

New Parliament.

Hon. Mr. Stout.

LOCAL COURTS.

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A BILL INTITULED

Title. AN ACT to abolish District and Resident Magistrates' Courts, and to provide Local Courts in lieu thereof.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. The Short Title of this Act is "The Local Courts Act, 1884."

Commencement of Act.

2. This Act shall come into force on the first day of *March*, one thousand eight hundred and eighty-five, except that all sections authorizing respectively the establishment of Courts, the appointment of the officers thereof, the framing of a code of procedure therein, the appointment of fees, and all other matters incident to the full constitution of such Courts, shall come in force on the passing hereof.

Continuance of actions commenced before passing of Act.

3. Actions commenced prior to the first day of *March*, one thousand eight hundred and eighty-five, in any District Court or Resident Magistrate's Court shall be continued in the Court nearest to the District Court or Resident Magistrate's Court in which the said actions would have been heard but for the passing of this Act, and according to the procedure prescribed by or under this Act.

When such Court has not the requisite jurisdiction, such actions shall be continued in the nearest Court having jurisdiction to try the same.

Repeal.

4. The several Acts and parts of Acts mentioned in the *First* Schedule hereto are hereby repealed.

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5. In this Act, and in the Schedules thereto, if not inconsistent with the context,— Interpretation.

- “Action” means any action, suit, or other civil proceeding in a Court :
- “Clerk,” or “bailiff,” means respectively the Clerk or bailiff of a Court :
- 5 “Counter-claim” includes a set-off :
- “Court” means a Court constituted under this Act.

6. Every Act of the Legislature of New Zealand in force and not hereby repealed shall be read and construed as follows :— How collateral Acts are to be read.

- 10 As if the words “Local Courts Act, 1884,” appeared in the place of the words “District Courts Act, 1858,” or “Resident Magistrates Act, 1867,” or any Acts amending the same respectively :
- As if the words “Stipendiary Magistrate with extended jurisdiction” appeared in the place of the words “Judge of District Court :”
- 15 As if the words “Stipendiary Magistrate” appeared in the place of the words “Resident Magistrate :”
- As if the words “Clerk of Local Court” appeared in the place of the words “Clerk of District Court” or “Clerk of Resident Magistrate’s Court :”
- 20 As if the words “bailiff of Local Court” appeared in the place of the words “bailiff of District Court” or “bailiff of Resident Magistrate’s Court.”

Provided that this section shall be read subject to the special provisions of section twelve hereof.

7. No Stipendiary Magistrate, Clerk, bailiff, or other officer shall, by reason of his appointment to any office under this Act, lose the benefit of any claim to Pension rights, &c., preserved. superannuation or retiring allowance under any Act in force at any time before the passing of this Act, and which he may claim to be entitled to by virtue of any office then or previously held by him.

CONSTITUTION OF COURTS.

8. There shall be within the colony Courts of record, possessing civil jurisdiction, to be called “Local Courts.” Courts constituted.

Subject to the provisions of this Act, such Courts shall, as to matters over which they are hereby given jurisdiction, have all such powers of Courts of law and equity as are or may be possessed by the Supreme Court of New Zealand.

35 Any power, authority, or discretion vested in the Court shall and may be possessed and exercised by a Stipendiary Magistrate thereof.

9. The Governor may from time to time, by Proclamation in the Gazette, appoint, throughout the colony or in any parts thereof, places whereat and wherein such Courts shall respectively be held, and such places may alter or abolish. Courts located and named.

Such Courts shall be held on such days and times as may from time to time be fixed by the Stipendiary Magistrate thereof.

10. The Governor may appoint fit and proper persons, being Justices of the Peace, to preside over such Courts, and to exercise the ordinary or the extended jurisdiction hereinafter described as the Governor shall appoint in each case, who shall be called “Stipendiary Magistrates,” and shall hold office at the pleasure of the Governor, and shall be paid such salaries as may be appropriated by the General Assembly. Appointment of Stipendiary Magistrates. Tenure of office.

50 The office of Stipendiary Magistrate may be held in conjunction with any other office which the Governor shall not deem incompatible.

No Stipendiary Magistrate shall practise as a barrister or solicitor, and no person shall be appointed to have the extended jurisdiction unless he is a barrister or solicitor of the Supreme Court. No Stipendiary Magistrate to practise as a barrister or solicitor, or be appointed to have extended jurisdiction unless a barrister or solicitor.

Powers and functions
of Stipendiary
Magistrates.

11. Each Stipendiary Magistrate, by virtue of his office, shall—

- (1.) Exercise only the ordinary jurisdiction hereinafter provided for, unless appointed to exercise the extended jurisdiction of the Court :
- (2.) Have all such powers, unless otherwise provided, as now are or hereafter may be exercised by two Justices of the Peace :
- (3.) Be a Coroner for the colony.

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Special jurisdiction.

12. The Governor may appoint any Stipendiary Magistrate or Stipendiary Magistrates who have the power to exercise the extended jurisdiction of the Court—

In bankruptcy.

- (1.) To have all the powers of a Judge in Bankruptcy, to exercise jurisdiction in all or any matters relating to bankruptcy :

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In mining cases.

- (2.) To exercise the jurisdiction heretofore conferred upon District Courts in all or any matters under "The Mines Act, 1877," and "The Mining Companies Act, 1872," and the several Acts amending the same.

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The Governor may at any time revoke or cancel any such appointment as to any or all of the Stipendiary Magistrates so named, and on such revocation or cancellation being gazetted the powers conferred by this section shall cease as to such Stipendiary Magistrates.

No Stipendiary Magistrate shall have or may exercise the powers to be conferred under this section unless specially appointed by the Governor to have such jurisdiction, anything contained in section *six* hereof notwithstanding.

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Deputy Stipendiary
Magistrates.

