

The Local Courts Act, 1904.

(No. 51 of 1904.)

ARRANGEMENT.

PART I.—PRELIMINARY.

Sec.

1. Short title.
Division.
2. Commencement.
3. Interpretation.
4. Repeal.

PART II.—COURTS, MAGISTRATES, AND OFFICERS.

Courts.

5. Appointment of Local Courts.
6. Courts to be courts of record.
7. Seal of the court.

Magistrates.

8. Appointment of magistrates.
9. Magistrates may act throughout State.
10. Place and times of sittings.
11. Jurisdiction in chambers.
12. Deputy magistrate.

Clerks.

13. Appointment of clerk.
14. Duties of clerk.
15. Minutes of proceedings to be kept.

Bailiffs.

16. Appointment of bailiffs.
17. Bailiffs' assistants may act after the death or removal of bailiff.
18. Duties of bailiffs.
19. Bailiff not required to take out auctioneer's license.
20. Remuneration of bailiffs.
21. Bailiff answerable for escape and neglect to levy execution.
22. Bailiff to give security.

General provisions relating to officers.

23. Disabilities.
24. Remedies against and penalties on bailiffs and other officers for misconduct.
25. No officer to be deemed a trespasser by reason of irregularity.
26. Indemnity to persons acting under this Act.
27. Limitations of actions.

Legal Practitioners.

28. Privilege.
29. Appearance may be in person or by a legal practitioner.

PART III.—JURISDICTION.

As to Subject-matter.

30. In personal actions.
31. In case of partnership, intestacy, and legacy.

Sec.

32. Equitable claims.
33. Powers of court.
34. Counterclaims.
35. Rules of law to apply to all Local Courts.

As to Locality.

36. Where action may be commenced.
37. Court where magistrate can sue and be sued.
38. Actions against officers.

Consent Jurisdiction.

39. Consent jurisdiction.

PART IV.—PROCEDURE.

Plaint and Summons.

40. Action commenced by plaintiff.
Ordinary summons.
41. Default summons.
42. Service of default summons.
43. Substituted service.
44. Proof of service by bailiff or police officer.
45. Notice of defence to default summonses.
46. When some defendants give notices of defence and others do not.
47. Judgment by default may be set aside.

Special Defences and Counterclaims.

48. Notice of special defence.

Payment into Court.

49. Payment into Court.

Confession of Debt.

50. Confession of or agreement as to debt.

Parties.

51. Judgment on such confession or agreement.
52. Proceedings by husband and wife.
53. Bankruptcy not to cause action to abate if trustee elects to continue it.
54. One of several persons jointly liable may be sued.
55. Partners.
56. Executors.
57. Infants.

Joinder and Severance of Causes of Action.

58. Joinder of causes of action.
59. Splitting demands.
60. Splitting debt by giving bills, etc.

Changing Venue.

61. Magistrate may change venue.

Local Courts.

Means of obtaining Evidence.

- Sec.
62. Summons to witnesses.
 63. Penalty on witnesses neglecting summons.
 64. Magistrate may cause arrest of witness not attending on summons.
 65. Notice to admit.
 66. Discovery of documents.
 67. Inspection of documents.
 68. Mode of enforcing discovery.
 69. Examination *de bene esse*.

Trial.

70. Trial.
71. Proceedings at the trial when both parties appear.
72. Proceedings when plaintiff does not appear.
73. Proceedings when defendant does not appear.
74. Proceedings where defendant's set-off or counterclaim exceeds plaintiff's claim.
75. Magistrate may grant time or adjourn.
76. Where defendant appears and admits claim.
77. Reference to clerk.

Evidence.

78. Rules of evidence.
79. Proof to be limited to matter in the summons.
80. Affidavits, before whom sworn.

Costs.

81. Costs.
82. Costs to be taxed.
83. Fees to legal practitioners and allowances to witnesses.
84. Costs where court has no jurisdiction.
85. Costs between solicitor and client.

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

86. Costs when not recoverable except on certificate or order.
87. Removal of action to Local Court.
88. Actions of tort may be removed from Supreme Court in certain cases.

Amendment.

89. As to amendment of defects and errors of proceedings, etc.

Judgment and New Trial.

