be given and execution issued against the same persons against whom, and in the same manner in which, judgment would be given or execution issued in the Supreme Court.

Infants. Amended by No. 46 of 1972, s. 6 and Schedule.

57. A person under the age of eighteen years may sue by his next friend, and defend by a guardian *ad litem*.

Provided that any minor may sue in his own name for wages or piecework, or for work or services as a clerk, servant, mechanic, or labourer, in the same manner as if he were of full age.

Joinder and Severance of Causes of Action.

Joinder of causes of action.
N.S.W., 1901, No. 4, s. 42.

58. Two or more causes of action, if by and against the same parties, may be joined in the same action; but if the magistrate is of opinion that the trial of different causes of action together would be inexpedient or inconvenient, he may order separate trials to be had.

Splitting demands.
Amended by No. 35 of 1930, s. 4; No. 26 of 1954, s. 13; No. 113 of 1965, s. 8; No. 69 of 1976, s. 14; No. 118 of 1981, s. 17.
Cf. 27 Vict., No. 21, s. 11; 51 and 52 Vict., c. 43, s. 81.
3 Edw. VII., c. 42, s. 3.

59. A plaintiff shall not divide a cause of action for the purpose of bringing two or more actions; but a plaintiff having a cause of action for more than the amount for which a plaint might be entered may abandon the excess (which abandonment shall be stated when the plaint is entered), and thereupon the plaintiff may, on proving his case, recover to an amount not exceeding six thousand dollars, and the judgment of the court shall be in full discharge of all demands in respect of the cause of action, and entry of the judgment of the court shall be made accordingly.

Splitting debt by giving bills, etc.
Amended by No. 35 of 1930, s. 4; No. 26 of 1954, s. 14; No. 113 of 1965, s. 8; No. 69 of 1976, s. 15; No. 118 of 1981, s. 18; No. 127 of 1982, s. 5.
N.S.W., 1901, No. 4, s. 45.

60. If a defendant has given two or more bills of exchange, promissory notes, bonds, or other securities, for a debt or sum, the plaintiff may sue separately upon each of the securities not exceeding six thousand dollars as forming a distinct cause of action.

Changing Venue.

Magistrate may change venue.
Cf. 51 and 52 Vict., c. 43, s. 85.

61. (1) If the magistrate is satisfied by either party to an action or matter pending in a court assigned to him that such action or matter can be more conveniently or fairly tried or heard in another court, he may order that the same be sent for trial to such other court.

(2) If a magistrate is interested in an action or matter pending in a court assigned to him, he shall either order the action or matter to be sent for trial or hearing to the nearest court which is not assigned to him, or shall adjourn the trial and order the same to be heard before another magistrate.

(3) The clerk of the court in which the action or matter was commenced shall forthwith transmit, to the clerk of the court to which it is sent, a certified copy of all the procedings therein, and the magistrate of the last-mentioned court shall appoint a day for the trial or hearing, notice whereof shall be sent, by post or otherwise, by the clerk, to both parties.

Means of obtaining Evidence.

Summons to witnesses. Cf. 27 Vict., No. 21, s. 78.

62. A party to an action or matter may obtain, at the office of the clerk, summonses to witnesses, requiring them to attend at the trial, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control.

Penalty on witnesses neglecting summons. Amended by No. 113 of 1965, s. 8; No. 127 of 1982, s. 6. Cf. 27 Vict., No. 21, s. 79; 51 and 52 Vict., c. 43, s. 111.

63. Any person summoned as a witness, either personally or in the prescribed manner, to whom at the same time payment or a tender of payment of his reasonable expenses is made, and who refuses or neglects, without sufficient cause, to appear or to produce any books, deeds, papers, or writings, required by the summons to be produced, and also every person present in court who is required to give evidence and who refuses to be sworn and give evidence, shall forfeit and pay such fine, not exceeding one hundred dollars, as the magistrate shall direct.

The whole or a part of the fine, as the magistrate thinks fit, after deducting the costs of levying it, shall be applicable toward indemnifying the party injured by the refusal or neglect, and the remainder shall be disposed of in the same manner in which other moneys recovered by the clerk of the court by which the fine was imposed are disposed of, but the fine shall not exempt the person from an action for disobeying the summons.

Magistrate may cause arrest of witness not attending on summons. Amended by No. 10 of 1957, s. 5; No. 56 of 1958, s. 2. Q., 1891. No. 33, s. 104.

64. (1) Instead of fining the person so refusing or neglecting to appear, the magistrate before whom the person should have appeared may, if good cause is not shown for his non-appearance, issue his warrant to bring and have the person at a time and place to be therein mentioned before the magistrate to

testify what he knows concerning the matters in dispute in the action or matter in which he is summoned as a witness, and may adjourn the trial to that time and place.

(2) The provisions of section one hundred and thirty-five of this Act to the extent to which they apply in respect of warrants of commitment, apply in respect of warrants issued under subsection (1) of this section, as if those provisions were repeated *mutatis mutandis* in this subsection.

Notice to admit. Vict. C.C. Act, 1890. s. 76.

65. (1) Any party to an action or matter may call on any other party thereto, by notice in the prescribed form, to admit any fact or document, saving all just exceptions; and in case of refusal or neglect to admit, the cost of proving the fact or document shall be paid by the party so neglecting or refusing, whatever the result of the action or matter may be, unless on the trial or hearing the magistrate shall certify that the refusal to admit was reasonable.

Ibid., s. 77.

(2) An affidavit of a party or of the solicitor in any action or matter or his clerk of the signature of any admission made in pursuance of such notice and annexed to the affidavit shall be sufficient evidence of such admission.

Discovery of documents. Substituted by No. 26 of 1954, s. 15.

66. (1) Upon the written request of any party to an action or matter addressed to and served upon another party to the action or matter—

(a) the party on whom the request is served; or

(b) if the party is a body corporate some officer of the body corporate having knowledge of the facts,

shall answer, on affidavit, stating which documents he or it has in his or its possession or power relating to the matters in dispute or what he knows as to the

custody the documents or any of them are in, and whether he or it objects to the production of the documents as are in his or its possession or power and if so, on what grounds.

(2) (a) If the party requested to give discovery or to produce any documents for inspection neglects or refuses to do so within seven days of the request being served on him or within such extended time as the parties may agree, the magistrate may upon application being made to him by the party making the request order compliance with the request but discovery shall not be ordered when and so far as the magistrate is of opinion that it is not necessary either for disposing of the action or matter or for saving costs.

(b) The magistrate may order the party in default to bear the costs of and incidental to the order.

(3) A party who produces any documents is not required to part with possession of them to the party requesting their production, but is required to make them available for the inspection of or copying by the party requesting their production, if that party so desires.

Inspection of documents. Cf. Vict., C.C. Act, 1890, s. 78.

67. Any party to an action or matter may, at any time, give notice in writing to any other party in whose particulars of claim, set off, counterclaim, or affidavits reference is made to any document, to produce such document for inspection of the party giving such notice, or his solicitor, and to permit copies thereof to be taken.

A party not complying with such notice shall not afterwards be at liberty to put such document in evidence in such action or matter, unless he satisfies the magistrate that he had a cause or excuse, which the magistrate deems sufficient, for not complying with such notice, in which case the magistrate may allow the same to be put in evidence on such terms, if any, as he may think fit.

Mode of enforcing discovery. Vict. C.C. Act, 1890, s. 80.

68. A magistrate shall, in the exercise of the powers conferred by the two last preceding sections, have and exercise the same power and authority for compelling obedience to, and for punishing disobedience of orders made thereunder, as the Supreme Court, or a Judge thereof, may exercise for compelling obedience to, or punishing disobedience of, any such order.

Examination *de bene esse.* Amended by No. 94 of 1972, s. 4 (as amended by No. 42 of 1975). N.S.W. 1901, No. 4, s. 70. Q., 1891, No. 33, s. 105.

69. (1) A magistrate may, at any time after plaint filed, on the application of either party, supported by affidavit showing—

(a) that the evidence of any specified witness, including either of the parties, is material in the action; and

(b) that such witness is absent from the State, or above one hundred and sixty kilometres from the place of trial, or unable from sickness or infirmity to attend at the hearing or is about to quit the State or to go some place beyond the said distance,

take in court or in chambers, or authorize the clerk of any Local Court, or any justice of the peace, or legal practitioner, whether of Western Australia or elsewhere, to take, at some convenient place, the examination of such witness *de bene esse.*

(2) All evidence so taken shall be admissible at the hearing, subject to all just exceptions, unless it is proved that such witness is, at the time of the hearing, within a convenient distance of the court and able to attend.

(3) In every case the opposite party shall have sufficient notice of the time and place appointed for taking such examination, and may cross-examine such witness in the usual manner.

(4) The magistrate may either direct the costs of taking such evidence to be paid by the party applying, or make the same costs in the cause.

Trial.

Trial. Substituted by No. 35 of 1930, s. 5. Amended by No. 31 of 1931, s. 2. No. 26 of 1954, s. 16.

70. (1) Save as in this Act is otherwise provided, all actions cognizable under this Act by a Local Court shall be heard and determined in open court by and before a magistrate.

(2) All proceedings other than actions cognizable in a Local Court shall be heard and determined by the magistrate.

(3) The magistrate may sit and take evidence at any convenient place if it appears desirable to do so and may adjourn any trial from place to place for that purpose on such terms and conditions as he thinks just.

[*Subsection (4) repealed by No. 26 of 1954, s. 16.*]

[*Subsection (5) repealed by No. 31 of 1931, s. 2.*]

[*Subsection (6) repealed by No. 26 of 1954, s. 16.*]

(7) Two or more sittings of any Local Court for the trial of actions may be held at the same time.

(8) The magistrate shall, in all actions and proceedings before him, determine all questions of law or fact.

[*Subsection (9) repealed by No. 26 of 1954, s. 16.*]

Proceedings at the trial when both parties appear. Cf. 51 and 52 Vict., c. 43, s. 79.

71. On the return day the plaintiff shall appear, and thereupon the defendant shall be required to answer the plaint; and on answer being made in court the magistrate shall proceed to try the action and give judgment without further pleading or formal joinder of issue.

Proceedings when plaintiff does not appear. Cf. 27 Vict., No. 21, s. 21; 51 and 52 Vict., c. 43, s. 88.

72. If on the return day or upon any adjournment of the court or of the action the plaintiff does not appear, and the defendant appears, the plaintiff shall be nonsuited:

But if the plaintiff does not appear when called upon, and the defendant appears and admits the cause of action to the full amount claimed, and pays the fees payable in the first instance by the plaintiff, the magistrate may proceed to give judgment as if the plaintiff had appeared.

