



ANNO DECIMO SEPTIMO

# GEORGI V REGIS.

A.D. 1926.

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## No. 1782.

An Act to consolidate and amend the Law relating to Local Courts and Officers thereof, and Matters connected therewith.

[*Assented to, December 22nd, 1926.*]

**B**E it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. This Act may be cited as the "Local Courts Act, 1926." Short title.
2. This Act shall come into operation on a day to be fixed by proclamation. Commencement of Act.
3. The Acts mentioned in the First Schedule are hereby repealed. Repeal.
4. In this Act, unless inconsistent with the context or some other meaning is clearly intended— Interpretation.  
"Court" and "Local Court" means— Cf. 386, 1886, s. 4.
  - (a) a Judge of the Supreme Court, when sitting in the exercise of the jurisdiction conferred by this Act; or
  - (b) the Local Court Judge; or
  - (c) the Local Court Judge and two Justices when sitting as a Local Court of Full Jurisdiction; or
  - (d) a Special Magistrate and two Justices, when sitting as a Local Court of Full Jurisdiction; or
  - (e) a Special Magistrate, when sitting alone as a Local Court of Full Jurisdiction; or
  - (f) a Special Magistrate or two Justices when sitting as a Local Court of Limited Jurisdiction; or

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(g) the Local Court Judge, or a Judge of the Supreme Court when exercising the equitable jurisdiction conferred by Part XII. of this Act ; or

(h) the tribunal, however constituted, which has jurisdiction by consent to hear and determine any action in a Local Court :

according as such definitions may be applicable to the particular case then being tried and the jurisdiction of the Court then sitting :

“ Bailiff ” includes assistant bailiff :

“ Clerk ” includes assistant clerk :

“ Judge ” means the Local Court Judge, or a Judge of the Supreme Court when exercising jurisdiction under this Act :

“ Law ” includes equity :

“ Rules of Court ” means Rules of Court made under this Act :

“ Warrant ” includes writ, and *vice versa*.

## Arrangement of Act.

5. This Act is divided into parts, as follows :—

- PART I.—The Establishment and Constitution of Local Courts, the Appointment of Officers, their Functions and Duties.
- PART II.—The Ordinary Jurisdiction of Local Courts and the Concurrent Jurisdiction of the Supreme Court.
- PART III.—Replevin.
- PART IV.—*Certiorari*, Prohibition, and *Mandamus*.
- PART V.—Appeals from Local Courts to the Supreme Court.
- PART VI.—The Joinder of Parties and of Causes of Action.
- PART VII.—The Commencement of Actions and Proceedings to Judgment.
- PART VIII.—The Enforcement of Judgments and Orders.
- PART IX.—Interpleader Summonses.
- PART X.—The Recovery of Premises.
- PART XI.—The Action of Ejectment.
- PART XII.—Special Equitable Jurisdiction of Local Court of Adelaide.
- PART XIII.—Remedies against Debtors about to Abscond.
- PART XIV.—Commissions and Orders for the Examination of Witnesses.
- PART XV.—Court Fees and Costs.
- PART XVI.—Penalties.
- PART XVII.—Protection of Officers of Local Courts, and  
General Matters. PART

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## PART I.

## PART I.

## THE ESTABLISHMENT AND CONSTITUTION OF LOCAL COURTS, THE APPOINTMENT OF OFFICERS, THEIR FUNCTIONS AND DUTIES.

6. (1) The several Local Courts which were in existence immediately prior to the commencement of this Act shall continue as if established under this Act, with the corresponding jurisdiction, whether full, limited, or both, and all proceedings already commenced therein shall be continued, heard, and determined under the provisions hereof.

Continuance of Local Courts already established.

Ibid., s. 6.

(2) All judgments and records of such Courts shall continue to be judgments and records of the respective Courts.

(3) Such Courts shall be held at such respective places, and the sittings thereof shall take place on such days and at such periods as have been fixed by or under any of the Acts hereby repealed, or as may hereafter be fixed by proclamation made under this Act.

7. (1) The Governor may from time to time, by proclamation, constitute and establish additional Local Courts, and shall assign to each Court so to be established full and limited jurisdiction, or limited jurisdiction only, and shall appoint, and by any proclamation may alter, a place or places, day or days, and period for the sittings thereof, and the place at which the office thereof shall be situated, and the times and days during which such office shall be open.

Establishment of additional Courts.

Cf. Ibid., s. 9.

(2) The Governor may, by proclamation, abolish any Local Court, or may alter the name of any Local Court.

8. (1) The Local Court Districts in existence at the commencement of this Act shall continue as at present constituted and established until altered or abolished.

Continuance of Local Court Districts.

Cf. *ibid.*, s. 9.

(2) The Governor may, by proclamation—

(a) alter such districts, or establish other districts, or abolish any districts at present or hereafter established ;

Powers of the Governor with respect to Local Court Districts.

(b) declare what Local Courts are to be held within each district so altered or established, and appoint Clerks, bailiffs, and offices for the said Local Courts, and the places at which such offices shall be respectively situated, and the times and days during which they shall be open ; and

(c) extend or limit, subject to the provisions of sections 31 and 32 of this Act, the jurisdiction of, or abolish, any Local Court, or alter the place, day, or period of holding the same, or the place at which shall be situated or the times and days during which shall be open the office of any Local Court.

9. (1) In

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Transfer of records  
and business of  
abolished Court.

Ibid., s. 10.

**9.** (1) In case of the abolition of any Local Court, the Governor may, by the proclamation abolishing it, or by any subsequent proclamation, or where, before the passing of this Act, any Local Court has been abolished, the Governor may, by proclamation, transfer the records and pending proceedings of the Court so abolished to the nearest Local Court, and such records shall be kept, and such pending proceedings may be continued, by the Local Court to which they are transferred, in the name of the Local Court so abolished.

(2) In the event of the defendant, or defendants if more than one, in any action having appeared before such transfer, notice of trial shall be given by the Clerk of the Court to which such proceedings have been transferred as if the appearance had been entered in a like action in such Local Court on the day of such transfer, and in the event of any defendant not having appeared and judgment not having been signed, the defendant shall be allowed the same time for appearance as if the summons had been issued out of the Local Court to which such transfer has been made and had been served personally on the day of such transfer.

Limitation of Local  
Courts not to affect  
right of suitors prior  
to such limitation.

Ibid., s. 11.

**10.** (1) In the case of the limitation of the jurisdiction of any Local Court, the Governor may, by the proclamation limiting it, or by any subsequent proclamation, direct that such limitation shall not affect the right of parties to proceed in any actions commenced, or to enforce any judgments recovered, when such Local Court exercised the powers of full and limited jurisdiction respectively.

(2) For the purpose only of proceeding in such actions, or enforcing such judgments, the said Local Court shall continue to exercise the powers of a Court of Full Jurisdiction in the same manner as it did before the issue of the proclamation limiting its jurisdiction.

Local Courts to be  
Courts of record.

Ibid., s. 12.

**11.** Local Courts shall be Courts of record, and each Court shall be styled by the name which it bears at the commencement of this Act or by the name by which it is styled in the proclamation establishing it, and shall have a seal wherewith are to be sealed or stamped all summonses and other process issued out of such Court.

Present Special  
Magistrates, Clerks,  
and bailiffs con-  
tinued in office.

Ibid., s. 13.

**12.** The Special Magistrates, Clerks of Local Courts, and bailiffs of Local Courts, now acting by virtue of an appointment under any law heretofore in force, shall continue to occupy their respective offices during His Majesty's pleasure, but subject to the provisions of this Act and the Public Service Acts, 1916 to 1925.

Appointment of  
Local Court  
Judge.

**13.** (1) The Governor, in the name and on behalf of His Majesty, may from time to time nominate and appoint, during His Majesty's pleasure, a Local Court Judge, who shall be a practitioner of the Supreme Court of at least seven years' standing.

(2) Subject to subsection (3) hereof, not more than one person may hold the office of Local Court Judge at one time. (3) The

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(3) The Governor may from time to time appoint any qualified person to be a temporary Local Court Judge if and whenever upon the certificate of the Attorney-General it appears that judicial assistance in the Local Court of Adelaide is required. Whilst acting as such temporary Judge the person so appointed shall have all the jurisdiction, powers, and duties of the Local Court Judge.

14. The Governor, in the name and on behalf of His Majesty, shall from time to time nominate and appoint, during His Majesty's pleasure, such suitable persons to be Special Magistrates as may be necessary who, with those already appointed, shall have the jurisdiction and shall exercise the powers conferred and shall carry out the duties imposed on them by this Act.

Appointment of  
Special Magistrate.  
Ibid., s. 14.

15. The Governor may, from time to time, by proclamation, appoint what common gaols shall be places of imprisonment for persons arrested under warrants issued out of Local Courts or committed to gaol under the authority of this Act, and from time to time in like manner cancel such appointments, and, in default of such appointment, such persons shall, except in cases for which provision is made by or under the Prison Acts, 1869 to 1925, be imprisoned in the Adelaide Gaol: Provided that all gaols heretofore so appointed shall, until their appointment is cancelled, or some other appointment in lieu of them is made hereunder, continue to be places of imprisonment in accordance with such appointment for persons so arrested or committed to gaol.

Governor may  
appoint gaols for im-  
prisonment under  
warrant of Local  
Court; existing  
appointments to  
continue.

Cf. *ibid.*, s. 15.

16. Local Courts shall have such and so many clerks, bailiffs, and other officers and servants as are necessary for the due administration of justice, who shall be appointed and may be suspended or removed as prescribed by the Public Service Acts, 1916 to 1925.

Appointment of  
officers.

Ibid., s. 16.

17. The Clerk and the bailiff of every Local Court shall give security for such sum, and in such manner and form, as the Governor from time to time orders, for the due performance of their several offices, and for the due accounting for and payment of all moneys received by them under this Act, or which they may become liable to pay for any misbehaviour in their office.

Clerks and bailiffs to  
give security.

Ibid., s. 17.

18. Such Clerks shall be remunerated by a fixed salary, and such bailiffs by fixed salary, or by the fees, or partly by fixed salary and partly by the fees, specified in the Fourth Schedule, as the Attorney-General may from time to time direct.

Remuneration of  
officers.

Ibid., s. 18.

19. (1) The offices of each Court shall, save so far as otherwise prescribed, be open for the dispatch of business daily throughout the year, except on Sundays, days between Christmas Day and New Year's Day inclusive and between Good Friday and Easter Tuesday inclusive, and public holidays.

Offices of the Courts  
when to be open.

Cf. *ibid.*, s. 19.

(2) Each Court shall sit for the dispatch of business at such places and on such days, and at such periods, as have been appointed for that purpose.

Holding of Courts.

20. Where

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Postponement of  
Court by Attorney-  
General.  
Cf. *ibid.*, s. 20, and  
W.A. Act.

**20.** Where the day appointed for holding any Local Court falls upon a public holiday or any day on which, under the last preceding section, the offices of a Court will not be open, or between the twentieth day of December in any year, and the eighteenth day of the following year, both days inclusive, it shall be lawful for the Attorney-General, by notice in the *Government Gazette*, to alter the day for holding such Court to a day to be named in such notice.

Constitution of  
Court.  
Cf. *ibid.*, s. 21.

**21.** (1) All actions and matters cognizable under this Act by a Local Court of Full Jurisdiction other than actions or matters under Part XII. shall be heard and determined in open Court in a summary way, by and before a Judge, or by and before a Special Magistrate, or by and before a Special Magistrate and two Justices when one of the parties has, in manner prescribed by this Act, demanded that the Court should be so constituted.

(2) All actions and matters cognizable by a Local Court of Full Jurisdiction under Part XII. shall be heard and determined in open Court by a Judge.

(3) All actions and matters cognizable under this Act by a Local Court of Limited Jurisdiction shall be heard and determined in open Court in a summary way, by and before the Local Court Judge or a Special Magistrate or two Justices: Provided that a Local Court of Limited Jurisdiction shall not adjudicate upon any matter when the claim or counter-claim exceeds Thirty Pounds, exclusive of costs.

(4) Several Judges, Special Magistrates, and Justices, or some of them, may sit contemporaneously in different places as the same Local Court, for the trial of actions pending in such Court.

Majority verdict to  
be valid.

**22.** In any case where the Court consists of a Special Magistrate and two Justices, or the Local Court Judge and two Justices, and any two of the members of such Court concur in any judgment, verdict, finding, decision, or order, the same shall not be invalid by reason only that the third member of such Court does not concur therein, but the concurrence of the two members shall suffice.

Where Special  
Magistrate available  
Local Court of  
Limited Jurisdiction  
not to be constituted  
of Justices.  
Cf. *Justices Act*,  
1921, s. 43.

**23.** Notwithstanding anything in section 21, if at any place where it is desired to hold a Local Court of Limited Jurisdiction there is a Special Magistrate present who is competent and willing to act, then such Local Court shall be constituted of such Special Magistrate and not of two Justices.

Jurisdiction by con-  
sent where Court  
defective owing to  
absence of a member.  
Cf. *principal Act*, s.  
24.

**24.** (1) Where, by reason of the absence of a Special Magistrate, or of one or more Justices, a competent Court cannot be constituted, one Justice or two Justices attending at the place appointed for holding the Court shall have power to hear and determine any action if both parties to the action, in person or by solicitor consent thereto in writing.

(2) Such consent shall not be revocable, and shall be filed in Court.

(3) The judgment of the person or persons whose jurisdiction is so consented to shall be entered as the judgment of the Court.

(4) If

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(4) If such consent is not obtained, or if there is no Judge, Special Magistrate, or Justice or Justices present, the Justice or Justices present in the one case, or the Clerk of the Court in the other, shall adjourn the Court to such a day as may be deemed convenient, and shall enter in the Minute Book a memorandum of such adjournment and the cause thereof.

25. (1) A Judge or Special Magistrate, in addition to his other duties under this Act, shall have the following powers and duties :—

- I. He shall preside at every Local Court of Full Jurisdiction in which he sits with two Justices, and shall determine all questions of law arising in any action or matter before such Court ;
 

Powers and duties of Judge and Special Magistrate.  
Cf. *ibid.*, s. 25.  
To preside at Courts.
- II. On the application of any party to an action or matter, he may—
  - (a) make an order for the inspection of such documents as it then appears to him the party applying is legally or equitably entitled to inspect ;
 

To order discovery or inspection.
  - (b) order that any other party, or if such other party is a body corporate, that some specified officer of such body corporate, do make discovery on oath or otherwise of the documents which are, or have been, in the possession or power of such other party relating to any question in the action or matter. Such order may be either general or limited to such classes of documents or such particular documents as he may think fit, but in no case shall he make any such order unless the same is in his opinion necessary for disposing fairly of the action or matter or for saving costs : The party making discovery shall produce to the other party for inspection all such documents as aforesaid ; and
  - (c) order that any other party, or if such other party is a body corporate, that some specified officer, of such body corporate, do answer by affidavit such interrogatories in writing relating to any question in the cause or matter as he thinks proper to administer. In no case shall he make any such order unless the order is in his opinion necessary for disposing fairly of the action or matter or for saving costs ;
- III. He may, before or at the hearing of any action or matter, order the adjournment of the hearing upon any terms he may think fit ;
 

To postpone hearing.
- IV. He may order the re-service of a summons where he is satisfied that the summons has not come to the knowledge of the defendant, and that the defendant has not absented himself to avoid service ;
 

To order re-service of summons.