90. Judgment to be final unless new trial granted.
91. When judgment does not exceed twenty pounds magistrate may order payment by instalments.

Arbitration.

92. Power to refer to arbitration.
93. Power to compel attendance of witnesses before arbitrators.

PART V.—REPLEVIN.

94. Actions of replevin.
95. Clerk to grant replevins.

Sec.

96. Conditions of security to be given when replevin brought in Supreme Court.
97. Conditions of security to be given when replevin brought in Local Court.
98. Replevin shall, at instance of defendant, be removed into Supreme Court by *certiorari* in certain cases.

PART VI.—RECOVERY OF POSSESSION OF LAND.

99. Possession of land may be recovered by landlord when term expired or determined.
100. Possession may be recovered for non-payment of rent.
101. Plaintiff may claim for rent and mesne profits.
102. Sub-tenant served with summons must give notice to his immediate landlord.
103. Action to recover land held without right, title, or license.
104. Service of summons in action to recover possession of land.
105. Warrant to bailiff.
106. Duration of warrant.

PART VII.—APPEALS, ETC.

Appeal to the Supreme Court.

107. Appeal to the Supreme Court.
108. When magistrate to take a note of questions of law.
109. When copy of magistrate's note to be given.
110. Hearing of appeal.
111. Jurisdiction of Supreme Court.
112. Parties may agree not to appeal.
113. Removal of action only in manner provided by this Act.

Certiorari.

114. When action may be removed.

Order in lieu of Mandamus.

115. Rule or order substituted for writ of mandamus.

Prohibition.

116. Magistrate not to be served with notice of application for prohibition.

Practice in such cases.

117. Rule or summons to show cause why a writ of *certiorari* or prohibition should not be issued to be a stay of proceedings.

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

118. Notice of writ of *certiorari* or prohibition obtained *ex parte* to be given to clerk and parties.

119. Costs.

Local Courts.

PART VIII.—ENFORCEMENT OF JUDGMENTS.

Action on Judgment.

- Sec.
120. Action on judgment.
121. Clerk to issue warrants of execution.

Execution against Land.

122. Bailiff may take land.
123. Notice of sale.
124. Magistrate to execute conveyance or transfer.
125. Application of Sec. 133 of Transfer of Land Act, 1893.

Execution against Goods.

126. Bailiff may seize goods.
Exceptions.
127. Securities seized to be held by bailiff.
128. When goods taken in execution may be sold.
129. When goods seized landlord may claim certain rent in arrear.

Execution against the Person.

130. Power to commit.
131. Execution of warrant.
132. Discharge on payment of debt and costs.
133. Detention of person arrested.
134. Suspension of 34 Vict., No. 21, s. 3.

Execution at a distance.

135. How execution may be levied at a distance.

General provisions relating to execution.

136. Time of applications for warrants to be entered.
137. Priority of execution issuing out of Supreme Court and Local Court.

Sec.

138. Execution after default in instalment may be issued for whole sum.
139. Magistrate may suspend execution or order discharge in certain cases.
140. Execution to be superseded on payment of debt and costs.
141. Cross-judgments to be set off.
142. Judgment may be removed to Supreme Court.

Interpleader.

143. Interpleader.

Attachment of Debts.

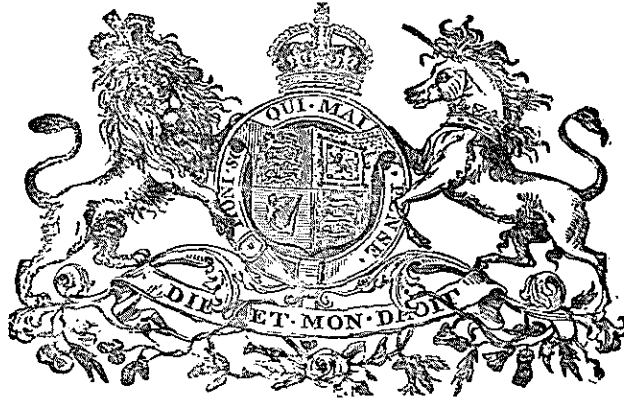
144. Examination of judgment debtor as to debts due to him.
145. Power to make garnishee order.
146. Service of garnishee order.
147. Execution against garnishee.
148. Trial of liability of garnishee.
149. Lien of third person on debt.
150. Trial of claim of third person.
151. Discharge of garnishee.
152. Attachment book.
153. Costs.