If in any such case neither party appears, the action may be struck out of the list of actions for trial.

Proceedings when defendant does not appear. Amended by No. 19 of 1909, s. 3. Cf. 27 Vict., 21, s. 22; 51 and 52 Vict., c. 43, ss. 90, 91.

73. If on the return day, or upon an adjournment of the court or of the action, the defendant does not appear, the following provisions shall apply:—

(a) If the claim is for a debt or liquidated money demand, on proof of service of the summons, judgment may be entered for the plaintiff for the amount of the claim and costs; and

(b) In any other case the magistrate may, on proof of service of the summons, proceed to the trial of the action on the part of the plaintiff only and the judgment thereupon shall be as valid as if both parties had attended:

But the magistrate may, at the same or a subsequent court, set aside a judgment so entered or given in the absence of the defendant, and the execution upon it, and may grant a new trial of the action upon such terms, if any, as to payment of costs, giving security for the debt or costs, or otherwise as he thinks fit.

Judgment under paragraph (a) of this section may be entered by the magistrate or the clerk; and the clerk shall have the same power to hear and determine any question necessary to be heard and determined, and to make any order as to payment, and to enter upon the judgment as the judgment of the court, as the magistrate would have.

Proceedings where defendant's set-off or counterclaim exceeds plaintiff's claim. N.S.W. 1901, No. 4, s. 63.

74. Where the defendant has a right of set-off or counterclaim in respect of any debt or demand against the plaintiff, the defendant shall be entitled to recover the amount, if any, by which the debt or demand so set off or counterclaimed is found to exceed the debt or demand claimed and proved by the plaintiff, and to have judgment and execution for the same accordingly.

Magistrate may grant time or adjourn. Cf. 51 and 52 Vict., c. 43, s. 106.

75. The magistrate may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the action, and may also from time to time adjourn the court or the trial, or further trial, of an action in such manner and upon such terms as to the magistrate may seem fit.

Where defendant appears and admits claim. Amended by No. 113 of 1965, s. 8. Cf. 51 and 52 Vict., c. 43, s. 92.

76. Where a defendant appearing at the hearing, either in person or by a solicitor or by some other person duly authorized on his behalf, admits the claim, the clerk may, by leave of the magistrate or in case of the magistrate's absence, settle the terms and conditions upon which it is to be paid, and enter up judgment accordingly as the judgment of the court.

Subject to the rules of court, the clerk may, on the application of the parties, and by leave of the magistrate, hear and determine any disputed claim where the sum claimed or the amount involved does not exceed ten dollars.

Reference to clerk. Ibid.

77. The magistrate may, after deciding or reserving any question of liability, refer to the clerk any mere matter of account which is in dispute between the parties, and, after deciding the question of liability, may give judgment on the clerk's report.

Evidence.

Rules of evidence.

78. The rules of evidence observed in the Supreme Court shall be applicable to and observed upon the trial of questions of fact in a Local Court.

Proof to be limited to matter in the summons. Cf. 51 and 52 Vict., c. 43, s. 80.

79. Subject to the power of amendment conferred by this Act, evidence shall not be given by the plaintiff of any demand or cause of action except such as is stated in the summons issued in the action.

Affidavits before whom sworn.

80. Any affidavit to be used in a Local Court may be sworn before a magistrate or clerk of a Local Court, or a justice of the peace, or a commissioner for taking affidavits in the Supreme Court; and all clerks of Local Courts, justices of the peace, and commissioners are hereby authorized and empowered to take affidavits to be used in a Local Court without any commission being issued for that purpose.

Costs.

Costs. Cf. 27, Vict., No. 21, s. 25; 51 and 52 Vict.,c. 43, s. 113.

81. Except as hereinafter provided, and subject to the rules of court, the costs of any action or matter shall be paid by or apportioned between the parties in such manner as the magistrate directs, and in default of a special direction shall abide the event; and the costs may be recovered in like manner as a debt adjudged by the court to be paid can be recovered.

Costs to be taxed. Cf. 51 and 52 Vict., c. 43, s. 118.

82. Except as hereinafter provided, and subject to the rules of court, all costs and charges as between the parties shall be taxed by the clerk of the court in which they are incurred, but the taxation of the clerk may be reviewed by the magistrate on the application of either party: And no costs or charges shall be allowed which are not sanctioned by the scale of costs in force for the time being.

Fees to legal practitioners and allowances to witnesses.

83. The fees to be allowed to legal practitioners for appearing or acting on behalf of a party to an action or other proceeding, and the expenses to be paid to witnesses, shall be according to the scale prescribed by the rules of court.

Costs where court has no jurisdiction. Cf. 51 and 52 Vict., c. 43, s. 114.

84. Whenever an action or matter is commenced over which the court has no jurisdiction, the magistrate shall, unless the parties consent to the court having jurisdiction, order it to be struck out, and shall have power to award costs, to the same extent, and recoverable in the same manner, as if the court had jurisdiction therein and the plaintiff had not appeared, or had appeared and failed to prove his demand.

Costs between solicitor and client. Cf. 51 and 52 Vict., c. 43, s. 118.

85. Costs and charges of proceedings as between solicitor and client may be taxed by the magistrate of the court in which they were incurred, or by the taxing officer of the Supreme Court.

Costs in Supreme Court of Actions that might be brought in a Local Court.

Supreme Court costs not recoverable except on certificate of Judge. Substituted by No. 26 of 1954, s. 17. Amended by No. 127 of 1982, s. 7.

86. If an action is brought in the Supreme Court which could have been commenced in a Local Court without the consent of the defendant, the plaintiff shall recover no greater sum by way of costs than he could have recovered had the action been brought in a Local Court other than as an action for a small debt, unless the Judge certifies, in the case of an action founded on tort, that it was proper to bring the action in the Supreme Court instead of a Local Court, and in any other case, that by reason of some important principle of law being involved, or of the complexity of the issues, or of the facts, the action was properly brought in the Supreme Court.

Removal of action to Local Court. Amended by No. 35 of 1930, s. 4; No. 26 of 1954, s. 18; No. 113 of 1965, s. 8; No. 69 of 1976, s. 16; No. 118 of 1981, s. 19. Cf. 27 Vict., No. 21, s. 85; 51 and 52 Vict., c. 43, ss.65, 69.

87. When an action is brought in the Supreme Court which might have been brought in a Local Court without the defendant's consent or in which the claim, though it originally exceeded six thousand dollars, is reduced by payment into Court, an admitted set-off, or otherwise, to a sum not exceeding six thousand dollars, the defendant may at any time apply to a Judge in chambers for an order remitting the action to a Local Court, and the Judge may, in his discretion, make an order accordingly.

Thereupon the master of the Supreme Court shall transmit to the clerk of the Local Court to which the action is remitted a copy of the order, together with a copy of the writ and of the pleadings (if any).

And the magistrate of the Local Court shall appoint a day for the trial of the action, and notice of it shall be sent by the clerk, by post or otherwise, to both parties or their solicitors, and after the trial the clerk of the Local Court shall certify the result to the Master of the Supreme Court, and judgment in accordance with the certificate may be signed in the Supreme Court.

The costs of the parties in respect of the proceedings subsequent to the order and up to judgment shall be allowed according to the scale prescribed in Local Courts. The costs of any other proceedings shall be in the discretion of the Supreme Court or a Judge thereof.

Actions of tort may be removed from Supreme Court in certain cases.
Cf. 58 Vict., No.13, s. 16; 51 and 52 Vict., c. 43, ss. 65, 66. 69.

88. A person against whom an action founded on tort is brought in the Supreme Court, whatever the amount claimed may be, may, upon an affidavit that the plaintiff has no visible means of paying the costs of the defendant if a verdict is not found for the plaintiff, call upon the plaintiff to show cause before a Judge in chambers why he should not give security for the defendant's costs of the action, and why in default of such security the action should not be remitted to a Local Court, or the proceedings in the action be stayed.

Upon the hearing of the application, the Judge, unless he is satisfied that the plaintiff has a cause of action which ought to be prosecuted in the Supreme Court, may order that the plaintiff shall, within a time mentioned in the order, give security for the defendant's costs to the satisfaction of the Judge, and that, in the event of the plaintiff failing to give the security, the action shall be remitted to a Local Court to be named in the order, or that in the event of such failure all proceedings in the action be stayed.

When such an order is made, if the plaintiff fails to give the security within the time limited by the order, the plaintiff shall, unless the proceedings are directed to be stayed, lodge the original writ and the order with the clerk of the last-mentioned court, and the magistrate of that court shall appoint a day for the trial of the action, and notice of it shall be sent by post or otherwise by the clerk to both parties or their solicitors.

The action and all subsequent proceedings therein shall be tried and taken in such court as if the action had originally been commenced therein, and that court shall have jurisdiction to entertain and decide the same; and the costs of the parties in respect of the proceedings subsequent to the order of the Judge of the Supreme Court shall be allowed according to the scale of costs prescribed in Local Courts, and the costs of the order and all proceedings previous to the order shall be allowed according to the costs for the time being allowed in Supreme Court actions.

Amendment.

As to amendment of defects and errors of proceedings, etc. Cf. 27 Vict., No. 21, s. 106; 51 and 52 Vict., c. 43, s. 87.

89. A magistrate may at any time amend any defect or error in a proceeding, whether there is anything in writing to amend by or not, and whether the defect or error is that of the party applying to amend or not; and an amendment may be made upon or without payment of costs and upon such terms as the magistrate thinks fit, and all such amendments as are necessary for the purpose of determining in the existing action or matter the real question in controversy between the parties shall be so made.

**Judgment and New Trial.*

Judgment to be final unless new trial granted. Cf. 27 Vict., No. 21, s. 26; 51 and 52 Vict., c. 43, s. 93.

90. Every judgment and order of the court, except as in this Act provided, shall be final and conclusive between the parties; but the magistrate may nonsuit the plaintiff in any case in which proof

* See section 142 Supreme Court Act 1935.

is not given entitling him to judgment, and may also in any case order or permit a new trial, to be had upon such terms as he thinks reasonable, and in the meantime may stay the proceedings.

When judgment does not exceed one hundred dollars magistrate may order payment by instalments. Amended by No. 56 of 1958, s. 3; No. 113 of 1965, s. 8. Cf. 27 Vict., No. 21 s. 95; 51 and 52 Vict., c. 43, s. 105.