V. He

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To set aside judgment by default.

v. He may—

- (a) extend the time for taking any step in any action, on such terms as he may think fit;
- (b) set aside any judgment by default of entering an appearance or attending at the hearing; and
- (c) suspend any execution;

To amend pleadings.

vi. He shall, at any stage of the proceedings, upon such terms as he may think fit, permit the amendment and may order better particulars of the claim, defence, counter-claim, or reply in any action;

To reinstate action struck out.

vii. He may, on such terms as he may think fit, reinstate any action that has been struck out;

To order interlocutory summons to be heard at another Court.

viii. He may, in the case of an interlocutory summons issued out of a Local Court within a particular Local Court District, make the summons returnable to be heard by him or any Judge or Special Magistrate at such place in that or any other Local Court District, and at such time, and upon such terms as to costs or otherwise, as he thinks proper;

To review decision of Clerk.

ix. He may review any act or decision of the Clerk of his Court;

To authorise bailiff to sell by auction.

x. He may authorise a bailiff of the Court to act as appraiser or auctioneer for the purpose of valuing or selling any goods, chattels, or effects taken in execution under process of a Local Court, and the person so authorised may, without other licence in that behalf, do and perform all the duties of appraiser or auctioneer, as the case may be;

To appoint special bailiff.

xi. He may in any case, on the application of the party interested, appoint a special bailiff for the purpose of serving any process of the Court, or for the purpose of executing any warrant against the goods or lands, or for the apprehension or committal, of the person named in any warrant;

To appoint a temporary Clerk.

xii. He may temporarily appoint any fit person to act as Clerk or bailiff of the Court in case of the death, suspension, removal, illness, or absence of any Clerk or bailiff;

xiii. He shall, on such terms as he may think fit, amend all defects and errors in any proceeding; and

Other powers.

xiv. He may do all other matters necessary to carry out this Act.

(2) Where a party has in manner prescribed by this Act demanded that the Local Court of Full Jurisdiction hearing any action or matter shall be constituted of a Special Magistrate and two Justices, the Local Court Judge may sit with two Justices to constitute a Local Court of Full Jurisdiction.

(3) Every Local Court hearing any action shall have such of the powers and duties specified in this section as may appropriately be exercised by a Court.



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26. (1) The Clerk of each Local Court, in addition to the other duties imposed by this Act, shall have the custody of all books, records, processes, and other proceedings of the Court, and of the seal of the Court, and shall have an office at or near to the place where the Court is held, at which the business of the Clerk of the Court shall be transacted, and at which shall be kept the Record Book and Minute Book hereinafter mentioned, and where all proceedings shall be entered of record, and all summonses and other processes shall be issued, and all moneys shall be received into and paid out of Court.

Duties of Clerk.  
Cf. *ibid.*, s. 26

Office of Clerk.

(2) The Clerk of each Local Court shall also have the following specific duties :—

- i. He shall cause a note of all claims and summonses, and of all orders, and of all judgments and executions, and returns thereto, and of all fines and of all attachments of debts, with the names, dates, and statements of the amounts attached and also of the amount recovered, and otherwise, and of all other proceedings of the Court, to be fairly entered from time to time in a book belonging to the Court, to be called the "Record Book," which shall be kept at the office of the Court, and such entries, or copies thereof, purporting to be stamped or sealed with the seal of the Court, and purporting to be signed and certified as true copies by the Clerk of the Court, shall at all times be admitted in all Courts and places whatsoever as evidence of such entries and of the proceedings referred to therein, and of the regularity of such proceedings, without further proof :
 

To keep Record Book.
- ii. He shall keep a book to be called the "Minute Book," in which he shall cause to be entered the titles of the actions set down for trial, the amounts claimed, the sums (if any) paid into Court, the judgment of the Court, and the names of the solicitors and counsel (if any) who appear for the parties :
 

To keep Minute Book.
- iii. He shall, within twenty-four hours of the issuing of any summons or warrant, or receiving any summons or warrant from the Clerk of any other Court, deliver the same to the bailiff, or, in case the person against whom the process is issued resides nearer to some other Court, shall, within the like period, forward by post the summons or warrant to the Clerk of the Court nearest to which the person against whom the process is issued resides :
 

To deliver process to bailiff.
- iv. He shall forthwith after receiving the duplicate of any summons issued by him from the bailiff or the Clerk of any other Court, enter in the Record Book the date of the service, or the report of non-service, and the cause thereof :
 

To enter services and returns in Record Book.
- v. He shall forthwith after receiving from the bailiff the duplicate of any summons or any warrant forwarded from any other Court for service or execution, return the same to the Clerk of the Court from which it was received :
 

To return summons, etc., to Court from which they were received.

vi. He

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To give notice of trial.

VI. He shall, subject to Rules of Court, within twenty-four hours after receipt of any notice of appearance, reply, or new ground of defence, give notice thereof, and of the day of trial, to the opposite party :

To post notices.

VII. Unless otherwise specially directed by this Act, or by the Rules of Court, he shall forward all notices by this Act required to be sent to any person by sending them to such person by post, to the address of such person as given to him, unless applied for earlier :

To forward warrant to Clerk of nearest Court for execution.

VIII. When a warrant of execution has been issued against the goods and chattels, or against the lands, of any person at a distance from the Court, or a warrant for the commitment of any such person has been issued, the Clerk shall send such warrant to the Clerk of the Local Court nearest to the place where such person, or his lands, goods, and chattels shall then be, or be believed to be, requiring execution of the same :

To notify receipt of warrants

IX. When a warrant of execution, or a warrant of commitment, is sent by the Clerk of any other Local Court, the Clerk receiving the same shall notify thereon the date of its receipt, and shall seal or stamp it with the seal of his Court, and shall deliver it to the bailiff of his Court :

To note time when warrants applied for.

X. He shall make a minute of the precise time when he was requested to issue any warrant against the goods and chattels, or against the lands, of any person, and he shall notify the same on the warrant :

To deliver warrants in rotation.

XI. Where more than one warrant of execution against the goods and chattels, or against the lands, of any party is taken out, he shall deliver such warrants to the bailiff in the order in which they were taken out :

To affix seal to all documents.

XII. He shall cause all summonses, notices, warrants, and other documents proceeding from the Court of which he is Clerk, to be sealed or stamped with the seal of his Court :

To deliver summonses, &c., to bailiff in order of issue.

XIII. He shall deliver all summonses, subpoenas, and notices proceeding from the Court of which he is Clerk, to the bailiff of such Court (if required to be served by him), in the order in which they were issued :

To keep books of account, and make returns.

XIV. He shall keep such books of account, and make such returns of moneys received and paid, fees, and disbursements, in such form and at such periods, and shall make payment and deposit of money received by him in such manner, as is required by or under the Audit Act, 1921.

Duties of bailiff.

*Ibid.*, s. 27.

27. (1) The bailiff of each Court shall have the service of all summonses (except any ordinary or special summons which the plaintiff desires to be served by himself, or by some person appointed or employed by him for the purpose as hereinafter provided), and the execution of all warrants (unless otherwise ordered by the Local Court Judge or a Special Magistrate in any particular case).

(2) The

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(2) The bailiff of each Court shall also have the following specific duties, namely:—

- I. He shall cause all summonses delivered to him for service to be examined, to enable the correctness thereof to be proved; and he shall cause all summonses to be served on the respective defendants as soon as practicable after their delivery to him by the Clerk of the Court and, in case of their non-service within a week, he shall as soon as possible thereafter report such non-service and the cause thereof to the Clerk of the Court: To examine summonses.
- II. He shall, forthwith after service of any summons, indorse on the duplicate summons the day of the month and year of such service, and shall, as soon as practicable after service, swear an affidavit of such service: To indorse service.
- III. When more than one summons, subpoena, or notice directed to any person has been delivered to him to serve, he shall serve them in the order in which they were delivered to him: To serve summonses in order in which he received them.
- IV. He shall cause to be executed every warrant of execution against goods and chattels, or against lands, or any warrant of commitment, within five days, or sooner if required by the Clerk of the Court, after receiving such warrant from him, and shall indorse on every warrant the time and mode of executing the same, and the several amounts received and disbursed or retained on account thereof; and in case of non-execution, he shall report to the Clerk of the Court such fact and the cause thereof: To execute warrants, and make returns of same.
- V. Where more than one warrant against the goods and chattels, or against the lands, of any person has been delivered to him, he shall execute such warrants in the order in which they were delivered to him: To execute warrants in rotation.
- VI. He shall, immediately after the receipt of any money levied or received by virtue of his office, pay over the same to the Clerk of the Court: To pay over money.
- VII. He shall be responsible for all the acts and defaults of himself and his assistant bailiffs, in like manner as the Sheriff of the State is responsible for the acts and defaults of himself and his officers. To be responsible for wrongful acts.

28. (1) The Governor may, from time to time, issue a commission under the Public Seal of the State, appointing the Local Court Judge or any Special Magistrate to make Rules of Court for carrying into effect this Act, or any other Act conferring jurisdiction upon Local Courts, and in particular for all or any of the following matters:—

- I. Regulating the pleading, practice, and procedure in Local Courts;
- II. Prescribing the mode of keeping entries and accounts kept by Clerks of Local Courts;
- III. Prescribing

Power to make Rules of Court.  
Cf. *ibid.*, s. 28.

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III. Prescribing forms for use in Local Courts ; and

IV. Generally with respect to the duties of the officers of Local Courts or to the costs of proceedings or allowances to witnesses therein, or to the fees and costs to be allowed to practitioners in Local Courts, or to the execution of the process of Local Courts.

(2) Rules may be made modifying, to any extent that may be necessary or expedient, any provisions in respect of the above-mentioned matters contained in this or any other Act.

(3) The power to make rules conferred by this section shall be deemed to include power to make rules in respect of any jurisdiction conferred upon a Local Court by any Act whenever passed.

References to Local Court in Acts not repealed.

29. (1) Any reference in any Act, not hereby repealed, to a Local Court shall be deemed to refer to and include a Local Court continued or established under this Act.

Saving of rules under unrepealed Acts.

(2) All rules and regulations made under any Act not hereby repealed regulating, or in reference to, the procedure or practice in Local Courts shall continue to be in force until and except so far as they may be annulled, altered, or added to pursuant to such Act or this Act, and any reference in such rules or regulations to a Local Court shall be deemed to refer to and include a Local Court continued or established under this Act.

Forms may be altered.

Cf. *ibid.*, s. 29.

30. It shall not be necessary that the forms in force under the provisions of this Act, or any Rules of Court made thereunder, shall be strictly adhered to; and any such forms may be altered or amended by a Judge, Special Magistrate, or Clerk of the Court, to meet the exigency of a particular case.

## PART II.

## PART II.

THE ORDINARY JURISDICTION OF LOCAL COURTS  
AND THE CONCURRENT JURISDICTION OF THE  
SUPREME COURT.

Jurisdiction of Courts of Full Jurisdiction.

Cf. *ibid.*, s. 30.

31. Every Local Court of Full Jurisdiction shall have jurisdiction to hear and determine :—

I. All personal actions where the sum claimed is not more than Five Hundred Pounds, whether on a balance of account or otherwise, including all actions for the recovery of a balance of account where the original claim has been reduced to Five Hundred Pounds or less by payment, or by any sum for which the plaintiff in his claim gives the defendant credit, or for which the defendant in his counter-claim gives the plaintiff credit :

II. All actions for the recovery of any sum, not exceeding Five Hundred Pounds, which is the whole or part of the unliquidated balance of a partnership account :

III. All

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- iii. All actions for the recovery of any sum not exceeding Five Hundred Pounds, which is the amount or part of the amount of a distributive share under an intestacy, or which is the amount or part of the amount, of any legacy under a will:
- iv. All unsatisfied judgment summonses issued in any Local Court, whatever the amount of the judgment may be.

**32.** Every Local Court of Limited Jurisdiction shall have jurisdiction to hear and determine:—

Jurisdiction of Courts of Limited Jurisdiction.

- i. All personal actions where the sum claimed is not more than Thirty Pounds, whether on a balance of account or otherwise, including all actions for the recovery of a balance of account where the original claim shall have been reduced to Thirty Pounds or less by payment, or by any sum for which the plaintiff in his claim gives the defendant credit, or for which the defendant in his counter-claim gives the plaintiff credit:
- ii. All actions for the recovery of any sum not exceeding Thirty Pounds, which is the whole or part of the unliquidated balance of a partnership account:
- iii. All actions for the recovery of any demand not exceeding Thirty Pounds which is the amount, or part of the amount, of the distributive share under an intestacy, or the amount, or part of the amount, of any legacy under a will:
- iv. All unsatisfied judgment summonses issued in any Local Court, whatever the amount of the judgment may be.

Cf. *ibid.*, s. 31.

**33.** Any Local Court shall have jurisdiction in any action without any limitation as to the amount of the claim, if both parties file with the Clerk of the Court a consent in writing, signed by them or their solicitors, which shall not be revocable, that the Court shall have such jurisdiction; and, thereupon, all proceedings may be taken and the judgment of the Court shall be enforced in like manner and be subject to the like right of appeal as in an ordinary action.

Court to have jurisdiction to any amount, by consent.

*Ibid.*, s. 32.

**34.** (1) Any Judge or Special Magistrate may, upon oral or written complaint of any party, with respect to any cause of action within the jurisdiction of any Local Court, and with the consent of both parties, immediately on the making of such complaint, investigate the matter thereof and inquire into the case and, on his own view, or the oath of any witness, determine the same in a summary way, and thereupon exercise all and every the powers and authorities vested in Local Courts or Special Magistrates under this Act in the same manner in every respect as if the case had been heard after the filing of a claim and an appearance thereto in the ordinary way.

Jurisdiction on consent to special procedure.

(2) The Judge or Special Magistrate shall have power to order either party to pay costs, such costs not exceeding the amount that would have been payable if a summons had issued.

**35.** (1) Any

## PART II.

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Actions of tort in Supreme Court may be remitted to a Local Court.

Cf. Eng. County Courts Act, 1888, s. 66.

**35.** (1) Any person against whom an action of tort is brought in the Supreme Court, whatever the amount of the claim may be, may make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff.

(2) Thereupon a Judge of the Supreme Court shall have power to make an order—

(a) that unless the plaintiff, within a time to be therein mentioned, gives full security for the defendant's costs to the satisfaction of the Master of the Supreme Court, or satisfies a Judge of the Supreme Court that he has a cause of action more fit to be tried in the Supreme Court, all proceedings in the action shall be stayed; or

(b) in the event of the plaintiff being unable or unwilling to give such security or failing to satisfy a Judge as aforesaid, that the action be remitted for trial before a Local Court to be named in the order.

(3) Thereupon the plaintiff shall lodge the original writ and the order with the Clerk of such Local Court, who shall appoint a day for the trial of the action, notice whereof shall be sent by the Clerk by post or otherwise to both parties or their solicitors.

(4) The action and all proceedings therein shall be tried and taken in such Local Court as if the action had originally been commenced therein.

(5) The costs of the parties in respect of the proceedings subsequent to the order of the Judge of the Supreme Court shall be allowed according to the scale of costs for the time being in use in Local Courts, and the costs of the order and all proceedings previous thereto shall be allowed according to the scale of costs for the time being in use in the Supreme Court.

Rules of equity to prevail when in conflict with common law.

Cf. S.A. 386, 1886, s. 33.

**36.** Where, in any action or proceeding in a Local Court, there is any conflict or variance between the rules of equity and the rules of common law with reference to the same matter, the rules of equity shall prevail.

Plaintiff not to divide cause of action.

Cf. *ibid.*, s. 34.

**37.** It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more actions in any of the said Courts; but any plaintiff having cause of action for more than the sum for which a claim might be filed under this Act may abandon the excess by entering such abandonment in or at the end of his claim, and thereupon the plaintiff shall, on proving his case, recover an amount not exceeding the sum competent to be awarded by such Court; and the judgment of the Court upon such claim shall be in full discharge of all claims in respect of such cause of action, and entry of judgment shall be made accordingly.

Defendant not to divide set-off.

Cf. *ibid.*, s. 35.

**38.** Where the defendant relies upon a set-off or counter-claim he shall not divide any cause of action which he may have against any plaintiff for the purpose of such set-off or counter-claim, but any defendant

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## PART II.

defendant having a set-off or counter-claim for more than the sum for which a claim may be made under this Act may abandon the excess by entering such abandonment in or at the end of his defence or counter-claim, and thereupon may, on proving his set-off or counter-claim, recover or be allowed an amount not exceeding the sum competent to be awarded by the Court, and the judgment of the Court upon such set-off or counter-claim shall be in full discharge of all demands in respect of the same.

**39.** (1) A Local Court of Full Jurisdiction shall, but a Local Court of Limited Jurisdiction shall not, have cognizance of any action in which the title to any corporeal or incorporeal hereditament or easement incidentally comes in issue, or in which the validity or effect of any devise, bequest, or limitation, under any will or settlement, or document in the nature of a settlement, may be disputed.

Exceptions from jurisdiction.