PART IX.—SUPPLEMENTARY PROVISIONS.

154. Nearest court, how determined.
155. Penalty for disobeying injunction or other order of the court.
156. Power of committal for contempt.
157. Payment of penalties, how enforced.
158. Power to make rules.
159. Fees.
160. Fees and fines to be paid to the Consolidated Revenue Fund.
161. Vacation.
162. Public holidays.

SCHEDULE.

WESTERN AUSTRALIA.



ANNO QUARTO

EDWARDI SEPTIMI REGIS,

XXVI.

No. 51 of 1904.

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

[Assented to 24th December, 1904.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Local Courts Act, 1904*. It is divided into Parts, as follows:—

Short title.
Division.

PART I.—PRELIMINARY, ss. 1-4.

PART II.—COURTS, MAGISTRATES, AND OFFICERS, ss. 5-29.

PART III.—JURISDICTION, ss. 30-39.

PART IV.—PROCEDURE, ss. 40-93.

PART V.—REFLEVIN, ss. 94-98.

PART VI.—RECOVERY OF POSSESSION OF LAND, ss. 99-106.

PART VII.—APPEALS, ss. 107-119.

PART VIII.—ENFORCEMENT OF JUDGMENTS, ss. 120-153.

PART IX.—SUPPLEMENTARY PROVISIONS, ss. 154-162.

Commencement.

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

Interpretation.

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;
- “Court” means a Local Court established under this Act;
- “Goods” includes money or bank-notes of any banking company established in Western Australia or elsewhere, and cheques, bills of exchange, promissory-notes, specialties, or other securities for money, and stock and shares, and other personal property of every kind;
- “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 resident or police 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 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.

PART II.—COURTS, MAGISTRATES, AND OFFICERS.

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.

Appointment of
Local Courts.

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.

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

Courts to be courts
of record.

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

Seal of the court.

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.

Appointment of
magistrates.

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

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

Magistrates may act
throughout State.

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.

Place and times of
sittings.

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 police or resident 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.

Page 110.

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.

13. For every court the Governor may appoint a clerk and assistant clerks, who shall be paid by salary.

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 complaints 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.

16. For every court there shall be one or more bailiffs, who shall be appointed by the Governor. Appointment of bailiffs.

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.

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

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.

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: Duties of bailiffs.

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 authorised by the magistrate.

19. A bailiff or other officer duly authorised to execute a warrant of execution issued under the authority of this Act may sell land or goods without taking out an auctioneer's license. Bailiff not required to take out auctioneer's license.

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 Remuneration of bailiffs.

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 & 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.

Cf. 51 & 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 one hundred pounds and full costs of action to any person who sues for the same.

Remedies against and penalties on bailiffs and other officers for misconduct.

Cf. 51 & 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 ten pounds 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.

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 forty shillings.

No officer to be deemed a trespasser by reason of irregularity.
Cf. 51 & 52 Vict., c. 43, s. 52.

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.

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

27. An action or prosecution shall not be commenced against a person for anything done, or omitted to be done, in pursuance or in contravention of this Act, unless it is commenced within six months after the act was committed or omitted.

Limitations of actions.
Cf. 51 & 52 Vict., c. 43, ss. 53, 54.

Notice in writing of the action and of the cause of action shall be given to the defendant one month at least before the commencement of the action, and a plaintiff shall not recover in the action if tender of sufficient amends is made before action brought, or if, after action brought, a sufficient sum of money with costs is paid into court by the defendant.

Legal Practitioners.

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

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

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

Appearance may be in person or by a legal practitioner.
Cf. 51 & 52 Vict., c. 43, s. 72.

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.

PART III.—JURISDICTION.

As to Subject-matter.

30. All personal actions in which the amount claimed is not more than one hundred pounds, 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 one hundred pounds or less, by payment or otherwise, or by deducting any sum for which the plaintiff gives the defendant credit upon the plaint being entered:

In personal actions.
Cf. 51 & 52 Vict.,
c. 43, ss. 56, 57;
3 Edw. VII., c. 42,
s. 3.

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.

Cf. 51 & 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 one hundred pounds, 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.