13. The Governor may appoint a fit and proper person to act as Deputy Stipendiary Magistrate in case of the death, illness, or absence of a Stipendiary Magistrate, or when a Stipendiary Magistrate shall certify that he is unable to perform his duties by reason of being engaged in the performance of other duties appertaining to his office.

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Such deputy, during the time he shall so act, shall—

Have all the powers and privileges, and perform all the duties, of the Stipendiary Magistrate for whom he has been appointed deputy :

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Not be precluded from practising his profession of a barrister or solicitor, except in the Court of which he is Deputy Stipendiary Magistrate, during such time as he is so acting.

Duties of deputies.

14. Subject to the Governor's pleasure, the appointment of such deputy shall continue until he shall receive from the Stipendiary Magistrate a certificate under his hand to the effect that he has resumed his duties, or until the appointment of a successor to such Stipendiary Magistrate shall be gazetted.

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A Stipendiary Magistrate not to sue or be sued in his own Court.
Clerk may adjourn Court.

15. A Stipendiary Magistrate may sue and be sued in any Court wherein he does not preside.

16. If for any cause a Court cannot be held upon a day appointed, the Clerk may adjourn it to such day as the Stipendiary Magistrate shall direct, or, in the absence of such direction, to such day as the Clerk may deem expedient.

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Appointment of
Clerks.

17. There may be for each Court a Clerk, who shall be appointed by and hold office during the pleasure of the Governor.

The Clerks of Resident Magistrates' Courts in office at the time of the commencement of this Act shall be the Clerks of the Courts taking the place of such Resident Magistrates' Courts respectively as if their appointments had been made under this Act.

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Duties of Clerk.

18. The Clerk shall perform and exercise the following general duties and powers :—

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- (1.) Issue all summons, warrants, executions, and other process required to be issued out of the Court, and keep a register thereof, and of all

returns thereto, and of all orders and judgments and other proceedings of the Court :

(2.) Receive and keep account of all moneys paid into or out of Court :

(3.) And generally all other acts and duties incident to the office of Clerk.

5 19. The register and account of the several matters and things hereinbefore required to be kept by the Clerk shall be kept by entries in books belonging to the Court which shall be kept by the Clerk for the purpose. Records as kept by Clerk to be evidence.

20. A Stipendiary Magistrate may appoint from time to time a deputy to act for a Clerk when he shall be prevented by illness or other cause from acting in his office ; and, in the case of the death of a Clerk, may appoint a deputy till the Governor's pleasure shall be known, and remove any such deputy at his pleasure. Deputies to Clerks.

15 A deputy, while acting under such appointment, shall have the like powers and privileges, and shall perform the same duties, and be subject to like provisions and penalties, as if he were Clerk for the time being.

21. There may be a bailiff and assistant bailiffs, and such other ministerial officers of each Court as may be necessary, who shall be appointed by and hold office during the pleasure of the Governor. Appointment of bailiffs.

20 The bailiffs and assistant bailiffs of Resident Magistrates' Courts in office at the time of the commencement of this Act shall be the bailiffs and assistant bailiffs of the Courts taking the place of such Resident Magistrates' Courts respectively as if their appointments had been made under this Act.

22. The bailiff shall—

Be sworn as, and have the powers of, a constable : Powers and duties of bailiffs.

25 Attend each sitting of the Court to which he is appointed for such time as shall be required, unless his presence be excused by the Court :

Serve all summons and orders and execute all writs issued out of any Court and coming to his hands for the purpose of such service or execution :

30 Conform to all rules and regulations affecting the execution of his office and subject thereto to the directions of the Court : and

35 Be answerable for all acts and defaults of himself and those acting under him and by his authority, in like manner as any Sheriff in New Zealand is responsible for the acts and defaults of himself and his officers.

In executing any process of the Court the bailiff shall have such powers and be subject to such liabilities as a Sheriff hath or is subject to in like cases in executing the process of the Supreme Court.

40 23. A Stipendiary Magistrate may appoint from time to time a deputy to act for a bailiff when he shall be prevented by illness or other cause from acting in his office ; and, in the case of the death of a bailiff, may appoint a deputy till the Governor's pleasure shall be known, and remove any such deputy at his pleasure. Deputies to bailiffs.

45 A deputy, while acting under such appointment, shall have the like powers and privileges, and shall perform the same duties, and be subject to like provisions and penalties, as if he were bailiff for the time being.

50 24. If a bailiff shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of a Court, the person so offending shall be liable to a fine not exceeding *twenty* pounds, to be recovered by order of the Court or before any two Justices of the Peace in a summary way, and such bailiff or any constable in any such case may take the offender into custody (with or without warrant) and bring him before such Court or Justices accordingly. Protection of bailiffs.

Neglect by bailiff.

25. In case a bailiff employed to levy an execution shall, by neglect, connivance, or omission, lose the opportunity of so levying, then, upon complaint of the party aggrieved by reason of such neglect, connivance, or omission (and the fact alleged being proved to its satisfaction), the Court shall order such bailiff to pay such damages as it shall appear the complainant has sustained, not exceeding in any case the sum for which the execution issued; and, on his refusal so to do, such order may be enforced by such ways and means as are provided for enforcing a judgment of the Court. 5

**Misconduct of bailiff.
Inquiry by Court.**

26. If any bailiff or other officer of the Court, acting under colour or pretence of the process of the Court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied or received by him under the authority of this Act, the Court may inquire into such matter in a summary way, and for that purpose may summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in an action may be enforced. 10 15

**Order of Court
thereupon.**

27. The Court may make such order thereupon for the payment of any money extorted, or for the due payment of any money so levied or received as aforesaid, and for the payment of such damages and costs as it shall think just, and also, if it shall think fit, may impose such fine upon the bailiff or officer, not exceeding *ten* pounds for each offence, as it shall deem adequate, and, in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in a Court. 20

Seal of Court.

28. Each Court shall have a seal, and all summonses and processes shall be sealed therewith. 25

JURISDICTION.

