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MAGISTRATES' COURTS.

THIS Bill, saving as to jurisdiction, is for the most part a consolidation of the existing law relating to Resident Magistrates' Courts. Several rules of procedure from the Supreme Court code, which were thought might be adopted with advantage, have been incorporated therein.

The jurisdiction is divided into ordinary, extended, and special.

At the present time there being but a few Resident Magistrates who do not exercise the extended jurisdiction of £100 permitted under the Act of 1867, and some of these being so debarred only by reason that they exercise jurisdiction in places where there happens to be a District Court, there appears no sufficient reason why the larger amount of jurisdiction should not be made universal. The ordinary jurisdiction, therefore, under this Bill is fixed at £100 in all cases formerly within the ordinary jurisdiction of Resident Magistrates.

By consent of parties cases may be heard exceeding the ordinary jurisdiction, but not exceeding the extended jurisdiction of a Magistrate's Court.

The jurisdiction of Justices is conserved at £20, with additional jurisdiction to a like amount in interpleader.

The extended jurisdiction includes cases within the ordinary jurisdiction to an amount not exceeding £200, and recovery of compensation in cases of false imprisonment, illegal arrest, malicious prosecution, libel, slander, seduction, and breach of promise.

By consent of parties cases may be heard exceeding the jurisdiction.

Where a question of title arises incidentally in any case, the Court may nevertheless determine the case before it, but the judgment therein shall not be taken as deciding the title between the parties.

The special jurisdiction which may be given specially and particularly or generally, embraces partnership accounts to £200, also recovery of undisputed bequests to a like amount, and the granting of injunctions in matters within its jurisdiction, and may include jurisdiction in bankruptcy or mining law, and the exercise of the powers of a Judge of the Supreme Court for arrest of persons about to quit the colony.

Writ of arrest to hold to bail absconding debtors is granted to all Magistrates up to the amount of their jurisdiction, and two Justices acting together may exercise the jurisdiction where no Magistrate is residing, or in the absence of a Magistrate.

The special jurisdiction as to Natives, in civil and criminal cases, is maintained untouched as it exists at the present.

Hon. Mr. Tole.

MAGISTRATES' COURTS.

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- 147. Court may award costs of service of process, &c.
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- 149. Court fees to be prepaid, except in Crown cases.
- 150. Court may order increased fee in certain cases.
- 151. Fines and fees to be paid to Public Account.

PARTNERSHIP ACCOUNTS.

- 152. Court may order partnership assets to be realized, and appoint a Receiver. (1.) Assets of partnership to vest in Receiver. (2.) Receiver may demand, sue for, and recover partnership assets in the name of "the Receiver of the assets of the firm of," &c. (3.) Receiver to pay debts of partnership and costs of realizing assets. (4.) Balance of assets to be paid out as Court orders. (5.) Receiver not to pay disputed debts or claims. (6.) Court may order moneys not to be paid out pending settlement of disputed claims. (7.) If disputed claims, &c., not promptly settled, Court may order moneys to be distributed.

RECOVERY OF POSSESSION OF TENEMENTS.

- 153. Landlord, on determination of lease, may sue for possession.
- 154. Court may order delivery of possession.
- 155. In default, may give possession.
- 156. Landlord suing for possession may add claim for rent or mesne profits.
- 157. Landlord having power of re-entry may sue for possession.
- 158. Upon payment of rent and arrears action to cease.
- 159. Upon non-payment of arrears Court may order delivery of possession.
- 160. In default, possession given discharged of tenancy.
- 161. Service of summons in action for possession of tenement.
- 162. Sub-tenant to give notice of action to his immediate landlord.
- 163. When rent in arrear and land deserted without distress, landlord may recover possession.

- 164. Lease voided on delivery of possession.
- 165. Recovery of possession may be registered.
- 166. Action to recover land held without right, title, or license.
- 167. Warrant sufficient authority to bailiff for entering premises.
- 168. Warrant to be in force for three months.
- 169. Suing out warrant without right deemed a trespass.
- 170. Irregularity in execution of warrant can only be sued for as special damage. Costs in actions for special damage.

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- 171. Jurisdiction in cases between Natives.
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- 173. Appointment of Assessors.
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- 175. Execution against a Native may be delayed.
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- 178. Native confessing larceny may be summarily convicted.
- 179. Native convicted of theft may be discharged upon paying four times the value of property stolen. Value in certain cases to be awarded to owner of stolen property.

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- 180. Actions against officers.
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- 183. In such actions, warrant evidence of previous authority.
- 184. Part IV. of "The Justices of the Peace Act, 1882," to apply.

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- 185. Penalty for insulting Magistrate, &c.
- 186. Power to imprison or fine for contempt.

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- 187. Penalty on constables, &c., for neglect of duty.
- 188. Penalty for disobeying injunction or other order of Court.
- 189. Payment of penalties, how enforced.
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A BILL INTITLED

AN ACT to consolidate and amend the Law relating to the Jurisdiction of Title. Magistrates and Justices of the Peace in civil matters.

BE IT ENACTED by the General Assembly of New Zealand in Parliament 5 assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Magistrates' Courts Act, 1886."

2. This Act shall come into force on the first day of March, one thousand 10 eight hundred and eighty-seven, except that all sections authorizing respectively the establishment of Courts, the appointment of the officers thereof, the framing of regulations, the appointment of fees, and all other matters incident to the full constitution of such Courts, shall come into force on the passing hereof; but nothing done under such sections shall take effect before the aforesaid first day of March.

Short Title.
Commencement of Act.

Continuance of actions commenced before passing of Act.

3. Actions commenced prior to the first day of *March*, one thousand eight hundred and eighty-seven, in any Resident Magistrate's Court under any of the Acts hereby repealed shall be continued in the nearest Magistrate's Court constituted under this Act the Magistrate whereof has competent jurisdiction, and according to the procedure prescribed by or under this Act. 5

Outstanding judgments, &c., may be enforced.

4. Any Magistrate appointed under this Act, having jurisdiction within any area comprised within the limits of a Resident Magistrate's district heretofore existing, on receiving a copy of any judgment of such Magistrate's Court, whether in its ordinary, extended, special, or Native jurisdiction, certified under the hand of the late Magistrate or Clerk of the Court in which such judgment shall have been given, and an affidavit that the same has not been satisfied, may grant a warrant of distress or writ of execution, and order such proceedings therein to enforce satisfaction of such judgment, as if such judgment had been originally obtained in his own Court. 10

Where, by any Act or enactment for the time being in force, any act, matter, or thing is required to be or may be performed, made, or done, or any power is required or may be exercised by a Resident Magistrate, such act, matter, or thing may be performed, and such power may be exercised, by a Magistrate appointed under this Act. 15

Pension rights, &c., preserved.
Fidelity bonds, &c., to remain in force.

5. No 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 superannuation or retiring allowance or compensation for loss of office under any law 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. 20

Every fidelity or guarantee bond or other security for the faithful discharge of his duties, given by any person holding an office under any of the Acts hereby repealed, shall subsist in force without necessity of renewal, in case such person is appointed to the same or any other office under this Act. 25

How collateral Acts are to be read.

6. Where, in an unrepealed Act or enactment, or in any document or instrument, reference is made to any Act repealed by this Act, or to any provisions thereof, or to any Court, office, or officer established, constituted, or appointed under any Act hereby repealed, such reference shall be construed and shall operate as if made to this Act or to the provisions of this Act corresponding to the provisions referred to, or to the Court, office, or officer constituted or appointed under this Act. 30

Repeal.

7. The several Acts and parts of Acts mentioned in the *First* Schedule hereto are hereby repealed. 35

Interpretation.

8. In this Act, if not inconsistent with the context,—

“Action” means any action, suit, or other civil proceeding in a Court:

“Bailiff” means any bailiff of a Court or any assistant-bailiff: 40

“Claim” includes debt, demand, claim, or damage:

“Clerk,” means the Clerk of a Court:

“Counter-claim” includes a set-off:

“Court” means a Court constituted under this Act:

“Landlord” means the person entitled to the immediate reversion of tenements, or, if the property be held in joint tenancy, coparcenary, or tenancy in common, includes any one of the persons entitled to such reversion: 45

“Magistrate” means a Magistrate appointed under this Act:

“Natives” includes all aboriginal natives of New Zealand and of other islands of the Pacific Ocean, and all half-castes and other persons of mixed race living as members of any Native tribe: 50

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"Nearest Court" means the Court nearest in distance by the most available method of travelling by road or railway :

"Prescribed" means prescribed by this Act, or by any regulations thereunder :

5 "Tenements" means only lands, houses, or other hereditaments of a corporeal nature.

REGULATIONS.

9. The Governor may by Order in Council from time to time prescribe, alter, vary, suspend, or rescind regulations— Rules of practice.

10 (1.) For regulating the practice and procedure of Courts and all matters therein dealt with, and in relation to documentary or other evidence, and the manner of taking evidence, and the conduct of arbitrations, and for appeal from the decision of any Court to the Supreme Court, and for the removal of any judgment of any Court into the Supreme Court, and for the enforcement thereof in and by such last-mentioned Court ;

15 (2.) Prescribing the various functions and duties of Magistrates which it shall not be necessary to perform or discharge in open Court ;

20 (3.) Prescribing forms to be adopted and used in all proceedings to be taken under this Act and the said regulations. In practice such variations from such forms may be made as the circumstances of any case may require. Forms.

(4.) Prescribing, according to the nature of any action and the amount involved therein, the costs and charges to be paid by one party or the parties in such action to the other party or parties, in addition to moneys paid out of pocket ; and Costs.

25 (5.) Prescribing the fees to be payable in respect of any proceedings taken under this Act. Fees.

All Orders in Council so made shall be gazetted, and shall take effect as from a day to be therein fixed ; and the regulations therein respectively prescribed shall have the same force and effect as if the matter thereof had been set out in the enacting part of this statute.

30 All forms of summons, notice, or other process in use under any of the Acts hereby repealed shall continue in force and may be used for like purposes under this Act, with such variations therein as may be necessary to adapt them for such purposes.

35 All rules, regulations, and tables of fees in force at the commencement of this Act shall, so far as not inconsistent with this Act, continue in force until revoked hereunder. Existing forms, rules, fees, &c., continued in force.

CONSTITUTION OF COURTS.

40 10. There shall be within the colony Courts of record, possessing civil jurisdiction, to be called "Magistrates' Courts." Courts constituted.

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

45 11. Such Courts shall respectively be held on such days and times as shall be deemed most convenient by the Magistrate thereof, and at such places as may from time to time be prescribed by the Governor. Courts located.

12. The Governor may, by warrant under his hand, from time to time, appoint fit and proper persons to be Magistrates within the colony, who shall preside in such Courts, and who shall be called "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 Magistrates.

50 The said Magistrates shall exercise the ordinary or the extended jurisdiction hereinafter described as the Governor shall appoint in each case. Tenure of office.

A Magistrate may preside in a Court in the place of the Magistrate usually presiding therein and otherwise act in his stead, but cannot in any case exercise any jurisdiction beyond that which he is appointed to exercise.

The office of Magistrate may be held in conjunction with any other office which the Governor shall not deem incompatible. 5

Magistrate not to practise.
Powers and functions of Magistrates.