*Ibid.*, s. 36.

(2) No Local Court shall have cognizance of any action of ejectment save as hereinafter mentioned.

**40.** (1) Where, in any action brought in the Supreme Court, the sum indorsed on the writ, or claimed by the plaintiff, in the statement of claim or particulars filed and delivered in the action, does not exceed Five Hundred Pounds, or where such claim, though it originally exceeded that amount, is reduced by payment into Court (under such circumstances that the plaintiff is entitled to have the money so paid into Court paid out to him, on his request), or by admitted set-off, or otherwise, to a sum not exceeding Five Hundred Pounds, and such action is of such a character that a Local Court of Full Jurisdiction would have jurisdiction to hear and determine it, a Judge of the Supreme Court, on the application of either party, after the close of the pleadings, may, in his discretion and on such terms as he thinks fit, order that the action be tried by and before any Local Court of Full Jurisdiction which he names.

Supreme Court may order certain actions to be tried in Local Courts.

*Cf. ibid.*, s. 37.

(2) Thereupon the party obtaining such order shall lodge with the Clerk of such Court such order and a copy of the pleadings and particulars, certified under the hand of the Master of the Supreme Court; and the Judge or Special Magistrate presiding over such Court, or the Clerk thereof, shall appoint a day for the hearing of the action, notice whereof shall be sent by post or otherwise by the Clerk, to both parties, or their solicitors; and after such hearing the Clerk shall certify the result to the said Master, and judgment, in accordance with such certificate, may be signed in the Supreme Court.

**41.** (1) When in any action of contract brought in the Supreme Court the amount claimed by the plaintiff is reduced by payment into Court, under such circumstances that the plaintiff is entitled to have the money so paid into Court paid out to him on his request, to a sum not exceeding Five Hundred Pounds, it shall be lawful for the plaintiff to accept such sum in bar of the further maintenance of the action, and thereupon to file in the office of the Master of the Supreme Court a notice intituled in the action that he claims a further sum, that the amount

Amount claimed in Supreme Court reduced by payment into Court.

*Cf. ibid.*, s. 38.

## PART II.

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amount so claimed is within the jurisdiction of a Local Court, and that he abandons all further proceedings in the said action.

(2) On service of a copy of such notice upon the defendant, either personally or at his address for service, the plaintiff may tax his costs of action, and if the taxed costs are not paid within forty-eight hours from the signature of the allocatur upon such taxation, may sign judgment for such costs.

Plaintiff may sue for balance of claim in Local Court.  
Ibid., s. 39.

(3) After the filing and service of such notice the plaintiff may sue for the residue of the amount claimed by him in such action in a Local Court of Competent Jurisdiction.

Money paid under plea of tender.  
Cf. *ibid.*, s. 40.

(4) If the money paid into Court, in any such action in the Supreme Court, is paid into Court with a defence setting up a tender of the sum paid into Court, then the plaintiff shall not tax his costs of action until the question raised by such defence is decided, and such plaintiff may join issue on such defence, and thereupon he shall lodge with the Clerk of the Local Court wherein he has sued for the residue of such amount, a copy, certified by the Master of the Supreme Court, of all the pleadings, filed in such action, and such Court shall try the issue thus raised, and shall notify the result of such trial to the Master of the Supreme Court, and judgment in accordance with such certificate may be signed in the Supreme Court.

Plaintiff suing in Supreme Court not to recover costs in certain cases.

Cf. *ibid.*, s. 40.

**42.** (1) In every action in the Supreme Court for any cause within the jurisdiction of any Local Court, except actions removed into the Supreme Court by a defendant, being in covenant, debt, or assumpsit where the plaintiff recovers a sum not exceeding Five Hundred Pounds, or being in trespass, detinue, trover, or case where the plaintiff recovers a sum not exceeding One Hundred Pounds, such plaintiff shall have judgment to recover such sum only and no costs unless he obtain a certificate of the presiding Judge, or an order of the Supreme Court or a Judge thereof, as hereinafter provided.

Judge of Supreme Court may give costs in certain cases.

Cf. *ibid.*, s. 42.

(2) If the plaintiff, in any such action as aforesaid, recovers by trial in the Supreme Court a sum not exceeding the sum in that behalf respectively hereinbefore specified, and the Judge of the Supreme Court presiding at the trial or trying the action certifies that the plaintiff had a sufficient and substantial reason for bringing such action in the Supreme Court, and that such action was more fit to be tried in the Supreme Court, or, if there is no trial, if the plaintiff satisfies a Judge of the Supreme Court, at Chambers, upon summons, that there was a sufficient and substantial reason for bringing such action in the Supreme Court, then such Judge shall make such order as to costs as it would have been proper to make if subsection (1) hereof had not been enacted. The probability or possibility that the plaintiff might recover a sum larger than the amount actually recovered shall not be deemed to be a sufficient or substantial reason for the purposes of this subsection.



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## PART III.

## REPLEVIN.

43. All actions of replevin in a Local Court shall be commenced by claims filed in the Local Court having jurisdiction nearest to the place where the goods were seized.

Replevin may be brought by plaintiff in Local Court nearest to place of seizure.

Cf. *ibid.*, s. 43.

44. The Sheriff shall have no powers or duties with regard to replevin bonds and replevin, but the Clerk of the Local Court nearest to the place where any goods subject to replevin, were taken, shall have power, subject to Rules of Court, to approve of replevin bonds, and to grant replevins, and to issue all necessary process in relation thereto.

Clerks of Local Courts to grant replevin.

*Ibid.*, s. 44.

45. Such Clerk shall, at the instance of the party whose goods have been seized, cause the goods to be replevied to such party on his giving one or other of such securities as are mentioned in the next two succeeding sections.

Party distrained upon to give security.

*Ibid.*, s. 45.

46. (1) An action of replevin may be commenced in the Supreme Court by the process applicable to personal actions therein, and such Court shall have power to hear and determine the same.

Action of replevin may be commenced in Supreme Court,

*Ibid.*, s. 46.

(2) If the replevisor wishes to commence proceedings in the Supreme Court he shall, at the time of replevying, give security to be approved of by the Clerk of the Local Court granting the replevin for such an amount as such Clerk deems sufficient to cover the alleged rent or damage in respect of which the distress has been made and the probable costs of the action in the Supreme Court, or, if the goods replevied have been seized otherwise than under colour of distress, the value of the goods and the probable costs of the action in the Supreme Court, conditioned to commence an action of replevin against the seisor in the Supreme Court within fourteen days from the date thereof, and to prosecute such action with effect and without delay, and (unless judgment thereon is obtained by default) to prove before the Supreme Court that he had good ground for believing either that the title to some corporeal or incorporeal hereditament exceeding in value One Hundred Pounds was in question, or that such rent or damage, or the value of the goods seized, exceeded Twenty Pounds, and to make return of the goods if a return thereof should be adjudged.

Conditions of security to be given in such cases.

47. If the replevisor wishes to commence proceedings in a Local Court he shall, at the time of replevying, give security to be approved of by the Clerk of such Court for such amount as such clerk deems sufficient to cover the alleged rent or damage in respect of which the distress has been made, or if the goods replevied have been seized otherwise than under colour of distress, the value of the goods and the probable costs of the action in the Local Court, conditioned to commence an action of replevin against the seisor in the Local Court nearest to the place where the seizure has been made within one month from the date of the

Conditions of security when action of replevin is brought in Local Court.

Cf. *ibid.*, s. 47.

## PART III.

## Local Courts Act.—1926.

the security, and to prosecute such action with effect and without delay, and to make return of the goods, if a return thereof should be adjudged.

## PART IV.

## PART IV.

## CERTIORARI, PROHIBITION, AND MANDAMUS.

Certain writs not to issue.  
Ibid., s. 64.

**48.** No writ of *certiorari*, prohibition, or *mandamus* shall issue to any Local Court or any officer thereof.

Application may be made to Supreme Court for orders to have effect of such writs.

Cf. *ibid.*, ss. 64, 66.

**49.** (1) Any person who, but for the preceding section, might have applied for and obtained any of such writs may apply to a Judge of the Supreme Court upon an affidavit of the facts for an order calling upon the Local Court or the officer thereof concerned, and on the party to be affected by such order to show cause to the Supreme Court why an order in the nature and to have the effect of such of the said writs as would have been applicable should not be made.

(2) Any such Judge may make the order applied for and may direct that such order shall operate as a stay of proceedings in the action (if any) to which the same relates, until such time and on such terms as he thinks fit.

(3) Notwithstanding anything in this section, no person may apply for any such order if the purpose of such person is to prohibit any Local Court from proceeding with any action on the ground that such Local Court is not the proper Local Court in which such action should have been commenced.

Service of order.

**50.** The order to show cause shall be directed to and served upon the particular Local Court or officer thereof concerned and the party to be affected or his solicitor, but service on the Clerk of a Local Court or the Special Magistrate constituting or presiding over a Local Court shall be deemed service on that Local Court.

Supreme Court may make order absolute.

**51.** If after service on the Local Court or officer concerned and the party to be affected good cause is not shown to the contrary, the Supreme Court may make such order in the nature and to have the effect of such of the said writs as would have been applicable, and such order as to costs, as it thinks proper.

Order to be obeyed.

**52.** All persons to whom such an order is directed and on whom it is served shall obey the same under pain of attachment.

Order to be served promptly.

**53.** Any person who has obtained an order to show cause shall serve the same as soon as possible after the order is made, and if he delays in so doing and the other party has incurred expense by reason of such delay the Court in which the action to which the order relates was commenced may order the person who obtained the order to pay to the other party such expense as the other party has so incurred.

**54.** (1) If

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## PART IV.

**54.** (1) If a Judge of the Supreme Court deems it desirable that an action commenced in a Local Court should be tried in the Supreme Court he may order such action to be removed into the Supreme Court to be tried as an action in the Supreme Court.

Action commenced in Local Court may be removed into Supreme Court.

(2) Such order shall have the effect of a writ of *certiorari*.

(3) The Judge shall have power to impose such terms and conditions as to the costs of the action and as to security for costs and the admission of facts and the admission and production of documents as he thinks proper.

**55.** The refusal to grant an order in the nature and to have the effect of any of such writs or of an order to show cause shall be final; but there shall be an appeal from any refusal by a Judge of the Supreme Court to grant an order to show cause to the Court itself, and notwithstanding any such refusal a second application may be made for such order to a Judge of the Supreme Court, or to the Supreme Court, on grounds different from those on which the first application was founded.

Refusal of order by Supreme Court or Judge to be final. Cf. *ibid.*, s. 68.

**56.** Except as by this Act provided, no judgment, determination, or order given or made by a Local Court, nor any action or proceeding brought before it, or pending in such Court, shall be removed into the Supreme Court.

No other jurisdiction in Supreme Court over Local Court matters. *Ibid.*, s. 78.

## PART V.

## APPEALS FROM LOCAL COURTS TO THE SUPREME COURT.

## PART V.

**57.** (1) Any Local Court may reserve any question of law arising in any action for the decision of the Supreme Court, whose decision shall be certified to and binding on the Local Court.

Local Court may reserve question of law for Supreme Court.

(2) The costs consequent on any such reservation shall be in the discretion of the Supreme Court and, having been certified by the Master of the Supreme Court, shall be recoverable against the party by whom the same are made payable, in the same manner as costs incurred in the Local Court.

Cf. *ibid.*, s. 69.

**58.** (1) Any party who is dissatisfied with any final judgment, determination, or order of a Local Court, not being an order of commitment—

Appeal from Local Court to Supreme Court.

Cf. *ibid.*, s. 70.

(a) in any action in which the amount of the claim or counter-claim exceeds Thirty Pounds; or

(b) in any action of replevin where the amount of the rent or damage, or, if the goods have been seized otherwise than under colour of distress, the value of the goods, exceeds Thirty Pounds; or

(c) in any action for the recovery of premises where the yearly rent of the premises exceeds Thirty Pounds; or

(d) in

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*Local Courts Act.—1926.*

(d) in proceedings in interpleader where the amount claimed, or the value of the goods in question, or of the proceeds thereof, exceeds Thirty Pounds; or

(e) in any action of ejectment under Part XI.; or

(f) in any action under Part XII.,

may appeal to the Supreme Court.

(2) Any party who is dissatisfied with any interlocutory order made by any Judge or Special Magistrate in any such action may, by leave of such Judge or Special Magistrate or of a Judge of the Supreme Court, appeal therefrom to the Supreme Court. The practice and procedure on such appeal (including the costs payable thereon) shall be as prescribed by Rules of the Supreme Court.

Notice of appeal.  
Cf. *ibid.*, ss. 70, 71,  
72.

**59.** (1) The party intending to appeal under subsection (1) of section 58 shall, within twelve clear days of the day on which the judgment, determination, or order was given or made, serve on or post to the Clerk of the Local Court and the opposite party or his solicitor in the action or proceeding a notice in writing of his intention to appeal.

(2) Such notice shall not operate as a stay of proceedings.

Appellant to obtain  
order to show cause.  
Cf. *ibid.*, s. 70.

**60.** (1) The appellant shall also obtain, within two months of the said day, the order of a Judge of the Supreme Court calling upon the other party to show cause to the Supreme Court or a Judge thereof on a day to be fixed by such Judge why the judgment, determination or order of the Local Court should not be set aside and a new trial had between the parties, or why the judgment, determination or order should not be entered for, or varied in favor of, the party appealing.

(2) Every such order shall state shortly but specifically the grounds of the appeal, and shall be served on the respondent or his said solicitor.

(3) Within eight days after the service on the respondent of such order the respondent may serve on or post to the appellant or his solicitor notice that he intends to cross-appeal, and upon so doing he shall file a copy of such notice in the office of the Master of the Supreme Court.

(4) Such notice shall state shortly but specifically the grounds of the cross-appeal and shall have the same effect as the order obtained by the appellant under subsection (1) hereof, and the respondent in respect of such cross-appeal shall have and be subject to the same rights, duties, and liabilities as the appellant in respect of his appeal.

Order may be  
granted on terms.

**61.** (1) The Judge making such order to show cause may grant the same upon such conditions as he thinks fit.

(2) Any Judge of the Supreme Court may direct that such order shall operate as a stay of proceedings until such time and on such terms as he deems proper.

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## PART V.

**62.** A Judge of the Supreme Court may, upon such terms as he deems proper, enlarge the time for obtaining the order to show cause beyond the said period of two months or the time for giving notice of intention to cross-appeal beyond the said period of eight days, even after the expiration of the period.

Time for obtaining order may be enlarged.

**63.** (1) Upon the hearing of any appeal the Supreme Court or Judge hearing the appeal may—

Powers of the Supreme Court on hearing of appeal.

- (a) draw all inferences of fact which might have been drawn by the Local Court appealed from :
- (b) order a new trial on such terms as it or he thinks fit, and may make such order on the ground of surprise :
- (c) order judgment to be entered for any party :
- (d) make any other order, on such terms as it thinks fit or proper to ensure the determination on the merits of the real questions in controversy between the parties :
- (e) make such order with respect to the costs of the appeal as it thinks proper :
- (f) amend the order to show cause or notice of intention to cross-appeal :

and every such order shall be final.

(2) If the Supreme Court or such Judge is of opinion that, although any ruling, direction, judgment, determination, or order objected to may not have been strictly according to law, yet that substantial justice has been done between the parties, it or he shall discharge the order, with or without costs, and if the Supreme Court or such Judge is of opinion that, although there has been a substantial wrong or miscarriage of justice, such wrong or miscarriage affects part only of the matter in controversy, it or he may make the order absolute with regard to such part, and discharge it as to the other part, with or without costs.

Cf. *ibid.*, s. 75.

(3) The Supreme Court or such Judge upon the hearing of any such appeal shall have all the powers and duties as to amendment or otherwise of the Local Court appealed from, together with full discretionary power to receive further evidence upon questions of fact. The Rules of Court under the Supreme Court Act, 1878, for the time being in force regulating the receiving of further evidence upon an appeal from a single Judge of the Supreme Court shall apply as to the mode of giving such further evidence and the conditions under which it is receivable.

**64.** On the hearing of any appeal or application to the Supreme Court or any Judge thereof any signed copy of the evidence and notes made by the Judge or Special Magistrate on the trial of the action which has been furnished to a party pursuant to this Act shall be used and received.