Jurisdiction.

29. The Court shall have jurisdiction in civil cases classed into "ordinary" and "extended."

Ordinary jurisdiction.

30. The ordinary jurisdiction shall include the following cases:—

- (a.) Breach of contract, or tort, where the amount claimed does not exceed fifty pounds: 30
- (b.) Debt, where the sum claimed does not exceed fifty pounds, whether such sum be the original amount of the debt, or a balance after allowing payment on account or the amount of a set-off admitted by the plaintiff: 35
- (c.) The enforcement of claims upon and the recovery of possession of some specific movable property the value whereof does not exceed fifty pounds: 35
- (d.) The recovery of possession of land, with or without arrears of rent or mesne profits, where the claim is alleged to have arisen on the determination of a hiring at a rental not exceeding the rate of fifty-three pounds by the year: 40
- (e.) Interpleader, where the value of the subject-matter in dispute does not exceed fifty pounds:
- (f.) Where the parties agree, by writing signed by them or their solicitors, that, whatever the amount or value of the subject-matter (provided the case be otherwise within the jurisdiction), the Court shall have jurisdiction. 54

**Power to give
further ordinary
jurisdiction.**

Where, at the time this Act comes into force, a Resident Magistrate's Court has jurisdiction up to one hundred pounds, the Governor in Council may declare that the Court established under this Act, in lieu of such first-mentioned Court, shall have ordinary jurisdiction up to a like sum; and in such case the provisions of this Act applicable to ordinary jurisdiction shall extend and apply to such Court accordingly. 50

**Extended
jurisdiction.**

31. The extended jurisdiction shall include the following cases:— 55

- (a.) Claims within the ordinary jurisdiction:
- (b.) Breach of contract, or tort, where the amount claimed does not exceed one hundred and fifty pounds:

- (c.) Debt, where the sum claimed does not exceed one hundred and fifty pounds, whether such sum be the original amount of the debt, or be a balance after allowing payments on account or the amount of a set-off admitted by plaintiff :
- 5 (d.) The enforcement of claims upon and the recovery of possession of some specific moveable property the value whereof does not exceed one hundred and fifty pounds :
- (e.) The recovery of possession of land, with or without arrears of rent or mesne profits,—
- 10 (1.) Where the claim is alleged to have arisen on the determination of a hiring at a rental not exceeding the rate of one hundred and fifty pounds by the year ;
- (2.) In other cases, where the value of the land does not exceed one hundred and fifty pounds :
- 15 (f.) Disputes between partners, where the amount involved does not exceed one hundred and fifty pounds :
- (g.) The recovery of a specific or pecuniary legacy or share of residue not exceeding in value or amount one hundred and fifty pounds :
- (h.) Interpleader, where the value of the subject-matter in dispute is not
- 20 more than one hundred and fifty pounds :
- (i.) The granting and dissolution of injunctions to prevent irreparable injury to property, being the subject-matter of an action :
- (j.) Where the parties agree by writing, signed by them or their solicitors, that, whatever the amount or value of the subject-matter (provided
- 25 the case be otherwise within the jurisdiction), the Court shall have jurisdiction.

32. If upon the day appointed for the sitting of a Court the Stipendiary Magistrate thereof cannot or does not attend, any other Stipendiary Magistrate may sit in his stead ; but no Stipendiary Magistrate sitting in the place of

30 another shall thereby exercise more than the ordinary jurisdiction, unless he and the Stipendiary Magistrate in whose place he is sitting shall be Stipendiary Magistrates respectively having extended jurisdiction.

Stipendiary Magistrates may act for one another.

33. If upon the day appointed for the sitting of a Court no Stipendiary Magistrate shall attend, two or more Justices of the Peace may hold a Court

35 without any Stipendiary Magistrate, and hear and determine the following cases :—

Powers of Justices of Peace to hold a Court.

- (1.) Breach of contract, or tort, where the amount claimed does not exceed twenty pounds :
- (2.) Debt, where the sum does not exceed twenty pounds, whether such
- 40 sum be the original amount of the debt, or a balance after allowing payment on account or the amount of a set-off admitted by the plaintiff :
- (3.) Where the plaintiff seeks to enforce a claim upon and to be put in possession of some specific moveable property the value whereof does
- 45 not exceed twenty pounds.

34. Any matter standing for hearing on a Court-day when the Stipendiary Magistrate is absent, and when some other Stipendiary Magistrate or two or more Justices of the Peace shall be sitting in his stead, shall, if beyond the jurisdiction of the Stipendiary Magistrate or Justices so sitting but within the

50 jurisdiction of the Stipendiary Magistrate of the said Court, stand adjourned to the next sitting of the Court, unless the parties shall agree to an adjournment to some other day, in which case the matter in question shall stand adjourned to such day. No fee shall be charged for such adjournment.

Adjournment of matters beyond jurisdiction.

35. No Court shall have cognizance of any action in which the validity of

55 any devise or bequest shall be in question, or the limitations under any will or settlement shall be disputed, or of any action for malicious prosecution, seduction, breach of promise of marriage, libel, or slander.

Matters not within jurisdiction.

Title incidentally in question.

36. If in an action in a Court in its ordinary jurisdiction any question of title to corporeal or incorporeal hereditaments shall incidentally arise, 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 thereon shall not be evidence of title between the parties or their privies in any proceeding in that or any other Court. **5**

A minor may sue for wages.

37. A minor may sue in a Court for wages or piecework, or for work as a servant, as if of full age.

Division of a cause of action not allowed.

38. A cause of action may not be divided for the purpose of bringing two or more actions or setting up two or more counter claims. **10**

Claim may be reduced to jurisdiction.

39. A person having a cause of action which, but for the largeness of the amount claimed, might have been tried in a Court, may bring it within the jurisdiction of such Court by alleging in his statement of claim or counter-claim that he abandons the excess.