91. When judgment is obtained for a sum not exceding one hundred dollars, exclusive of costs, the magistrate may order the sum and costs to be paid at specified times, by instalments, and all such moneys shall be paid into court; but in all other cases he shall order the full amount for which judgment is obtained to be paid either forthwith or within fourteen clear days from the date of the judgment, unless the plaintiff or his solicitor consents to its being paid by instalments, in which case the magistrate shall order it to be paid at the times and by the instalments consented to; and all such moneys, whether payable in one sum or by instalments, shall be paid into court.

Assessment of value of goods. Inserted by No. 5 of 1912, s. 9.

91A. (1) The assessment of the value of any goods for the delivery whereof judgment has been given or entered may be obtained in the prescribed manner.

(2) Before such assessment the plaintiff may enforce such delivery, and after the assessment he shall be entitled, subject to any order of the magistrate, to enforce delivery of any such goods still undelivered or payment of their value at his sole option.

Judgment against one joint debtor. Inserted by No. 5 of 1912, s. 9. Amended by No. 26 of 1954, s. 20.

91B. (1) Any judgment recovered or proceeding taken in a Local Court against one or more of two or more persons jointly liable shall be without prejudice to the right to proceed against the other or others of them.

(2) Where a defendant has not given notice of defence within the time required by the summons, if the defendant in default is not the sole defendant, any judgment entered shall be without prejudice to

the plaintiff's right to proceed with the action against any other defendant and any assessment of damages shall, unless the magistrate otherwise orders, be made on the trial of the action against the other defendant.

Arbitration.

Power to refer to arbitration. Amended by No. 127 of 1982, s. 8. Cf. 27 Vict., No. 21, s. 70; 51 and 52 Vict., c. 43, s. 104.

92. The magistrate may, with the consent of both parties to an action other than an action for a small debt, order the same with or without other matters within the jurisdiction of the court in dispute between the parties, to be referred to arbitration, to such person or persons and in such manner and on such terms as he thinks reasonable and just.

The reference shall not be revocable by either party except by consent of the magistrate, and the arbitrator or arbitrators or umpire shall hear and determine the case, and the award given by him or them shall be entered as the judgment in the action, and shall be as binding and effectual to all intents as if it were the judgment of the court:

But the magistrate may, on application to him at the first sittings of the court held after the expiration of one week after the entry of the award, set aside the award, or refer the award back to the arbitrator, arbitrators, or umpire, or, with the consent of the parties, revoke the reference or order another reference to be made in the manner before prescribed.

Power to compel attendance of witnesses before arbitrators. Q. 1891, No. 33, s. 135.

93. When a reference to arbitration is made by a magistrate, he may, by an order to be made for that purpose, direct the issue of summonses requiring the attendance and examination of any person to be named, or the production of any documents to be mentioned, in the order.

Any such summons may be served in the same manner, and disobedience to the summons shall entail the same consequences, as in the case of a summons to a witness to attend at a trial of an action:

But a person shall not be compelled to produce under the summons any writing or other document which he would not be compelled to produce at a trial.

Every application made to the magistrate for such an order must set forth the place where the witness whose attendance is required is residing at the time.

Every person whose attendance is so required shall be entitled to the like conduct money and payment of expenses as for and upon attendance at a trial.

PART V.—REPLEVIN.

Actions of replevin. Cf. 27 Vict., No. 21, ss. 66, 67; 51 and 52 Vict., c. 43, s. 133.

94. All actions of replevin brought in a Local Court shall be commenced by plaint, and in every such action the plaint shall be entered in the court held nearest to the place where the goods were seized.

Clerk to grant replevins. Cf. 27 Vict., No. 21, ss. 68, 69; 51 and 52 Vict., c. 43, s. 134.

95. The sheriff shall have no powers and responsibilities with respect to replevin bonds and replevins; but the clerk of the court held nearest to the place where any goods subject to replevin are seized shall be empowered, subject to the provisions 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.

The clerk of the court shall, at the instance of the party whose goods are seized, cause the same to be replevied to such party, on his giving one or other of such securities as are mentioned in the two next following sections.

Conditions of security to be given when replevin brought in Supreme Court. Amended by No. 113 of 1965, s. 8. Cf. 27 Vict., No. 21, s. 70; 51 and 52 Vict., c. 43, s. 135.

96. Where a replevisor desires to commence proceedings in the Supreme Court he shall, at the time of replevying, give security, to be approved of by the clerk in the last preceding section mentioned, for such an amount as such clerk shall deem sufficient to cover the alleged rent or damage, or if the goods replevied have been seized otherwise than under colour of distress, the value of the goods, and

in either case the probable costs of the action in the Supreme Court, conditioned to commence an action of replevin against the seizor 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 is obtained by default, to prove before the Supreme Court that he had good ground for believing either that the title to land, the rent or value whereof exceeded forty dollars by the year, was in question, or that such rent or damage, or the value of the goods seized, exceeded forty dollars, and to make return of the goods if a return thereof is adjudged.

Conditions of security to be given when replevin brought in Local Court. Cf. 27 Vict., No. 21, s. 71; 51 and 52 Vict., c. 43, s. 136.

97. If a replevisor desires to commence proceedings in a Local Court, he shall at the time of replevying give security, to be approved of by the clerk, for such an amount as the clerk shall deem sufficient to cover the alleged rent or damage in respect of which the distress was made, or if the goods replevied were seized otherwise than under colour of distress, the value of the goods, and in either case the probable costs of the action, conditioned to commence an action of replevin against the seizor in the court held nearest to the place where the goods were seized, within one month from the date of the security, and to prosecute such action with effect and without delay, and to make a return of the goods if a return thereof is adjudged.

Replevin shall at instance of defendant be removed into Supreme Court by *certiorari* in certain cases. Amended by No. 113 of 1965, s. 8. Cf. 27 Vict., No. 21, s. 72; 51 and 52 Vict., c. 43, s. 137.

98. Any action of replevin brought in a Local Court shall be removed into the Supreme Court by a writ of *certiorari*, if the defendant applies to the Supreme Court or to a judge thereof for such writ, and gives security, to be approved of by the Master of the Supreme Court, for such amount, not exceeding three hundred dollars, as the Master thinks fit, conditioned to defend such action with effect, and unless the replevisor discontinues or does not prosecute such action, or becomes nonsuit therein, to prove before the Supreme Court that the defendant had good ground for believing, either that the title

to land the rent or value whereof exceeded forty dollars by the year was in question, or that the rent or damage in respect of which the distress was taken, or the value of the goods seized, exceeded forty dollars.

PART VI.—RECOVERY OF POSSESSION OF LAND.

Possession of land may be recovered by landlord when term expired or determined.
Amended by No. 10 of 1953, s. 3; No. 9 of 1964, s. 3; No. 113 of 1965, s. 8; No. 69 of 1976, s. 17; No. 118 of 1981, s. 20.
Cf. 27 Vict., No.21, s. 99; 51 and 52 Vict., c. 43, s. 138.
3 Edw. VII., c. 42, s. 3.

99. When the term or interest of the tenant of any land, where the rent payable in respect thereof did not exceed ten thousand dollars by the year, and upon which no fine or premium was paid, has expired, or is determined by notice to quit or by demand of possession, and the tenant or a person claiming under him neglects or refuses to give up possession, the landlord may bring an action to recover possession, either against the tenant or against the person so neglecting or refusing, in the court held nearest to the land.

A summons shall thereupon be issued in the prescribed form, addressed to the tenant or the person so neglecting or refusing; and if on the return day the defendant does not show good cause to the contrary, then, on proof of the tenancy, and of the defendant still neglecting or refusing to deliver up possession, and of the yearly rent, and of the expiration or other determination of the tenancy with the time and manner of the determination, and of the title of the plaintiff, if the title has accrued since the letting of the land, and of the service of the summons if the defendant does not appear, the magistrate may order that possession of the land be given to the plaintiff, either forthwith, or on or before such day as the magistrate appoints.

If the order is not obeyed the clerk, whether the order is proved to have been served or not, shall, on the application of the plaintiff, issue a warrant authorizing and requiring the bailiff of the court to give possession of the land to the plaintiff.

100. When the rent of any land, of which the rent payable does not exceed ten thousand dollars by the year, is in arrear for ten days in the case of a weekly tenancy, or for twenty-one days in the case of monthly tenancy, or for forty-two days in the case of a tenancy for any longer period, and the landlord has right by law to re-enter for the non-payment thereof, he may, without formal demand or re-entry, bring an action to recover possession in the court held nearest to the land.

Possession may be recovered for non-payment of rent.

Amended by No. 10 of 1953, s. 4; No. 9 of 1964, s. 4; No. 113 of 1965, s. 8; No. 69 of 1976, s. 18; No. 118 of 1981, s. 21.

Cf. 27 Vict., No. 21, s. 101; 51 and 52 Vict., c. 43, s. 139.

N.Z., 1893, No. 55, s. 176.

A summons in the prescribed form shall thereupon be issued to the tenant, and the service of it shall stand instead of a demand and re-entry; and if the tenant, five clear days before the return day, pays into court all the rent in arrear and the costs, the action shall be stayed.

But if he does not make such payment and does not, on the return day, show good cause why the land should not be recovered, then on proof of the rent of the land, and of the fact that such rent was in arrear before the plaint was entered, and of the landlords power to re-enter, and of the rent being still in arrear, and of the title of the plaintiff, if the title has accrued since the letting of the land, and of the service of the summons if the defendant does not appear, the magistrate may order that possession of the land be given to the plaintiff on or before such day, not being less than fourteen days from the day of hearing, as the magistrate appoints, unless within that time all the rent in arrear and the costs are paid into court.

If the order is not obeyed, and the rent and costs are not so paid, the clerk, whether the order is proved to have been served or not, shall, at the instance of the plaintiff, issue a warrant, authorizing and requiring the bailiff of the court to give possession of the land to the plaintiff, and the plaintiff shall, from the time of the execution of the warrant, hold the land discharged of the tenancy, and the defendant and all persons claiming under him shall, so long as the order of the court remains unreversed, be barred from all relief.

Plaintiff may claim for rent and mesne profits.
Amended by No. 10 of 1953, s. 5.
No. 26 of 1954, s. 21.
No. 9 of 1964, s. 5.
No. 113 of 1965, s. 8.
No. 118 of 1981, s. 22.
Cf. 27 Vict., No. 21, s. 100; 51 and 52 Vict., c. 43, s. 138.

101. In any such action against a tenant or other person as in either of the two last preceding sections mentioned, 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, provided that the claim does not exceed ten thousand dollars.