Cf. 51 & 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 one hundred pounds, the person seeking to enforce the claim or demand may sue for and recover it in a Local Court.

Powers of court.

36 & 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.

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 two, no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counterclaim:

Counterclaims.

36 & 37 Vict., c. 66,
s. 90.

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.

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

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

(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.

(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.

Ibid.

Rules of law to apply to all Local Courts.

36 & 37 Vict., c. 66, s. 91.

35. The several rules of law enacted and declared by the Supreme Court Act, 1880, 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.

As to Locality.

Where action may be commenced.

Cf. 58 Vict., No. 13, s. 4;
51 & 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.) by leave of the magistrate or clerk, 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.) with the like leave, in the court held nearest to the place where the cause of action or claim wholly or in part arose.

Court where magistrate can sue and be sued.

Cf. 51 & 52 Vict., c. 43, s. 22.

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.

Actions against officers.

Cf. 51 & 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.

Consent Jurisdiction.

Consent jurisdiction.

Cf. 58 Vict., No. 13, s. 5;
51 & 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.

40. (1.) On the application of a person desirous of bringing an action in a Local Court, the clerk shall enter in a book to be kept for the purpose in his office a plaint in writing, stating the names and the last known places of residence of the parties and the substance of the action intended to be brought. The plaints shall be numbered in every year according to the order in which they are entered.

Action commenced by plaint.
27 Vict., No. 21, s. 9;
51 & 52 Vict., c. 43, s. 73.

(2.) Upon the plaint being entered, a summons stating the substance of the action, and bearing the number of the plaint on the margin, shall be issued under the seal of the court in the prescribed form, and shall be served on the defendant at the prescribed time and in the prescribed manner.

Ordinary summons.

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

41. In any action for a debt or liquidated demand in money, with or without interest, arising upon a contract, express or implied, the plaintiff may, at his option, cause to be issued a summons in the ordinary form, or (upon filing an affidavit verifying the debt or demand) a default summons in the prescribed form.

Default summons.
Cf. 27 Vict., No. 21, s. 87;
51 & 52 Vict., c. 43, s. 86.

There shall be indorsed upon or annexed to every default summons a statement in the prescribed form of the particulars of the plaintiff's claim.

42. A default summons shall be served personally, unless the magistrate otherwise orders.

Service of default summons.

43. Where personal service of a default summons cannot be effected, and the magistrate is satisfied by affidavit that reasonable efforts have been made to effect such service, the magistrate may order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions (if any) as he may think fit.

Substituted service.
Cf. 58 Vict., No. 13, s. 9;
51 & 52 Vict., c. 43, s. 86 (5).

44. Where any summons or other process is served by a bailiff or police officer the service may be proved by indorsement on a copy of the summons or process setting forth the day, place, and mode of service.

Proof of service by bailiff or police officer.
Cf. 58 Vict., No. 13, s. 12;
51 & 52, Vict., c. 48, s. 78.

The signature to an indorsement shall be *prima facie* evidence that the indorsement was signed by the person whose signature it purports to be.

Any false statement in an indorsement of service shall render the person making the same liable, on summary conviction, to imprisonment, with or without hard labour, for not exceeding six months.

Notice of defence to default summonses. 51 & 52 Vict., c. 43, s. 86.

45. (1.) If a default summons is issued, and the defendant does not, within eight days after service of the summons, inclusive of the day of service, or within such further time as may be prescribed, give notice in writing, signed by himself or his solicitor, to the clerk of the court from which the summons was issued, of his intention to defend, the plaintiff may, after eight days, or such further period as aforesaid, and within six months from the day of service, upon proof of service, or of an order to proceed as if personal service had been effected, have judgment entered up against the defendant for the amount of his claim and costs, such costs to be taxed.

(2.) The order upon such judgment shall be for payment forthwith, or at such time or times, and by such instalments, if any, as the plaintiff or his solicitor shall, in writing, have consented to take at the time of entry of the plaint or of the judgment.

(3.) If the defendant gives notice of defence, the clerk shall forthwith send a letter to the plaintiff or his solicitor, by post, stating therein that the defendant has given such notice, and shall send by post to both plaintiff and defendant notice of the day upon which he has fixed that the trial shall take place, at least six days before the day so fixed.