The judgment of the Court thereupon shall be a full discharge of all demands in respect of such cause of action. **15**

No privilege to solicitors.

40. No privilege shall be allowed to any solicitor or other person to exempt him from the jurisdiction of a Court.

Judgment of Supreme Court not to be sued on. Court to determine both fact and law.

41. No action shall be brought in a Court on a judgment of the Supreme Court.

42. The Court shall determine all questions as well of fact as of law. **20**

ARBITRATION.

Reference to arbitration.

43. The Court may with the consent of both parties order any action, with or without other matters within its jurisdiction in dispute between the parties, to be referred to arbitration to such persons and in such manner and on such terms as it shall think reasonable. Such reference shall not be revocable by either party except by the consent of the Court, and the award shall be entered and be binding and effectual as a judgment of the Court. **25**

Awards may be set aside.

44. The Court may, on application of either party, at the first sitting held after the expiration of ten days after the entry of any such award as a judgment of the Court, set aside such award and judgment so entered, or may, with the assent of both parties, revoke the reference, or order another reference to be made in manner aforesaid. Execution on a judgment so entered shall not issue until after such first sitting shall have been held. **30**

Proceedings on application to set aside awards.

45. The party intending to make application to set aside such award and judgment shall, within six days after such judgment shall have been entered give notice in writing to the opposite party of his intention so to apply, and shall file a copy of such notice in the Court, and shall, at the time of filing such notice, give sufficient security for the payment of the costs incurred in hearing and determining the said application. **35**

Award to stand if no appearance by applicant.

46. In the event of there being no appearance by the applicant at the time appointed for hearing the same, the application shall be dismissed with costs, and the award and judgment shall stand. **40**

Hearing of application.

47. In the event of there being no appearance by or on behalf of the party upon whom notice was served to appear in support of such award and judgment, and upon proof to the satisfaction of the Court of due and proper service of such notice, the Court may proceed to hear the matter *ex parte*, and amend, or cancel, or confirm such award and judgment as it shall see fit. **45**

Grounds of application.

48. The only grounds upon which an application to set aside or vary any award and judgment entered as aforesaid can be made shall be as follows:— **50**

(1.) That the award upon which a judgment has been entered has been made clearly contrary to the evidence given before the arbitrators:

(2.) That proper evidence tendered by the objector at the hearing before the arbitrators has been refused by the arbitrators: **55**

(3.) That witnesses summoned to attend before the arbitrators could not attend by reason of sickness or other unavoidable cause, and that a reasonable application for an adjournment of the hearing by such arbitrators was refused:

- (4.) That the terms and conditions or the mode of proceedings laid down by the Court on granting the reference to arbitration have not been complied with, to the prejudice of the interests of the objector :
- (5.) That some clear and undoubted error has been made by the arbitrators in entering up their award :
- (6.) That the judgment of the Court entered upon such erroneous award is wrong ; or that judgment of the Court entered from an award does not correspond with or carry out the intention of such award.

reference to arbitration
reference to arbitration
reference to arbitration

49. On the hearing of applications to set aside or vary an award and judgment entered thereupon, the Court shall take evidence if offered, or may of its own accord call for evidence ; and the decision of the Court given after hearing such applications shall be entered as a judgment of the Court, and shall be final.

Judgment on application.

RECOVERY OF POSSESSION OF TENEMENTS.

50. When the term and interest of the tenant of any house, land, or other tenement held by him at will or for any term of years, where the rent payable in respect thereof is within the jurisdiction of the Court, has expired, or been determined, either by the landlord or tenant, by a legal notice to quit, and such tenant, or any person holding or claiming by, through, or under him, shall neglect or refuse to deliver up possession accordingly, the landlord may enter a plaint, at his option, either against such tenant or against the person so neglecting or refusing to deliver up possession, in the Court of the district in which the premises lie, for the recovery of the same, and thereupon a summons shall issue to such tenant or such person so refusing.

Landlord, on determination of lease, may sue for possession.

51. If the defendant shall not, at the time named in the summons, show good cause to the contrary, then, on proof of his still neglecting or refusing to deliver up possession of the premises, and of the yearly value and rent of the premises and of the holding, and of the expiration or other determination of the tenancy, with the time and manner thereof, and of the title of the plaintiff if such title has accrued since the letting of the premises, and of the service of the summons if the defendant shall not appear thereto, the Court may make an order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff either forthwith or on or before such day as the Court shall think fit to name.

Court may order delivery of possession.

52. If such order be not obeyed the Clerk may, at the instance of the plaintiff, issue a warrant to the bailiff or to any constable to give possession of such premises to the plaintiff.

In default, may give possession.

53. In any such plaint against a tenant the plaintiff may add a claim for rent or mesne profits, or both, down to the day appointed for the hearing, or to any preceding day named in the plaint, so as the amount of such claim shall not exceed the jurisdiction of the Court ; and any misdescription in the nature of the claim may be amended at the trial.

Landlord suing for possession may add claim for rent or mesne profits.

54. When the rent of any tenement, where the rent payable in respect thereof is within the jurisdiction of the Court, is in arrear for three months, and the landlord has a right by law to enter for the non-payment thereof, he may, without any formal demand or re-entry, enter a plaint in the Court of the district in which the premises lie for the recovery thereof, and thereupon a summons shall issue to the tenant, the service whereof shall stand in lieu of a demand or re-entry.

Landlord having power of re-entry may sue for possession.

55. If the tenant shall, at any time before the day appointed for the hearing of the case, pay into Court all the rent in arrear, and the costs, the said action shall cease.

Upon payment of rent and arrears, action to cease.

Upon non-payment of arrears, Court may order delivery of possession.