Sub-tenant served with summons must give notice to his immediate landlord.
27 Vict., No. 21, s. 102.
Cf. 51 and 52 Vict., c. 43 s. 140.

102. When a summons for the recovery of possession of land is served on or comes to the knowledge of a sub-tenant of the plaintiff's immediate tenant, such sub-tenant being an occupier of the whole or of part of the land sought to be recovered, he shall forthwith give notice of it to his immediate landlord, under penalty of forfeiting to the landlord three years' rack rent of the land held by the sub-tenant, to be recovered by the landlord by action in the court from which the summons was issued, and the landlord, on the receipt of the notice if not originally a defendant, may be added or substituted as a defendant.

Action to recover land held without right, title, or licence.
Amended by No. 10 of 1953, s. 6; No. 26 of 1954, s. 22; No. 9 of 1964, s. 6; No. 113 of 1965, s. 8; No. 69 of 1976, s. 20; No. 118 of 1981, s. 23.
N.Z., 1893, No. 55, s. 178.

103. If any person shall, without right, title, or licence, be in possession of any land the value whereof does not exceed ten thousand dollars by the year, the owner or person entitled to immediate possession may enter a plaint in the court held nearest to the land to recover possession thereof; and thereupon a summons in the prescribed form shall issue to the person so in illegal occupation.

If the defendant does not appear at the time named in the summons, or, if appearing, does not show reasonable cause why possession should not be given of the land, and upon proof of the facts of the case being made, the magistrate may issue a warrant to the bailiff authorizing and requiring him to enter, by force if necessary, and give possession of the land to the owner.

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

Service of summons in action to recover possession of land.
27 Vict., No. 21, s. 103.
Cf. 51 and 52 Vict., c. 43, s. 141.

104. A summons for the recovery of possession of land may be served like other summonses to appear to plaints, but if the defendant cannot be found, and his place of residence is not known, or admission to it cannot be obtained for serving the summons, a copy of the summons shall be posted on some conspicuous part of the premises sought to be recovered, and posting shall be deemed good service on the defendant.

Warrant to bailiff.
27 Vict., No. 21, s. 104.
Cf. 51 and 52 Vict., c. 43, s. 142.

105. A warrant to a bailiff to give possession of land shall justify the bailiff named in the warrant in entering upon the land with such assistance as he thinks necessary, and in giving possession accordingly; but an entry under the authority of any such warrant shall not be made except between the hours of nine in the morning and four in the afternoon.

Duration of warrant.
27 Vict., No. 21, s. 105.
Cf. 51 and 52 Vict., c. 43, s. 143.

106. The warrant shall, on whatever day it is issued, bear date on the day next after the last day named by the magistrate in his order for the delivery of possession of the land in question, and shall continue in force for three months after such date and no longer; but an order for delivery of possession need not be drawn up or served.

PART VIA.—ACTIONS FOR SMALL DEBTS.

Heading inserted by No. 127 of 1982, s. 9.

Interpretation of this Part.
Inserted by No. 127 of 1982, s. 9.

106A. (1) In this Part—

(a) "general provision" means—

(i) a provision of this Act other than a provision of this Part;

or

(ii) a provision of the Rules of Court other than a provision made for the purposes of this Part;

"this Part" includes Rules of Court made for the purposes of this Part;

(b) the expression "stipendiary magistrate" has the same meaning as it has in the Stipendiary Magistrates Act 1957.

(2) A reference in this Part to the amount of a claim or counterclaim in respect of a cause of action is a reference to the amount claimed and set forth in the plaint or counterclaim, as the case may be, whether on a balance of account, or after an admitted set off or a reduction on account of any sum paid by or credited to the party from whom the amount is claimed, or otherwise.

Election to have action heard under this Part. Inserted by No. 127 of 1982, s. 9.

106B. (1) Subject to section 106G of this Act, where the plaintiff in an action in a Local Court is authorized by section 106C of this Act to elect to have the action heard and determined under this Part and, in accordance with section 106C, he so elects—

(a) the court shall hear and determine the action under this Part; and

(b) for the purposes of this Act, the action is an action for a small debt.

(2) Subsection (1) (a) of this section does not affect the operation of section 46 (2) (a) or 73 (a) of this Act in relation to an action for a small debt.

Actions in which election may be made. Inserted by No. 127 of 1982, s. 9.

106C. (1) The plaintiff in an action in a Local Court may, by his plaint, elect to have the action heard and determined under this Part—

(a) where there is a single cause of action—if the cause of action is a debt or liquidated demand in money and the amount claimed in respect of the cause of action does not exceed $1 000; or

(b) where two or more causes of action are joined—if at least one of the causes of action is a debt or liquidated demand in money and none of the respective amounts claimed in respect of the causes of action exceeds $1 000.

(2) A plaintiff who has a cause of action for more than $1 000 may, for the purpose of enabling that cause of action to be tried as or joined in an action for a small debt, abandon the excess (which abandonment shall be stated when the plaint is entered), and thereupon the plaintiff may, pursuant to this Act, recover to an amount not exceeding $1 000, and the judgment of the court shall be in full discharge of all demands in respect of the cause of action and entry of the judgment of the court shall be made accordingly.

Constitution of court. Inserted by No. 127 of 1982, s. 9.

106D. A Local Court hearing and determining an action for a small debt shall be constituted by a stipendiary magistrate and, when hearing and determining the action, that stipendiary magistrate may be referred to as sitting in the Small Debts Division of that court.

Counterclaims. Inserted by No. 127 of 1982, s. 9.

106E. (1) Where the defendant in an action for a small debt counterclaims an amount exceeding $1 000 in respect of any cause of action the court shall—

(a) if all the parties consent to the hearing and determination of the whole action under this Part—hear and determine the whole action under this Part; or

(b) if any of the parties does not consent to the hearing and determination of the whole action under this Part—

(i) hear and determine the claim under this Part and order that the counterclaim be heard and determined separately under the general provisions; or

(ii) at the request of the plaintiff, order that the whole action be heard and determined under the general provisions.

(2) This section does not affect the application of section 34 of this Act to an action in which a counterclaim involves matters beyond the jurisdiction of a Local Court.

Application of general provisions may be ordered in any case
Inserted by No. 127 of 1982, s. 9.

106F. Without affecting the operation of section 106E (1) (b) (ii) of this Act, a Local Court may order that any action that has been commenced as an action for a small debt be heard and determined under the general provisions if—

(a) all the parties so request; or

(b) the court thinks fit having regard to the importance of a principle of law involved or to the complexity of the issues or of the facts.

Effect of orders under sections 106E and 106F.
Inserted by No. 127 of 1982, s. 9.

106G. Where an order is made under section 106E (1) (b) (ii) or 106F of this Act in relation to an action—

(a) the action ceases to be an action for a small debt for the purposes of this Act and the general provisions shall apply to and in relation to the action as if the plaintiff had not elected to have the action heard and determined under this Part;

(b) if in respect of a cause of action for an amount exceeding $1 000 the excess has been abandoned that excess shall be deemed not to have been abandoned except where the cause of action is for an amount exceeding $6 000 in which case the excess over $6 000 shall be deemed to have been abandoned pursuant to section 59 of this Act.

Court may obtain particulars. Inserted by No. 127 of 1982, s. 9.

106H. Sections 47A, 47B, 65, 66, 67 and 68 of this Act shall not apply to or in relation to an action for a small debt but the clerk or the court may, in accordance with Rules of Court, require a party to furnish particulars of any claim, defence or counter-claim.

Settlement. Inserted by No. 127 of 1982, s. 9.

106I. (1) The primary function of the court hearing an action for a small debt is to attempt to bring the parties to the action to a settlement acceptable to all the parties and the court may, at any stage of the proceedings, do all such things and take all such steps as it considers to be appropriate for that purpose.

(2) Where it appears to the court hearing an action for a small debt to be impossible to attain a settlement acceptable to all the parties the court shall proceed with the hearing and determination of the action.

(3) Anything said or done by a party for the purpose of attempting to attain a settlement in an action for a small debt shall be deemed to be said or done without prejudice to any evidence or submission which he has adduced or made, or which he may subsequently adduce or make, in or in respect of the proceedings, and the saying or doing of that thing shall not disqualify the stipendiary magistrate constituting the court from sitting to hear the action or continue to hear the action, as the case may require.

Hearing of action. Inserted by No. 127 of 1982, s. 9.

106J. An action for a small debt shall be heard and determined in private unless the court hearing the action otherwise directs.

Evidence. Inserted by No. 127 of 1982, s. 9.

106K. In an action for a small debt the court shall not be bound by rules or practice as to evidence but may inform itself on any matter in such manner as it thinks fit.

Representation. Inserted by No. 127 of 1982, s. 9.

106L. (1) At the hearing of an action for a small debt, or during any attempt to settle such an action under section 106 I of this Act, a party shall not be entitled to be represented by an agent unless the court considers that an agent should be permitted to that party as a matter of necessity and approves accordingly.

(2) Subsection (1) of this section does not authorize a court to give approval for a party to an action for a small debt to be represented by an agent who has a legal qualification under the laws of this State or of any other place, or who is in the nature of a professional advocate unless—

(a) all parties to the action agree; and

(b) the court is satisfied that the parties, other than the party who has applied for the approval, or any of them shall not be thereby unfairly disadvantaged.

Costs. Inserted by No. 127 of 1982, s. 9.

106M. Costs other than—

(a) the court fees and service fees paid by the successful party; and

(b) costs of execution,

shall not be allowed to or against any party to an action for a small debt unless the court is of the opinion that because of the existence of exceptional circumstances an injustice would be done to a party if other costs of the action were not allowed to him.

Proceedings not subject to appeal or judicial supervision. Inserted by No. 127 of 1982, s. 9.

106N. (1) Where in an action for a small debt a settlement is brought about pursuant to section 106 I of this Act or an order or judgment is made or given by the court, the settlement, order or judgment shall be final and binding on all parties to the action, and no appeal shall lie in respect thereof.

(2) Subject to subsection (3) of this section, no—

(a) writ of *certiorari,* or prohibition, or other prerogative writ;

(b) summons, rule or order under section 115 of this Act; or

(c) declaratory judgment,

shall issue or be served, made or given in respect of an action for a small debt or in respect of an order or judgment made or given therein.