(4.) If the defendant neglects to give such notice, the magistrate may, upon an affidavit disclosing a defence upon the merits, and satisfactorily explaining his neglect, let in the defendant to defend upon such terms (if any) as he may think just.

When some defendants give notices of defence and others do not. Q. 1891, No. 33, s. 76.

46. When there are several defendants to a default summons, of whom one or more give notice of defence, and another or others of them fail to give notice of defence, the plaintiff may sign judgment against such of them as have not given notices of defence, and may issue execution upon the judgment without prejudice to his right to proceed with his action against such as have given notices of defence.

Judgment by default may be set aside. Cf. Vict. C.C. Act, 1900, s. 64, s.s. (9.)

47. Any judgment by default entered upon a default summons may be set aside by the magistrate upon such terms as to costs or otherwise as the magistrate may think fit.

Special Defences and Counterclaims.

Notice of special defence. Cf. 27 Vict., No. 21, s. 19; 51 & 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.

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.

Payment into court.
Cf. 27 Vict., No. 21,
s. 24;
51 & 52 Vict., c. 43,
s. 107.

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.

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

Confession of or agreement as to debt.

(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

Cf. 27 Vict., No. 21,
s. 38 ;
51 & 52 Vict., c. 43,
s. 98.

(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, or a justice of the peace.

Judgment on such confession or agreement.

Cf. 27 Vict., No. 21, s. 39;
51 & 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.

Proceedings by husband and wife.
N.S.W., 1901, No. 4, s. 43.

52. In proceedings under this Act by a man and his wife for an injury done to the wife in respect of which she is necessarily joined as a co-plaintiff, the husband may add claims in his own right.

In the case of the death of either of them, the action, so far only as relates to the causes of action, if any, which do not survive, shall abate.

Bankruptcy not to cause action to abate if trustee elects to continue it.
Cf. 27 Vict., No. 21, s. 111;
51 & 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 & 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.

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.

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

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

Infants.

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.

Provided, also, that any minor above the age of eighteen years may sue or be sued without a next friend or guardian, upon any cause of action within the jurisdiction of the court in respect of which he might sue or be sued by next friend or guardian; and judgment may be given in any such action, and such proceedings may be had and taken as if the minor were of the full age of twenty-one years.

Joinder and Severance of Causes of Action.

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.

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

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 one hundred pounds, 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 demands.
Cf. 27 Vict., No. 21,
s. 11;
Cf. 51 & 52 Vict.,
c. 43, s. 81.
3 Edw. VII., c. 42,
s. 3.

60. If a defendant has given two or more bills of exchange, promissory notes, bonds, or other securities, for a debt or sum

Splitting debt by
giving bills, etc.
N.S.W., 1901, No. 4,
s. 45.

originally exceeding one hundred pounds, the plaintiff may sue separately upon each of the securities not exceeding one hundred pounds as forming a distinct cause of action.

Changing Venue.

Magistrate may change venue.
Cf. 51 & 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 proceedings 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.
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.
27 Vict., No. 21, s. 79;
Cf. 51 & 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 expenses is made on the prescribed scale, 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 fifty pounds, 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.
Q., 1891, No. 33, s. 104.

64. 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.

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.

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

(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.

Ibid., s. 77.

66. Upon the application of any party to an action or matter, the magistrate may order that—

Discovery of documents.

(a.) the party against whom such application is made; or

Cf. Vict. C.C. Act,
1890, s. 79.

(b.) if such party is a body corporate, some officer to be named of such body corporate

N.S.W., 1901, No. 4,
s. 69.

shall answer, on affidavit, stating what documents he or they has or have in his or their possession or power relating to the matters in dispute, or what he knows as to the custody such documents or any of them are in, and whether he or they objects or object to the production of such as are in his or their possession or power, and if so, on what grounds:

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.

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.

Inspection of documents.

Cf. Vict. C.C. Act,
1890, s. 78.

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.

68. A magistrate shall, in the exercise of the powers conferred by the two last preceding sections, have and exercise the same power

Mode of enforcing discovery.

Vict. C.C. Act,
1890, s. 80.

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*.
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 miles 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 to some place beyond the said distance,

take in court or in chambers, or authorise 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.