56. If he shall not make such payment, and shall not at the time named in the summons show good cause why the premises should not be recovered, then, on proof of the yearly value and rent of the premises, and of the fact that three months' rent was in arrear before the plaint was entered and that no sufficient distress was then to be found on the premises to countervail such arrear, and of the landlord's power to re-enter, and of rent being still in arrear, and of the title of the plaintiff if such title has accrued since the letting of the premises, and of the service of the summons if the defendant shall not appear thereto, the Court may make an order that possession of the premises mentioned in the plaint may be given by the defendant to the plaintiff on or before such day, not being less than four weeks from the day of hearing, as the Court shall think fit to name, unless within that period all the rent in arrear and the costs be paid into Court.

In default, possession given discharged of tenancy.

57. And if such order be not obeyed, and such rent and costs be not so paid, the Clerk shall, at the instance of the plaintiff, issue a warrant authorizing and requiring the bailiff or some constable to give possession of such premises to the plaintiff; and the plaintiff shall, from the time of the execution of the warrant, hold the premises discharged of the tenancy, and the defendant and all persons claiming by, through, or under him shall, so long as the order of the Court remains unreversed, be barred from all relief in equity or otherwise.

Service of summons in action for possession of tenement.

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

Sub-tenant to give notice of action to his immediate landlord.

59. When any such summons for the recovery of a tenement as is hereinbefore specified shall be served on or come to the knowledge of any sub-tenant of the plaintiff's immediate tenant, such sub-tenant, being an occupier of the whole or of a part of the premises sought to be recovered, shall forthwith give notice thereof to his immediate landlord, under penalty of forfeiting not exceeding three years' rack-rent of the premises held by such sub-tenant to such landlord, to be recovered by the landlord by action in the Court from which such summons shall be issued; and such landlord, on the receipt of such notice, if not originally a defendant, may be added or substituted as a defendant to defend possession of the premises in question.

When rent in arrear and land deserted without distress, landlord may recover possession.

60. If any tenant holding any lands or tenements under any demise or agreement, written or verbal, at a rack-rent, or where the rent reserved shall be full three-fourths of the yearly value of the demised premises, who shall be in arrear for one half-year's rent, shall desert the demised premises, leaving the same uncultivated or unoccupied so as no sufficient distress can be had to countervail the arrears of rent, the Court of the district in which the premises lie, although no right of entry be reserved or given to the landlord in case of non-payment of rent, on the information and at the request of the landlord, or his attorney, solicitor, or agent, made in open Court, and upon proof given to the satisfaction of the Court of the arrears of rent and desertion of the premises by the tenant as aforesaid, may issue a warrant to the bailiff of the Court or some constable to go upon and view the premises, and to affix upon the most conspicuous part of the premises notice in writing notifying on what day (at the distance of fourteen days at least) he will return to take a second view thereof.

61. If upon such second view the tenant or some person on his behalf shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premises, then upon the return of the warrant, and upon proof being given to the satisfaction of the Court before which the warrant shall be returned that it has been duly executed, and that neither the tenant nor any person on his behalf has appeared and paid the rent in arrear, and that there is no sufficient distress upon the premises, the Court may issue a warrant to the bailiff of the Court or some constable requiring him to put the landlord or lessor into possession of the premises; and the lease thereof to such tenant as to any demise contained therein only shall, upon the execution of such last-mentioned warrant, and upon the registration of such warrant in the Registry of Deeds for the district in which the premises are situate, thenceforth become void.

Lease voided on delivery of possession.

62. The Registrars of Deeds are hereby authorized and required to register such warrants, subject to the same rules and regulations as for the time being apply to the registration of deeds of lease, provided that no such warrant shall be registered until after the expiration of the time herein allowed for giving security on appeals.

Recovery of possession may be registered.

63. If any person shall, without right, title, or license, be in possession of any tenement the annual value of which shall not exceed the jurisdiction of the Court, the owner may enter a plaint in the Court of the district in which the premises lie, to recover possession thereof; and, if he shall have given to the person in occupation notice in writing to quit the land he may, in the same plaint, insert a claim to an amount not exceeding twenty pounds for damages for the occupation of the land subsequently to the service of such notice.

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

64. Any warrant under the hand of a Stipendiary Magistrate or Clerk to a bailiff or constable to give possession of a tenement shall justify him in entering upon the premises named therein, with such assistants as he shall deem necessary, and in giving possession accordingly; but no entry under any such warrant shall be made except between the hours of nine in the morning and four in the afternoon.

Warrant sufficient authority to bailiff for entering premises.

65. Every such warrant shall, on whatever day it may be issued, bear date on the day next after the last day named by the Court for delivery of possession of the premises in question, and shall continue in force for three months from such date, and no longer; but no order for delivery of possession need be drawn up and served.

Warrant to be in force for three months.

66. If any person, by whom a warrant for the recovery of possession of any tenement shall be sued out in a Court, had not, at the time of suing out the same, lawful right to the possession of the premises, the suing-out of such warrant shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry shall be made by virtue of the warrant.

Suing out warrant without right deemed a trespass.

67. Where a person by whom a warrant for the recovery of possession of any tenement shall be sued out had, at the time of suing out the same, lawful right to the possession of the premises, neither he nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act; but the party aggrieved may, if he think fit, bring an action in any Court of competent jurisdiction and recover for special damage.

Irregularity in execution of warrant can only be sued for as special damage.

68. If the special damage be not proved the defendant shall be entitled to a verdict, and if proved, but assessed by the Court at any sum not exceeding five shillings, the plaintiff shall recover no more costs and damages, unless the

Costs in actions for special damage.

Stipendiary Magistrate before whom the trial shall have been holden shall certify that in his opinion full costs ought to be allowed.

JURISDICTION AS TO NATIVES.

Provisions to be in force only within proclaimed districts.

69. The Governor may from time to time, by Proclamation in the *Gazette*, declare that, from a day to be in such Proclamation fixed, sections seventy to eighty, both inclusive, having special reference to persons of the Native race, or such of those sections as shall be in such Proclamation specified, shall come into operation in such districts of the colony as shall be in such Proclamation specified, and until so proclaimed, and in places not included in any such districts, such sections shall not be in force; and by like Proclamation may, from time to time, abolish, alter, or re-define such districts, or cancel any Proclamation so declaring such sections or any of them to have come into force.