No Magistrate shall practise as a barrister or solicitor.

13. Each Magistrate, by virtue of his office—

(1.) Shall be a Justice of the Peace for the colony :

(2.) Shall, though sitting alone, have all such powers, unless otherwise specially provided, as now are or hereafter may be exercised by two 10
Justices of the Peace :

(3.) Shall be a Coroner for the colony.

Appointment of Clerk.

14. There may be for each Court a Clerk, who shall be appointed by and hold office during the pleasure of the Governor ; but the Magistrate of the Court if he think fit may suspend the Clerk of such Court from the exercise of 15
his office until the Governor's pleasure shall be known.

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. 20

Duties of Clerk.

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

(1.) Issue all summonses, warrants, writs, 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 25
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.

Records to be kept by Clerk.

16. 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, in manner as may be prescribed.

Deputies to Clerk.

17. A Magistrate may appoint from time to time a deputy to act for a Clerk 30
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.

Any deputy or other person appointed as aforesaid, while acting under such appointment, shall have the like powers and privileges, and shall perform the 35
same duties, and be subject to like provisions and penalties, as if he were Clerk for the time being.

Appointment of bailiffs.

18. There may be a bailiff or such 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 Magistrate. 40

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

Powers and duties of bailiffs.

19. Every bailiff shall— 45

Have the powers of a constable :

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 or cause to be served all summonses and orders, and execute or cause to be executed all warrants issued out of any Court and coming to 50
his hands for the purpose of such service or execution :

Conform to all rules and regulations affecting the execution of his office, and in other respects be subject to the directions of the Magistrate: and

5 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.

10 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.

15 **20.** If a bailiff, or any person acting under his authority, 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 penalty 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; and the jurisdiction of such Court or Justices shall not be ousted by any question of title that may arise.

Protection
bailiffs.

20 **21.** In case a bailiff, or any person acting under his authority, 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 25 the complainant has sustained, not exceeding in any case the sum for which the execution issued, and, on his refusal or neglect so to do, such order may be enforced by such ways and means as are provided for enforcing a judgment of the Court.

Neglect by bailiffs.

30 **22.** If any bailiff, or any person acting under his authority, 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 35 the attendance of witnesses in an action may be enforced.

Extortion, &c., by
officers.

Inquiry by Court.

23. 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 penalty upon the 40 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.

Order of Court
thereupon.

45 **24.** No privilege shall be allowed to any solicitor or other person to exempt him from the jurisdiction of a Court, saving as may be provided by any Act for the time being in force relating to the privileges of members of the General Assembly of New Zealand.

No privilege to
solicitors.

50 **25.** No action shall be brought in a Court on a judgment of the Supreme Court.

26. No Court shall have cognizance of any action in which the validity of any devise or bequest shall be in question, or the limitations under any will or settlement shall be disputed.

Judgment of
Supreme Court not
to be sued on.
Matters not within
jurisdiction.

JURISDICTION.

- Seal of Court.** 27. Each Court shall have a seal, which shall be kept by the Clerk, or Magistrate where there is no Clerk, and all summonses and processes shall be sealed therewith by the person issuing the same.
- Court to determine both fact and law.** 28. The Court shall determine all questions as well of fact as of law. 5
- Taking of affidavits.** 29. All affidavits and declarations to be used in a Court may be sworn or taken before any solicitor of the Supreme Court, or before any Justice of the Peace, or before the Clerk of any Magistrate's Court.
- Affidavits by company, corporation, &c.** 30. Affidavits and declarations required to be made by any corporation or incorporated company may be made on their behalf by any officer, attorney, or agent of such corporation or incorporated company; and may be made on behalf of any party in an action by his solicitor or duly-appointed agent. 10
- Jurisdiction.** 31. The Court shall have jurisdiction in civil cases classed into "ordinary," "extended," and "special."
- Ordinary jurisdiction.** 32. The ordinary jurisdiction shall include the following cases:— 15
- (a.) Breach of contract, or tort, where the amount claimed does not exceed one hundred pounds, excepting in actions for false imprisonment, or illegal arrest, or for malicious prosecution, or for libel or slander, or for seduction, or breach of promise of marriage: 20
 - (b.) Debt, where the sum claimed does not exceed one hundred pounds, whether such sum be the original amount of the debt, or a balance after allowing payment on account, or credit for goods supplied, or the amount of any other set-off: 25
 - (c.) The attachments of debts not exceeding in amount the sum of one hundred pounds: 25
 - (d.) The enforcement of claims upon and the recovery of possession of some specific movable property the value whereof does not exceed one hundred pounds: 25
 - (e.) The recovery of possession of land, with or without arrears of rent or mesne profits not exceeding respectively one hundred pounds, where the claim has arisen on the determination of a hiring at a rental not exceeding the rate of one hundred pounds by the year: 30
 - (f.) Interpleader, where the value of the subject-matter in dispute does not exceed one hundred pounds: 30
 - (g.) Where the parties agree, by writing signed by them or their solicitors, that, whatever the amount or value of the subject-matter, but not in excess of two hundred pounds (provided the case be otherwise within the jurisdiction), the Court shall have jurisdiction: 35
 - (h.) The granting a writ of arrest for holding to bail any person about to quit the colony, leaving unsettled a claim within the ordinary jurisdiction of the Court. 40
- Extended jurisdiction.** 33. The extended jurisdiction shall include the following cases:—
- (a.) Breach of contract, or tort, where the amount does not exceed two hundred pounds, including the recovery of any pecuniary compensation not exceeding two hundred pounds, for false imprisonment, or illegal arrest, or malicious prosecution, or for libel or slander, or for seduction, or for breach of promise of marriage: 45
 - (b.) Debt, where the sum claimed does not exceed two hundred pounds, whether such sum be the original amount of the debt, or a balance after allowing payment on account, or credit for goods supplied, or the amount of any other set-off: 50
 - (c.) The attachments of debts not exceeding in amount the sum of two hundred pounds: 50

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- (d.) The enforcement of claims upon and the recovery of possession of some specific movable property the value whereof does not exceed two hundred pounds :
- 5 (e.) The recovery of possession of land, with or without arrears of rent or mesne profits not exceeding respectively two hundred pounds,—
 - (1.) Where the claim is alleged to have arisen on the determination of a hiring at a rental not exceeding the rate of two hundred pounds by the year ;
 - 10 (2.) In other cases, where the value of the land does not exceed two hundred pounds :
- (f.) Interpleader, when the value of the subject-matter in dispute does not exceed two hundred pounds :
- (g.) 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 :
- 15 (h.) The granting a writ of arrest for holding to bail any person about to quit the colony leaving unsettled a claim within the ordinary or extended jurisdiction of the Court.
- 20 **34.** The Governor may appoint any Magistrate to exercise special jurisdiction in respect of either of or all the following matters, that is to say,—
 - (1.) (a.) Partnership accounts, or disputes between partners, where the amount involved does not exceed two hundred pounds : Partnership.
 - 25 (b.) The recovery of a specific or pecuniary legacy or share of residue not exceeding in value or amount two hundred pounds, where the validity of the bequest is not disputed : Bequests.
 - (c.) The granting and dissolution of injunctions to prevent irreparable injury to property, being the subject-matter of an action within the jurisdiction of the Court : and For injunctions.
 - 30 (2.) To exercise all the powers of—
 - A Judge of a District Court acting as Judge of a local Court in Bankruptcy : or under any Act for the time being in force relating to mining : In ban krupctey and mining.
 - 35 A Judge of the Supreme Court by section fifteen of "The Imprisonment for Debt Abolition Act, 1874," for the arrest of persons about to quit the colony. For arrest.
- The Governor may at any time revoke or cancel any such appointment as to any or all such Magistrates as to any or all the aforesaid matters, and on such revocation or cancellation being gazetted the powers conferred by this section shall cease as to such Magistrates either wholly or partially as may be the case.
- 40 **35.** If upon the day appointed for the sitting of a Court no Magistrate shall attend, two or more Justices of the Peace may hold a Court without any Magistrate, and hear and determine the following cases :—
 - 45 (1.) Breach of contract, or tort, where the amount claimed does not exceed twenty pounds, excepting in actions for false imprisonment, or illegal arrest, or for malicious prosecution, or for libel or slander, or for seduction, or breach of promise of marriage :
 - (2.) Debt, where the sum claimed does not exceed twenty pounds, whether such sum be the original amount of the debt, or a balance after allowing payment on account, or credit for goods supplied, or the amount of any other set-off :
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(3.) The enforcement of claims upon and the recovery of possession of some specific movable property the value whereof does not exceed twenty pounds :

(4.) Interpleader, when the value of the subject-matter in dispute does not exceed twenty pounds :

And the said Justices may hear and by a majority of their number, may determine all applications in relation to any such aforesaid cases either already heard and determined or about to be heard in the Court, and may make any order or do any act, matter, or thing in relation to any such cases which the Court or Magistrate is empowered by this Act to make or do.

The said Justices shall sit and act together without a Chairman, and no one of them shall have a casting vote.

In the event of no decision being arrived at in consequence of the Justices being equally divided in opinion, the case shall, if the plaintiff so requires, be set down for hearing at a subsequent sitting of the Court, to be agreed upon between the parties, or as the Clerk shall appoint.

36. Any matter standing for hearing on a Court-day when the Magistrate usually presiding in the Court is absent, and when some other Magistrate or two or more Justices of the Peace shall be sitting in his stead, shall, if beyond the jurisdiction of the Magistrate or Justices so sitting but within the jurisdiction of the Magistrate usually presiding in the said Court, stand adjourned to the next sitting of the Court, unless the parties shall agree to an adjournment to some other sitting of such Court, in which case the Magistrate or Justices shall adjourn the matter in question to such last-named sitting. No fee shall be charged for such adjournment.

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

38. If in an action in a Court in its ordinary extended or special 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 other proceeding in that or any other Court.

39. In case of any action founded upon a promissory note, bill of exchange or other negotiable instrument, declared upon the affidavit of the plaintiff to be lost, if an indemnity be given by the plaintiff to the satisfaction of the Court against the claims of any other person upon such instrument, the Court may give judgment therefor as if the same were produced.

40. A cause of action may not be divided for the purpose of bringing two or more actions.

41. 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 annexed to the summons that he abandons the excess, or that he admits that the defendant has a counter-claim against him to the amount of such excess, and that he is willing to give credit to the defendant for such amount.

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

42. A Magistrate may sue or be sued in any Court wherein he presides before any two or more Justices when the cause of action is within the limit of the jurisdiction of such Justices ; and in cases beyond their jurisdiction in the nearest Court presided over by any other Magistrate.

Adjournment of matters beyond jurisdiction.

Clerk may adjourn Court.

Title incidentally in question.

Actions on lost instruments.

Division of a cause of action not allowed.

Claim may be reduced to jurisdiction.

A Magistrate may sue or be sued in his own Court before two Justices, or in another Court.

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 Infants may sue by next friend.
 Summary admittance of next friend.

43. Any infant may sue and defend by his next friend.
 44. The Court may summarily admit any person to act as next friend to an infant plaintiff or defendant, and the person so admitted shall be liable to satisfy the judgment of the Court and for costs in all respects as if he had been
 5 originally a party to the action.