70. The magistrate shall, in all actions or proceedings in the court, determine all questions of law and of fact.

Proceedings at the trial when both parties appear.
51 & 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 & 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.

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.

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.

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.

76. Where a defendant appearing at the hearing, either in person or by a solicitor or by some other person duly authorised 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 five pounds.

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.

Proceedings when defendant does not appear.

Cf. 27 Vict., No. 21, s. 22; 51 & 52 Vict., c. 43, ss. 90, 91.

Proceedings where defendant's set-off or counterclaim exceeds plaintiff's claim.

N.S.W., 1901, No. 4, s. 63.

Magistrate may grant time or adjourn.

51 & 52 Vict., c. 43, s. 106.

Where defendant appears and admits claim.

51 & 52 Vict., c. 43, s. 92.

Reference to clerk.

Ibid.

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.
51 & 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 authorised 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 & 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 & 52 Vict., c. 43, s. 113.

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 & 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.

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

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

86. With respect to any action brought in the Supreme Court which could have been commenced in a Local Court, the following provisions shall apply:—

Costs when not recoverable except on certificate or order.

- (1.) If in an action founded on contract the plaintiff recovers a sum less than twenty pounds, he shall not be entitled to any costs of the action; and if he recovers a sum of twenty pounds or upwards, but not exceeding fifty pounds, he shall not be entitled to any more costs than he would have been entitled to if the action had been brought in a Local Court; and
- (2.) If in an action founded on tort the plaintiff recovers a sum less than ten pounds, he shall not be entitled to any costs of the action; and if he recovers a sum of ten pounds or upwards, but not exceeding twenty pounds, he shall not be entitled to any more costs than he would have been entitled to if the action had been brought in a Local Court,

51 & 52 Vict., c. 43, s. 116.
Cf. 3 Edw. VII., c. 42, s. 3.

unless in any such action, whether founded on contract or on tort, a Judge of the Supreme Court certifies that there was sufficient reason for bringing the action in that court, or unless the Supreme Court or a Judge thereof shall by order allow costs:

Provided that, if in any action founded on contract the plaintiff within twenty-one days after service of the writ, or within such further time as may be ordered by the Supreme Court or a Judge thereof, obtains an order in chambers under the rules of the Supreme Court, empowering him to enter judgment for a sum of twenty pounds or upwards, he shall be entitled to costs according to the scale for the time being in use in the Supreme Court.

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 one hundred pounds, is reduced by payment into Court, an admitted set-off, or otherwise, to a sum not exceeding one hundred pounds, 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.

Removal of action to Local Court.

Cf. 27 Vict., No. 21, s. 85;
51 & 52 Vict., c. 43, ss. 65, 69.

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 & 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.

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.

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

Judgment and New Trial.

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 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.

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

91. When judgment is obtained for a sum not exceeding twenty pounds, 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.

When judgment does not exceed twenty pounds magistrate may order payment by instalments.
Cf. 27 Vict., No. 21, s. 95;
51 & 52 Vict., c. 43, s. 105.

Arbitration.

92. The magistrate may, with the consent of both parties to an action, 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.

Power to refer to arbitration.
Cf. 27 Vict., No. 21, s. 70;
51 & 52 Vict., c. 43, s. 104.

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

Cf. 27 Vict., No. 21,
s. 99;
51 & 52 Vict., c. 43,
s. 138.
3 Edw. VII., c. 42,
s. 3.

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 authorising and requiring the bailiff of the court to give possession of the land to the plaintiff.

Possession may be recovered for non-payment of rent.

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

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

100. When the rent of any land, of which the rent payable does not exceed one hundred pounds 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 a 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.

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 landlord's 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, authorising 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.

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 one hundred pounds.

Plaintiff may claim for rent and mesne profits.

Cf. 27 Vict., No. 21, s. 100; 51 & 52 Vict., c. 43, s. 138.

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.

Sub-tenant served with summons must give notice to his immediate landlord.

27 Vict., No. 21, s. 102.
Cf. 51 & 52 Vict., c. 43, s. 140.

103. If any person shall, without right, title, or license, be in possession of any land the value whereof does not exceed one hundred pounds 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.

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

N.Z., 1893, No. 55, s. 178.

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 authorising 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 one hundred pounds, for damages for such occupation subsequently to the service of such notice.