Civil Jurisdiction.

Jurisdiction in cases between Natives.

70. Subject to section *thirty-five* of this Act the Court shall have jurisdiction to hear and determine summarily all claims and demands whatsoever of a civil nature arising between persons of the Native race.

Appointment of Assessors.

71. The Governor, from time to time, may appoint aboriginal natives of the greatest authority and best repute in their respective tribes to be Assessors of the Stipendiary Magistrate for the purposes of this Act, and of "The Native Circuit Courts Act, 1858," and any Acts or enactments amending the same, and may remove such Assessors from time to time.

Every such Assessor shall have jurisdiction within such portion of the colony as shall be by such appointment specified, or generally throughout the colony.

Every person lawfully holding the office of Native Assessor immediately before this Act comes into operation shall continue to hold such office and be deemed to have been appointed under this Act.

Mode of hearing Native cases.

72. In any case of a civil nature in which both parties shall be persons of the Native race it shall not be lawful for any Justice of the Peace or Stipendiary Magistrate to sit and act either together with, or in the absence of, a Stipendiary Magistrate, anything to the contrary in this Act contained notwithstanding; but every such case shall be heard and determined by a Stipendiary Magistrate assisted by two such Assessors as aforesaid.

Each of the parties to the case shall choose one Assessor, and if either party shall neglect or refuse to choose an Assessor one shall be chosen by the Stipendiary Magistrate on his behalf.

Such case shall be heard by the Stipendiary Magistrate alone, or by the Stipendiary Magistrate assisted by one Assessor only, if the parties shall so agree and the Stipendiary Magistrate shall think proper. Nothing in this Act contained shall be deemed to affect the jurisdiction of the Supreme Court in any cases in which both or either of the parties are of the Native race.

Judgment in Native cases.

73. Every such case shall be determined by the Stipendiary Magistrate in such manner as he shall find to stand with equity and good conscience, with the concurrence of one at least of the two Assessors. If either of the Assessors shall dissent from such judgment no act shall be done or proceeding taken to carry such judgment into execution until such Assessor shall have signified his concurrence therewith; but, if such concurrence be not signified within one month from the date of judgment given, the Stipendiary Magistrate, if he shall think fit, may direct that the case be reheard before himself and two other Assessors to be chosen in manner aforesaid.

Distress warrants against Natives to be

74. Except within the chief towns of provincial districts it shall not be lawful to make distraint of the goods of any person of the Native race under

any warrant of distress issued under the authority of this Act, unless such warrant shall be signed or indorsed by the Stipendiary Magistrate. signed by Stipendiary Magistrate.

75. Any Stipendiary Magistrate may delay, so long as he shall deem it expedient to do so, the enforcing of any judgment obtained in such Court against a person of the Native race. Execution against a Native may be delayed.

76. In every case in which the judgment of the Court shall have been carried into execution to the satisfaction of the Stipendiary Magistrate the Governor may pay to each of the Assessors any sum not exceeding five pounds. Payment of Assessors

Criminal Jurisdiction.

77. Except within the chief towns of provincial districts no person of the Native race shall be apprehended under any warrant or be committed to prison except upon a warrant or committal signed by a Stipendiary Magistrate, or having thereupon indorsed a certificate by a Stipendiary Magistrate that he allows the execution thereof. Natives not to be apprehended or imprisoned except by authority of Stipendiary Magistrate.

No person of the Native race actually apprehended or imprisoned shall have any right of action against any person by reason merely that the warrant or committal was not signed or indorsed in manner hereby required, nor shall he be entitled to be released from custody for such cause only, unless the Stipendiary Magistrate shall deem it expedient to direct such release.

Nothing herein contained shall apply to writs, warrants, or other process issued out of the Supreme Court.

78. When any person of the Native race shall be charged with larceny or with receiving stolen goods, and shall, after hearing the information and evidence against him, voluntarily confess the same, any Stipendiary Magistrate, at his discretion, may take such confession, and may sentence the offender to be imprisoned for any period not exceeding two years, and either with or without hard labour. Native confessing larceny may be summarily convicted.

But, if the Stipendiary Magistrate before whom any Native shall be so charged shall be of opinion that such Native ought to be tried before the Court, such Stipendiary Magistrate may hear such charge and take the evidence thereon, and may proceed in the manner provided by "The Justices of the Peace Act, 1882," so far as the same relates to indictable offences.

79. In case any person of the Native race shall be convicted in a summary way before a Stipendiary Magistrate as aforesaid upon any charge of theft or of receiving stolen goods, every such person may, after such conviction, by permission of the Court, and at any time before sentence passed, pay into the Court four times the value of the goods so stolen or received as aforesaid. Native convicted of theft may be discharged upon paying four times the value of property stolen.

If the goods so stolen or received as aforesaid shall have been restored by the person so convicted, such person may, by permission of the Court, and at any time before sentence passed, pay into the Court either four times the value of the goods so stolen or received as aforesaid, or such less sum as to the Court shall seem fit. If such payment shall be so made as aforesaid, or if security for such payment shall be given to the satisfaction of the Court, no sentence shall be passed, but the person so convicted and making such payment or giving such security as aforesaid shall be discharged from custody, and shall be in the same condition in all respects as if he had received sentence and undergone his punishment in the ordinary course of law: Provided that, for the purposes of this present provision, such Court shall have power to delay passing sentence in any such case for any period not exceeding eight days.