(3) Subsection (2) of this section does not prevent the service, making or giving of a writ, summons, rule, order or judgment mentioned in paragraph (a), (b) or (c) of that subsection if the court before which it is sought is satisfied—

(a) that an action, or an order or judgment made or given in an action, involves matter beyond the jurisdiction of a stipendiary magistrate sitting in the Small Debts Division of a Local Court; or

(b) that there has occurred in an action a denial of natural justice to a party therein.

(4) For the purposes of subsection (3) (a) of this section where a matter is heard and determined under this Part pursuant to consent given by the parties under section 106E (1) (a) of this Act, that matter shall be regarded as being within the jurisdiction of a stipendiary magistrate sitting in the Small Debts Division of a Local Court.

(5) Nothing in this section prevents—

(a) the setting aside under section 47 of this Act of a judgment by default in an action for a small debt; or

(b) the setting aside under section 73 of this Act of a judgment entered or given under paragraph (a) or (b) of that section in an action for a small debt or of the execution upon such a judgment.

Application of this Act to actions for small debts. Inserted by No. 127 of 1982, s. 9.

106 O. (1) In relation to an action for a small debt, a provision of this Part that is inconsistent with a general provision shall prevail to the extent of the inconsistency unless this Part provides otherwise.

(2) Subject to subsection (1) of this section the general provisions shall apply to an action for a small debt in the same manner as they apply to any other action in a Local Court.

Heading amended by No. 127 of 1982, s. 10.

PART VII.—APPEALS AND JUDICIAL REVIEW.

Appeals.

Appeals. Substituted by No. 69 of 1976, s. 21.

107. (1) Subject to subsection (2) of this section, a party to an action or matter who is dissatisfied with—

(a) a final judgment may appeal from that judgment to the District Court;

(b) a judgment that is not a final judgment, may by leave of the District Court appeal to that Court,

notwithstanding that the action or matter to which the final judgment or judgment relates may have been brought in the Local Court by consent as provided in this Act.

(2) An appeal to the District Court shall be made in the time and manner prescribed, and with such security for costs of the appeal as prescribed, by the Rules of the District Court, and, subject to subsection (5) of this section, the District Court has the jurisdiction to hear and determine the appeal accordingly.

(3) A party to an appeal to the District Court who is dissatisfied with a judgment of the District Court on the appeal may by leave of the Supreme Court or a Judge thereof appeal from that judgment to the Full Court of the Supreme Court constituted under the Supreme Court Act 1935.

(4) An appeal to the Full Court of the Supreme Court shall be made in the time and manner prescribed, and with such security for costs of the appeal as prescribed, by the Rules of the Supreme Court, and that Full Court has jurisdiction to hear and determine the appeal accordingly.

(5) Where an appeal to the District Court is pending, the Supreme Court or a Judge thereof may, at the instance of a party to the appeal and for good cause shown by him, remove the appeal to the Full Court of the Supreme Court.

(6) The removal of an appeal to the Full Court of the Supreme Court shall be done in the time and manner prescribed, and with such security for costs of the appeal as prescribed, by the Rules of the Supreme Court, and those Rules shall apply in respect of the appeal, and that Full Court has jurisdiction to hear and determine the appeal accordingly.

(7) Notice of an appeal, a pending appeal, or proceedings on an appeal shall not operate as a stay of execution upon the judgment the subject of the appeal, unless the magistrate, or a Judge of the Court in which the appeal is pending or proceeding, otherwise orders.

When magistrate to take a note of questions of law. Cf. 51 and 52 Vict., c. 43, s. 120.

108. At the trial or hearing of an action or matter, the magistrate, at the request either before or after judgment given of either party, shall make a note of any question of law raised at the trial or hearing, and of the facts in evidence in relation to that question, and of his decision on it, and of his decision of the action or matter.

When copy of magistrate's note to be given. Cf. 51 and 52 Vict., c. 43, s. 121.

109. In any action or matter in which the magistrate has at the request of either party made a note as in the last preceding section mentioned, he shall, at the expense of any party or parties to the action or matter, furnish a copy of the note so taken at the trial or hearing, or allow a copy of it to be taken by such party or parties, and he shall sign the

copy, whether a notice of appeal has been given or not, and the copy so signed shall be used and received at the hearing of the appeal.

Hearing of appeal. Amended by No. 69 of 1976, s. 22.

110. An appeal shall be heard and determined by the Supreme Court or the District Court, as the case may be, on a copy of the proceedings and of the notes of the evidence taken by the magistrate, certified by the magistrate or the clerk of the Local Court, and such other materials as to the Supreme Court or the District Court, as the case may be, shall seem fit, with full discretionary power to receive further evidence on questions of fact, such evidence to be either by oral examination in court or by affidavit.

But such further evidence shall be admitted on special grounds only, and not without special leave of the court.

Jurisdiction of Supreme Court and District Court. Amended by No. 35 of 1930, s. 9; No. 69 of 1976, s. 23. Cf. 51 and 52 Vict., c. 43, s. 122.

111. On the hearing of an appeal, the Supreme Court or the District Court, as the case may be, shall have power to affirm, reverse or modify the judgment, order or other decision or determination appealed from, and to give or make such judgment, order, decision or determination as ought to have been given or made in the first instance, and to review any finding of fact, and to draw inferences of fact, and may order a new trial on such terms as the court shall think just, or may order judgment to be entered for any party, or may make any other order, on such terms as the Supreme Court or the District Court, as the case may be, may think proper to insure the determination on the merits of the real questions in controversy between the parties, and may make such order with respect to the costs of the appeal as it shall think just, and every such order shall be final.

Parties may agree not to appeal. Cf. 51 and 52 Vict., c. 43, s. 123.

112. An appeal shall not lie from the decision of a magistrate if, before the decision is pronounced, both parties agree, in writing signed by themselves or their solicitors, that the decision of the magistrate shall be final.

113. A judgment given by a magistrate, or an action or matter brought before him or depending in his court, shall not be removed by appeal, motion, writ of error, or *certiorari,* or otherwise into another court, save and except in the manner and according to the provisions of this Act.

Removal of action only in manner provided by this Act.
Cf. 51 and 52 Vict., c. 43, s. 124.

Certiorari.

114. If the Supreme Court or a Judge thinks it desirable that any action, matter, or proceeding pending in a Local Court should be tried in the Supreme Court, the Court or Judge may direct a writ of *certiorari* to be issued for the removing such action, matter, or proceeding into the Supreme Court, upon such terms as to payment of costs, giving security for costs, or otherwise as such Court or Judge thinks fit.

When action may be removed.
Amended by No. 113 of 1965, s. 8.
Cf. 51 and 52 Vict., c. 43, s. 126.

An action or matter shall not be so removed when the amount claimed does not exceed forty dollars, unless the defendant gives security to the satisfaction of such Court or Judge for the amount claimed and the costs in the Supreme Court.

Order in lieu of Mandamus.

115. A writ of mandamus shall not be issued to a magistrate or an officer of a Local Court requiring him to do any act relating to the duties of his office, but a party requiring the act to be done may, by counsel or in person, apply to the Supreme Court or a Judge, upon an affidavit of the facts, for a rule or summons calling upon the magistrate or officer of the Local Court, and also the party to be affected by the act, to show cause why the act should not be done, and if after the service of the rule or summons good cause is not shown, the Supreme Court or a Judge thereof may, by rule or order, direct the act to be done, and the magistrate or officer of the Local Court shall, upon being served with the rule or order, obey it under pain of attachment, and in any event the Court or Judge may make such order with respect to costs as to the Court or Judge seems fit.

Rule or order substituted for writ of mandamus.
Cf. 27 Vict., No. 21, s. 94; 51 and 52 Vict., c. 43, s. 131.

Prohibition.

Magistrate not to be served with notice of application for prohibition. Cf. 51 and 52 Vict., c. 43, s. 128.

116. When an application is made to the Supreme Court or a Judge thereof for a writ of prohibition addressed to a Local Court, the magistrate of the Local Court shall not be served with notice, and shall not, except by the order of a Judge of the Supreme Court, be required to appear or be heard on the application, and shall not be liable to any order for the payment of the costs thereof; but the application shall be proceeded with and heard in the same manner in all respects as a case of an appeal duly brought from a judgment of a magistrate.

Notice of the application shall be given to or served upon the same parties as in the case of an appeal against a judgment or an order made or refused by a magistrate in a matter within his jurisdiction.

Practice in such Cases.

Rule or summons to show cause why a writ of *certiorari* or prohibition should not be issued to be a stay of proceedings. Cf. 27 Vict., No. 21, s. 91; 51 and 52 Vict., c. 43, s. 129.

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

Notice of rule or summons to be given to registrar and parties.

If a copy of the rule or summons is not served by the party who obtained it on the opposite party, and on the clerk of the Local Court, at least two clear days before the day fixed for the hearing of the action, the magistrate of the Local Court may order the party who obtained the rule or summons to pay the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court or a Judge thereof has made a different order respecting such costs.

Notice of writ of *certiorari* or prohibition obtained *ex parte* to be given to clerk and parties. Cf. 27 Vict., No. 21, s. 92; 51 and 52 Vict., c. 43, s. 130.

118. When a writ of *certiorari* or of prohibition addressed to a Local Court is granted by the Supreme Court or a Judge thereof on an *ex parte* application, and the party who obtained it does not lodge it with the clerk, and give notice to the opposite party that it has been issued, at least two clear days before the day fixed for hearing the action to which it relates, the magistrate of the Local Court may order the party who obtained the writ to pay all the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court or a Judge thereof has made a different order respecting such costs.

Costs. Q., 1891, No. 33, s. 185.

119. When an order is granted for the removal of an action or matter from a Local Court, or for the issuing of a writ of *certiorari* for such removal, and provision is not made in such order with respect to the costs of the proceedings in the Local Court, the costs of the proceedings shall be costs in the action or matter.

PART VIII.—ENFORCEMENT OF JUDGMENTS.

Action on Judgment.

Action on judgment. Q., 1891, No. 33, s. 160.

120. An action may be brought in the Supreme Court upon a judgment in a Local Court, but the plaintiff shall not recover any costs in such an action up to judgment unless the defendant appears and unsuccessfully defends the action.

Clerk to issue warrants of execution. Amended by No. 19 of 1909, s. 4; No. 5 of 1912, s. 11. Cf. 27 Vict., No. 21, s. 27; 51 and 52 Vict., c. 43, s. 146.

121. In any case in which a judgment is entered up or given for the payment of money, the clerk, on the application of the party in whose favour the judgment was entered or given, may issue a warrant of execution, which shall be directed to the bailiff of the court.

Execution against Land.

Bailiff may take land. Q., 1891, No. 33, s. 162.