The summons being served upon an infant defendant, no further step shall be taken in the action until a next friend is admitted.

- If no application be made for admission of a next friend to any infant defendant before the day preceding the day appointed for the hearing the Court may,
 10 on application of the plaintiff, order a solicitor who will consent thereto to act as guardian *ad litem* to such defendant, and such defendant shall be liable to pay to the solicitor so appointed his costs of defending the action.

45. Notwithstanding anything in the *last-preceding* section contained,—
 15 (1.) Any minor above the age of sixteen years may sue in a Court for wages or piecework, or for work as a servant, as if of full age ;
 (2.) Any minor above the age of eighteen years may sue and be sued in any Court as if of full age, upon any contract or agreement which the Court shall deem to have been, or to be, beneficial to such minor, or
 20 in any case of tort in which the Court has jurisdiction ; and judgment may be given in any such action, and such proceedings may be had and taken to enforce such judgment as if the minor were of the full age of twenty-one years.

Minor may sue for wages or on a contract to his benefit.

46. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate,
 25 and shall be considered as representing such parties in the action.

Actions by or against trustees, executors, &c.

- The Court may, at any stage of the proceedings, order any of such parties to be made parties to the action; either in addition to, or in lieu of, the previously existing parties thereto.

- 30 47. Two or more persons claiming or being liable as partners may sue, or be sued, in the name of their respective firms (if any), and the opposite party may in such case apply for the names of the persons who are partners in any such firm, and the Court may order an affidavit to be filed stating the names and addresses of such partners.

Actions by or against partners or single firm.

- 35 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.

- 40 48. When there are numerous parties having the same interest in an action, one or more of such parties may sue or be sued, or may be authorized by the Court to defend in such action on behalf of or for the benefit of all parties so interested.

Party may sue on behalf of others having common interest.

49. A plaintiff may, at his option, join all or any of the persons severally or jointly and severally liable on any one contract, including parties to bills of exchange and promissory notes.

Plaintiff may claim jointly against several parties.

- 45 50. When in an action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants to the intent that in such action the question as to which (if any) of the defendants is liable, and to what extent, may be determined as between all the parties.

Plaintiff may claim jointly against parties when in doubt against whom his remedy lies.

- 50 51. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative.

Joinder of plaintiffs jointly, severally, or alternatively.

Judgment may be given for such one or more of the plaintiffs for such relief as he or they may be entitled to, without any amendment.

- 55 If any person or persons so joined shall not be found entitled to relief, the defendant, though unsuccessful against the remainder of the persons so joined, shall be entitled to his costs occasioned by so joining such first-mentioned person or persons, unless the Court, in disposing of the costs of the action, shall otherwise direct.

Joinder of defendants jointly, severally, or alternatively.

52. All persons may be joined as defendants against whom the right to relief is alleged to exist, whether jointly, severally, or in the alternative.

Judgment may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities, without any amendment.

The Court, in disposing of the costs of the action, may award costs against any defendant who shall be unsuccessful, and in favour of any other of the defendants, as it shall think right.

Defendants severally not interested in relief.

53. It shall not be necessary that every defendant shall be interested as to the relief prayed for, or as to every cause of action alleged.

The Court may make such order as may appear just, to prevent any defendant being embarrassed or put to expense by being required to attend any proceedings in the action in which he may have no interest, or to reimburse him his expenses if he so attend.

Joinder of actions by or against husband and wife. Joinder of actions by or against executor, &c. Exception.

54. Claims by or against husband and wife may be joined with claims by or against either of them separately.

55. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

Claims by or against a married executrix or administratrix as such shall not be joined with claims by or against her husband personally, unless the claims by or against him arise with reference to the estate in respect of which his wife sues or is sued as executrix or administratrix.

Application for joinder of parties.

56. An application to add, strike out, or substitute a plaintiff or defendant may be made at any time before or at the hearing in a summary manner.

Order for adding or striking out parties.

The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear just, order that the name or names of any party or parties, whether plaintiffs or defendants, improperly joined, be struck out, and that the name or names of any party or parties who ought to have been joined, whether as plaintiffs or defendants, or whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added.

Joinder of causes of action.

57. Subject to the preceding sections, a plaintiff may unite in the same statement of claim several causes of action; but, if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may order separate hearings, or may make such other order as may be necessary or expedient for the separate disposal thereof.

Misjoinder of parties not to defeat action.

58. No action shall be defeated by reason of misjoinder, and the Court may, in every action, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

APPEARANCE.

Parties to appear personally or by solicitor. Court may permit appearance by agent.

59. A party to any action may appear and act personally or by a barrister or solicitor of the Supreme Court, and not otherwise; but the Court may permit any party to appear by an agent authorized in writing by the party himself, if within the colony, or, if absent therefrom, by any person holding a power of attorney from such party authorizing such person to sue and be sued for and in the name of such party; but such agent, unless he be a barrister or solicitor, shall not be entitled to receive any fee or reward for so appearing or acting.

Officer may appear for corporation, &c.

A corporation or an incorporated company may appear by any officer, attorney, or agent of such corporation or incorporated company on behalf thereof.

Absentee may appear by attorney.

When a party appears by a solicitor, service of any notice at the office of such solicitor shall be deemed sufficient service on the said party.

Action against absent defendant.

60. The Court shall not determine any action against a defendant absent from the colony until it is satisfied that such defendant has a duly appointed

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agent within the colony authorized to sue and be sued on his behalf, and that legal service of a summons has been effected on such agent.

61. No misnomer, or inaccurate description of any person or place, in any plaint or summons, or in any subsequent proceeding, shall vitiate the same, provided that the person or place be therein described so as to be commonly known.

Misnomer not to vitiate process, &c

The Court shall have power to amend any misnomer or inaccurate description on such terms as to adjournment and payment of costs as it shall think fit.

COMMENCEMENT OF ACTION.—CLAIM.

62. Upon the application of any person desirous of prosecuting an action in the Magistrate's Court, the Clerk of the Court, or the Magistrate, if there is no Clerk, shall enter in a book, to be kept for the purpose in his office, a plaint in writing, which shall state the names and the last known places of abode of the parties and the substance of the action intended to be brought, every one of which plaints shall be numbered in every year according to the order in which it shall be entered.

Action to commence by lodging plaint and statement of claim.

The intending plaintiff shall, at the same time, deliver to the Magistrate or Clerk of the Court a full and explicit statement in writing of the particulars of his claim, to be filed for the use of the Court, together with as many copies of such statement as there are defendants to the action; one copy of such statement shall be annexed to, and served with, each summons, and be deemed a part thereof.

If the plaintiff sue, or the defendant is sued, in a representative capacity, the statement of claim and the summons shall state such capacity.

63. If a plaintiff claim to recover special damage, the statement of claim and the summons shall state so, and shall show the nature thereof.

63. The statement of claim shall give such particulars of time, place, names of persons, amount, dates of instruments, expressed either in figures or in words, and other circumstances as may suffice to fully and fairly inform the opposite party of the cause of action.

Particulars required to be stated.

64. When an aboriginal native of New Zealand—

(a.) Is defendant, a translation into the Maori language of the summons and statement of claim shall be served upon him.

Translation to be added for Natives.

(b.) Is plaintiff, a translation into the Maori language of any counter-claim shall be served upon him.

65. Every application as aforesaid shall be made at the nearest Court to the place where the cause of action arose in the whole or some material part, or to the place where the defendant, or the defendant first named in the summons, if there be more than one, or in the case of an absent defendant, where his attorney or agent resides or carries on his business.

Plaint to be lodged in nearest Court.

66. The plaintiff shall, at the time of making such application, deliver to the Magistrate or Clerk of the Court an affidavit or declaration sworn or made respectively by himself to the effect that the Court in which it is intended to sue is the proper Court for the purpose, but the Magistrate or Clerk may nevertheless refuse to grant or issue any summons where the application appears to have been made to the wrong Court.

Plaintiff to make declaration it is the proper Court.

No objection shall be taken at the hearing on the ground that the Court is not such nearest Court.

67. A summons, which shall be signed by the Magistrate or by the Clerk of the Court, shall thereupon be issued by the Clerk to each defendant.

Issue of summons.

Such summons shall be issued and served three clear days at least before the day on which the defendant is to appear, or at such longer interval before such day as the Magistrate or Clerk issuing the same may appoint.

When summons to be served.

68. A summons may issue and be served at any time before the holding of the Court,—

Summary service.

- (1.) If the defendant or his solicitor agree to accept service, and the Magistrate so order; or
- (2.) If the Magistrate or, in his absence, the Clerk granting or issuing the summons is satisfied that the defendant is about to remove to more than thirty miles' distance from the Courthouse whence the summons is issued, but in every such case the Court may, at its discretion and on such terms as it shall think fit, adjourn the hearing. 5

Plaint in certain cases may be lodged with a Justice of the Peace.

69. Where any person whose usual place of residence is not within ten miles from any Courthouse at which a Clerk of the Court does not attend continuously, such person, or any agent authorized by him, or solicitor of the Supreme Court on his behalf, may make an application as in section *sixty-two* mentioned to any Justice of the Peace resident in the neighbourhood of the aforesaid place of residence: 10

Such Justice shall take down a plaint containing the particulars which are hereinbefore directed to be entered in the plaint-book, and the same proceeding shall be had and taken as is provided where the application is made to the Clerk of the Court; and the said Justice shall in any such case sign and issue all necessary summonses, and shall with all convenient dispatch transmit such plaint and statement of particulars to the Magistrate or to the Clerk of the Court at the place at which such plaint is to be heard. 15 20

DEFENCE.—COUNTER-CLAIM.

Set-off by way of defence.

70. Every defendant may set off, by way of defence, any claim or demand whatsoever that he may have in the capacity in which he is sued against the plaintiff in the capacity in which he sues, and which the Court would have jurisdiction to hear and determine if the same were a claim or demand by a plaintiff in such Court. 25

Defendant may file counter-claim as set-off without issuing summons.

If the defendant has a counter-claim against the plaintiff alone, he may file a statement of such counter-claim, giving such particulars thereof as would be necessary in case of a claim. 30

- (1.) Such statement shall be headed with the words "Counter-Claim," but shall in all other respects conform to the rules as to statements of claim.
- (2.) A copy of such counter-claim shall be filed in the office of the Court and served upon the plaintiff at least twenty-four hours before the time appointed for the hearing, and all further proceedings thereon shall be taken in the same manner as if the defendant had commenced an independent action against the plaintiff, and the said counter-claim shall be tried at the same place as the claim in the original action together with or immediately after the trial of the original action. 35 40
- (3.) The Court may order the claim and counter-claim to be heard together if it be made to appear that such claim and counter-claim can be disposed of more conveniently together than separately.
- (4.) The Court may adjourn the hearing of a counter-claim if it be made to appear that the plaintiff will be prejudiced by the hearing taking place as hereinbefore provided. 45
- (5.) A counter-claim cannot be set up against any one of two or more joint plaintiffs.

Plea of coverture, &c., not admitted unless notice given.