Signed copy of evidence and Special Magistrate's notes to be used on appeal.  
Cf. *ibid.*, s. 128.

**65.** Forthwith

## PART V.

## Local Courts Act.—1926.

Duty of Clerk of Local Court after receiving notice of appeal.

**65.** Forthwith after receiving notice of appeal, the Clerk of the Local Court shall forward to the Master of the Supreme Court a copy of the claim, defence, counter-claim, and reply (if any), and of the evidence and of the notes made at the trial.

Costs of appeal.  
Cf. *ibid.*, s. 77.

**66.** (1) The costs of the successful party to the appeal, if ordered to be paid by the opposite party, shall be taxed by the Master of the Supreme Court, and the Clerk of the Local Court on receiving the allocatur of the said Master shall enter judgment for such costs or add them to any judgment already obtained in favor of such party.

(2) Every such judgment may be proceeded on in like manner as any other judgment of the Local Court.

## PART VI.

## PART VI.

## THE JOINDER OF PARTIES AND OF CAUSES OF ACTION.

Joinder of plaintiffs.

Cf. Supreme Court Rules, O. xv., r. 1.

**67.** (1) All persons may be joined in one action, as plaintiffs, in whom any right to relief, in respect of or arising out of the same transaction or series of transactions, is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons brought, separate actions, any common question of law or fact would arise.

(2) If upon the application of any defendant it appears that such joinder may embarrass or delay the trial of the action, a Judge or Special Magistrate may order separate trials or make such other order as may be expedient, and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to without any amendment.

(3) The defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found to be entitled to relief, unless the Court or a Judge or Special Magistrate otherwise directs.

Misjoinder and nonjoinder of plaintiffs.

*Ibid.*, O. xv., r. 2.  
Cf. 386, 1886, s. 85.

**68.** Where an action has been commenced in the name of a wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a Judge or Special Magistrate may, if satisfied that it has been so commenced through a *bona fide* mistake or that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff, upon such terms as he thinks proper.

Joinder of defendants.

Cf. S.C. Rules, O. xv., r. 4.

**69.** All persons may be joined in one action as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, and judgment may be given against such one or more of the defendants as may be found liable according to their respective liabilities without any amendment.

**70.** It

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## PART VI.

70. It shall not be necessary that every defendant shall be interested as to all the relief claimed, or as to every cause of action included, in any proceeding against him; but the Court or a Judge or Special Magistrate may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

Defendant need not be interested as to all relief claimed.

Ibid., r. 5.

71. Where the plaintiff is in doubt as to the person from whom he is entitled to redress he may, in such manner as hereinafter mentioned, or as may be prescribed by Rules of Court, 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 parties.

Where doubt as to party liable.

Ibid., r. 7.

72. (1) 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, and shall be considered as representing such persons; but the Court, or a Judge, or Special Magistrate, may, at any stage of the proceedings, order any of such persons to be made parties, either in addition to, or in lieu of, the previously existing parties.

Trustees representing estate.

Ibid., r. 8.

(2) This section shall apply to trustees, executors, and administrators sued in proceedings to enforce a security by foreclosure or otherwise.

73. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorised by a Judge or Special Magistrate, before, or by the Court at, the trial, to defend in such action on behalf or for the benefit of all parties so interested.

Representative actions.

Ibid., r. 9.

74. (1) No action shall be defeated by reason of the misjoinder, or nonjoinder, of parties, 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.

Misjoinder and nonjoinder not to defeat action.

Ibid., r. 12.

Cf. 386, 1886, s. 87.

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

(3) No person shall be added as a plaintiff suing without a next friend, or as the next friend of the plaintiff under any disability, without his own consent in writing thereto.

75. Any

## PART VI.

*Local Courts Act.—1926.*

Mode of applying to rectify mis-joinder and non-joinder.

S. C. Rules, O. xv., r. 13.

**75.** Any application to add or strike out or substitute a plaintiff or defendant may be made to a Judge or Special Magistrate at any time before trial, by interlocutory summons, or to the Court at the trial, in a summary manner.

Service of process on added or substituted defendant.

*Ibid.*, r. 14.

**76.** (1) Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the Court or a Judge or Special Magistrate, serve such new defendant with the amended proceeding in the same manner as original defendants are served.

(2) Such service shall, unless otherwise ordered by the Court or a Judge or Special Magistrate, be effected in the same manner in which original defendants are served.

One of several persons jointly liable may be sued.

386, 1886, s. 86, altered.

**77.** (1) Where a plaintiff has any claim against two or more persons jointly answerable, it shall be sufficient if any one of such persons is sued and judgment may be obtained, and execution issued against the person or persons so sued, notwithstanding that others jointly liable may not have been sued, or may not be within the jurisdiction of the Court: Provided that every person against whom judgment has been so obtained and who has satisfied such judgment may recover contribution from any other person jointly liable with him.

(2) Where a plaintiff avails himself of the provisions of this section and proceeds against one or more persons jointly answerable, the defendant or defendants sued may avail himself or themselves of any defence or counter-claim which he or they would have been entitled to set up if all the persons jointly answerable had been made defendants.

Joinder of causes. Cf. S.C. Rules, O. xviii., O. r. 1.

**78.** (1) Subject to this Act and to the Rules of Court the plaintiff may unite in the same action several causes of action.

(2) If it appears to the Court at the trial, or to a Judge or Special Magistrate before the trial, that any of such causes of action cannot be conveniently tried together, the Court, Judge, or Special Magistrate may order separate trials of any such causes of action to be had, or may make such other order as may be necessary or expedient, for the separate disposal thereof.

Defendant may plead set-off or counter-claim.

386, 1886, s. 89.

**79.** (1) Subject to subsection (2) hereof, a defendant may set-off or set-up by way of counter-claim, against the claims of the plaintiff, any right or claim against the plaintiff, or against the plaintiff and one or more persons jointly answerable, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a claim in a cross-action, so as to enable the Court to pronounce a final judgment in the same action, both on the claim and on the counter-claim.

(2) The Court, or before trial a Judge or Special Magistrate, on the application of the plaintiff or any person joined with the plaintiff in the set-off or counter-claim, may, if of opinion that



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that such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof, and make such other order as it or he may think fit.

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## THE COMMENCEMENT OF ACTIONS AND PROCEEDINGS TO JUDGMENT.

**80.** (1) Any person intending to bring an action in a Local Court shall furnish the Clerk of the Court with a memorandum in writing (in this Act called "the claim") containing the names and places of residence or business of the parties, the occupation or description of the plaintiff, and a clear and concise statement of the particulars of his claim, with as many copies thereof as there are defendants.

Plaintiff to furnish names of parties and particulars.

Cf. *ibid.*, s. 98.

(2) Where the plaintiff is unacquainted with the defendant's Christian name, the defendant may be described by his or her surname or by his or her surname and the initial of his or her Christian name, or by the name by which he or she is generally known (prefaced in each case by Mr., Mrs., or Miss, as the case may require) and all subsequent proceedings thereon may be taken in conformity with such description, or in conformity with any amended description which the Court or any Judge or Special Magistrate may approve.

**81.** (1) If the claim filed in any Local Court (other than under Part XII.) does not show that such Local Court has jurisdiction in the matter there shall be added to such claim a statement—

Allegation as to jurisdiction.

(a) that such Local Court has jurisdiction and the ground or grounds on which it has jurisdiction; or

(b) that the defendant has consented to such Local Court having jurisdiction.

(2) Such statement shall be signed by the plaintiff personally or by his solicitor.

(3) Any person signing or procuring to be signed any incorrect statement under this section shall be liable to a penalty not exceeding Twenty Pounds, unless he proves that he had reasonable grounds for believing the statement to be correct.

**82.** (1) The Clerk shall thereupon enter in a book to be kept for that purpose, called a *Plaint Book*, a *plaint*, stating the names and places of residence of the parties, and the occupation or description of the plaintiff, the names and addresses of their respective solicitors or agents, and the amount of the plaintiff's claim, and the sum paid by him for fees.

Entry of *plaint*.

*Ibid.*, s. 100.

(2) A note of such *plaint* shall be furnished to the plaintiff, in the form, and containing the particulars and directions, prescribed by Rules of Court.

(3) Every *plaint* shall be numbered progressively in each year, according to the order in which it is entered.

**83.** (1) The

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Summons to issue  
to defendant.

Cf. *ibid.*, s. 101.

**83.** (1) The Clerk shall forthwith issue a summons to each defendant, according to such form as may be prescribed by Rules of Court with regard to an ordinary summons (hereinafter called "ordinary summons"), or, at the instance of the plaintiff, according to such form as may be prescribed by Rules of Court with regard to a special summons, (hereinafter called "special summons"), if he considers such summons to be applicable to the claim of the plaintiff, or at the instance of the plaintiff, if the action is under Part XII. in such form as may be prescribed by Rules of Court with regard to an action under Part XII.

(2) The Clerk shall append to each summons a copy of the claim.

Party may require  
Local Court of Full  
Jurisdiction to be  
constituted of  
Special Magistrate  
and two Justices.

**84.** (1) Any party to an action in a Local Court of Full Jurisdiction (other than under Part XII.) may demand that the action be tried by a Special Magistrate and two Justices, and thereupon such action shall be tried accordingly.

(2) Every such demand shall be made in writing and if made by the plaintiff shall be made at the time he files his claim and shall be stated thereon, and if made by the defendant shall be made at the time he files his appearance and shall be stated thereon.

Infants—How they  
sue and defend.

Cf. *ibid.*, s. 82.

**85.** Infants may sue as plaintiffs by their next friends and may defend any action by their guardians appointed for that purpose: Provided that any infant may sue for wages, or piecework, or, for any work or services as a clerk, servant, mechanic, or laborer in the same manner as if he were of full age.

Married women.  
S. C. Rules, O. xv.,  
r. 16.

**86.** Married women may sue and be sued as provided by the Married Women's Property Act, 1883-4.

Lunatics.

**87.** Lunatics, persons of unsound mind not so found, and persons mentally defective within the meaning of the Mental Defectives Act, 1913, may sue and defend in manner prescribed by Rules of Court.

Consent of persons  
under disability.

Cf. O. xvi., r. 21.

**88.** In any action to which any infant or person of unsound mind or mentally defective within the meaning of the Mental Defectives Act, 1913, whether so found by inquisition or not, or a person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure shall if given with the sanction of the Court or a Judge or Special Magistrate, by the Public Trustee, the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability and had given such consent.

Poor persons.

**89.** A Judge or Special Magistrate may, subject to such conditions and on such terms as may be prescribed by Rules of Court, allow any person or persons to sue or defend *in forma pauperis* in cases where he may consider that the extreme poverty of such person would otherwise prevent the attainment of justice.

**90.** (1) Any

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**90.** (1) Any two or more persons claiming or being liable as Partners. co-partners and carrying on business within the State (and any Cf. O. xxxvii., r. 1. person carrying on business within the State in the name of a firm Cf. 386, 1886, s. 90. apparently consisting of more than one person), may sue or be sued in the names of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action, and any person who was at the time of the accruing of the cause of action carrying on business in the State in the name of a firm apparently consisting of more than one person may sue or be sued, in that name.

(2) Any party to an action may in any such case apply by interlocutory summons to a Judge or Special Magistrate for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise as the Judge or Special Magistrate may direct.

**91.** In all actions where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—

When special summons may issue.  
Cf. *ibid.*, s. 102, and O. 3, r. 6.

- (a) upon a contract express or implied (as, for instance on a bill of exchange, promissory note, or cheque, or other simple contract debt); or
- (b) on a bond or contract under seal, for payment of a liquidated amount of money; or
- (c) on a statute, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or
- (d) on a guarantee, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand only,

the plaintiff may, at his option, require the Clerk to issue a special summons.

**92.** (1) It shall not be necessary for a bailiff of the Court to serve any summons other than an unsatisfied judgment summons, but the same may be served by the plaintiff or by any person appointed or employed by him for the purpose.

Ordinary and special summonses may be served by plaintiff or by person employed by him.

Cf. *Ibid.*, s. 103.

(2) Where a summons is served by a person other than a bailiff, such person shall forthwith indorse on the duplicate summons the day of the month and the year of such service, and shall, as soon as practicable after the service, swear an affidavit of such service, and file the duplicate summons, together with the affidavit of service, with the Clerk of the Court from which such summons was issued.

(3) Any person who neglects or fails to file the said duplicate summons, together with the affidavit of service thereof, with such Clerk as aforesaid, as soon as practicable after the service, shall be liable to a penalty not exceeding Ten Pounds.

**93.** (1) Where an intended plaintiff is resident in the State of South Australia and an intended defendant is outside the State of South

Summons may be served out of the State.  
Cf. *ibid.*, s. 104.

South Australia, the intended plaintiff may, in any case in which a Local Court would have had jurisdiction had the defendant been within the State of South Australia, issue a summons out of the Local Court nearest to which the intended plaintiff resides or, at his option, out of the Local Court of Adelaide.

(2) Such summons may, if the defendant is within any other State or part of the Commonwealth of Australia, be issued without the leave of a Judge or Special Magistrate, provided—

*Cf. Service and Execution of Process Act, 1901-1922, s. 11.*

(a) that the subject matter of the action, so far as it concerns such defendant, is—

I. land or other property situated or being within the State of South Australia ; or

II. shares, or stock, of a corporation or company having its principal place of business within the State of South Australia ; or

III. any deed, will, document, or thing affecting any such land, shares, stock, or property ; or

(b) that any contract in respect of which relief is sought in the action against such defendant by way of enforcing, rescinding, dissolving, annulling, or otherwise affecting such contract, or by way of recovering damages or other remedy against such defendant for a breach thereof, was made or entered into within the State of South Australia ; or

(c) that the relief sought against the defendant is in respect of a breach, within the State of South Australia, of a contract wherever made ; or

(d) that the act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was done, or is to be done, or is situated, within the State of South Australia ; or

(e) that, at the time when the liability sought to be enforced against the defendant arose, he was within the State of South Australia.

In every other case leave to issue such summons shall be obtained from a Judge or Special Magistrate.

(3) Any summons issued pursuant to this section may be served out of the State of South Australia.

(4) Such service shall be effected in such manner as is prescribed by Rules of Court.

(5) The time to be limited for appearance to such summons shall be such as is fixed by the Commonwealth Service and Execution of Process Act, 1901-1922, or any Act amending the same or substituted therefor for the time being in force, or such longer time as may be prescribed by Rules of Court. Such summons shall contain the endorsements required by that Act.

*Service of summons.*  
386, 1886, s. 105.

**94.** (1) A summons (other than an interlocutory summons) shall be served personally; or, in the case of an ordinary summons when served

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served within the State, by delivering the same at the dwelling-house or place of business of the defendant, to some person thereat who is apparently above the age of fourteen years or, in special cases, in such other manner as is prescribed by Rules of Court: Provided that no place of business shall be deemed the place of business of the defendant unless he is the master or one of the masters thereof.

(2) An ordinary summons or a special summons shall be deemed to have been duly served upon a defendant if a solicitor accepts service thereof on behalf of such defendant and undertakes to appear to such summons according to the exigencies thereof.

95. Any interlocutory summons, or any notice or subpoena to either party to an action, may be served by sending the same through the post office in a prepaid letter addressed to the party or his solicitor named in the claim or appearance at his place of residence or business specified in the claim or appearance.

Service of interlocutory summons and notices.  
386, 1886, s. 106.

96. The service of any summons or notice in any action in a Local Court may be proved by affidavit, and such affidavit shall be received in evidence on the trial of any action in a Local Court.

Affidavit of service.  
Ibid., s. 106.

97. (1) Subject to this Act, the period to be allowed to a defendant to appear to a summons, when served within the State of South Australia, shall be as follows:—

Defendant to appear within certain periods.

- I. Where the defendant has been served personally, and resides within twenty miles of the office of the Court, a period of six days:
- II. Where he has been served personally and resides beyond twenty and within fifty miles of such office, a period of eight days, and so on in like manner an additional two days for every fifty miles beyond the first fifty miles:
- III. Where the defendant has not been served personally an addition of two days to each of the foregoing periods will be allowed:

Ibid., s. 107.