122. A bailiff may, under a warrant of execution by which he is directed to levy a sum of money, seize and take, and cause to be sold, any land which the

person named in the warrant is or may be possessed of or entitled to, or which he has the power to transfer or dispose of for his own benefit.

Notice of sale.
Q., 1891, No. 33, s. 163.

123. Instead of making an actual seizure of land under a warrant of execution in order to authorize a sale thereof, the bailiff may cause notice of the warrant and of the intended day and place of sale, and the particulars of the property to be published in such manner as may be prescribed, or as the magistrate may direct.

The publication of the notice shall be equivalent to an actual levy by the bailiff on the land indicated in the notice.

Magistrate to execute conveyance or transfer.
Q., 1891, No. 33, s. 164.

124. When the right, title, and interests of a person of, to, or in any land is sold under a warrant of execution, the magistrate shall execute a proper conveyance, assignment, or transfer to the purchaser, which shall operate and be effectual as a conveyance of the estate, right, title, and interest of such person.

Application of s. 133 of Transfer of Land Act 1893.

125. Section one hundred and thirty-three of the Transfer of Land Act 1893, shall apply to a sale under a warrant of execution issued under this Act, and that section and the schedules therein referred to shall, in relation to any such sale, be read as if the words "warrant of execution issued out of a Local Court" were inserted in place of "writ of *fieri facias* issued out of the Supreme Court," and as if the words "bailiff of the Local Court" were inserted in place of the word "sheriff."

Execution against Goods.

Bailiff may seize goods.
Amended by No. 13 of 1938, s. 2; No. 56 of 1958, s. 4; No. 113 of 1965, s. 8.
Cf. 27 Vict., No. 21, s. 49; 51 and 52 Vict., c. 43, s. 147.

126. A bailiff, under a warrant of execution by which he is directed to levy a sum of money, may seize and take, and cause to be sold any goods which the person named in the warrant is or may be possessed of or entitled to, or which he has power to assign or dispose of:

Provided that the following goods shall be protected from seizure:—

> Wearing apparel of such person to the value of one hundred dollars and of his wife to the value of one hundred dollars and of his family to the value of fifty dollars for each member thereof dependent on him; household furniture and effects to a value not exceeding in the aggregate three hundred dollars; implements of trade to the value of one hundred dollars; all beds and bedding; family photographs and portraits.

Securities seized to be held by bailiff. Cf. 27 Vict., No. 21, ss. 49, 50; 51 and 52 Vict., c. 43, s. 148.

127. The bailiff shall hold any cheques, bills of exchange, promissory notes, specialities or other securities for money, which are seized or taken under a warrant of execution, as a security for the amount directed to be levied under the warrant, or so much thereof as has not been otherwise levied or raised for the benefit of the execution creditor, and may receive any moneys payable by virtue of any such instrument from the person liable under it.

The execution creditor may sue in the name of the execution debtor, or in the name of any person in whose name the execution debtor might sue, for the recovery of the sums secured or made payable by any such instrument, when the time of payment thereof arrives.

Any money paid to the bailiff or recovered in an action brought by the execution creditor in respect of any such instrument shall be paid into court by the officer or person who receives the same. The payment of any such moneys to the bailiff or in the course of or under a judgment in any such action shall effectually discharge the person by whom they are paid to the extent of the payment.

When goods taken in execution may be sold. Cf. 27 Vict., No. 21, s. 59; 51 and 52 Vict., c. 43, s. 154.

128. A sale of goods which are taken in execution shall not be made until after the expiration of the five days at least next following the day on which the goods were taken, unless the goods are of a perishable nature, except upon the request in writing of the person whose goods are taken.

Until the sale, the goods must 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.

When goods seized landlord may claim certain rent in arrear.
Cf. 27 Vict., No. 21, s. 61; 51 and 52 Vict., c. 43, s. 160.

129. The landlord of any premises in which goods are taken may, at any time within five clear days from the date of the taking, or at any time before the removal of the goods, claim any rent in arrear by delivering to the officer making the levy a writing signed by himself or his agent, stating the amount of rent in arrear claimed and the period in respect of which the rent is due.

If such a claim is made, the officer making the levy shall, in addition to levying for the amount for which the warrant was issued, keep possession of the goods by way of distress for the rent so claimed and the cost of the possession, and shall not, within five clear days next after the notice, sell any part of the goods taken, unless they are of a perishable nature, except upon the request in writing of the person whose goods are taken.

The bailiff shall afterwards sell so much of the goods taken under the execution as is sufficient to satisfy—

(a) the costs of and incident to the levy and sale;

(b) the claim of the landlord not exceeding the rent for four weeks when the premises are let by the week, the rent for two months when the premises are let by the month, or the rent for three months in any other case; and

(c) the amount for which the warrant was issued.

If a replevin is made of any goods so taken, the bailiff shall, notwithstanding the replevin, sell such portion of the goods as will satisfy the costs of and

incident to the levy and sale under the execution, and the amount for which the warrant was issued, and the surplus, if any, arising from the sale, and the residue of the goods shall be returned to the defendant.

The poundage of the bailiff and broker for appraisement and sale under the possession by way of distress shall be the same as would have been payable if no claim had been made for rent; and no other fees shall be demanded or taken in respect thereof.

Execution against the Person.

Power to commit. Amended by No. 10 of 1957, s. 6; No. 127 of 1982, s. 11. Cf. 34 Vict., No. 21, s. 3.

130. (1) Subject to the provisions hereinafter contained, and to the rules of court, any magistrate may commit to prison, for a term not exceeding six weeks or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any judgment or order of a Local Court:

Provided that such jurisdiction shall only be exercised where it is proved to the satisfaction of the magistrate that the person making default either has or has had, since the date of the judgment or order, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

(2) Proof of the means of the person making default may be given in such manner as the magistrate thinks fit; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath according to the rules of court.

(2a) Where—

(a) a summons obtained under this section is duly served on a judgment debtor and at the same time payment or a tender of payment of his reasonable expenses is made; and

(b) the debtor refuses or neglects to obey the summons,

the magistrate before whom the debtor should have appeared may, if good cause is not shown for the non-appearance of the debtor, issue his warrant to bring and have the debtor before a magistrate to be examined pursuant to this section.

(2b) Where a warrant is issued under subsection (2a) of this section the judgment debtor shall be brought before a magistrate for examination on the day on which he is apprehended pursuant to the warrant or, if that is not practicable, as soon as is practicable thereafter.

(3) For the purposes of this section, the magistrate may direct any debt due from any person, in pursuance of any judgment or order, to be paid by instalments, and may from time to time vary or rescind such order.

(4) No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands or goods of the person imprisoned, in the same manner as if such imprisonment had not taken place.

(5) A married woman may be committed under the provisions of this section, where it is proved to the satisfaction of the magistrate that she either has or has had, since the date of the judgment or order, the means out of her separate estate to pay the sum in respect of which she has made default, and has refused or neglected, or refuses or neglects, to pay the same.

(6) The Minister or the magistrate may by delegation in writing signed by the Minister, or as the case may be, the magistrate, delegate to the clerk authority to exercise generally, or in any particular

case, or in any case of a class, the jurisdiction conferred upon the magistrate by the preceding subsections of this section; and the clerk who is the delegate—

(a) may, subject to the provisions of subsection (7) of this section, exercise that jurisdiction as if references in those subsections to the magistrate were references to the clerk;

and

(b) may exercise any power conferred by this Act or the rules of court on the magistrate, as incidental or ancillary to the exercise of the jurisdiction referred to in paragraph (a) of this subsection, including any power of fining, or compelling the attendance of, any person who neglects or refuses to appear to be examined; or who, having appeared, refuses without lawful justification to answer to the best of his knowledge any question put to him in examination; or to produce anything he is required to produce for the purposes of examination. Cf. ss. 62-64.

(7) The effectiveness of an order made, or decision given, or direction issued, in exercise of jurisdiction mentioned in paragraph (a) of subsection (6) of this section by a clerk acting under power of delegation is, and shall be expressed to be, suspended until the order, decision, or direction, is reviewed by the magistrate, who shall review it as soon as is practicable after it has been made, given, or issued, but this subsection does not apply in respect of the exercise by the clerk of any power mentioned in paragraph (b) of subsection (6) of this section.

(8) The magistrate on reviewing under subsection (7) of this section, an order, or a decision or a direction,

(a) may confirm it, and direct it to take effect from a day to be appointed by the magistrate;

(b) may vary it and direct it to take effect as so varied from a day to be so appointed; or

(c) may set it aside,

and the decision of the magistrate has, and shall be given, effect according to its tenor.

Execution of warrant. N.S.W., 1901, No. 4, s. 94 (2).

131. The bailiff and the keeper of the prison to whom the warrant for the commitment of a debtor, or any warrant issued in pursuance of it, is directed, shall respectively execute and obey the same, and the police officers within their several jurisdictions shall aid and assist in its execution.

A warrant of commitment may be executed on a Sunday as on any other day.

Discharge on payment of debt and costs. N.S.W., 1901, No. 4, s. 95.

132. A person arrested or imprisoned under warrant of commitment shall be entitled to his discharge on payment of the amount named in the warrant as due on the judgment or order, and the costs of obtaining and executing the warrant, or upon a receiving order under the Bankruptcy Act 1892, being made against him, or his executing a deed of assignment under the Bankruptcy Act Amendment Act 1898, or otherwise upon the order of the magistrate.

The bailiff making the arrest, and the keeper of the prison to whom the warrant is directed, are hereby empowered and required to receive the amount so paid, and to transmit it to the clerk of the court in which the judgment was recovered.

Detention of persons arrested. Amended by No. 19 of 1909, s. 5. Q. 1891, No. 33, s. 172.

133. When a warrant of commitment is issued and the debtor is arrested, he shall, unless entitled to his discharge under the provisions of this or some other Act, be forthwith conveyed in the custody of the bailiff or other officer apprehending him to a prison in pursuance of the said warrant.

134. The provisions of section three of the Debtors' Act 1871, shall not apply to any judgment or order of a Local Court.

Suspension of 34 Vict., No. 21, s. 3.

Execution at a distance.

135. When a warrant of execution or a warrant of commitment has been issued under this Act, the clerk of the court may send the warrant to the clerk of the Local Court held nearest to the place where the person against whom it is issued, or any of his property, then is or is believed to be, with a warrant annexed to it, under the hand of the clerk, and under the seal of the court from which the original warrant was issued, requiring execution thereof.