71. Except by special leave of the Court, no defendant shall be allowed to set up a defence of infancy, coverture, Statute of Limitations, tender, or a discharge in bankruptcy, unless notice thereof shall have been filed in the Court and served upon the plaintiff by the defendant at least twenty-four hours before the day appointed for the hearing. 50

Claim or counter-claim may be amended.

72. Either party may at any time before the hearing file an amended statement of claim or counter-claim, and serve a copy thereof on the opposite party; and the Court may at any stage of the proceedings amend any statement of claim or counter-claim. 55

When a statement of claim or of counter-claim has been so amended, the Court may, either before or at the hearing, adjourn the hearing for such time, to such place, and upon such terms as to payment of costs by the party amending, as may appear just.

Hearing may be adjourned.

- 5 **73.** If at the hearing it appear to the Court that either party is taken by surprise by the nature of the case set up by the opposite party, the Court may adjourn the hearing to such time and place as shall seem just, and upon such terms as to the payment of costs as the Court may think just.

Court may adjourn hearing of any case if either party taken by surprise.

CHANGE OF VENUE.

- 10 **74.** A defendant may, if he do so without delay and before filing any counter-claim, apply to change the venue of an action on the ground that the Court is not the Court in which the action, having regard to all the circumstances of the case, should be brought, and the costs of such application and change (if any) shall be in the discretion of the Court; or if the Court shall be satisfied by either
- 15 party to an action pending therein that such action can be more conveniently, properly, or fairly tried in some other Court, it may make an order that the cause be sent for hearing to such other Court.

Court may adjourn hearing to another place if necessary.

The Clerk of the Court in which the plaint was entered shall forthwith transmit to the Clerk of the Court to which the same is to be sent a certified copy of the plaint, with the summons and statement of claim, and the order for changing the place of hearing; and the last-named Clerk shall enter the same in his plaint-book.

The Magistrate of the Court to which the cause is sent shall appoint a day for the hearing, notice whereof shall be given to both parties in such manner as such Magistrate shall direct.

25 After the removal of a plaint as aforesaid, all further proceedings thereon shall be had in the Court into which it has been removed, as if it had been originally lodged therein.

SERVICE.

- 30 **75.** Service of a summons may be effected in manner as hereinafter mentioned on each defendant by delivering to him personally one of the duplicates of the summons, with copy of the statement of claim annexed, or by bringing the same to his notice if he refuse to receive it.

What deemed sufficient service on different parties.

35 (1.) When a defendant cannot conveniently be found the summons and statement of claim may be served by leaving the same at his usual place of abode with some member or servant of his family appearing to be above the age of fourteen years:

40 (2.) Before personal service is dispensed with proof by affidavit shall first be given to the satisfaction of the Magistrate, or any Justice of the Peace, or Clerk of any Court that reasonable efforts have been made to effect such personal service; and, in every case where personal service on a defendant is dispensed with, service at his usual place of abode shall be effected at least seven days before the day fixed for the hearing.

45 Service of any summons as aforesaid, or of any other summons, or notice, or process issued out of any Court, to the parties to a suit—

(1.) May be effected by the bailiff, or by any constable, or, with leave of the Court or of the Clerk, in the absence of the Magistrate, by the party at whose instance the same was issued, or by any one appointed by him.

50 (2.) May be effected by any person authorized by the Magistrate specially in that behalf, as occasion requires;

(3.) May be effected anywhere within but not out of the colony, and must be effected within twelve months after the issue thereof;

55 (4.) May be proved by an affidavit of the person effecting such service, setting forth the fact and mode thereof, which shall be filed in the office of the Court; or such service may be proved upon oath at the hearing.

Where personal service cannot be effected, and the person to be served has left or abandoned his usual place of abode, or quitted the neighbourhood, or is avoiding service, then legal service on such person may be effected in such

manner as the Magistrate in each case may think fit to direct, on the application of any person seeking to have the service effected.

In any case not provided for in this section, or otherwise not provided for by law, service shall be effected in such manner as may be prescribed from time to time by regulations.

Service at a distance may be effected through another Court.

76. When, having regard to the place where a summons is required to be served, the Clerk may consider that service may be more conveniently effected by an officer of another Court, he shall transmit the same with the Court copy to the Clerk of such other Court for service.

The Clerk of such other Court shall indorse upon the said Court copy the time when the same shall be received by him, and shall forthwith deliver the same to the bailiff of his Court, who is hereby authorized and required to serve the summonses.

The bailiff required to serve such summonses shall return the Court copy to the Clerk of his Court, accompanied by an affidavit setting forth the fact and mode of service, or a note that he has been unable to effect such service and from what cause as the case may be, and such Clerk shall forthwith transmit the same with the affidavit or note so received by him to the Clerk of the Court from which he received it.

WITNESSES—SUBPENAS.

Evidence to be taken *vivâ voce*.

77. Evidence at the hearing of an action shall be given by means of witnesses examined *vivâ voce* in open Court, except as in this Act otherwise provided.

Summonses to witnesses.

78. Either party may obtain at the office of the Court summonses to witnesses, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or under their control, to be served at the option of such party either by himself or his agent or by the bailiff.

Any such summons may be signed either by the Magistrate, or by a Justice of the Peace, or by the Clerk of the Court; and there may be inserted therein the names of as many witnesses, not exceeding four, as the plaintiff or person applying for such summons shall think fit.

Expenses.

79. A witness in a civil suit, attending a Court upon such a summons, shall be entitled to a sum for his expenses and loss of time, according to the prescribed scale.

Penalty on witness for refusing to be sworn or give evidence.

80. Every person on whom such a summons as mentioned in section *seventy-eight* shall be served, and to whom at the same time payment or tender of his expenses shall be made on the scale prescribed, and who shall refuse or neglect, without sufficient cause, to appear or to produce any books, deeds, papers, or writings required by such summons to be produced at the sitting of the Court for which he shall have been summoned, or at any adjournment of the Court or of the action, and also every person present in Court who shall be required to give evidence and who shall refuse to be sworn and give evidence, shall be liable to such penalty not exceeding twenty pounds, as the Court shall direct, or in default of payment to be imprisoned for any term not exceeding fourteen days.

Such penalty may be imposed upon any such person by the Court after he shall have been afforded an opportunity to show cause why he should not be so punished, and shall have failed to satisfy the Court in that behalf. But the payment of any such penalty or the undergoing any such term of imprisonment shall not exempt such person from any action for disobeying such summons.

Production of documents.

81. Upon the application of either party to an action, the Court may make such order as it shall think just for the production by the opposite party of any document in his possession or control.

Parts of books may be sealed.

Where it is shown to the satisfaction of the Court that certain parts of books or documents do not relate to the matters in dispute, the party producing the same may be allowed to close up such parts.

Inspection and admission of documents.

82. Either party may call upon the opposite party—

(1.) To produce any document or instrument for inspection, and on refusal or neglect the Court on the day of hearing may adjourn the cause and make such order as to costs as it shall think fit; or

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(2.) To admit any document, saving all just exceptions, and on refusal or neglect the Court may make such order as it shall think fit as to the costs of proving any such document.

5 **83.** A deed may be proved and given in evidence in a Court in the same manner as a document which does not require attestation.

Proof of deeds without attesting witness.

84. The books to be kept by the Clerk, and any entry therein or extract therefrom bearing the seal of the Court, and purporting to be signed and certified as true copies or correct extracts by the Clerk, shall be admitted in all Courts and places as evidence of such books and entries and of the proceedings thereby referred to and of the regularity of such proceedings without further proof.

Records kept by Clerk to be evidence.

If the existence of a record of the Court is in dispute, the existence of such record shall be determined by the Court.

WITNESSES RESIDENT AT A DISTANCE.

15 **85.** Where an action shall have been commenced, and a person, whether a party to such action or not, shall—

Where witness more than twenty miles from Court party may apply for examination.

Be resident more than twenty miles from the Courthouse where the hearing of the action is appointed to be held; or

20 Be about to go and remain beyond such distance until after the hearing, the party desiring to use the evidence of himself or of such person at the hearing may give notice of such desire to the Clerk of the Court in which it is intended that the examination hereinafter mentioned shall take place, and which Court is hereafter mentioned as "the Court for examination." Such notice shall specify the name or names of the person or persons intended to be examined. There shall be delivered therewith a copy of all statements of claim and counter-claim in the

25 action. **86.** Immediately upon receiving such notice the Clerk receiving the same shall appoint a time and place for such examination, and, if the summons shall not have issued out of his Court, shall transmit a copy of such notice, with a memorandum of the time and place appointed for the taking of such examination, to the Clerk of the Court (hereafter mentioned as "the Court for hearing") out of which the summons issued.

Time and place for examination to be appointed and notices to be given.

30 Notice of the intention to hold such examination, and of the time and place of holding the same, shall forthwith, after appointing the same or receiving notice of such application, be given by the Clerk of the Court for hearing to the party against whom such evidence is intended to be used.

Procedure at examination.

35 The last-mentioned Clerk shall forthwith, after service on such party last mentioned, transmit to the Court for examination a copy of the last-mentioned notice, with an affidavit of service thereof.

40 Summons to witnesses to attend such examination, and to produce books, papers, and writings, may issue, and the procedure on such examination shall be the same in all respects as if such examination were the hearing of an action, except as may be otherwise prescribed by regulations from time to time.

45 **87.** All evidence given at such examination shall be reduced into writing and signed by the Magistrate before whom it is taken and by the persons giving such evidence respectively, and such writing shall be forwarded by the Clerk of the Court for examination to the Clerk of the Court for hearing, together with all books, documents, and things admitted in evidence, or copies thereof respectively.

Transmission of evidence to place of hearing.

50 In case no Magistrate is present at the time appointed for hearing, any two Justices of the Peace may act in his place, and hold such examination, notwithstanding that the matter under examination is beyond the jurisdiction of such Justices.

55 **88.** The costs of such examination, together with the allowances for solicitors and witnesses, in accordance with the prescribed scale, shall be fixed by the Court for examination; and the same allowances for solicitors and witnesses may be made as if such examination as aforesaid had been the hearing of an action.

Costs of examination in discretion of Magistrate.

Such costs and allowances may in all cases be dealt with by the Court as if the same were incurred in and about the hearing of the said action.

Evidence given at examination deemed to have been given in the action.

89. Every person giving evidence at any such examination shall be deemed to have given his evidence in such action, and in any indictment and information it shall be sufficient to allege that such examination was held under the provisions of this Act; and proof of the summons having been issued in such action, and of the evidence of any person having been given at such examination, shall without proof of any of the notices herein mentioned be sufficient evidence of the authority of the Court for examination to hold the same and of such examination having been so held; and the signature of every Magistrate to such written evidence shall be judicially noticed without any proof thereof.

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Indictment and evidence.

HEARING.

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Court to decide according to equity and good conscience.

90. The Court in all actions shall have full power to examine witnesses on oath or affirmation and to give such judgment between the parties as it shall find to stand with equity and good conscience, either at once or after taking time for consideration; and the Court shall be at liberty to receive any such evidence as to it may seem fit, whether the same shall be strictly legal evidence or not, and in any judgment to prescribe such terms and conditions as to the time and mode of satisfying such judgment as it shall deem just and reasonable.