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

Service of summons in action to recover possession of land.

27 Vict., No. 21, s. 103.

Cf. 51 & 52 Vict., c. 43, s. 141.

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.

Rule or order substituted for writ of mandamus.

Cf. 27 Vict., No. 21, s. 94; 51 & 52 Vict., c. 43, s. 131.

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.

Prohibition.

Magistrate not to be served with notice of application for prohibition.

Cf. 51 & 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 & 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.

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.

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 & 52 Vict., c. 43, s. 130.

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.

Costs.

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

PART VIII.—ENFORCEMENT OF JUDGMENTS.

Action on Judgment.

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.

Action on judgment.

Q., 1891, No. 33, s. 160.

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

Clerk to issue warrants of execution.

Cf. 27 Vict., No. 21, s. 27;
51 & 52 Vict., c. 43, s. 146.

Execution against Land.

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.

Bailiff may take land.

Q., 1891, No. 33, s. 162.

123. Instead of making an actual seizure of land under a warrant of execution in order to authorise 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.

Notice of sale.

Q., 1891, No. 33, s. 163.

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. 16k.

124. When the right, title, and interest 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 sec. 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 *feri 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.
Cf. 27 Vict., No. 21,
s. 49;
51 & 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:

Exceptions.

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

Wearing apparel of such person to the value of five pounds, and of his wife to the value of five pounds, and of his family to the value of two pounds for each member thereof dependent on him; bedding to the value of five pounds, and an additional sum of one pound for each member of his family dependent on him; implements of trade to the value of five pounds; family photographs and portraits.

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

127. The bailiff shall hold any cheques, bills of exchange, promissory notes, specialties 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.

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.

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

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.

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.

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

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.

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

(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.

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 pay-
ment 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.

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 the prison nearest to the place where he was arrested.

Detention of person arrested.
Q., 1891, No. 33, s. 172.

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 & 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 authorised and required to act in all respects as if the original warrant of execution or 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 & 52 Vict., c. 43, ss. 146, 147.

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

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

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 & 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.

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

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.

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.

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

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.

142. If a Judge of the Supreme Court is satisfied that a party against whom judgment for an amount exceeding twenty pounds 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.
Cf. 58 Vict., No. 13, s. 23;
51 & 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 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.

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

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.

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 magistrate for an order that the judgment debtor be orally examined as to whether any and what debts are owing to him; and the magistrate may make an order for the examination of the judgment debtor, and for the production of any books, deeds, papers, or writings.

Examination of judgment debtor as to debts due to him.
N.S.W., 1901, No. 4, s. 96.

(2.) Every judgment debtor who refuses or neglects to obey such order shall be subject to the penalties to which a witness duly summoned to attend in court and failing to appear at the time appointed would be subject.

Power to make
garnishee order.

58 Vict., 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 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 & 34 Vict.,
c. 30, s. 1.

Service of garnishee
order.

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.

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.

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.

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.

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.

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

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.

Discharge of gar-
nishee.
53 V. ct., No. 13, s. 30.

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.

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

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

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

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.

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

PART IX.—SUPPLEMENTARY PROVISIONS.

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

Nearest court, how
determined.

(a.) where the defendant or one of the defendants resides or carries on business, or resided or carried on business at any time within six months next before the entry of the plaint; or

(b.) where the cause of action wholly or in part arose; or

(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 five miles at the least.

Penalty for disobeying injunction or other order of the court.

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 ten pounds 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.

51 & 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 ten pounds, 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.

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

Power to make rules.
Cf. 27 Vict., No. 21, s. 74; 51 & 52 Vict., c. 43, s. 164.

- (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.

(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.

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.

Fees.
Cf. 51 & 52 Vict., c. 43, s. 165.

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.

A table of the fees shall be exhibited in some conspicuous place in the court-house, and in the clerk's office.

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.

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

161. A vacation shall be observed in every Local Court from the twentieth day of December to the eighteenth day of January, both inclusive, during which period the court shall not sit: Provided that every court shall continue open for the entry of plaints, the issue of process, and the receipt and payment out of money due under any order of the court, pursuant to the rules of court in force for the time being.

Vacation.

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.

Public holidays.

Section 4.

SCHEDULE.

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.