How execution may be levied at a distance. Cf. 27 Vict., No. 21, s. 57; 51 and 52 Vict., c. 43, s. 158.

The clerk of the court to which the warrant is sent shall seal or stamp it with the seal of the court, and shall issue it to the bailiff of his court.

The last-mentioned bailiff shall thereupon be authorized and required to act in all respects as if the original warrant of execution of commitment had been directed to him by the court of which he is the bailiff, and he shall, within the prescribed time, make a return to the clerk of the court from which the warrant was originally issued with respect to what he has done in the execution of the process; and, if a levy is made, he shall, within the prescribed time, pay over the moneys received in pursuance of the warrant to the clerk of the court to which the warrant was sent, who shall transmit such moneys to the clerk of the court from which the warrant was originally issued, retaining the fees for execution of the process.

General provisions relating to Execution.

136. The precise time when an application is made to the clerk to issue a warrant of execution shall be entered by him in the execution book and on the warrant, and when more warrants than one are delivered to a bailiff to be executed against the same person he shall execute them in the order of the times so entered.

Time of applications for warrants to be entered. Cf. 27 Vict., No. 21, s. 96; 51 and 52 Vict., c. 43, ss. 146, 147.

Priority of execution issuing out of Supreme Court and Local Court.
Cf. 27 Vict., No. 21, s. 97; 51 and 52 Vict., c. 43, s. 152.

137. When a writ of execution against the lands or goods of a party to an action or other proceeding has been issued out of the Supreme Court, and a warrant of execution has been issued out of a Local Court, the right to the property seized shall be determined by the priority of the time of the delivery of the writ so issued out of the Supreme Court to the sheriff to be executed, or the time of the application to the clerk for the issue from the Local Court of the warrant of execution, whichever is the earlier.

The sheriff shall, on demand, inform the clerk of the precise time of the delivery of the writ so issued out of the Supreme Court, and the clerk shall, on demand, inform the sheriff, or a sheriff's officer, of the precise time of the application to the clerk for the issue from the Local Court of the warrant of execution.

Execution after default in instalment may be issued for whole sum.
Q. 1891, No. 33, s. 176.

138. If the magistrate makes an order for payment of a sum of money by instalments, execution upon the order shall not be issued against the party until after default in some instalment.

Upon such default being made, execution or successive executions may be issued for the whole of the sum of money and costs then remaining unpaid, or for such portions thereof as the magistrate may have ordered, or may order, either at the time of making the original order, or at a subsequent time.

Magistrate may suspend execution or order discharge in certain cases.
Cf. 27 Vict., No. 21, s. 58; 51 and 52 Vict., c. 43, s. 153.

139. If at any time it appears to a magistrate that the defendant in an action or matter is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof, the magistrate may suspend or stay any judgment given or execution issued in the action or matter for such time and upon such terms as he thinks fit, and so from time to time until it appears that the cause of inability has ceased.

A magistrate may also discharge a debtor confined in prison, who by reason of sickness or other sufficient cause ought, in the opinion of the magistrate, to be discharged.

140. In or upon every warrant of execution the clerk of the court shall cause to be inserted or indorsed the sum of money and costs adjudged and the amount of the fees for the execution of the warrant.

Execution to be superseded on payment of debt and costs. Cf. 51 and 52 Vict., c. 43, s. 155.

If the party against whom the warrant is issued, before actual sale, pays or tenders to the clerk of the court from which it was issued, or to the bailiff holding the warrant, the sum of money and costs, or such part thereof as the person entitled thereto agrees to accept as full payment of the debt or damages and costs, the execution shall be superseded, and the property of the party against whom the execution was issued shall be discharged.

141. If there are cross-judgments between the same parties in a Local Court, execution shall be issued at the instance of that party only who has obtained judgment for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction shall be entered on the judgment for the smaller sum, and if both sums are equal, satisfaction shall be entered on both judgments.

Cross-judgments to be set off. Cf. 27 Vict., No. 21, s. 46; 51 and 52 Vict., c. 43, s. 151.

142. If a Judge of the Supreme Court is satisfied that a party against whom judgment for an amount exceeding forty dollars exclusive of costs has been obtained in a Local Court has no goods which can be conveniently taken to satisfy such judgment, he may, if he thinks fit, and on such terms as to costs as he may direct, by order remove the judgment of the Local Court to 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 the Supreme Court.

Judgment may be removed to Supreme Court. Amended by No. 113 of 1965, s. 8. Cf. 58 Vict., No. 13, s. 23; 51 and 52 Vict., c. 43, s. 151.

Interpleader.

143. If a claim is made to or in respect of goods taken in execution under the process of a Local Court, or in respect of the proceeds or value of the goods, by a person not being the party against whom the process has been issued, the clerk of the

Interpleader. Cf. 27 Vict., No. 21, s. 65; 51 and 52 Vict., c. 43, s. 157; N.S.W., 1901, No. 4, s. 93.

court under the process of which the levy is made, or the clerk of the court of the district in which the levy is made, upon application of the officer charged with the execution of the process, whether an action has been brought against the officer or not, may enter an interpleader plaint, and may issue a summons thereon calling before the court both the party issuing the process and the party making the claim, and thereupon any action which has been brought in the Supreme Court or in a Local Court in respect of the claim shall be stayed.

Upon the return of the summons the magistrate shall have and may exercise such and the same powers as a Judge of the Supreme Court has and may exercise upon the application of the sheriff, in the case of goods taken in execution under process issued from the Supreme Court.

The court in which the action has been brought, or any Judge or magistrate of such court, on proof of the issue of the summons and that the goods were so taken in execution, may order the party bringing the action to pay the costs of all proceedings had upon the action after the issue of the summons out of the Local Court.

Attachment of Debts.

Examination of judgment debtor as to debts due to him. Amended by No. 10 of 1957, s. 7; No. 127 of 1982, s. 12. N.S.W. 1901, No. 4, s. 96.

144. (1) When a judgment is for the recovery by or payment to a person of a sum of money, the party entitled to enforce it may apply to the clerk for a summons to the judgment debtor to attend to be orally examined as to whether any and what debts are owing to him; and to produce any books, deeds, papers, or writings.

(1a) If on application being made to him for a summons under subsection (1) of this section, the clerk refuses the application, the magistrate on application being made to him may direct the clerk to grant the application for the summons and the clerk shall give effect to the direction.

(2) Where—

(a) a summons obtained under this section is duly served on a judgment debtor and at the same time payment or a tender of payment of his reasonable expenses is made; and

(b) the debtor refuses or neglects to obey the summons,

the magistrate before whom the debtor should have appeared may, if good cause is not shown for the non-appearance of the debtor issue his warrant to bring and have the debtor before a magistrate to be examined pursuant to this section.

(3) Where a warrant is issued under sub-section (2) of this section the judgment debtor shall be brought before a magistrate for examination on the day on which he is apprehended pursuant to the warrant or, if that is not practicable, as soon as is practicable thereafter.

(4) Where a judgment debtor refuses or neglects to produce books, deeds, papers, or writings as directed by a summons obtained under this section and duly served on him the magistrate may make an order for their production by him.

Power to make garnishee order. Amended by No. 5 of 1912, s. 12. Cf. 58 Vic., No. 13, s. 24.

145. Upon the *ex parte* application of the judgment creditor, either before or after the oral examination, and upon affidavit by himself or his solicitor stating that judgment has been recovered, and that it is still unsatisfied and to what amount, and that another person is indebted to the judgment debtor and is within the State, the magistrate or the clerk may order that all debts owing or accruing from the third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment; and, by the same or a subsequent order, may order that a summons be issued requiring the garnishee to appear before the magistrate, to show cause why he should not pay

the judgment creditor the debt due from him to the judgment debtor, or so much of it as is sufficient to satisfy the judgment: Provided, however, that no order shall be made for the attachment of the wages of any servant, labourer, or workman.

Cf. 33 and 34. Vict., c. 30, s. 1.

Service of garnishee order. Cf 58 Vict., No. 13, s 25.

146. Service of an order that debts due or accruing to a judgment debtor shall be attached, or notice of it to the garnishee in such manner as the magistrate directs, shall bind the debts in his hands.

Execution against garnishee. Cf. 58 Vict., No. 13, s. 26.

147. If the garnishee does not dispute the debt due or claimed to be due from him to the judgment debtor, or does not appear in obedience to the summons, and if in either case he does not forthwith pay into court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, the magistrate may order a warrant of execution to be issued, and it may be issued accordingly without a previous writ or process, to levy the amount due from the garnishee, or so much of it as is sufficient to satisfy the judgment:

N.S.W. 1901, No. 4, s. 99.

Provided that the magistrate may direct such payment to be made at such times and by such instalments as he thinks fit, and if default is made in the payment of any one such instalment execution may issue for so much of the amount then due by the garnishee as will satisfy the judgment debt remaining unpaid at the time of such default.

Trial of liability of garnishee. Cf. 58 Vict., No. 13, s. 27.

148. If the garnishee disputes his liability, the magistrate, instead of making an order that a warrant of execution shall be issued, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which an issue or question in an action is tried or determined, and thereupon the same proceedings may be had in all respects as if an action were pending between the parties, and any order or judgment made in such proceedings may be enforced in the same manner as a judgment in an action in the court.

Lien of third person on debt. Cf. 58 Vict., No. 13, s. 28.

149. When in proceedings to obtain an attachment of debts it is suggested by the garnishee, or it otherwise appears, that the debt sought to be attached belongs to a third person, or that a third person has a lien or charge upon it, the magistrate may order a summons to be issued requiring the third person to appear and state the nature and particulars of his claim upon the debt.

Trial of claim of third person. Cf. 58 Vict., No. 13, s. 29.

150. After hearing the allegations of the third person, and of any other person whom, by the same or a subsequent order, the magistrate directs to be summoned, or if the third person does not appear in obedience to the summons, the magistrate may order that a warrant of execution be issued to levy the amount due from the garnishee, or that an issue or question be tried or determined as hereinbefore provided, and the magistrate may bar the claim of the third person, or may make such other order as he thinks fit, upon such terms, with respect to the lien or charge (if any) of the third person, and to costs, as he thinks just.

Discharge of garnishee. Cf. 58 Vict., No. 13, s. 30.

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

Attachment book. Cf. 58 Vict., No. 13, s. 32.

152. The clerk shall keep a debt attachment book, in which entries shall be made of all attachments made and of the proceedings taken in respect of them, with names, dates, and statements of the amount recovered, and such other particulars as may be prescribed; and copies of entries made in the book may be taken by any person upon application to the clerk and payment of the prescribed fee.