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Court may amend errors in proceedings.

91. The Court shall have power, at any time either before, at, or after the hearing, to amend all defects and errors in the proceedings, whether there be anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not.

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Such amendments shall be made with or without costs, and upon such terms as to the Court may seem fit, and all amendments shall be made that may be necessary for the purpose of determining the real controversy between the parties in the action; but nothing herein shall be deemed to authorize the substitution of one cause of action in the place of another.

25

Court may postpone or adjourn hearing.

92. The Court shall have full power either before or during the hearing, to postpone or adjourn the hearing of any case from time to time, and for such time and upon such terms (if any) as the Court may think fit.

Proceedings when plaintiff does not appear.

93. If at the time and place of hearing or at any continuation or adjournment of the Court or action the plaintiff shall fail to appear, and if the defendant admit the cause of action to the full amount claimed, the Court may proceed to give judgment as if the plaintiff had appeared; but if the defendant shall appear and shall not admit the demand, the action shall be struck out, and the Court may adjudge to the defendant by way of costs such sum as the Court in its discretion shall think fit:

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But the Court, at the same or the next subsequent sitting thereof, may order any such action to be reinstated if it shall think fit upon such terms as to adjournment of the hearing thereof, and service of notice thereof, and as to costs, as the Court may think fit.

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If defendant does not appear, Magistrate may determine case *ex parte*.

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

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When Magistrate may nonsuit plaintiff or give costs to defendant.

95. If, at the time and place of hearing or at any continuation or adjournment of the Court or action, the plaintiff shall appear but not make proof

of his demand or of some part of it to the satisfaction of the Court, the Court may nonsuit the plaintiff as to the whole or a part of his claim, or give judgment in his favour for the whole or a part of his claim, or give judgment for the defendant, and, if the defendant shall appear and shall not admit the demand, may adjudge to the defendant by way of costs such sum as the Court in its discretion shall think fit.

96. The plaintiff may, at any time before judgment is delivered, elect to be nonsuited. After a nonsuit the plaintiff shall not be debarred from having the action heard again on the same statement of claim or any amended statement of claim, all the costs of the first hearing having been first paid, and the Court, on application of the plaintiff, may fix a time and place for such second hearing, of which the plaintiff shall give not less than two clear days' notice to the defendant. Should there be a third hearing in any case, judgment shall be given thereat either for the plaintiff or defendant without any election of nonsuit.

15 The Court may nonsuit the plaintiff without his consent.

In case of nonsuit the Court may award to the defendant such costs as to it shall seem reasonable; and the amount so awarded may be recovered in the same manner as if judgment had been given for the said amount.

20 **97.** If a counter-claim be proved to a claim—

(1.) To an amount less than that proved to the claim, the plaintiff shall have judgment for the balance of his claim, after deducting the portion of of the counter-claim proved by the defendant;

(2.) To an amount exceeding that proved to the claim, the defendant shall have judgment for the excess.

25 **98.** Judgment may be entered by the Clerk of the Court upon a written confession of the cause of action given by the defendant or his solicitor to the plaintiff, or lodged with the Clerk, with or without condition annexed as to the time for satisfying the claim, whether by instalments or otherwise. No condition shall be embodied in the judgment unless consented to by the plaintiff in writing.

30 (1.) The confession may be of part only of the alleged cause of action, in which case the plaintiff can have judgment entered for the part confessed, and may proceed as to the residue, or if he refuse to accept the confession as to a part he may proceed with the case as if no confession had been entered.

35 (2.) A confession may be given at any time after the summons is issued; but notice thereof must be served upon the other party or his solicitor not later than twelve o'clock (noon) of the day preceding the day of hearing.

40 **99.** Judgment may be entered by consent upon a written agreement between the plaintiff and the defendant as to the amount of the claim so agreed upon between them, and the terms and conditions upon which the same shall be paid or satisfied, or, with the authority of the parties, by their solicitors.

45 **100.** A confession or a consent for judgment may be signed in the presence of the Clerk of any Court, or a Justice of the Peace, or a solicitor of the Supreme Court. If not signed before the Magistrate or Clerk of the Court, proof shall be given of the signatures to such confession or consent to the satisfaction of the Court before judgment is entered.

50 **101.** If the claim be for money the defendant may at any time before the hearing pay into Court a sum of money by way of satisfaction or amends, together with the costs incurred by the plaintiff up to the time of such payment.

If the relief claimed be possession of land or possession of chattels, the defendant may, at any time before the hearing, deliver, or offer to deliver, possession of the land or of the chattels claimed, or any part thereof, to the plaintiff, and pay into Court a sum of money by way of compensation for the detention thereof or damage thereto, together with the costs incurred by the plaintiff up to the time of such payment.

55 **102.** In paying money into Court the defendant shall specify the cause of action or particular part of the plaintiff's claim in respect of which the money is paid in, and the Clerk shall enter a memorandum of such payment accordingly.

Plaintiff may elect a nonsuit.

Judgments in cases of set-off.

Judgment by confession.

Judgment by consent.

Signing of confession or consent.

Payment into Court.

Delivery of land or chattels.

Notice of payment.

Costs to plaintiff up to time of payment.

Notice of such payment or delivery or offer of delivery shall be served by the defendant upon the plaintiff at least twenty-four hours before the time appointed for the hearing, failing which the Court may order the defendant to pay such reasonable costs as the plaintiff shall have incurred in preparing for trial before such notice was received by him, or in the attendance of himself or witnesses at the Court. 5

No further costs to plaintiff if he recover no further.

103. All sums of money and costs paid into Court as aforesaid shall be paid to the plaintiff, and as to any such payment, or delivery or offer of delivery of land or chattels,—

(1.) If the plaintiff shall accept the same in satisfaction for his demand he shall forthwith and before the hearing give notice thereof to the defendant, failing which the Court shall allow the defendant his costs of the action subsequently to such payment or delivery or offer of delivery; but 10

(2.) If the plaintiff do not accept the same in satisfaction, and shall elect to proceed, but shall fail at the hearing to recover a greater sum of money than the sum paid into Court, or to recover other land or chattels than those delivered or offered to be delivered, or if the Court shall be of opinion that the relief offered was adequate relief, though not the precise relief the plaintiff may be awarded, the Court may allow the defendant his costs of the action subsequently to such payment or delivery or offer of delivery or relief as the case may be. 15

Plaintiff may discontinue action.

104. The plaintiff may, at any time before the hearing, discontinue his action, either wholly or as to any cause or part of a cause of action, by filing in the office of the Court a memorandum thereof and serving a copy of such memorandum upon the defendant or his solicitor at least eighteen hours before the time fixed for the hearing. A plaintiff so discontinuing wholly shall pay to the defendant the costs incurred by him in defending the action up to such discontinuance, and in default the Court may enter judgment for the same. 25

Not a defence to subsequent action.

The discontinuance of an action shall not be a defence to any subsequent action on the cause of action or part of a cause of action discontinued. 30

The Court may stay proceedings in any such subsequent action until the costs of the former action have been paid.

Judgment to be final except the Court order a nonsuit or a rehearing, or vary its judgment.

105. Subject to the right of appeal hereinafter contained, every order and judgment shall be final and conclusive between the parties: 35

But the Court may, in its discretion,—

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

Alter or vary its judgment during the sitting of the Court at which it was given; 40

Grant a rehearing in manner as hereinafter mentioned.

Proceedings not to be quashed for want of form.

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

Interest may be awarded.

107. A judgment may award interest to the date of judgment at the rate agreed upon, if any, otherwise at eight pounds per centum per annum. 45

Judgment to carry interest.

108. A judgment shall carry interest from the date thereof until satisfied at the rate of eight pounds per centum per annum; and such interest may be levied under any warrant of distress issued upon such judgment.

Judgment to expire in six years.

109. No warrant of distress or for seizure of goods or chattels shall, without leave of the Court, issue on a judgment more than six years old, unless some payment has been made into Court under such judgment within twelve months previously; but no notice to the defendant previous to applying for such leave shall be necessary; and such leave shall be expressed on the warrant under the seal of the Court. 50

In civil suits distress warrants may issue.

110. In every case of a civil nature heard and determined under the authority of this Act, when judgment shall have been given or an order made

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for the payment of any sum of money, and the amount thereof shall not be paid forthwith, or at the time or times or in the manner thereby directed, the Magistrate or any Justice of the Peace may at any time after the expiration of the time allowed for giving notice of appeal, and is hereby required, at the request of the party prosecuting such judgment or order, and upon receiving a certificate from the Clerk of the Court or other person authorized to receive such money, that the same or some part thereof remains unpaid, to grant a warrant of distress under his hand directed to the bailiff of the Court or to some other fit person to be named in such warrant, authorizing and requiring him to levy or cause to be levied such sum of money as shall be ordered or adjudged to be paid, or so much thereof as shall then remain unpaid, and also the costs of the execution by distress and sale of the goods and chattels of the party against whom such judgment shall have been given or order made.

Notwithstanding anything in this section contained any Magistrate may grant immediate execution on cause being shown to his satisfaction in that behalf.

111. No sale of goods or chattels taken in execution shall be sold until after the end of five clear days next following the day on which they shall have been so taken, unless they be of a perishable nature, or upon the request in writing of the party whose goods or chattels have been taken.

Sale of distress.

Until such sale the said goods and chattels shall be deposited by the bailiff in some fit place, or they may remain upon tenements occupied by the owner thereof at his request, in the custody of a fit person to be put in possession by the bailiff.

Any bailiff or other person authorized to execute any warrant of distress may sell by auction the goods and chattels seized thereunder without having taken out an auctioneer's license, anything in any law, Act, or ordinance to the contrary notwithstanding.

Bailiff may act as auctioneer.

112. If it shall at any time appear to the satisfaction of the Court, by the oath or declaration of any person or otherwise, that any defendant is unable from sickness or other cause to pay or discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid, the Magistrate of the Court may in his discretion suspend any judgment, order, or execution for such time and on such terms as he shall think fit, and so from time to time until it shall appear by the like proof as aforesaid that such cause of inability has ceased.

In case of illness of defendant time may be granted.

113. If the Court shall have made an order for payment by instalments, execution upon such order shall not issue until after default in payment of some instalment according to such order, and execution or successive executions may then be issued for the whole sum and costs then remaining unpaid, unless the Court, upon the application of the party liable, shall otherwise order.

Execution when money ordered to be paid by instalments.

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

Execution, how to issue when there are cross-judgments.

115. The Magistrate, Justice of the Peace, or Clerk of the Court shall note upon the application and upon the warrant of distress the precise time when application shall be made to issue such warrant; and, when more than one such warrant shall be issued, they shall be executed in the order of the times so noted.

Time of application for warrant to be noted.