(2) A defendant may appear at any time before judgment is signed or the claim set down for assessment of damages.

98. (1) A defendant desirous of appearing to a plaintiff's claim shall enter an appearance by filing with the Clerk of the Court an appearance in duplicate.

Mode and effect of appearance.  
Cf. *ibid.*, s. 108.

(2) Such appearance—

- (a) in the case of a debt, whether by simple contract or specialty, shall operate as a denial as well of the particular contract, dealing, or transaction between the defendant and the plaintiff out of which the alleged debt or liability arises, as of the breach thereof; and
- (b) in the case of a claim for damages for a breach of duty or wrongful act, shall operate as a denial as well of such breach of duty or wrongful act as of the right, property, or possession of the plaintiff, or of the circumstances out of which the alleged cause of complaint arises, unless

unless the defendant, by his appearance or defence, expressly limits such operation.

(3) If the defendant intends to dispute the character in which the plaintiff claims, or to rely upon any special or statutory defence, such as an equitable defence, set-off or counter-claim, tender before action, payment, release, illegality not apparent on the particulars, fraud, infancy, coverture, insolvency, whether of the plaintiff or defendant, or drawing, indorsing, accepting or making bills or notes by way of accommodation, want of notice of dishonor, want of notice of action, mutual credit, lien, unseaworthiness, misrepresentation, concealment, and other like defences, he shall state in his appearance the grounds of his defence.

(4) If the defendant relies upon a set-off or counter-claim, he shall state specifically that he does so by way of set-off or counter-claim, as the case may be, and shall also file particulars of such set-off or counter-claim.

(5) If the defendant relies upon a tender before action brought, he shall pay the amount into Court at the time of entering his appearance.

Defendants to counter-claim to be served.

Cf. *ibid.*, s. 91.

**99.** Where a defendant by his appearance or defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person or persons, he shall in such appearance or defence set forth the names of all the persons who, if such counter-claim were to be enforced by cross-action, would be defendants to such cross-action, and shall state the particulars of such set-off or counter-claim, as in cases where a set-off or counter-claim raises questions between the defendant and the plaintiff only.

Mode of service.

Cf. *ibid.*, s. 91.

**100.** Where any person, as in the last preceding section mentioned, is not a party to the action, he shall be summoned to appear by being served with a copy of the appearance and defence, bearing such endorsement as is prescribed by Rules of Court, and such service shall be governed by the same provisions as may be in force with respect to the service of an ordinary summons, and every appearance and defence so served shall be under the seal of the Court.

Appearance by defendants to counter-claim.

Cf. *ibid.*, s. 90.

**101.** Any person not originally a party to the action who is served with an appearance and defence as aforesaid must appear thereto as if he had been served with an ordinary summons to appear in an action.

Reply to counter-claim.

Cf. *ibid.*, s. 90.

**102.** (1) The plaintiff, and any person named in an appearance or defence as a party to a counter-claim thereby made, if he intends to rely in reply to any counter-claim upon any matter which would on the part of a defendant constitute a special defence within the meaning of section 98, shall file in duplicate with the Clerk of the Court a clear and concise statement of such special matter in reply.

(2) In

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(2) In the case of a person other than a plaintiff such statement shall be filed at the time of entering appearance, and in the case of a plaintiff within three clear days from the receipt of the counter-claim.

**103.** A defendant may avail himself of any set-off, counter-claim, or other defence to which he would have been entitled if some persons had not been improperly joined as plaintiffs, or if all the persons answerable were made defendants, or if the persons named as defendants had been properly joined.

Defendant's right of set-off or counter-claim preserved in case of misjoinder.

386, 1886, s. 92.

**104.** (1) Any party to an action may avail himself of any ground of defence to a claim, set-off, or counter-claim which has arisen after action brought.

Matters arising pending action.

Cf. *ibid.*, s. 94.

(2) If such ground of defence arises before the entry of appearance or filing of reply, notice of the party's intention to avail himself of such ground of defence, together with particulars of the same, shall be filed with the appearance or reply.

If such ground of defence arises after the entry of appearance or filing of reply, the party shall not avail himself of it without leave of a Judge or Special Magistrate or, at the trial, of the Court.

(3) The opposite party shall, in case such ground of defence is admitted or established, be entitled to such costs as he would have been entitled to if such new ground had not arisen, unless a Judge or Special Magistrate or, at the trial, the Court, otherwise orders.

**105.** Any party to an action may avail himself of any defence in equity to the claim of the opposite party.

Equitable defence may be availed of.

*Ibid.*, s. 109.

**106.** (1) If a special summons has been issued in any action, the defendant shall not be allowed to appear unless, at the time of entering an appearance, he or some person cognizant of the facts of the case makes and files an affidavit that he has a good defence to the action on the merits, and sets out in such affidavit some ground of such defence.

Defendant not to appear without affidavit of good defence, when special summons issued.

*Ibid.*, s. 110.

(2) The Local Court Judge or a Special Magistrate may, upon application by interlocutory summons, or at the trial, set aside an appearance entered in any action in which a special summons has been issued if he considers the affidavit filed by the defendant does not disclose some valid ground of defence.

**107.** (1) If the defendant does not enter an appearance in any action where the claim is for a debt or liquidated demand such as to entitle a plaintiff to require a special summons to be issued, the Clerk of the Court, upon proof of the service of the summons or of the filing of an undertaking by a solicitor to appear to the summons for the defendant, shall, at the request of the plaintiff, sign judgment for the amount, together with interest, if the plaintiff so desires, from the date of the filing of the claim to the date of signing judgment, on so much of the claim as does not consist of interest.

Judgment by default.

Cf. *ibid.*, s. 111.

(2) Such

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(2) Such interest shall be calculated at the rate, if any, alleged by the plaintiff in his claim to have been agreed upon, or, if no such rate has been alleged, then at the rate of Eight Pounds per centum per annum.

When not final,  
damages to be  
assessed.

Ibid., s. 112.

**108.** If the defendant does not enter an appearance in any other action, the Clerk of the Court shall, at the request of the plaintiff, set the claim down for assessment of damages, and afterwards the defendant shall not be at liberty to enter an appearance in the action except as provided by this Act.

When action to be  
tried.

Cf. *ibid.*, s. 114.

**109.** (1) After the defendant has appeared, the trial of the action shall, subject to Rules of Court and to subsection (2) hereof, take place at the first Court to be held after the expiration of the time hereinbefore allowed for the defendant to appear, or seven clear days after the appearance of the defendant, whichever is the later date.

(2) If the plaintiff resides at a distance from the Court in which the claim is filed, he may, at the time of filing the claim, give notice to the Clerk that he will require an extended notice of trial, to be specified by him, not exceeding the period which he would have been allowed for appearance if he had been the defendant and served personally.

Defendant may con-  
fess debt or part  
thereof and judg-  
ment thereupon.

Cf. *ibid.*, s. 115.

**110.** (1) Any defendant may, at any time before trial, file with the Clerk of the Court an admission of liability for the plaintiff's claim or a part thereof, together with a copy of such admission, which admission shall be attested by a Clerk of a Local Court, Commissioner for taking affidavits in the Supreme Court, notary public, or Justice, or shall be under the hand of a practitioner of the Supreme Court, and the copy thereof so filed shall be sent by the Clerk of the Court to the plaintiff, and the Clerk of the Court shall, at the request of the plaintiff, enter judgment to the extent of the amount admitted.

(2) If the defendant admits a portion only of the claim, and the plaintiff does not sign judgment as aforesaid, the action shall proceed.

Defendant may pay  
money into Court.

Cf. *ibid.*, s. 116.

**111.** (1) Any defendant may, at the time of entering his appearance, pay into Court such sum of money as he thinks sufficient to satisfy the claim of the plaintiff, together with the costs incurred by the plaintiff on that scale up to the time of such payment.

(2) Notice of such payment shall be sent by the Clerk of the Court to the plaintiff, and the said sum of money, if not less than the amount claimed, shall be paid to the plaintiff.

(3) If a sum less than the amount claimed has been paid into Court, and the plaintiff does not send to the Clerk of the Court a notice of his acceptance of the amount paid into Court in full satisfaction of his claim, the action shall proceed. If the plaintiff sends to the Clerk of the Court such notice of acceptance, the Clerk of the Court shall forthwith send to the defendant notice of such acceptance, and the sum paid into Court shall be paid to the plaintiff.

**112.** If



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**112.** If the plaintiff recovers no further sum than has been so admitted or paid into Court, the plaintiff shall pay or allow to the defendant the costs incurred by the defendant in the said action after such payment, or after the plaintiff had notice of such admission, such costs to be taxed by the Clerk of the Court; but if a defence of tender before action brought has been found for defendant, then the plaintiff shall pay the whole cost of the action.

Plaintiff to pay costs in certain cases.

Ibid., s. 117.

**113.** If—

(a) the defendant agrees with the plaintiff upon the amount of the claim and upon the terms and conditions upon which the same shall be paid or satisfied; and

Judgment when parties agree as to amount and terms of payment.

Ibid., s. 118.

(b) a statement of the claim so agreed upon, and of the terms and conditions upon which the same shall be paid or satisfied, signed by the plaintiff and the defendant, and attested by a Clerk of a Local Court or a practitioner of the Supreme Court, is filed with the Clerk of the Court,

the Clerk shall enter up judgment for the plaintiff for the amount of the claim so agreed on upon the terms and conditions mentioned in such statement.

**114.** Every action, not being an action of replevin or for the recovery of premises or of ejectment or under Part XII., shall be commenced in the Court having jurisdiction to the amount claimed—

In what Courts actions to be commenced.

Cf. *ibid.*, s. 119, and 431, 1888, s. 7.

(a) nearest to the place where the cause of action arose; or

(b) nearest to the place where the defendant or one of the defendants resides or carries on business at the time of action brought; or

(c) if the action is of contract, nearest to the place where the plaintiff, if a party to the original contract, carried on business at the time of the making of the contract, or, if he did not then carry on any business, nearest to the place where he resided at that time; or

(d) if the action is of contract and the plaintiff is not a party to the original contract, nearest to the place where the party in whose right the plaintiff claims carried on his business at the time of the making of the contract, or, if he did not then carry on any business, nearest to the place where such party resided at that time.

**115.** No defendant shall be allowed to object in any Local Court that the action has not been commenced in the proper Court unless, at or before the time of entering his appearance, he files in the Court—

No objection to be allowed unless ground given and merits proved.

Cf. 386, 1886, s. 119; 431, 1888, s. 2.

(a) a memorandum in writing of such objection, setting out the grounds thereof and specifying the Local Court in which he alleges the action should have been commenced; and

(b) an

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(b) an affidavit by himself or some person cognizant of the facts of the case, stating that he has a good defence to the action on the merits irrespective of such objection and setting out some ground of such defence.

Procedure if plaintiff admits action brought in wrong Court.

Ibid., s. 3.

**116.** If upon receipt of such objection the plaintiff forthwith gives notice in writing to the defendant and to the Court in which the action was commenced of his consent to the trial of the action by the Local Court specified in such objection, the said action, and all proceedings in respect thereof, shall be transferred to the Local Court specified in such objection.

If objection not sustained.

Ibid., s. 4.

**117.** (1) If the plaintiff does not forthwith give such notice, the defendant may apply to the Local Court Judge or a Special Magistrate, on an interlocutory summons taken out in the Court in which the action was commenced, for the determination of such objection.

(2) The Local Court Judge or Special Magistrate hearing such summons shall determine such objection and, unless such objection is sustained, the action shall proceed in the Local Court in which it was commenced.

If sustained, proceedings to be transferred.

Ibid., s. 5.

**118.** If such objection is sustained, the said action and all proceedings in respect thereof shall be transferred to the Local Court specified in such objection.

To what Court proceedings to be transferred.

Ibid., s. 6.

**119.** The Local Court to which any action is transferred pursuant to this Part shall have jurisdiction to proceed with and to hear and determine such action in like manner as if such action had originally been commenced in such Court and, where an appearance had been entered, as if such appearance had been entered therein on the day on which such proceedings were transferred.

Costs may be awarded notwithstanding want of jurisdiction.

Ibid., s. 119.

**120.** Any Court or Judge or Special Magistrate may, notwithstanding that it or he has no jurisdiction to try an action, award costs in such action to either party to any action commenced therein, and the party in whose favor the costs have been awarded may enforce payment of the same as fully and effectually, and in the same manner, as if such Court had had such jurisdiction.

Security for costs.

Cf. *ibid.*, s. 120.

**121.** If the plaintiff in any action is not at the time of filing his claim within any State or part of the Commonwealth of Australia, or if before judgment is obtained he leaves the Commonwealth of Australia, a Judge or a Special Magistrate may order such plaintiff to give security for the costs of the action to such amount and in such manner as such Judge or Special Magistrate may deem proper, and may stay all proceedings in the action until such security is given.

Plaintiff may discontinue.

Cf. *ibid.*, s. 123.

**122.** (1) A plaintiff in any action may any time before trial discontinue, by giving notice of discontinuance to the Clerk of the Court and to the defendant, by post or otherwise, and the defendant shall be entitled only to such costs as were incurred up to the receipt of such notice, unless a Judge or Special Magistrate otherwise orders.

(2) Such

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(2) Such costs, and any further costs ordered by a Judge or Special Magistrate, may be recovered as a judgment of the Court.

(3) When any action has been discontinued the plaintiff shall not begin a similar action for the same cause without leave of a Judge or Special Magistrate. Such leave may be obtained on an *ex-parte* application.

**123.** If, in any case in which the defendant sets up a counter-claim, the action of the plaintiff is stayed, discontinued, or dismissed, the counter-claim may nevertheless be proceeded with.

Counter-claim may proceed though action delayed.  
S. C. Rules, O. xxii., r. 16.

**124.** Any party to an action or matter may obtain, at the office of the Clerk of the Court, summonses to witnesses, and any number of names may be inserted in one summons.

Witnesses may be summoned.  
Ibid., s. 124.

**125.** (1) If, on the day appointed for hearing an action, neither party attends when the action is called on, the Court shall order the action to be placed at the bottom of the cause list of the Court for such day; and if, before the conclusion of the sitting of the Court on such day, neither party attends, the Court shall order the action to be struck out, and thereupon no further proceedings shall be taken in the action unless a Judge or Special Magistrate reinstates it.

Proceedings if neither party, or only defendant, appears at trial.

Ibid., s. 125.

(2) If only the defendant attends, by himself or his solicitor, then, with his consent, the Court shall order the action to be placed at the bottom of the cause list for such day, and if the plaintiff is not in attendance at the conclusion of the sitting of the Court on that day the defendant may pay the Court fees in the first instance payable by the plaintiff, and the Court may thereupon give judgment in like manner as if the plaintiff had attended.

Defendant appearing may proceed *ex parte*.

**126.** (1) If, on the day appointed for hearing an action, the defendant does not attend when the action is called on, personally or by his solicitor, the Court may, in all cases where the claim is for a debt or liquidated demand, without requiring the plaintiff to call any evidence, cause judgment to be entered for the amount claimed, together with interest, if the plaintiff so desires, from the date of the filing of the claim to the date of entry of judgment, on so much of the claim as does not consist of interest. Such interest shall be calculated at the rate, if any, alleged by the plaintiff in his claim to have been agreed upon, or, if no such rate is alleged, then at the rate of Eight Pounds per centum per annum.

If defendant does not appear, plaintiff may recover.

Cf. *ibid.*, s. 126.

(2) In other cases the Court shall proceed to assess the damages; and if in any such case a set-off or counter-claim has been filed by the defendant, such set-off or counter-claim shall be struck out.

**127.** If the plaintiff does not attend, either by himself or his solicitor, upon the hearing of any action, or at any adjournment of the said hearing, and the defendant attends, either by himself or his solicitor, upon such hearing or adjournment, the Court may, without prejudice to the defendant's right to elect to proceed under section 125, nonsuit the plaintiff.

Court may nonsuit when plaintiff does not appear.

Ibid., s. 127.

**128.** On

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Evidence in appealable actions to be taken down in writing and certain notes to be taken.