Costs. Cf. 58 Vict., No. 13, s. 33.

153. The costs of an application for an attachment of debt, and of the proceedings arising from or incidental to the application, shall be in the discretion of the magistrate.

N.S.W., 1901, No. 4, s. 101.

But where the garnishee pays into court all debts due, owing, or accruing from him to the judgment debtor, or so much thereof as is sufficient to satisfy the judgment debt, five clear days before the return day of the summons, he shall not be liable for any costs incurred by the judgment creditor.

PART IX.—SUPPLEMENTARY PROVISIONS.

Nearest court, how determined. Amended by No. 5 of 1912, s. 13; No. 94 of 1972, s. 4 (as amended by No. 19 of 1973).

154. If objection is taken to the jurisdiction of the court on the grounds that it is not the court held nearest to the place—

[*Paragraphs (a) and (b) repealed by No. 5 of 1912, s. 13.*]

(c) where the goods were seized, if the action is of replevin; or

(d) where the land is situated, if the action is for the recovery of land,

the determination of the magistrate on such question shall be final and conclusive.

The distance shall be calculated by the nearest public thoroughfare; and no such objection shall be allowed unless it is shown to the satisfaction of the magistrate that another court is held nearer to such place by a distance of eight kilometres at the least.

Penalty for disobeying injunction or other order of the court. Amended by No. 113 of 1965, s. 8. N.Z., 1893, No. 55, s. 194.

155. When a lawful order is made by a magistrate, not for the payment of money, but for the doing of some other act, or for ceasing either for a time or permanently to do some act, any person acting in disobedience to such order shall be liable, at the discretion of the magistrate, to a penalty not exceeding twenty dollars for each offence, and to be imprisoned in default of payment, or to be imprisoned in the first instance, and the magistrate may issue a warrant of commitment accordingly.

The person so offending shall be taken to some convenient prison, to be named in such warrant, and delivered to the keeper thereof, and he shall

be there detained until he shall give security to the satisfaction of the magistrate that he will do the act required, or cease to do the act prohibited, or until the magistrate shall make an order for his release.

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

Power of committal for contempt. Amended by No. 113 of 1965, s. 8. Cf. 51 and 52 Vict., c. 43, s. 162.

156. If any person wilfully insults, interferes with, or obstructs a magistrate, or a clerk, bailiff, or other officer of a Local Court, or any party to a cause or matter, or any witness lawfully summoned to attend a Local Court, during his sitting or attendance in court, or in going to or returning from the court, or wilfully interrupts the proceedings of the court, or otherwise misbehaves himself in court, a bailiff or other officer may, with or without the assistance of any other person, by order of the magistrate, take the offender into custody and detain him till the rising of the court; and the magistrate may, by a warrant under his hand, and sealed with the seal of the court, commit the offender to the prison nearest to the court for any time not exceeding fourteen days, or may impose on the offender a fine not exceeding twenty dollars, and in default of payment may commit the offender to prison for any time not exceeding fourteen days, unless the fine is sooner paid.

Payment of penalties, how enforced. N.Z., 1893, No. 55, s. 195.

157. The payment of any fine or penalty imposed by a magistrate may be enforced in like manner as payment of any penalty may be enforced in summary proceedings before justices of the peace under the Justices Act 1902.

Power to make rules. Amended by No. 111 of 1976, s. 17. Cf. 27 Vict., No. 21, s. 74; 51 and 52 Vict., c. 43, s. 164.

158. (1) The Governor may, from time to time, make, alter, and repeal rules of court prescribing—

(a) the practice of the courts and the forms of proceedings therein;

(b) the fees to be allowed to legal practitioners;

(c) the expenses to be paid to witnesses;

(d) the mode of keeping all books, entries, and accounts to be kept by the clerks;

(e) matters relating to expert evidence, including the disclosure, by the furnishing of reports or otherwise, of the nature and substance of the expert evidence to be given, and including the exclusion of expert evidence in case of non-compliance with the rules relating to expert evidence or with any order for the disclosure of the nature and substance of expert evidence, and in relation thereto—

(i) differing requirements depending on different classes of cases, different classes of matters, or other different circumstances; and

(ii) a discretionary authority.

(2) All rules of court shall be published in the *Government Gazette*, and shall not take effect until one month after the publication thereof.

(3) The rules and forms in force at the commencement of this Act, except so far as they are inconsistent with this Act, shall continue in force until altered or revoked by rules made under this Act.

Fees.
Amended by No. 10 of 1957, s. 8.
Cf. 51 and 52 Vict., c. 43, s. 165.

159. There shall be payable, in respect of every proceeding in a Local Court, such court fees and bailiff's fees as the Governor may from time to time prescribe.

The fees shall be paid in the first instance by the party on whose behalf the proceeding is to be taken, and shall be paid before the proceeding is taken, and the fees payable for executing warrants of execution shall be paid into court before or at the time of the issue of the process of execution.

Fees and fines to be paid to the Consolidated Revenue Fund.

160. All fees payable in respect of any proceedings to the clerk, except such part of them as the bailiff is entitled to receive and retain for his own use under the provisions of this Act, and all fines imposed under this Act and received by the clerk, shall be paid into the Consolidated Revenue Fund.

[*Section 161 repealed by No. 127 of 1982, s. 13.*]

Public holidays.

162. In the event of any sitting of a Local Court falling upon a public holiday, the court shall not sit upon such day, but upon the day next following.

Effect of non-compliance. Inserted by No. 5 of 1912, s. 14.

163. Non-compliance with any statutory or other rule of procedure shall not render any proceeding in a Local Court void, unless the magistrate so directs, but such proceeding may, subject to any rules of court, be set aside either wholly or in part as irregular or may be amended or otherwise dealt with in such manner and upon such terms as the magistrate may think fit.

Heading and Part X inserted by No. 93 of 1981, s. 4.

PART X.—MAINTENANCE AND DESTRUCTION OF COURT RECORDS.

Interpretation. Inserted by No. 93 of 1981, s. 4.

164. In this Part—

"court record" means official record of any proceedings in any Local Court and includes any document filed in the Court, or in the custody of the Court, in relation to the proceedings but does not include the Foreign Executions Re-issue Book;

"document", "negative", and "reproduction" have the same respective meanings as they have in and for the purposes of the Division of the Evidence Act 1906 relating to the reproduction of documents; and

"official record" includes—

(a) any document, book, plan, paper, photograph, or parchment; or

(b) any other material or part thereof on which is any writing or printing or which is marked with any letters or marks denoting words or any other signs capable of carrying a definite meaning to persons conversant with them,

made or received by a Court or person acting judicially under this Act.

Application of Part X. Inserted by No. 93 of 1981, s. 4.

165. This Part of this Act shall not be construed so as to derogate in any way from section 6 of this Act or from the Library Board of Western Australia Act 1951.

Negatives of court records. Inserted by No. 93 of 1981, s. 4.

166. A negative of a court record may be made at any time to be held by or on behalf of the Court.

Destruction of court records generally. Inserted by No. 93 of 1981, s. 4.

167. Subject to section 165 of this Act, a court record may, in any case, be destroyed after the expiration of 15 years from the date when the relevant action or matter was commenced.

Destruction of court records where negatives held. Inserted by No. 93 of 1981, s. 4.

168. Subject to section 165 of this Act, a court record may be destroyed at any time after the expiration of 3 years from the time it became such a record if a negative of it is held by or on behalf of the Court but in that case the negative shall be so held until the expiration of 15 years from the date when the relevant action or matter was commenced.

Evidentiary provision. Inserted by No. 93 of 1981, s. 4.

169. For the purpose of the laws relating to the admissibility of evidence but without otherwise affecting those laws, where, at any time, a negative of a court record is held by or on behalf of the Court, the negative is deemed to be the court record and shall be treated as such by any Local Court, and any other Court, without any enquiry as to whether or not the court record has been destroyed.

SCHEDULE.

Section 4.

Date of Act	Title.	Extent of Repeal
27 Vict., No. 21	The Small Debts Ordinance, 1863	The whole.
51 Vict., No. 10	The Small Debts Act, 1887	The whole.
58 Vict., No. 13	The Small Debts Ordinance, 1863, Amendment Act, 1894	The whole.

SECOND SCHEDULE.

Inserted by No. 5 of 1912, s. 15.

Form 1.

No.

In the Local Court at

Between

A.B. .... Plaintiff.

and

C.D. .... Defendant.

TAKE NOTICE that the defendant objects to the jurisdiction of this Court, and says that he resides at (*naming place*), and that he requires the action to be transferred to the Court nearest to that place: And further take notice that unless you shall within (*the prescribed time*) file in this Court an affidavit to my satisfaction according to the prescribed Form, justifying your choice of Court, or discontinue this action, I shall transfer the action to the Local Court at

Dated the day of , 19 .

Clerk of Local Court at

To the Plaintiff.

Form 2.

Summons.

In the Local Court at

Between

A.B., of Plaintiff,

and

C.D. of Defendant.

To the Defendant,—

You are hereby summoned to answer the Plaintiff's claim indorsed hereon (*or* annexed hereto), and take notice that unless within five days [*or such longer time as shall be prescribed*] after service of this summons upon you you give notice to the Clerk of this Court that you intend to defend this action the plaintiff may proceed therein and judgment may be given in your absence.

Dated the day of , 19 .

Clerk of Court.

Note.—Subscriptions and endorsements shall be made on the summons as prescribed.

N.B.—These forms may be altered to meet the circumstances of any particular case.

Inserted by No. 21 of 1921, s. 4.

THIRD SCHEDULE.

Interlocutory Summons for Judgment.

In the Local Court at.....

Between J. D., Plaintiff,

and

R. M., Defendant.

Let the Defendant attend the Magistrate in Chambers at the Local Court at ..... on ..... day, the ..... day of .....19....., at the hour of ..... o'clock in the ..... noon, on the hearing of an application on the part of the plaintiff for judgment in this action for the amount claimed with costs.

Dated the ..... day of ....., 19.....

[Seal of the Court.] F.H.,
Clerk of the Court.

Note.—The affidavit of the plaintiff [*or* of H.S.], a copy whereof [together with copies (*or* a copy) of the exhibit(s) referred to therein] is served on you herewith, will be used on the hearing of this application.

This summons was taken out by the plaintiff [or by X.Y., the plaintiff's solicitor.]

To Mr. R. M.,
the Defendant.

By Authority: WILLIAM C. BROWN, Government Printer

31247/1/84