116. When a writ or warrant against the goods of a party has issued from the Supreme Court or any District Court, and a warrant of distress against the goods of the same party has issued under the provisions of this Act, the right to

Priority of execution of writs and warrants issuing from different Courts.

the goods seized shall be determined, as the case may be, by the priority of the time of the delivery of the writ to the Sheriff to be executed, or of the application to the Clerk of the District Court for the issue of the warrant to be executed, or of the application to the Magistrate, or Justice of the Peace, for such warrant of distress; and the Sheriff on demand shall, by writing signed by him, inform the bailiff or other person to whom such warrant of distress shall be directed, of the precise time of such delivery of the writ; and the bailiff of the District Court on demand shall show his warrant to the bailiff or other person to whom such warrant of distress shall be directed, and the bailiff of the Magistrate's Court or other person to whom such warrant of distress shall be directed, shall on demand show such warrant to any Sheriff's officer, or to the bailiff of the District Court, and such writing, purporting to be so signed, and the indorsements on such warrant, shall respectively be sufficient justification to any Sheriff or bailiff acting thereon.

What property may be seized under warrant.

117. A warrant of distress shall authorize the bailiff—

To seize all the goods, including money, cheques, bills of exchange, promissory notes, bonds, or other securities for money, of the person against whom it is issued, except the personal and family clothing, the bed-clothes, bedding, and tools or implements of trade, not exceeding in all *twenty-five* pounds in value;

To give notice to any Court or to the proper officer of any Court requiring it and him not to part with any moneys in the possession of the said Court or officer belonging to the party against whom execution shall have issued;

To apply to the Court *ex parte* for an order for the payment of such last-mentioned moneys by such officer to him. The Court may make any such order accordingly, and upon notice thereof the officer in whose custody such money may be shall pay the same accordingly.

Disposal of property seized.

118. The bailiff shall deliver all cheques, bills of exchange, promissory notes, bonds, specialities, or other securities for money which have been seized or taken, and all moneys received from any officer of the Court as in the last section respectively mentioned, to the Clerk of the Court, for the benefit of the party upon whose application such execution shall have issued, as security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised; and the said party may sue in the name of the person against whom execution shall have issued, or in the name of any person in whose name the person against whom execution shall have issued might have sued for the recovery of the sum or sums secured or made payable thereby when the time of payment thereof arrives.

Court may order delivery of chattels to be made.

119. Upon application of the plaintiff who has obtained a judgment for the recovery of specific goods, and damages for their detention, the Magistrate may grant a warrant to the bailiff requiring him to demand and seize the specific goods claimed, if they can be found by him, and to deliver them to the plaintiff. If the bailiff shall not find and seize the said goods, the Magistrate, if he shall see fit, on the application of the plaintiff, may order the immediate return thereof; and if such order be not obeyed by warrant may commit the defendant to some convenient prison, there to be imprisoned for any time not exceeding one month, unless he shall in the meantime cause the goods so detained to be returned to the plaintiff.

And if such demand be refused, or such order be not obeyed, the Magistrate may at any time thereafter, on application of the plaintiff, grant a warrant of execution for the value of the goods, such value to be assessed in such manner as the Magistrate may direct, without prejudice to the plaintiff's right to obtain execution, either before or after or concurrently therewith, for his costs of suit and the damages awarded for the detention of the goods.

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120. When a warrant is required to be executed by the bailiff of a Court other than the Court issuing the warrant, the Magistrate of the last-named Court may, except under special circumstances, cause the same to be transmitted to the Clerk of the first-named Court, and such Clerk shall indorse thereupon the time when the same shall be received by him, and shall forthwith deliver the same to the bailiff of his Court, or to such other person, in case of the absence of the bailiff, as such Clerk shall think to be a fit and proper person for the purpose, who is hereby authorized and required to execute the same. Such bailiff shall certify to the last-mentioned Clerk what he has done, and, if he has received any money or fees, shall pay over the same to such Clerk, who shall forthwith return the warrant to the Clerk of the Court whence it issued, together with any moneys which may have been received by him in manner aforesaid, after deducting therefrom the fees allowed to him.

Execution of process at a distance.

REPLEVIN AND INTERPLEADER.

121. 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 five 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.

Landlord may claim rent to a limited extent.

If such claim be made, the bailiff shall, in addition to the levy under the warrant, distrain for the rent so claimed and the cost of such distress; and in the exercise of such power the bailiff shall be deemed to be the agent of the landlord.

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 warrant issued.

122. If any replevin be made of the goods so taken, the bailiff shall notwithstanding sell such portion thereof as will satisfy the costs of and incident to the sale under the execution and the amount for which the warrant issued, and in any event the overplus of the sale (if any) and the residue of the goods shall be returned to the person whose goods shall have been so taken in execution, and the poundage of the bailiff for keeping possession and sale under such distress shall be the same as would have been payable if the distress had been under a warrant of distress out of the Resident Magistrate's Court, and no other fees shall be demanded or taken in respect thereof.

In case of replevin, bailiff to sell sufficient to pay costs.

123. When goods taken in execution under the process of a Court are claimed by any person not being the party against whom the warrant has been issued, the bailiff shall deliver possession of the goods so seized to the person claiming the same or his agent, upon such person or agent paying into Court or to the bailiff the amount of the sum to be levied under the warrant, and the fees and expenses of execution, or giving security to the satisfaction of the bailiff for such amount.

In cases of interpleader, amount of debt and costs to be paid into Court.

The amount so paid or secured shall be subject to the decision of the Court on the claim of such person: Provided—

If the value of the goods seized is less than the amount of the sum to be levied under the warrant and the fees and expenses of execution, the person claiming such goods may obtain the delivery thereof on paying into Court or to the bailiff, or securing as aforesaid the value of such goods, such value in case of dispute to be settled by the appraisalment of some indifferent person to be appointed by the Magistrate;

Or the person so claiming any goods as aforesaid may pay to the bailiff the amount of the fees he is entitled to charge for keeping possession of the goods seized until a decision of the Court as to the claim of

Procedure on claim to goods seized in execution.

such person can be obtained, and the bailiff shall thereupon keep possession of such goods until such decision shall be obtained.

124. When goods seized under a warrant of distress or the proceeds or value thereof are claimed by any landlord for rent or by any party not being the party against whom such process was issued, the bailiff may before or after the return of the warrant, and whether an action has been commenced against him for such seizure or not, obtain a summons to the party issuing such warrant, the party against whom it is issued, and the person making such claim. 5

On the hearing of such summons the Court may, for the adjustment of such claim and the relief of such bailiff, exercise all or any of the powers conferred by this Act, and may make such orders between the parties as to any moneys paid into Court or secured, or any goods retained by the bailiff, and in respect of the costs of the proceedings as shall appear just according to the circumstances of the case. 10

Procedure when goods seized are secured under a bill of sale.

It shall be competent to any Magistrate to hear such summons, whether granted by himself or any other Magistrate or competent authority. 15

125. When goods have been seized under a warrant of distress, and some third person claims under a bill of sale or otherwise to be entitled to such goods by way of security for a debt, the Magistrate may order a sale of the whole or part of such goods upon such terms as to payment of the whole or part of such secured debt or otherwise as he shall think fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as to him may seem just. 25

ATTACHMENT OF DEBTS.

Court may order examination of judgment debtor.

126. The Court in which a creditor has obtained judgment may, on his application, order his judgment debtor to be examined as to what debts are owing or accruing to him, and may order that all or any of such debts be attached to answer the judgment debt, and be paid to such creditor, and also may make such other orders in the whole case as it shall think fit. 30

Examination to be as Magistrate may order.

On any such order being made the examination thereunder may be oral, and may be had before a Magistrate, or such other person as the Court may appoint; and such Magistrate or any Justice of the Peace shall have the same powers of compelling the attendance of such judgment debtor for the purpose of being so examined as is possessed by a Justice of the Peace under sections one hundred and twenty-six and one hundred and twenty-seven of "The Justices of the Peace Act, 1882," for the purpose of compelling the attendance of witnesses in cases of indictable offences. 35

Power to compel attendance.

JUDGMENT DEBTORS RESIDENT AT A DISTANCE.

Judgment debtor may be ordered to appear at most convenient Court.

127. When a judgment creditor issues out of a Court a summons under section six of "The Imprisonment for Debt Abolition Act, 1874," against his judgment debtor, such summons may call upon the said debtor to attend and be examined either at the Court issuing the summons, or at another Court to be named in such summons, being the one nearest to the residence of the judgment debtor. 40

Procedure when examination held at a distant Court.

(1.) The Clerk of the Court issuing the summons shall, when such examination is to be had in any Court other than his Court, transmit the summons, on the issuing thereof, for service, with the duplicate, to the Clerk of such other Court, who shall appoint the day upon which such examination shall be had. 45

(2.) Upon an examination in a Court other than the Court issuing the summons, such order may be made and the matter may be dealt with by the examining Court in like manner in all respects as if the summons had issued out of such Court, and such of the provisions of this Act relative to "witnesses resident at a distance" as may be applicable shall apply to the procedure on any such summons. 50

WRIT OF ARREST.

Absconding debtors may be held to bail.

128. When it is made to appear to the satisfaction of any Magistrate having jurisdiction to the amount of the claim, by affidavit of any plaintiff or 55

his authorized agent that he has a good cause of action against a defendant for a sum within the jurisdiction of such Magistrate, and not being less than *twenty* pounds, for which a summons has been issued under this Act, and that there is probable cause, the grounds of which shall be stated in such affidavit, for believing
 5 that such defendant is about to leave the colony and to evade the payment of such sum, such Magistrate may issue a writ of arrest under his hand, returnable immediately, and, *if payment of the said sum be not made before execution of the writ, may* thereupon cause such defendant to be brought before him, and, upon investigation of the case, may either discharge such defendant or hold him to bail
 10 for any sum not exceeding the amount sworn to in such affidavit, with costs.

In default of bail being given, or the amount with costs deposited with the Clerk, as hereinafter provided, the Magistrate may order such defendant to be detained in some prison or lock-up, and to be brought from there to a Magistrate's Court at a time to be stated in such order, being not more than four clear
 15 days from the date of such order, unless he shall sooner give the prescribed security or make the said deposit.

A defendant against whom such writ has issued for any amount may deposit with the officer executing such writ, or with the Clerk, in lieu of bail, such amount, with three pounds for costs in a case not exceeding fifty pounds, or
 20 five pounds when such amount exceeds fifty pounds, and the sum so deposited shall be paid, applied, and disposed of according to the final judgment of the Court.

A Magistrate before whom a defendant is brought under authority of any writ to be issued as aforesaid may, with the consent in writing of the
 25 defendant, summarily hear and finally adjudicate upon the claim of the plaintiff, or may fix a time for hearing the said claim by the Court.

129. Where a Magistrate hears and finally adjudicates upon the claim of a plaintiff under the power contained in the *preceding section*,—

(1.) If judgment is given for the plaintiff, he may make an order for the
 30 immediate payment of the amount of such judgment, with costs not exceeding the sums in the last aforesaid section mentioned, and execution may be at once issued, and such other proceedings may be had thereon as if the same were a judgment obtained in the ordinary course of procedure.

(2.) If judgment is given for the defendant, he may, at his discretion,
 35 award to such defendant, by way of compensation, any sum not exceeding twenty pounds, and such award shall be deemed to be a judgment of the Court, and execution may issue thereon.

130. Any two Justices of the Peace, acting together, may exercise the
 40 jurisdiction conferred upon a Magistrate by the *last two preceding* sections in case of the absence, illness, or other cause preventing such Magistrate from acting, or in any place where no Magistrate may be resident.

ARBITRATION.