**128.** On the trial of any action in respect of which an appeal lies to the Supreme Court the Judge or Special Magistrate before whom the trial takes place shall—

- (a) cause the evidence to be taken down in writing; and
- (b) cause to be made notes of any question of law raised at the trial, and of the findings of fact in relation thereto, and of the decision thereon, and of the findings of fact and the decision in the action itself; and
- (c) at the expense of any party to any such action who requires the same forthwith cause to be furnished to such party a copy signed by him of such evidence and notes.

In case of cross judgments, execution to issue for the balance of the larger.

*Ibid.*, s. 130.

**129.** If there are cross judgments between the parties, execution shall be taken out by that party only who has obtained judgment for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction shall be entered on the judgment of the smaller sum, and for the remainder so far as it is paid or realised; and if both sums are equal, satisfaction shall be entered upon both judgments.

Court to give judgment for balance where set-off or counter-claim.

*Ibid.*, s. 93.

**130.** When in any action a set-off or counter-claim is established as a defence against the plaintiff's claim the Court may, if the balance is in favor of the defendant, give judgment for the defendant for such balance.

Court may order return of chattels detained.

*Cf. ibid.*, s. 131.

**131.** The Court may upon the application of the plaintiff in any action for the detention of any chattel—

- (a) order that execution shall issue for the return of the chattel detained, without giving the defendant the option of retaining such chattel upon paying the value assessed; and
- (b) order that the defendant pay such damages as the Court may assess in respect of the detention of the chattel, such damages to be reduced to such sum as the Court fixes if the plaintiff obtains possession of the chattel.

Specific delivery of goods sold may be ordered.

*Cf. ibid.*, s. 132.

**132.** (1) The Court may, upon the application of any party in any claim for breach of contract to deliver specific goods for a price in money, find—

- (a) what are the goods in respect of the non-delivery of which the party is entitled to recover, and which remain undelivered;
- (b) what (if any) is the sum the party would have been liable to pay for the delivery thereof;
- (c) what damages (if any) the party would have sustained if the goods should be delivered under execution as hereinafter mentioned; and
- (d) what damages if not delivered.

(2) Thereupon the Court, on the application of the party in whose favor judgment is given, may, if satisfied that the goods are still

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still in the possession or control of the opposite party, order execution to issue for delivery of them, on payment of such sum (if any) as has been found to be payable by the party making the application for the said goods, without giving the opposite party the option of retaining the same upon paying the damages assessed.

**133.** If any party sues another in any Local Court for any cause of action for which he has already sued him and obtained judgment in that or any other Court, proof of such former action having been brought and judgment having been obtained may be given, and the party so suing shall not be entitled to recover in such second action, and shall be adjudged to pay such compensation to the opposite party as the Local Court may award.

Second action for same cause not allowed.

*Ibid.*, s. 133.

**134.** Any party to any action in any Local Court in whose favor any judgment has been given, unless the Court otherwise orders, may cause execution to be issued thereon forthwith after the judgment has been pronounced and entered in the Record Book.

Party obtaining judgment may cause execution to issue.

**135.** Any party to an action or proceeding in a Local Court, or a practitioner of the Supreme Court, or (except in proceedings under Part XII.), any articulated law clerk acting on the instructions of his principal or, by leave of the Court, any other person instead of the party, may appear to conduct the action or proceeding.

Who may appear at hearing.

*Ibid.*, s. 137.

**136.** (1) The Court may nonsuit the plaintiff, or with respect to a counter-claim the defendant, whenever satisfactory proof has not been given entitling either the plaintiff or the defendant to the judgment of the Court, and, at the close of the plaintiff's or with respect to a counter-claim the defendant's case, the Court may nonsuit the plaintiff or defendant whether such plaintiff or defendant consents thereto or not.

Court may nonsuit.

*Ibid.*, s. 138.

(2) The plaintiff, or with respect to a counter-claim the defendant, may, at any time before the judgment of the Court is pronounced, elect to be nonsuited.

Plaintiff may elect to be nonsuited.

**137.** A nonsuit, if the Court so directs, shall have the same effect as a judgment upon the merits for the defendant, or with respect to a counter-claim for the plaintiff; but in any case of mistake, surprise or accident any nonsuit may be set aside by a Judge or a Special Magistrate, on such terms as to payment of costs and otherwise as he thinks proper.

Nonsuit same effect as judgment on the merits.

*Ibid.*, s. 139.

**138.** When a sole plaintiff or defendant, or one or more of several plaintiffs or defendants, die before judgment, the action shall not abate if the cause of action survives to or against the representatives of the deceased person or persons, or to or against the surviving parties.

On death of sole or one of several plaintiffs or defendants, action not to abate.

*Ibid.*, s. 95.

**139.** When one or more of several plaintiffs or defendants die after judgment, proceedings thereon may be taken by the survivor or survivors, or against the survivor or survivors, without leave of the Court.

On death of one of several plaintiffs or defendants, after judgment, proceedings may be taken against survivors.

*Ibid.*, s. 96.

**140.** (1) The

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In case of insolvency of plaintiff, action not to abate if trustees elect to proceed.

Ibid., s. 97.

**140.** (1) The insolvency of, or the execution of a deed of assignment under Part XI. of the Insolvent Act, 1886, by the plaintiff in any action in a Local Court which the trustees might maintain for the benefit of the creditors, shall not cause the action to abate if the trustees elect to continue such action and to give security for the costs thereof within such reasonable time as a Judge or Special Magistrate orders, and all further proceedings in the action shall be suspended, and the hearing may be adjourned, till such election is made.

(2) In case the trustees do not elect to continue the action and to give such security within the time limited by the order, the defendant may avail himself of the insolvency or assignment where it constitutes a defence to the action.

Costs where executor or administrator is unsuccessful plaintiff.  
English County Court Rules, O. 30, r. 1.

**141.** In actions by executors or administrators, if the plaintiff fails, the costs shall, unless the Court otherwise orders, be awarded in favor of the defendant, and shall be levied *de bonis propriis*.

When executor or administrator does not appear.

Ibid., r. 2.

**142.** Where an executor or administrator who is plaintiff or defendant in an action in a Local Court, does not attend on the day of hearing, the provisions of sections 125, 126, and 127 shall apply, subject to the provisions of this Act applicable to executors or administrators suing or being sued.

Plaintiff may charge *devastavit*.

Ibid., r. 3.

**143.** (1) A party suing an executor or administrator may charge in his claim that the defendant has had assets and has wasted them.

(2) If any party does so allege, he shall also state in his claim the amount of assets alleged to have been left by the deceased, and the manner in which the said assets have been wasted.

If waste found provisions as to costs.

Ibid., r. 4.

**144.** (1) Where a defendant is charged with waste in the plaintiff's claim, if the Court is of opinion that the defendant has wasted the assets, the judgment shall be that the debt or damages and costs shall be levied *de bonis testatoris, si, &c., et si non, de bonis propriis*.

(2) The non-payment of the amount claimed immediately on the Court finding such claim to be correct, and that the defendant is chargeable in respect of assets, shall be conclusive evidence of wasting to the amount with which he is so chargeable.

If assets not denied.

Ibid., r. 4a.

**145.** Where a defendant sued as an executor or administrator does not appear at the trial, or admits his representative character and the plaintiff's claim, and does not deny assets, the judgment shall be that the demand and costs shall be levied *de bonis testatoris, si, &c., et si non*, as to the costs *de bonis propriis*.

Where demand only denied.

Ibid., r. 5.

**146.** Where a defendant, sued as an executor or administrator, admits his representative character, and only denies the demand, if the plaintiff proves the demand the judgment shall be that the demand and costs shall be levied *de bonis testatoris, si, &c., et si non*, as to the costs *de bonis propriis*.

Judgment of assets *quando acciderint*.

Ibid., r. 6.

**147.** Where such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant

proves

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proves the administration alleged, the judgment shall be to levy the costs of proving the demand *de bonis testatoris, si, &c., et si non, de bonis propriis*, and as to the demand, judgment of assets *quando acciderint*, and the plaintiff shall pay the defendant's costs of proving the administration of assets unless the Court otherwise orders.

**148.** Where such defendant admits his representative character but denies the claim, and alleges a total or partial administration of assets, and the plaintiff proves his claim, but the defendant does not prove the administration alleged, the judgment shall be to levy the amount of the claim, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si, &c., et si non*, as to the costs *de bonis propriis*, and as to the residue of the claim, if any, judgment of assets *quando acciderint*.

Where total or partial administration alleged and is not proved, but demand is denied and proved.

Ibid., r. 7.

**149.** Where such defendant admits his representative character and the plaintiff's claim, but alleges a total or partial administration of assets, and proves the administration alleged, the judgment shall be of assets *quando acciderint*, and the plaintiff shall pay the defendant's costs of proving the administration of assets, unless the Court otherwise orders.

Where total or partial administration alleged and proved and demand is admitted.

Ibid., r. 8.

**150.** Where such defendant admits his representative character and the plaintiff's claim, but alleges a total or partial administration of assets, but does not prove the administration alleged, and has not established any other ground of defence, the judgment shall be to levy the amount of the claim, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si, &c., et si non*, as to the costs *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets *quando acciderint*.

Where defendant admits demand and fails to prove administration alleged.

Ibid., r. 9.

**151.** Where judgment has been given against an executor or administrator that the amount be levied upon assets of the deceased, *quando acciderint*, the plaintiff may issue a summons according to the form prescribed by Rules of Court, and if it appears that assets have come to the hands of the executor or administrator since the judgment, a Judge or Special Magistrate, may order that the debt, damages, and costs be levied *de bonis testatoris, si, &c., et si non*, as to the costs *de bonis propriis*: Provided that it shall be competent for the party applying to charge in his claim that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in section 143, and the provisions of section 144 shall apply to such inquiry; and the Judge or Special Magistrate may, if it appears that the party charged has wasted the assets, direct a levy to be made as to the debt and costs *de bonis testatoris, si, &c., et si non, de bonis propriis*.

Procedure on judgment *quando acciderint*.

Ibid., r. 10.

**152.** Where a defendant admits his representative character and the plaintiff's claim, and that he is chargeable with any sum in respect of assets, he shall pay such sum into Court, subject to the provisions of this Act and the Rules of Court relating to payment into Court in other cases.

Defendant admitting assets and demand to pay into Court.

Ibid., r. 11.

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## THE ENFORCEMENT OF JUDGMENTS AND ORDERS.

Execution to issue  
against goods.

Ibid., s. 141.

**153.** Judgments and orders of any Local Court, Judge, or Special Magistrate for the payment of money—

- (a) may be enforced in case of default or failure of payment thereof forthwith, or at the time or times thereby directed, in the manner hereinafter set out; and
- (b) shall carry interest on the amount thereof at the rate of Eight Pounds per centum per annum from the date thereof until payment.

Judgments and orders for sums over £20 to be enforceable by a *feri facias* or by *capias ad satisfaciendum* after return of *nulla bona*.

Ibid., s. 142.

**154.** (1) Judgments and orders of any Local Court, or of any Judge or Special Magistrate for the payment of a sum exceeding Twenty Pounds, exclusive of costs, may be enforced in like manner as judgments and orders for the payment of any sum of money are enforceable in the Supreme Court.

(2) Warrants in the forms prescribed by Rules of Court shall respectively have the like force and effect as writs of *capias ad satisfaciendum* and *feri facias* in the Supreme Court.

(3) No warrant of commitment in the nature of a writ of *capias ad satisfaciendum* shall issue until after a return by the bailiff to a warrant of execution against the goods and chattels that the party against whom the warrant was issued has no goods and chattels whereof the amount by the said execution directed to be levied can be made, or that the bailiff has caused to be made a part of such amount, and that there are no further goods and chattels whereof he can cause to be made the amount required.

Clerk to issue warrant of execution.

Cf. *ibid.*, s. 143.

**155.** (1) The Clerk of the Court, at the request of the party prosecuting a judgment or order for the payment of any sum of money, shall issue a warrant of execution to the bailiff of the Court, who, by such warrant, shall be empowered to levy, or cause to be levied, by distress and sale of the goods and chattels of the party against whom the judgment or order is sought to be enforced, such sum of money as is adjudged or ordered, and also, if sought to be recovered, the interest thereon as provided by section 153, and also the costs of execution.

(2) All constables and other peace officers shall aid in the execution of every such warrant.

Successive levies may be made.

(3) Every warrant of execution against the goods and chattels of a party shall, while in force, authorise the bailiff to make successive levies for the amount due under the warrant, together with any additional costs incurred by such successive levies, should no sufficient goods and chattels whereof the amount by the said warrant directed to be levied can be made, or the balance thereof, be found on the occasion of the first or previous levy or levies.

**156.** (1)—(a) After



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**156. (1)**—(a) After the return by the bailiff to a warrant of execution under section 155 that the party against whom the same was issued has no goods or chattels available for the purpose of the execution, or that the bailiff has caused to be made a part of such amount, and that there are no further goods or chattels whereof he can cause to be made the amount required ; or

Warrant to sell.  
Ibid., s. 144.

(b) Where, upon the application of the party prosecuting a judgment or order for the payment of any sum of money, it appears to the satisfaction of a Judge or Special Magistrate, by oath or otherwise, that the party against whom such judgment or order is sought to be enforced is resident outside the State of South Australia, and that there are no goods or chattels of such last-mentioned party available for the purpose of execution within the said State,

the Clerk of the Court, at the request of the party prosecuting the judgment or order, shall issue a warrant in the form prescribed by Rules of Court, and thereupon the bailiff shall make sale, and the Clerk of the Court shall execute a conveyance, or if the land is subject to the provisions of the Real Property Act, 1886, a transfer, to the purchaser, of so much of all lands, tenements, and hereditaments within the said State as the person against whom execution is issued out, or any person in trust for him, was seized or possessed at the time of or after the issuing of such last-mentioned warrant, or over which such person then or at any time thereafter has any disposing power which he might, without the consent of any person, exercise for his own benefit as may be required to produce the amount of such warrant directed to be levied.

(2) No such sale shall be made until after fourteen days' notice by advertisement in the *Government Gazette* and in two newspapers published in Adelaide, the expenses of which advertisements shall be recoverable by the said bailiff, together with the other expenses incurred by him in and about such sale.

(3) In cases where a warrant of execution is issued against land under this section, the party prosecuting such warrant shall furnish the bailiff with a statement in writing containing particulars of the land to be seized under such execution.

**157.** A judgment for the recovery or the delivery of possession of land may be enforced by warrant of possession in such form as may be prescribed by Rules of Court.

Warrant of possession of land.  
Ibid., s. 145.

**158. (1)** Where any judgment or order is against a firm, execution may issue—

Judgment against partners, how recovered.

(a) against any property of the partnership :

Cf. *ibid.*, s. 146.

(b) against

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(b) against the property of any person who has appeared in his own name or who has admitted in his claim, appearance, defence, counter-claim, or reply, that he is, or who has been adjudged to be, a partner.

(2) If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply upon notice to such other person to the Court, Judge, or Special Magistrate for leave to do so.

(3) The Court, Judge, or Special Magistrate may give such leave, if the liability is not disputed, or if such liability is disputed may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

Execution by a person not a party.

Ibid., s. 147.

**159.** (1) Execution on any judgment may issue on behalf of any person not a party to the action, by leave of a Judge or Special Magistrate, upon proof of title to the benefit of the judgment, and upon substitution of the name of the new party, together with a statement of his derivative title, for that of the original party.

(2) The Clerk of the Court shall give notice by post of such substitution to the opposite party.

(3) Execution shall not issue on the judgment until the expiration of six clear days after the posting of the notice.

Execution against a person not a party.

Ibid., s. 148.

**160.** Execution, or other process on a judgment, shall not issue against any person not a party to the action or proceeding, except a plaint upon the judgment be entered in the nature of a *scire facias*, the proceedings in which shall be the same as in ordinary cases.

Execution against goods of deserting husband.

Cf. *ibid.*, s. 149.

**161.** (1) For the purpose of realising the amount of a judgment or order against a married woman who has been deserted by her husband, any goods and chattels which may have been left by the husband in the possession of the wife shall be deemed her separate estate.

(2) No execution against any such goods and chattels shall issue without an order of the Court or a Judge or Special Magistrate, on proof of such desertion.

(3) In this section "deserted" means left without adequate means of support for a period of not less than six months, and "desertion" has a corresponding meaning.