80. Where any such payment as last mentioned shall have been made, and it shall appear that restitution of the goods charged to have been stolen or Value in certain cases to be awarded to owner of stolen property.

received as aforesaid has not been or cannot be made, the Court shall have power, upon application then made by the owner of such goods or his representatives, to award to such owner or representatives such part of the sum so paid into Court as aforesaid as shall be equal to the sworn value of such goods, together with such costs as to the Court shall seem reasonable. 5

JUDGMENT.

81. Subject to section *ninety*, hereinafter contained, every order and judgment shall be final and conclusive between the parties: Provided that the Court may, in its discretion,—

Nonsuit a plaintiff when satisfactory proof has not been given entitling either plaintiff or defendant to judgment; 10

Alter or vary its judgment during the sitting of the Court at which it was given;

Order a new trial to be had upon such terms as it shall think reasonable, and in the meantime stay proceedings. 15

82. No order, judgment, or other proceeding in a Court shall be quashed or vacated for want of form.

To be final except the Court order a nonsuit, or a new trial, or vary its judgment.

Proceedings not to be quashed for want of form.

EXECUTION.

83. The landlord of a tenement in which goods shall be taken in execution under this Act, or his agent, may claim the rent thereof at any time within four days from the date of such taking, or before the removal of the goods, by delivering to the bailiff a writing signed by such landlord or his agent, stating the amount of rent claimed to be in arrear and the time in respect of which such rent is due. 20

84. If such claim be made, the bailiff shall, in addition to the levy under the writ of sale, distrain for the rent so claimed and the cost of such distress. 25

The bailiff shall afterwards sell such of the goods under the execution and distress as shall satisfy, first, the costs of and incident to the sale; next, the claim of such landlord, not exceeding the rent of eight weeks where the tenement is let by the week, the rent of two terms of payment where the tenement is let for any other term less than a year, and the rent of one year in any other case; and, lastly, the amount for which the writ of sale issued. 30

85. On the application of a creditor who has obtained judgment in a Court, the Court may order his judgment debtor to be examined as to what debts are owing or accruing to him, and that all or any of such debts be attached to answer the judgment debt. 35

REMOVAL OF CAUSES OR JUDGMENTS INTO SUPREME COURT.

86. Any action commenced in a Court where the claim exceeds twenty pounds may be removed by rule or order into the Supreme Court, if the Supreme Court or a Judge thereof shall deem it desirable that the cause shall be tried in the Supreme Court, and if the party applying for such rule or order shall give security, to be approved of by the Registrar of the Supreme Court, for the amount of the claim and the costs (not exceeding fifty pounds) of the trial, and shall further assent to such terms, if any, as the Supreme Court or Judge thereof shall think fit to impose. 40

87. If application be made for an order removing an action into the Supreme Court, the Court shall from time to time adjourn the hearing of such action to such day as it shall think fit, until such application be disposed of. 45

If notice of such application having been made be not served by the party

Landlord may claim rent.

To a limited extent.

Attachment of debts.

Actions may be removed into Supreme Court.

Procedure on removal.

applying upon the opposite party and on the Clerk three days before the day fixed for the hearing of the action, the Court may in its discretion order the party applying to pay the costs incurred by the opposite party in preparing for trial, or so much thereof as it may think fit, unless the Supreme Court or a Judge thereof shall have made some order respecting such costs.

88. On the application of a judgment creditor who has recovered in a Court in its extended jurisdiction an order or judgment for money, the Clerk of the Court shall give him, or any person applying on his behalf, a certificate of such order or judgment, which thereupon may be filed in the Supreme Court, and final judgment may be signed in that Court; but any judgment so signed may be set aside or amended by a Judge of the Supreme Court, upon such terms as to costs or otherwise as to him may seem just.

Judgments may be removed into Supreme Court.

89. An action may be brought on a judgment of a Court in the Supreme Court, but no costs shall be allowed in such action to the plaintiff unless the Judge of the Supreme Court shall certify that the action was necessary and proper for the enforcement of the judgment of the Court against the person or property of the defendant.

Action may be brought in Supreme Court on a judgment of a Court.

APPEAL.

90. Either party may appeal to the Supreme Court against any determination or direction of the Court in point of law, or upon the admission or rejection of evidence: Provided—

Right to, given.

(a.) That, in actions for debt or damages where the amount is under twenty pounds, the consent of the Court be first obtained:

Limited.

(b.) That the ground of appeal be not the admission in evidence of a document objected to under any Act for the time being in force relating to Stamp duties, or that the Court refused to allow or compelled a party to begin:

Denied.

(c.) That the parties had not before the determination or direction agreed in writing, signed by them or their solicitors or agents, that the judgment of the Court should be final:

Conditioned.

(d.) That the appellant, within five days after such determination or direction as to actions within the ordinary jurisdiction, and within ten days as to other actions, give notice of appeal:

Notice.

(e.) That the appellant, within such time as may be fixed by the Court, give security to abide the event of the appeal in such amount as may be approved by the Court, or, in lieu thereof, deposit with the Clerk a sum equal to the amount of such security.

Security for costs.

91. The Supreme Court may order a new trial on such terms as it thinks fit, or that judgment be entered for either party as the case may be, or that the case be referred back to the Court below for amendment, or, in case where an order has been made for the delivery of possession of any tenement, may order re-delivery thereof to be made, and may make such order with respect to costs as such Court shall think proper.

How case dealt with by Supreme Court.

COSTS AND FEES.

92. A party having a judgment carrying costs shall, for his solicitor's charges in the action, be entitled, as against the other side, to charge, in addition to any moneys paid out of pocket by the solicitor, according to the following scale:—

Scale of costs to solicitors.

In actions to recover debts under twenty pounds—

When judgment is confessed before hearing: Nothing.

In other cases: A sum not exceeding one guinea.

In other actions—A sum not exceeding five pounds per centum upon the amount of debt or damage claimed, or upon the value of the property claimed or in dispute: Provided—

That the Court may, in any cases where the sum allowed under this provision would be less than three guineas, allow at its discretion a sum not exceeding three guineas: 5

That in no case shall the sum allowed under this scale be more than five guineas:

That in actions for land on the determination of a hiring the percentage allowed shall be calculated upon the rental, and not upon the value of the land. 10

Allowance in discretion of Court.