131. The Court may of its own motion, when it shall seem expedient to
 45 do so, or 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 and subject to such costs as it shall think reasonable, and may appoint an arbitrator in case any party neglects to appoint one, or in the place of any
 50 arbitrator who may refuse to act. Such reference shall not be revocable by either party except by the consent of the Court, and the award shall be entered on the application of either party and be binding and effectual as a judgment of the Court, and there shall be no appeal therefrom.

132. The Court may, on application of either party, at the first sitting held
 55 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.

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. 5

REMOVAL OF JUDGMENTS INTO SUPREME COURT. 10

Certificate of judgment may be obtained.

133. Whenever any sum of money exceeding twenty pounds is recovered in any one action by the judgment of a Magistrate's Court, the Clerk, upon the application of the judgment creditor or of any person on his behalf, shall grant and deliver to the person making such application a certificate in the form or to the effect thereof in the prescribed form, and shall register in his office a minute or memorandum thereof. 15

Not to be granted before execution might issue.

(1.) No such certificate shall be granted before the expiration of the time allowed for giving notice of appeal, or before the time at which execution could be issued out of the last aforesaid Court; and, if any execution against the goods and chattels shall have been issued out of such Court, no such certificate shall be granted until after the return of the warrant of execution. 20

After any such certificate shall have been granted no further proceeding shall be had or taken in such action in the said Court.

Certificate may be filed in Supreme Court.

(2.) The person obtaining the said certificate may file the same in the Supreme Court by delivering it for such purpose at the office of the Registrar of the Supreme Court which is nearest to the Magistrate's Court aforesaid; and thereupon, without any previous process, may sign final judgment in the said Supreme Court in the form or to the effect thereof in the prescribed form (on which judgment no appeal shall lie) for the sum mentioned in such certificate to be unpaid, together with the interest thereon at the rate of eight pounds per centum per annum from the day named in such certificate until the date of the said final judgment, and the fee paid for the said certificate to the Clerk of the Magistrate's Court, as well as all prescribed fees paid in the Supreme Court in respect of or in connection with the signing of the said final judgment. 25 30 35

Final judgment signed.
Execution thereon may issue forthwith.

(3.) Upon such final judgment execution may be forthwith issued, and all other remedies had thereon in the same manner as on any other judgment of the Supreme Court.

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

134. An action may be brought on a judgment of a Magistrate's 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 such Magistrate's Court against the person or property of the defendant. 40

SATISFACTION OF JUDGMENT. 45

Entry of satisfaction of judgment.

135. When a judgment is satisfied by payment, levy, or otherwise, the judgment debtor shall be entitled to have satisfaction for the same entered up; and when a judgment is satisfied by payment into Court or otherwise through the Court, it shall be the duty of the Clerk of the Court, without any application, to enter up satisfaction thereof on the record of the judgment. 50

REHEARING.

Court may order rehearing on such terms as it thinks fit.

136. Any Magistrate or the majority of the Justices of the Peace before whom a civil case has been heard, in his or their discretion, may grant a rehearing of such case upon such terms as he or they shall think reasonable if application for the purpose be made within fourteen days after judgment is given, and in the meantime stay proceedings. 55

Such rehearing shall not necessarily take place before the same person or persons by whom the case was originally heard.

REMOVAL OF ACTIONS INTO SUPREME COURT.

137. 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.

Actions may be removed into Supreme Court.

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

Procedure on removal.

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

APPEAL.

139. Either party may appeal to the Supreme Court against any final determination or direction of the Court in point of law, in any case where the amount of the claim exceeds five pounds: Provided—

Right to, given.

(a.) That, in actions for any claim where the amount exceeds five pounds but is under twenty pounds, the consent of the Court be first obtained:

(b.) 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:

(c.) That the appellant give notice of appeal within seven days after such determination or direction; and that within such seven days he give security to abide the event of the appeal in such form and to such amount as may be approved by the Court, not being less than will be sufficient to cover the costs of the appeal as well as the amount of the judgment appealed against and its costs.

Notice.

Security for costs.

Notice of appeal shall be given by leaving with the Clerk and serving on the opposite party a notice in writing briefly stating the grounds of appeal.

140. The appeal shall be in the form of a case agreed on by both parties or their solicitors.

Form of appeal.

(1.) An appellant shall within seven days after the latest day on which he could have properly given notice of appeal deliver to the respondent a draft of the case on appeal for his approval. The respondent within five days after the receipt thereof shall return the draft either approved or altered, as he may desire, to the appellant, who, if the draft is approved or the alterations accepted, shall cause it to be engrossed in triplicate.

Notice.

(2.) If the parties do not thereon agree as to the form of the draft, it shall be forthwith forwarded by the appellant to the Clerk, and the Magistrate shall, after hearing the parties, if he think fit, or either of them, or their solicitors, settle the draft and return it to the appellant, by whom it shall be engrossed in triplicate, as settled by the Magistrate.

(3.) Within seven days after the draft has been agreed upon or settled by the Magistrate, as the case may be, the engrossments thereof shall be delivered to the Clerk, who shall procure one of them to be signed by the Magistrate, and sealed with the seal, which shall thereon be the "case on appeal."

- Hearing of appeal. (4.) Each of the other two engrossments shall be made by the Clerk into a correct copy of the case on appeal, and he shall return one copy to the appellant, and forward the other to the respondent. 5
- (5.) The case on appeal he shall transmit or deliver to the Registrar of the Supreme Court which is to hear the appeal, and such Registrar shall within seven days after the receipt thereof enter the same on the list of cases for hearing at the next practicable sitting of the Supreme Court.
- (6.) If at such hearing the appellant does not appear to prosecute such appeal, it shall be deemed abandoned and shall be struck off the list.
- How case dealt with by Supreme Court. 141. 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. 10 15
- Order as to costs. No sum exceeding ten pounds, over and above the fees of Court, shall be allowed by the Supreme Court as costs of appeal in any case where the cause of action or matter in dispute does not exceed fifty pounds in value or amount.
- Decision on appeal. 142. The Registrar of the Supreme Court shall transmit to the Clerk of the Magistrate's Court from which the appeal was brought a memorandum of the decision of the Supreme Court, and such proceedings shall be had thereupon as if such decision had been given by the Magistrate's Court. 20
- Stay of execution pending appeal. 143. If before notice of appeal is given execution shall have issued, the Clerk shall, upon the appellant giving the required security forthwith, give notice to the bailiff, and proceedings on such execution shall be thereupon stayed; and if any sum shall have been paid or levied, but not paid over to the successful party, the same shall remain in Court to abide the order of the Supreme Court. 25
- If appeal not prosecuted, judgment may be enforced. 144. If the appellant does not appear at the time appointed for hearing the appeal it shall stand dismissed, and if he do not prosecute his appeal with due diligence the respondent may apply to the Court for leave to proceed on the judgment, and leave for that purpose may be granted accordingly if the Court shall think fit; and the successful party shall also be entitled to such costs as he shall have incurred in consequence of the appellant's proceedings; which shall be fixed by the Court, and added to the judgment. 30
- COSTS AND FEES. 35
- Scale of costs to solicitors. 145. A party having a judgment carrying costs shall, for his solicitor's charges in the action, be entitled, as against the other party, to charge on such judgment, in addition to any moneys paid out of pocket by the solicitor for fees of Court, such fees as may be prescribed by Order in Council.
- The disallowance of all or any part of any costs shall be in the discretion of the Court. 40
- Allowance in discretion of Court. 146. All the costs of an action, or of any application or other proceeding in any Court shall be paid or apportioned between the parties in such manner as the Court shall think fit; but, in default of any special direction, such costs shall abide the event of the action, and shall be exclusive of the foregoing charges. 45
- The amount of costs awarded shall be ascertained and stated in the judgment.
- Court may award costs of service of process, &c. 147. The Court may, if it think fit, award to either party reasonable costs for their attendance to prosecute or defend any action, and costs of service of any summons, notice, or other process in connection with the action, where such service has been effected by the parties to the action, including, for service of summons by a plaintiff, if he obtain judgment, such sum for mileage or actual expenses as the Court shall fix, not exceeding one shilling per mile one way over two miles. 50
- Though cause of action not within jurisdiction, costs may be allowed. 148. 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 54

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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.

- 5 149. All 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.

Court fees to be prepaid, except in Crown cases.

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

- 10 A 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.

- 15 But in any proceedings in which Her Majesty or any officer of Her Majesty's Government in the colony, on her behalf, or on behalf of the said Government, is seeking to recover any debt, or other sum of money, or any fine or penalty due to the Crown or to the aforesaid Government, no fees of Court need be prepaid on behalf of her said Majesty or officer, but such fees shall nevertheless be recoverable from the defendant with costs if judgment be given against him.

- 20 150. Notwithstanding anything contained in any prescribed table or schedule of fees, a Magistrate may authorize the payment of such charges or fees as he shall think reasonable to enable any summons or process to be served or executed without pecuniary loss to the person entrusted with the service or execution thereof, in any case where such Magistrate shall be satisfied that the prescribed fee is not sufficient for the purpose.

Court may order increased fee in certain cases.

- 25 151. All moneys which shall be payable under or by virtue of this Act by way of fines, fees, or penalties, shall form part of the Consolidated Fund.

Fines and fees to be paid to Public Account.

- 30 All fees payable in respect of keeping possession shall be excepted from this provision, and such last-mentioned fees shall be paid to the bailiff or person charged with the execution of the warrant, to be paid by him to the person put in possession.

PARTNERSHIP ACCOUNTS.

- 35 152. Any Magistrate having jurisdiction to hear and determine claims to partnership assets, may order the partnership assets in any firm to be realized and converted into money, and by the same or any other order or orders may appoint such person (hereinafter called "the Receiver"), and at such rate of remuneration, to be specified in any of the said orders, as the Court shall deem fit, to take possession of all the partnership assets and property, and of all books, deeds, documents, and papers relating to the partnership.

Court may order partnership assets to be realized, and appoint a Receiver.

- 40 (1.) All the assets of the partnership, including personal property, rights, privileges, claims, and demands to or in respect of personal property, shall, from the date of the order appointing a Receiver, vest absolutely in the person so appointed Receiver.

Assets of partnership to vest in Receiver.

- 45 (2.) The said Receiver shall, in the name of "the Receiver of the assets of the firm of [*name of firm*], in the Magistrate's Court," have full power and authority to ask, demand, sue for, collect, get in, receive, recover, and take possession of all the said assets, and enforce all the said rights, privileges, and claims of the partnership from and against all persons whomsoever, including the members of the partnership, and to realize and convert into money the said assets: Provided that the said Receiver shall exercise the said powers and authorities subject to, and in accordance with, any orders or directions of the said Court which from time to time may be made or given.

Receiver may demand, sue for, and recover partnership assets in the name of "the Receiver of the assets in the firm of," &c.

- 50 (3.) The said Receiver shall pay and discharge out of the moneys arising from the realization of the said assets all the lawful debts and lia-

Receiver to pay debts of partnership and costs of realizing assets.