Clerk to issue process on application of party entitled to it.

Ibid., s. 150.

**162.** The Clerk of the Court, on the application of any party and on payment of the fees in respect thereof, shall issue such process of attachment or execution as such party may be entitled to, and if the right thereto is dependent on the fulfilment of a condition or the happening of a contingency, the Clerk shall take notice thereof, and, upon demand, issue process accordingly.

**163.** Save

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**163.** Save as herein excepted the bailiff of a Local Court shall, in respect of the process in execution of the judgments and orders of the Court, have the like powers, and perform the like duties, and enjoy and suffer the like privileges and liabilities, as the Sheriff in respect of the like process issuing out of the Supreme Court.

Bailiff to perform duties of Sheriff.

Ibid., s. 151.

**164.** All gaolers, peace officers, constables, and other persons shall take the like notice of, and shall do and suffer the like acts and things in obedience to and in aid of, the orders and process of a Local Court as of the orders and process of the Supreme Court.

Gaolers, peace officers, &c., to obey process of Local Courts.

Ibid., s. 152.

**165.** (1) If it appears to the satisfaction of the Court, or of a Judge, or Special Magistrate, by oath or otherwise, that the judgment debtor in respect of a judgment for a sum not exceeding Thirty Pounds, exclusive of costs, is unable, from sickness or other sufficient cause, to pay the amount of such judgment, or any instalment thereof, if the judgment has been ordered to be paid by instalments, such Court, Judge, or Special Magistrate may suspend or stay any judgment, order, or execution given, made, or issued in the action in which such judgment was obtained, for such time, and on such terms, as the Court, Judge, or Special Magistrate thinks fit, and so, from time to time, until it appears, by the like proof as aforesaid, that such temporary cause of disability has ceased.

In case of sickness, etc., the Court may suspend execution.

Cf. *ibid.*, s. 153.

(2) The powers conferred by this section may be exercised when the judgment debt exceeds Thirty Pounds, if the judgment creditor consents.

**166.** If the Court has made any order for payment of any sum of money by instalments under section 165, execution shall not issue against the party until after default in payment of some instalment according to such order, and then the Clerk of the Court, at the request of the judgment creditor, shall issue execution for the whole of the sum of money and costs remaining unpaid, unless the Court, at the time of making the said order, otherwise directs, in which case successive executions may issue.

On default of payment of any instalment execution to issue for the whole judgment.

Ibid., s. 154.

**167.** (1) When the Court has ordered an execution to issue for the return or delivery of any specific goods or chattels, if such goods or chattels, or any part thereof, cannot be found, the bailiff of the Court shall, unless the Court otherwise orders, distrain the person against whom the Court ordered such execution to issue by all his goods and chattels, until he delivers such chattels or goods, or, at the option of the person prosecuting such order, cause to be made of the lands, goods, and chattels of the person against whom such order was made, the assessed value or damages, or a due proportion thereof.

When specific delivery is ordered, if defendant make default, he may be distrained upon until compliance.

Cf. *ibid.*, s. 155.

(2) The person prosecuting such order shall, either by the same or a separate warrant, be entitled to have made of the lands, goods, and chattels of the person against whom such order was made, the damages and costs in such action.

**168.** Every

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What goods may be taken in execution.

Cf. *ibid.*, s. 156, and 385, 1886, s. 108.

**168.** Every bailiff or officer executing any process of execution against the goods and chattels of any person may, by virtue thereof, break open any house, room, shop, warehouse, trunk, chest, or other receptacle of such person where any of his property is suspected to be, and seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person and his family, and the tools and implements of his trade, the whole not exceeding in value the sum of Twenty Pounds, and any sewing-machine, type-writing machine or mangle, the property of or under hire to such person), and may also seize and take any money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to such person.

Judgment creditor may sue upon securities seized in execution.

386, 1886, s. 157.

**169.** (1) The Clerk of the Court shall hold any cheques, bills of exchange, promissory notes, specialties, or other securities for money which have been so seized or taken as aforesaid as a security for the amount directed to be levied by such execution, or so much thereof as has not been otherwise levied or raised for the benefit of the person in whose favor the judgment or order was given or made.

(2) Such person may sue in the name of the person from whom such securities were seized and taken, or in the name of the person in whose name the person from whom such securities were seized and taken might have sued, for the recovery of the sum or sums made payable thereby, when the time of payment thereof has arrived.

Warrants may be executed by bailiff of another Court.

*Ibid.*, s. 158.

**170.** Any person who is in a position to cause a warrant of execution or an order of commitment to issue may, on taking out the same, require the Clerk of the Court to send the warrant or order to the Clerk of some other Court for execution by the bailiff of such Court, in the first instance.

No sale to be made of goods taken in execution until the expiration of five days, except in certain cases.

**171.** (1) No sale of any goods which are taken in execution, under this Act shall take place until after the expiration of five days at least next following the day on which such goods were so taken, unless such goods are of a perishable nature, or upon the request, in writing, of the party whose goods have been taken.

(2) Until such sale, the goods shall be deposited by the bailiff in fit place, or they may remain in the custody of a fit person, to be put in possession by the bailiff.

(3) No goods taken in execution under this Act shall be sold for the purposes of satisfying the warrant of execution except by auction, or in such other manner as is prescribed by Rules of Court.

Execution to be superseded on payment of the sum indorsed upon the warrant, together with fees.

*Ibid.*, s. 160.

**172.** The party against whom any execution has been issued may, before an actual sale thereunder, pay or tender to the bailiff or other officer holding the warrant of execution the sum of money and costs indorsed on the warrant, or such part thereof as the person entitled thereto agrees to accept, in full satisfaction of his judgment and

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and costs, together with the fees by this Act directed to be paid, and any other charges necessarily incurred in connection with an intended sale, whereupon the execution shall be superseded, and the lands, goods, and chattels of the said party shall be released.

**173.** Any person arrested or imprisoned by virtue of this Act shall be entitled to be discharged out of custody on payment to the party arresting, or, if in prison, to the gaoler or keeper of the place of imprisonment where he is imprisoned, of the amount mentioned in the warrant of commitment.

Party arrested to be discharged on payment.

Ibid., s. 161.

**174.** Any person who has obtained any judgment or order in any Local Court for the payment of any sum of money, which said sum has not been paid, may, in manner prescribed by Rules of Court, transfer the same to any other Local Court.

Unsatisfied judgment may be transferred.

**175.** (1) Any person who has obtained any judgment or order in a Local Court for the payment of any sum of money, or who has obtained any judgment, decree, or order of the Supreme Court, or any Court of competent jurisdiction, for the payment of any sum of money, which said sum has not been paid, may cause an unsatisfied judgment summons to be issued directed to the other party to the action.

Summons on unsatisfied judgment.

Cf. *ibid.*, s. 162, and 466, 1889, s. 6.

(2) Such summons shall be issued—

(a) in the case of the judgment or order of a Local Court, from the Court in which the judgment or order was obtained or made, or from the Local Court (having jurisdiction to the amount claimed) nearest to which the person to whom it is directed resides or carries on his business at the time of such issue:

(b) in the case of a judgment, decree, or order of the Supreme Court, or any Court of competent jurisdiction, not being a Local Court, from the Local Court nearest to which the person to whom it is directed resides or carries on his business, at the time of such issue, or, by order of a Judge or Special Magistrate, from the Local Court of Adelaide.

(3) Such summons shall—

(a) be in the form prescribed by Rules of Court:

(b) and shall require the person to whom it is directed to attend the Court at such time as may be prescribed by Rules of Court, and to answer such things as are specified in such summons.

(4) Such summons shall be served by a bailiff, unless authority is obtained from a Judge or Special Magistrate for service by some other person, and shall be served personally on the person to whom it is directed, who shall attend in accordance therewith.

(5) The costs of and incidental to such summons and the proceedings in relation thereto shall be costs in the action.

**176.** (1) Where

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Unsatisfied judgment summons against partners.

Cf. Eng. County Court Rules, O. 25, r. 27.

**176.** (1) Where a judgment, decree, or order is against a firm, or is against a person carrying on business in any name other than his own in such other name, and the person entitled to enforce the judgment, decree, or order, desires to do so by unsatisfied judgment summons against any person whom he alleges to be liable under the judgment, decree, or order as a partner in, or sole member of, the firm, or as the person carrying on business in such other name as aforesaid, he shall file an affidavit, together with a copy thereof, according to the form prescribed by Rules of Court, and thereupon may cause an unsatisfied judgment summons to issue according to the form prescribed by Rules of Court, directed to the person alleged to be liable, as aforesaid, and there shall be annexed to such unsatisfied judgment summons, and served therewith, a copy of such affidavit, sealed with the seal of the Court.

(2) No such unsatisfied judgment summons shall be issued, except by leave of a Judge or Special Magistrate (which leave may be obtained without notice to the person against whom it is sought to issue it), unless the Court out of which it is sought to issue the same is the Court having jurisdiction nearest to where the defendant at the time of such issue resides or carries on business.

(3) If such person does not attend on the return day of such unsatisfied judgment summons he shall be deemed to admit his liability, as a partner in or sole member of the firm, or as the person carrying on business in such other name as aforesaid, to pay the amount due and payable under the judgment or order. But if he attends and denies his liability the Court may decide the question on the evidence then before it, or may order the question to be tried and determined in an action to be commenced by claim and summons in the ordinary way, and after he has been held or is deemed to be liable he shall be a party to the action in which the unsatisfied judgment summons was issued.

If party appears, he may be examined touching his estate, etc.

Cf. 386, 1886, s. 163.

**177.** At the hearing of the summons—

- (a) the party summoned may be examined upon oath touching his estate and effects, and whether any and what debts are owing or accruing due to him, and the manner and circumstances under which he contracted the debt, or incurred the damage or liability, which is the subject of the action in which judgment has been obtained against him, and as to the means and expectations he then had, and as to the property and means he still has, of discharging the said debt or damage or liability, and as to the disposal he may have made of any property, and as to the whereabouts of any chattel detained or specific goods ordered to be delivered, and upon such other matters as are prescribed by Rules of Court or are specified in the summons;
- (b) the Court may hear such evidence in relation to the said matters as it thinks fit; and
- (c) the Court may order the party summoned to pay the judgment debt at such time or in such instalments as it thinks fit.

**178.** If

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**178.** If the person so summoned attends and—

- (a) refuses to be sworn ; or
- (b) refuses to disclose any of the matters mentioned in section 177 ; or
- (c) does not make answer touching the same to the satisfaction of the Court ; or
- (d) it appears to the Court that he has wilfully contracted or incurred the debt or liability which is the subject of the action in which the judgment, decree, or order has been obtained under false pretences or by means of fraud or breach of trust, or has wilfully contracted or incurred such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same ; or
- (e) it appears to the Court that he has made, or caused to be made, any gift, delivery, or transfer of any property, or has charged, removed, or concealed the same, with intent to defraud his creditors, or any of them ; or
- (f) it appears to the Court that he has then, or has had since the judgment, decree, or order obtained against him, sufficient means and ability to pay the sum of money which he is liable to pay or a part thereof and has neglected to pay such sum or part ; or
- (g) it appears that he has neglected to pay any of the instalments ordered by the Court to be paid as herein provided ; or
- (h) it appears that he has neglected to comply with an order of a Local Court to return any chattel detained or to deliver specific goods ; or
- (i) it appears to the Court that he has failed without reasonable cause to comply with any order made by the Court for payment,

the Court may order that he be committed to a gaol or other proper place of imprisonment, to be named in such order, for any period not exceeding forty days.

**179.** If the party summoned does not attend as required by the summons the Court—

- (a) may order that for such failure to attend he be committed to a gaol or other place of imprisonment to be named in such order for any period not exceeding forty days, if the Court is that having jurisdiction nearest to which the party summoned resides or carries on business at the time of the issue of the summons ; and
- (b) may proceed *ex parte* upon hearing the evidence adduced, and make an order for payment of the judgment debt at such time and in such instalments as it thinks fit.

Party appearing and refusing to be sworn, or not answering satisfactorily, may be committed to gaol.

Cf. *ibid.*, s. 172.

Procedure when party summoned does not attend.

**180.** (1) No

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Imprisonment of judgment debtor.

Cf. *ibid.*, s. 172.

**180.** (1) No order for commitment made on the hearing of an unsatisfied judgment summons need be drawn up or served.

(2) The issue of a warrant pursuant to such order may be suspended for such time and subject to such conditions as to payment of instalments or otherwise as the Court thinks proper, and the warrant shall not issue unless and until the Clerk of the Court is satisfied that such suspension has ceased.

(3) By leave of a Judge or Special Magistrate (which may be granted on an *ex parte* application) a warrant may be issued pursuant to such order for commitment notwithstanding that after the making of the order money has been paid by the party summoned on account of the judgment debt.

Date of warrant of commitment.

*Ibid.*, s. 176.

(4) Every warrant of commitment issued out of a Local Court shall, on whatever day it may be issued, bear the date of the day on which the order for commitment was made or on which the suspension of the issue of such warrant ceased, and shall continue in force for one year from such date.

Imprisonment not to satisfy or extinguish judgment.

Cf. *ibid.*, s. 177.

(5) No imprisonment under this Act and no order made on the hearing of an unsatisfied judgment summons shall operate as a satisfaction or extinguishment of the judgment, decree, or order in respect of which the judgment debtor was liable, or protect the judgment debtor from being again summoned and imprisoned for any new fraud or default rendering him liable to be imprisoned under this Act, or deprive the judgment creditor of any right to take out execution against the goods and chattels of the judgment debtor in the same manner as if such imprisonment or order had not taken place or been made.

The Court may alter and rescind orders, and make any other orders.

*Ibid.*, s. 173.

**181.** (1) Any Local Court before which any unsatisfied judgment summons is heard may, without prejudice to the exercise of any of its other powers, rescind or alter any order previously made against the judgment debtor for the payment, by instalments or otherwise, of any judgment debt, and may make any further or other order for the payment of the judgment debt either forthwith, or by any instalments, or in any other manner which may appear just.

Compensation in vexatious cases.

Cf. *Justices Act*, 1921, s. 48.

(2) If the Court before which any such summons is heard is of opinion that the judgment debtor has been brought to the place where the Court is held vexatiously and oppressively, or if the judgment creditor fails to attend on the hearing of the summons, the Court may order the judgment creditor to pay to the judgment debtor, by way of compensation, such sum, not exceeding Five Pounds, as it may think fit, and payment of such sum may be enforced in like manner as a judgment given for a defendant on the hearing of an action: Provided that the judgment debtor may, notwithstanding any such order, be examined by the Court as to the matters set out in section 177, and the Court may thereupon make any such order against him as it is authorised by section 177 or section 178 to make.

Power to examine and commit at hearing of action.

*Ibid.*, s. 174.

**182.** When any party to an action personally attends at the trial of the action and judgment is subsequently given against him, the Court, at the hearing of the action, or at any adjournment thereof,



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thereof, shall have the same power and authority to examine such party, and the opposite party, and other persons touching the matters referred to in section 177, and of commitment, and of making an order, as the Court would have under the provisions hereinbefore contained in case the judgment creditor had obtained a summons on an unsatisfied judgment.

**183.** (1) Whenever any order of commitment has been made against a judgment debtor, the Clerk of the Court shall, if the party prosecuting the order so requires, issue a warrant of commitment, in the form prescribed by Rules of Court, under his hand and the seal of the Court, directed to the bailiff of his Court, and to the bailiffs of all other Local Courts, who by such warrant shall be empowered to take the body of the person against whom such order is made.

Warrants of commitment to be issued to the bailiff.

Ibid. s. 175.

(2) All constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant, and the gaoler or keeper of every gaol, prison, or other place of imprisonment mentioned in any such order shall be bound to receive and keep therein the person against whom such order is made until discharged in due course of law.

**184.** Where any party (hereinafter called the judgment creditor) has obtained any judgment or order for the recovery or payment of money, a Judge or Special Magistrate may, at any time, upon the *ex parte* application of the judgment creditor and upon affidavit by him or his solicitor stating that the judgment has been obtained or the order made and that it is still unsatisfied, and to what amount, and that any third person is indebted to the person liable under such judgment or order (hereinafter called the judgment debtor), and is within the State—

Attachment of debts.