93. The disallowance of all or any part of any costs shall be in the discretion of the Court.

Though cause of action not within jurisdiction, costs may be allowed.

94. If an action be brought or a counter-claim set up which the Court has not jurisdiction to try, the Court shall, unless the parties consent to the Court assuming jurisdiction, order the action or counter-claim to be struck out, but may award costs to the same extent and recoverable in the same manner as if the Court had jurisdiction and the claim or counter-claim had not been established. 15

Court fees to be fixed by the Governor in Council.

95. The Governor in Council may from time to time fix, alter, and abolish any fees payable in respect of proceedings which are by this Act or shall hereafter be authorized to be taken in a Court. 20

Such fees, except such as may be payable in respect of keeping possession or appraising or selling goods seized, shall be paid in the first instance by the party on whose behalf any such proceeding shall be taken. 25

A table of all fees shall be posted in some conspicuous place in every Clerk's office.

A Stipendiary Magistrate or any officer of the Court may refuse to do any act for which a fee is demandable, unless such fee be first paid.

RULES.

Practice to be regulated by "Code of Procedure."

96. The Governor may by Order in Council make a "Code of Civil Procedure" regulating the practice and procedure of Courts and all matters therein dealt with, and for appeal from the decision of any local Court to the Supreme Court, and for the removal of any judgment of any local Court into the Supreme Court, and for the enforcement thereof in and by such last-mentioned Court. Such code shall have the same force and effect as if the matter thereof had been set out in the enacting part of this statute: Provided— 30 35

Amendment of code.

(1.) That any part or parts of such code may be rescinded, suspended, added, to, or amended from time to time by order to be made by the Governor in Council, with the concurrence of any two or more Judges of the Supreme Court: 40

Forms may be prescribed.

(2.) That by like orders there may from time to time be prescribed forms to be adopted and used in all proceedings to be taken under this Act and the said code, and such forms may from time to time be added to, amended, or withdrawn from use. In practice such variations from such forms may be made as the circumstances of any case may require. 45

All Orders in Council so made shall be gazetted, and shall take effect as from a day to be therein fixed.

PROTECTION OF OFFICERS.

Actions against officers.

97. No officer of a Court in executing any writ, and no person at whose instance any such writ shall be executed, shall be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such writ depends, or in the form of such writ, or in the mode of executing it; 50

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.

5 98. All proceedings against any person for anything done in pursuance of this Act shall be commenced within three months after the act committed and not afterwards, and notice in writing of any such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action. Within three months, and one month's notice to be given.

10 99. A plaintiff shall not recover in such action if tender of sufficient amends shall have been made before such action be brought, and if, after action brought, a sufficient sum of money shall have been paid into Court with costs. Action to cease if amends tendered.

15 100. In any such action the writ under the seal of the Court being produced in evidence shall be deemed sufficient proof of the authority of the Court previous to the issuing of such writ. In such actions, writ evidence of previous authority.

MISCELLANEOUS.

101. The payment of any fine imposed by any Court may be enforced upon the order of a Stipendiary Magistrate, in like manner as payment of any debt adjudged in the Court, except where any other remedy is hereby provided. Payment of fines, how enforced.

20 102. If any person shall wilfully insult a Stipendiary Magistrate, or any Clerk, bailiff, or officer of a Court, during his attendance in or in going to or returning from the Court, or shall wilfully interrupt the proceedings of any Court, or otherwise misbehave in Court, any bailiff or officer of the Court, with or without the assistance of any other person, by order of the Stipendiary Contempt of Court.
25 Magistrate, may take such offender into custody and detain him until the rising of the Court.

103. The Stipendiary Magistrate may, if he shall think fit, by a warrant under his hand and the seal of the Court, commit any such offender to prison for any time not exceeding ten days, or impose upon him a fine not exceeding Power to imprison or fine for contempt.
30 ten pounds for every such offence, and, in default of payment thereof, commit him to prison for any time not exceeding ten days unless the said fine be sooner paid.

104. All moneys which shall be received under or by virtue of this Act by way of fines, fees, or penalties, shall be paid to the Public Account, and shall Fines and fees to be paid to Public Account.
35 form part of the consolidated revenue of the colony.

SCHEDULE.

Schedule.

ACTS AND PARTS OF ACTS REPEALED.

- 1858, No. 30.—The District Courts Act, 1858.
- 1865, No. 4.—The District Courts Act Amendment Act, 1865.
- 1866, No. 5.—The District Courts Jurisdiction Extension Act, 1866.
- 1870, No. 12.—The District Courts Criminal Jurisdiction Extension Act, 1870.
- 1879, No. 13.—The District Courts Proceedings Validation Act, 1879.
- 1879, No. 14.—The District Courts Act 1858 Amendment Act, 1879.
- 1880, No. 33.—The District Courts Act, 1880.
- 1867, No. 13.—The Resident Magistrates Act, 1867.
- 1868, No. 46.—The Resident Magistrates Act, 1868.
- 1870, No. 24.—The Resident Magistrates Evidence Act, 1870.

- 1872, No. 27.—The Resident Magistrates Act Amendment Act, 1872.
1879, No. 28.—The Resident Magistrates Act 1867 Amendment Act, 1879.
1865, No. 51.—The Petty Sessions Act, 1865.
1866, No. 75.—The Petty Sessions Act Amendment Act, 1866.
1868, No. 19.—The Petty Sessions Act, 1868.
1874, No. 66.—The Petty Sessions Act Amendment Act, 1874.
1878, No. 46.—The Financial Arrangements Act, 1878. *In part, namely,*
section fourteen.
1880, No. 16.—The Juries Act, 1880. *In part, namely,* Part XVI.

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.—1884.