- bilities of the partnership firm, and all the costs, charges, and expenses in connection with the taking possession, getting in, recovery, sale, realization, and conversion into money of the said assets or relating thereto, including the personal costs, charges, and actual expenses of the said Receiver, and shall pay the balance of such moneys into the Court. 5
- (4.) The said balance so paid into Court shall be paid out of Court in such manner, at such time or times, to such persons, and for such purposes as the Court shall have ordered or shall from time to time order or direct. 10
- (5.) The said Receiver shall not pay or discharge any alleged liabilities of or claims against the partnership which any member of the partnership declares or which the Receiver deems not to be lawful, and shall report to the Court, when paying into Court the said balance, what, if any, outstanding disputed liabilities or claims exist against the partnership. 15
- (6.) The Court, if it shall deem it just, may order that the said balance, or any part thereof paid into Court by the said Receiver, shall remain in Court for a period not exceeding *three* months, to abide the event of any actions or suits against the partnership firm in respect of such disputed liabilities or claims. 20
- (7.) If the aforesaid liabilities and claims be not sued upon and enforced by judgment and execution within the time limited by the Court for detaining the said balance, the said Court shall, upon the application of any person entitled to receive the said balance, or a part thereof, order that the moneys so detained shall be paid out of Court. 25
- Balance of assets to be paid out as Court orders.
- Receiver not to pay disputed debts or claims.
- Court may order moneys not to be paid out pending settlement of disputed claims.
- If disputed claims, &c., not promptly settled, Court may order moneys to be distributed.

RECOVERY OF POSSESSION OF TENEMENTS.

153. When the term and interest of the tenant of any house, land, or other tenement held by him at will or for any term, where the value thereof, or the yearly 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, if necessary, 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 nearest to the locality in which the premises are situate, for the recovery of the same, and thereupon a summons, in the prescribed form, shall issue to such tenant or such person so refusing. 30 35
154. 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 value and yearly 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. 40 45
155. 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. 50
156. 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
- Landlord, on determination of lease, may sue for possession.
- Court may order delivery of possession.
- In default, may give possession.
- Landlord suing for possession may add claim for rent or mesne profits.

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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.

5 **157.** 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 nearest to the locality in which the premises are situate for the recovery thereof, and thereupon a summons shall issue to the tenant, the service whereof shall stand
10 in lieu of a demand.

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

158. 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.

159. If he shall not make such payment, and shall not at the time named
15 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,
20 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
25 Court shall think fit to name, unless within that period all the rent in arrear and the costs be paid into Court.

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

160. 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
30 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.

In default, possession given discharged of tenancy.

161. A summons for the recovery of a tenement may be served like other
35 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.

Service of summons in action for possession of tenement.

162. When any such summons for the recovery of a tenement as is here-
40 inbefore 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
45 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.

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

163. 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
50

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

uncultivated or unoccupied so as no sufficient distress can be had to counter-
vail the arrears of rent, the Court nearest to the locality in which the premises
are situate, 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 5
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 10
second view thereof.

Lease voided on
delivery of
possession.

164. 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 suffi-
cient distress upon the premises, then upon the return of the warrant, and
upon proof being given to the satisfaction of the Magistrate to whom the warrant 15
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 said Magistrate may grant a
warrant to the bailiff of the Court or some constable requiring him, on or
before a day to be named in such warrant, to put the landlord or lessor into 20
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 or of Lands
for the district in which the premises are situate, thenceforth become void.

Recovery of
possession may be
registered.

165. The Registrars of Deeds and District Land Registrars are hereby 25
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 or memoranda
of lease: Provided that no such warrant shall be registered until after the
expiration of the time herein allowed for giving security on appeals.

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

166. If any person shall, without right, title, or license, be in possession of 30
any tenement the annual value of which shall not exceed the jurisdiction of the
Court, the owner may enter a plaint in the Court nearest to the locality in which
the premises are situate, 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 *one hundred pounds* 35
for damages for the occupation of the land subsequently to the service of such
notice.

Warrant sufficient
authority to bailiff
for entering
premises.

167. Any warrant under the hand of a 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 40
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 to be in
force for three
months.

168. 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 45
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.

Suing out warrant
without right
deemed a trespass.

169. 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, 50
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.

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170. 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.

If special damage be not proved the defendant shall be entitled to a verdict, and if proved, but assessed by the last-mentioned Court at any sum not exceeding five shillings, the plaintiff shall recover no more costs and damages, unless the Judge or Magistrate of the Court before whom the trial shall have been holden shall certify that in his opinion full costs ought to be allowed.

Costs in actions for special damage.

JURISDICTION AS TO NATIVES.

171. Subject to section *sixty-five* of this Act the Court shall have jurisdiction to hear and determine summarily, under the foregoing provisions of this Act, all claims and demands whatsoever of a civil nature in which either the plaintiff or defendant, but not both shall be of the Native race, and also in all places where sections *one hundred and seventy-three* to *one hundred and seventy-nine*, both inclusive, are not in force, all claims and demands whatsoever of a civil nature in which both parties are persons of the Native race; except cases in which the validity of any devise, bequest, or limitation under any will or settlement, or the title to land, whether held under Native custom or otherwise, is in dispute.

Jurisdiction in cases between Natives.

172. Sections *one hundred and seventy-three* to *one hundred and seventy-nine*, both inclusive, of this Act, having special reference to persons of the Native race, shall have operation within such portions only of the North Island as are comprised within the districts enumerated in a Proclamation of the Governor dated the third day of March, one thousand eight hundred and eighty-six, or within such other portions of the North Island as may from time to time be appointed by Proclamation in the *Gazette*. And until so proclaimed, and in places not comprised with the limits defined in any such Proclamation, the aforesaid sections shall not be in force.

Provisions to be in force only within North Island.

But, nevertheless, the Governor may from time to time, by Proclamation in the *Gazette*, declare that, from a day to be fixed in such Proclamation, the aforesaid sections shall come into force in any part of the colony, and by like Proclamation may from time to time declare that such sections or any of them shall cease to have operation in any part of the colony where they had previously been in force.

Exception.

Civil Jurisdiction.

173. 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 a 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.

Appointment of Assessors.

Every such Assessor shall have jurisdiction 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, and to have general jurisdiction throughout the colony.

174. Every case of a civil nature in which both parties shall be persons of the Native race may, if either of the parties to the case so require, be heard and

Mode of hearing Native cases.

determined by a Magistrate assisted by two such Assessors as aforesaid, anything to the contrary in this Act contained notwithstanding.

- (1.) 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 Magistrate on behalf of such party. 5
- (2.) Every such case shall be determined by the Magistrate in such manner as he shall find to stand with equity and good conscience, and his decision shall be concurred in by one of the Assessors.
- (3.) If such concurrence be not signified within one month from the date of the decision given, the Magistrate, if he shall think fit, may direct 10 that the case be reheard before himself and two other Assessors to be chosen in manner aforesaid.

Judgment.

But any such case may be heard by a Magistrate alone, if the parties consent and he shall think proper.

Execution against a Native may be delayed.

175. Any Magistrate may delay, so long as he shall deem it expedient 15 to do so, the enforcing of any judgment obtained in a Magistrate's Court against a person of the Native race.

Distress warrants against Natives to be signed by Magistrate.

176. Except within boroughs and town districts respectively, it shall not be lawful to make distress of the goods of any person of the Native race under any warrant of distress issued under the authority of this Act, unless such 20 warrant shall be signed or indorsed by a Magistrate.

Criminal Jurisdiction.

Natives not to be apprehended or imprisoned except by authority of Magistrate.

177. Notwithstanding anything contained in "The Justices of the Peace Act, 1882," or any other Act, saving as hereinafter mentioned, no person of the Native race shall, except within boroughs and town districts respectively, be 25 apprehended or be committed to prison under a warrant or committal unless the same is signed by a Magistrate, or has thereupon indorsed a certificate by a Magistrate that he allows the execution thereof.

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 30 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 a 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. 35

Native confessing larceny may be summarily convicted.

178. 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 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. 40

But, if the Magistrate before whom any Native shall be so charged shall be of opinion that such Native ought to be tried before the Supreme Court, such 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. 45

Native convicted of theft may be discharged upon paying four times the value of property stolen.

179. In case any person of the Native race shall be convicted in a summary way before a 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. 50

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If the goods so stolen or received as aforesaid—

- 5 (1.) Have been restored by the person so convicted, and if such payment shall be made as aforesaid, or such less sum as to the Court shall seem fit, 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, and the Court may delay passing sentence in any such case for any period not exceeding eight days.
- 10 (2.) Have not been and cannot be restored, and if such payment as first mentioned shall be made, and the Court may, upon application, award to the owner of such goods or his 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.
- 15

Value in certain cases to be awarded to owner of stolen property.

PROTECTION OF OFFICERS.

180. 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.
- 20
181. 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.
- 25
182. 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.
- 30
183. In any such action the warrant 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 warrant.
- 35
184. It is hereby declared that Part IV. of "The Justices of the Peace Act, 1882," relating to the protection of Justices, so far as not repugnant to this Act and as far as the nature of the case will allow, shall extend to Magistrates, Justices of the Peace, and Native Assessors acting in their civil jurisdiction.
- 40

Actions against officers.

Within three months, and one month's notice to be given.

Action to cease if amends tendered.

In such actions, warrant evidence of previous authority.

Part IV. of "The Justices of the Peace Act, 1882," to apply.

CONTEMPT.

185. If any person shall wilfully insult a Magistrate, or any Clerk, bailiff, or officer of a Court, during his attendance in or in going to or returning from the Court, or a witness in 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 Magistrate, may take such offender into custody and detain him until the rising of the Court.
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186. The 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
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Penalty for insulting Magistrate, &c.

Power to imprison or fine for contempt.

not exceeding ten days, or impose upon him a penalty not exceeding ten pounds for every such offence, and, in default of payment thereof, commit him to prison for any time not exceeding fourteen days unless the said penalty be sooner paid.

MISCELLANEOUS.

Penalty on constables, &c., for neglect of duty.

187. All constables shall, within their several jurisdictions, aid and assist any Magistrate and Justice of the Peace in the execution of all and any of the duties imposed upon such Magistrate or Justice by this Act; and if any such constable shall neglect or refuse so to do, he shall be liable to a penalty not exceeding five pounds.

Penalty for disobeying injunction or other order of Court.

188. When a lawful order is made by a Court or 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 who adjudicates upon such disobedience, 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 said 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 give security to the satisfaction of the Magistrate that he will cease to do the act prohibited or will do the act required, 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.

Payment of penalties, how enforced.

189. The payment of any fine or penalty imposed by any Court may be enforced upon the order of a Magistrate, in like manner as payment of any penalty may be enforced in summary proceedings before Justices of the Peace by distress or imprisonment, under "The Justices of the Peace Act, 1882."

Saving of Married Women's Property Act.

190. Nothing in this Act contained shall be construed to nullify or overrule any of the provisions of "The Married Women's Property Act, 1885."

Schedule.

SCHEDULE.

ACTS AND PARTS OF ACTS REPEALED.

- 1867, No. 13.—The Resident Magistrates Act, 1867. 40
 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. 45
 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.
 1885, No. 45.—The Enforcement of Judgments Act, 1885. *In part, namely,*
 so much thereof as relates to judgments recovered in
 Resident Magistrates' Courts. 50