Cf. *ibid.*, s. 164.

- (a) order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment or order, together with the costs of the garnishee proceedings; and
- (b) order, either at the same time or later, that the garnishee shall appear before the Court or a Judge or Special Magistrate to show cause why he should not pay to the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs aforesaid.

**185.** (1) In any case where the judgment debtor has been orally examined by the Court at the trial, or on the hearing of an unsatisfied judgment summons, the Court may make any order which might have been made upon the *ex parte* application of the judgment creditor under section 184.

Garnishee order may be made on a trial or on hearing of judgment summons.

Cf. *ibid.*, s. 164.

(2) It shall not in any such case be necessary for the judgment creditor or his solicitor to make any such affidavit as mentioned in the said section if the facts which the said section requires to be stated upon affidavit are sufficiently proved by evidence at such trial or hearing.

**186.** Service

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Service of order binds debts.

Cf. Supreme Court Rules, O. 42, r. 2.

**186.** Service of an order that debts, due or accruing to a debtor liable under a judgment or order for the recovery or payment of money, shall be attached, shall bind such debts in his hands, on notice thereof being given to the garnishee in such manner as the Court, Judge, or Special Magistrate directs.

If garnishee does not pay or dispute claim, execution may issue.

Cf. *Ibid.*, O. 42, r. 3.

**187.** If the garnishee—

(a) does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to that of the judgment or order, and does not dispute the debt due or claimed to be due from him to the judgment debtor; or

(b) does not appear pursuant to an order made under section 184, then the Court, Judge, or Special Magistrate may order execution to issue, and it may issue accordingly, without any previous summons or process, to levy the amount due from such garnishee or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

If garnishee disputes liability, question may be tried.

Cf. *ibid.*, O. 42, r. 4.

**188.** If the garnishee disputes his liability, the Court, Judge, or Special Magistrate, instead of making an order that execution shall issue, may order that any issue or question necessary for determining the garnishee's liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

Third party, having alleged lien, may be summoned.

Cf. *Ibid.*, O. 42, r. 5.

**189.** Whenever in proceedings to obtain an attachment of debts it is claimed by the garnishee that the debt sought to be attached is due to a third person, or that a third person has a lien or charge upon it, the Court, Judge, or Special Magistrate may order such third person to appear and state the nature and particulars of his lien or claim (if any) upon or to such debt.

On trial Court may disallow, or allow lien, or order execution to issue.

Cf. *Ibid.*, O. 42, r. 6.

**190.** (1) After hearing the evidence of any such third person, and of any other person whom the Court, Judge, or Special Magistrate, at the same time or later, may order to appear, the Court, Judge, or Special Magistrate may—

(a) order execution to issue to levy the amount due from such garnishee, together with the costs of the garnishee proceedings, and of any issue or question of the garnishee's liability tried or determined under this Act, and bar the claim of such third person; or

(b) make such other order as the Court, Judge, or Special Magistrate thinks fit;

upon such terms with respect to the lien or charge (if any) of such third person, and to costs, as the Court, Judge, or Special Magistrate thinks fit.

(2) The Court, Judge, or Special Magistrate may also make any such order if such third party fails to appear as required by the order.

**191.** Payment

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

Payment by garnishee discharged his debt *pro tanto*.

*Ibid.*, O. 42, r. 7.

**192.** (1) The Clerk of the Court shall keep a Debts Attachment Book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates and statements of the amount recovered, and otherwise.

Debt attachment book to be kept.

*Ibid.*, O. 42, r. 8.

(2) Copies of any entries made in the Debts Attachment Book may be taken by any person upon application to the Clerk of the Court.

**193.** (1) The costs of any application for an attachment of debts, and of any proceeding arising from or incidental to any such application and the jurisdiction of the Court to try the question of the garnishee's liability in case he disputes the claim, shall be regulated and determined by the amount of the debt alleged to be due by the garnishee.

Jurisdiction and costs determined by amount of garnishee's debt.

386, 1886, s. 171.

(2) The Court, Judge, or Special Magistrate hearing any such application or proceeding may make any order as to such costs as it or he may think fit.

**194.** (1) Section one of the Act of the eighth year of the reign of Queen Anne, chapter fourteen, shall not apply to goods taken in execution under the warrant of a Local Court; but the landlord of any premises in which any such goods have been so taken may claim the rent thereof at any time within five clear days from the date of such taking, or before the removal of the goods, by delivering to the bailiff or officer making the levy a memorandum in writing, signed by himself or his agent, stating the amount of rent claimed to be in arrear, and the period in respect of which such rent is due.

Provision for landlord in case of rent in arrear.

*Ibid.*, s. 178.

(2) The bailiff shall forthwith forward, by post or otherwise, a copy of such memorandum to the execution creditor; and the bailiff or officer making the levy shall, in addition thereto, distrain for the rent so claimed, and the costs of such distress; and shall not within five days next after such distress sell any part of the goods taken unless they are of a perishable nature, or upon the request in writing of the party whose goods have been taken.

(3) The bailiff shall afterwards sell sufficient of the goods under the execution and distress to satisfy—

(a) the expenses of and incidental to the sale;

(b) the claim of the landlord, not exceeding four weeks' rent where the premises are let by the week, the rent of two terms of payment where the premises are let for any other term less than a year, and the rent of one year in any other case; and

(c) the amount for which the warrant issued.

(4) If

(4) If any replevin is 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.

(5) In either event, the overplus of the sale, if any, and the remainder of the goods, shall be returned to the judgment debtor.

(6) 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 an execution of a Local Court, and no other fees shall be demanded or taken in respect thereof.

(7) If the goods taken in execution and distress appear to the bailiff to be insufficient, or not more than sufficient, to satisfy the distress and the costs thereof, he shall go out of possession without making any sale, removal, or disposition thereof.

Effect of return of  
"no effects."

1112, 1913, s. 4.

**195.** (1) Where a party against whom a warrant of execution has been issued has no goods and chattels available for the purpose of the execution, that fact shall be sufficiently indicated in the return to the warrant by the words "no effects."

(2) The entry in the Record Book kept under section 26 of the words "no effects" as the return to a warrant of execution means that the party against whom such warrant has been issued has no goods or chattels available for the purpose of the execution.

Judgment of Local  
Courts may be  
removed into  
Supreme Court in  
certain cases.

Cf. *ibid.*, s. 283.

**196.** (1) Notwithstanding anything in this Act, it shall be lawful for the Supreme Court or any Judge thereof, on the application of any person who has obtained a judgment in a Local Court for an amount exceeding Thirty Pounds, exclusive of costs, which judgment still remains unsatisfied, to order that such judgment be removed into the Supreme Court. Such order shall have the effect of a writ of *certiorari*, and the return shall be made thereto by the Clerk of the Court by transmitting a true copy of so much of the Record Book of the Local Court as relates to such judgment, certified under the seal of such Local Court and the hand of the Clerk. Such return shall be in the form prescribed by Rules of Court.

(2) Such order may be made *ex parte*, but shall not be made if the Supreme Court or a Judge thereof is of opinion that, owing to the smallness of the amount of the judgment or the cost of proceeding thereon when removed into the Supreme Court, the removal would be worthless or vexatious.

(3) The costs of and incidental to the said application and the removal may be ordered to be paid by the party against whom the judgment has been given, and when so ordered to be paid shall be taxed by the Master of the Supreme Court, and shall be added to the amount of the judgment.

(4) Upon

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(4) Upon the return to such order, the party desirous of suing out execution shall cause to be entered up a judgment, as of the Supreme Court, which may be in the form prescribed by Rules of Court, and such judgment shall be signed and have the same effect as an ordinary judgment of the Supreme Court, and all proceedings may be had thereupon accordingly.

When removed shall have the same effect as judgment of the Supreme Court.

*Ibid.*, s. 284.

## PART IX.

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## INTERPLEADER SUMMONSES.

\* 197. (1) If any claim is made by any person to or in respect of any goods or chattels taken in execution under the process of a Local Court, or in respect of the proceeds or value thereof, the Clerk of the Court, upon the application of the bailiff, as well before as after any action brought against the bailiff, may issue a summons calling before the Court as well the party issuing such process as the party making such claim.

Bailiffs may interplead where claims as to goods taken in execution are made.

386, 1886, s. 179.

(2) The Court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to it seems fit; and shall also adjudicate between such parties, or either of them, and the bailiff, with respect to any damage or claim to damages arising or capable of arising out of the execution of such process by the bailiff, and make such order in respect thereof, and of the cost of the proceedings, as the Court thinks fit; and may, if it thinks fit, order the costs of the interpleader to be paid by one party, and the costs arising out of any claim for damages to be paid by the other party.

(3) Such order shall be enforced in like manner as any order in any action brought in the Court, and shall be final and conclusive as between the parties, and as between them, or either of them, and the bailiff, unless the decision of the Court is in either case appealed from.

(4) Upon the issue of the summons any action which has been brought in any Court in respect of such claim, or of any damage arising out of the execution of such process, shall be stayed.

198. All claims mentioned in the last preceding section to or in respect of any goods or chattels taken in execution may be made by telegram, and the delivery of the telegram to the bailiff shall be held equivalent to the delivery of the signed copy thereof lodged in the telegraph office.

Claims to goods taken in execution may be made by telegram.

*Ibid.*, s. 180.

199. (1) Where any claim is made under section 197, the claimant may deposit with the bailiff either the amount of the value of the goods claimed, to be fixed by appraisalment in case of dispute, to be by such bailiff paid into Court, to abide the decision of the Court

Claimant must deposit the value of the goods, or pay cost of keeping possession, otherwise goods to be sold.

upon *Ibid.*, s. 181.

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upon such claim, or the sum which the bailiff is allowed to charge as costs for keeping possession of such goods, until such decision can be obtained.

(2) In default of the claimant so doing, the bailiff shall sell such goods as if no such claim had been made, and shall pay into Court the proceeds of such sale, to abide the decision of the Court.

Deposits to bailiffs of country Local Courts may be made to the Clerk of the Adelaide Local Court.

Ibid., s. 182.

**200.** All deposits mentioned in the last preceding section required to be made with the bailiff of any Local Court outside the City of Adelaide may be made with the Clerk of the Local Court of Adelaide, and the said Clerk shall, if required, forthwith forward a telegram or certificate to the said bailiff stating that such deposit has been made.

Proceedings in case of claim to goods seized in execution.

Ibid., s. 183.

**201.** (1) Where any claim is made to or in respect of any goods and chattels taken in execution under the process of any Local Court, or in respect of the proceeds or value thereof, and summonses have been issued on the application of the bailiff, such summonses shall be served at such time and in such manner as an ordinary summons under this Act, and the case shall proceed as if the claimant were the plaintiff and the execution creditor the defendant.

(2) The claimant shall, five clear days before the day on which the summonses are returnable, leave with the Clerk of the Court a memorandum in writing containing particulars of any goods or chattels alleged to be the property of the claimant and of the grounds of his claim, or in the case of a claim for rent, of the amount thereof and for what period and in respect of what premises the rent is claimed to be due, and how and when the rent is payable, and the name, address, and description of the claimant shall be fully set forth in such particulars.

(3) Any money paid into Court under the execution shall be retained by the Clerk of the Court until the claim has been adjudicated upon.

(4) By consent an interpleader claim may be tried notwithstanding that this section has not been complied with.

Withdrawal by claimant and admission of title by execution creditor.

Cf. Eng. County Court Rules,

O. 27, r. 1.

**202.** If before the return day of the interpleader summons the claimant files a notice that he withdraws his claim and at the same time gives notice of such withdrawal to the execution creditor, or if the execution creditor files an admission of the title of the claimant and at the same time gives notice of such admission to the claimant, the goods and chattels taken in execution, or the proceeds of sale thereof, or the money paid into Court (as the case may be), shall be dealt with and disposed of as if such claim had not been made, or as if such execution had been withdrawn (as the case may be), but a Judge or Special Magistrate may, in and for the purposes of the interpleader proceedings, make all such orders as to costs, charges, and expenses, as may be just.

**203.** (1) Where

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**203.** (1) Where any execution creditor gives notice, pursuant to the preceding section, or to the bailiff, that he admits the title of the claimant to the goods and chattels, or requests the bailiff to withdraw from possession, the bailiff may thereupon withdraw from possession and may apply to a Judge or Special Magistrate for an order protecting him from any action in respect of the seizure and possession of the said goods and chattels, and the Judge or Special Magistrate may make any such order as may be just and reasonable in respect of the same.

On admission of title by execution creditor order protecting bailiff may be made.

Cf. *ibid.*, r. 2.

(2) Any such application shall be in writing and intituled in the matter of the execution, and three clear days' notice in writing thereof shall be given by the bailiff to the claimant, who may, if he so desires, attend the hearing of the application, and the Judge or Special Magistrate may, if he attends, make all such orders as to costs as may be just.

**204.** Where the claimant to goods taken in execution claims damages from the execution creditor or from the bailiff for or in respect to the seizure of goods, he shall, in the particulars of his claim to the goods, state the amount he claims for damages, and the grounds upon which he claims damages.

Claimant to give particulars of his claim for damages.

386, 1886, s. 184.

**205.** Where an execution creditor claims damages against the bailiff arising out of the execution of any process, he shall deliver to the bailiff a notice of such claim, stating the grounds for and the amount of such claim.

Execution creditor to give notice of claim for damages.

*Ibid.*, s. 185.

**206.** (1) Where a claim for damages under section 197 is made against any bailiff and execution creditor, or either of them, they or either of them may pay into Court money in full satisfaction of such claim.

Execution creditor or bailiff may pay money into Court.

*Ibid.*, s. 186.

(2) Such payment into Court shall be made in the same manner and have the same effect as if, and the parties respectively shall have the same rights and remedies as they would respectively have had if, the proceeding had been an action under this Act in which the claimant was plaintiff and the bailiff and judgment creditor defendants.

**207.** Interpleader summonses shall be issued from, and the execution creditor and claimant be summoned to, the Local Court nearest to which the execution was levied.

From what Court interpleader summonses to issue.

*Ibid.*, s. 187.

**208.** Where the defendant in an action brought by the assignee of a debt or chose in action has had notice that the assignment is disputed as to the whole or part of such chose in action by the assignor, or anyone claiming under him, or where the defendant in any such action for any debt, chose in action, money, goods, or chattels, has had notice of any other opposing or conflicting claim to the whole or any part of such debt, chose in action, money, goods, or chattels, such defendant may, within five days of the service of the

Interpleader in action by assignee or in action for debt, &c., where conflicting claims exist.

Cf. Eng. County Court Rules, O. 27, r. 15 (1).

summons

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summons upon him, apply to a Judge or Special Magistrate for a summons against the assignor or the person making such opposing, or conflicting claim (hereinafter called the claimant.)

Judge or S.M. to be satisfied that defendant claims no interest and does not collude.

Cf. *ibid.*, r. 15 (2).

**209.** (1) The defendant shall satisfy the Judge or Special Magistrate by affidavit that he claims no interest in the subject matter in dispute other than for charges or costs, and does not collude with either the plaintiff or the claimant, and is willing to pay or transfer the subject matter into Court, or dispose of it as the Court may direct.

(2) On filing such affidavit the defendant shall lodge with the Clerk of the Court copies thereof for the plaintiff and the claimant.

Absence of common origin of title not to disentitle defendant to relief.

*Ibid.*, r. 15 (3).

**210.** The defendant shall not be disentitled to relief by reason only that the titles of the plaintiff and the claimant have not a common origin, but are adverse to and independent of each other.

Interpleader summons to issue.

Cf. *ibid.*, r. 15 (4).

**211.** (1) The Judge or Special Magistrate on being satisfied as aforesaid shall—

(a) direct an interpleader summons to issue for service on the claimant, returnable as soon as conveniently may be; and

(b) adjourn the trial of the action to the day on which the interpleader summons is made returnable.

(2) The Clerk of the Court shall thereupon give notice to the plaintiff and to the defendant of the adjournment of the trial of the action and of the issue of the interpleader summons.

(3) The interpleader summons may be served in the same manner as an ordinary summons under this Act, but there shall be annexed thereto a copy of the summons and of the claim in the action.

Claimant to furnish particulars.

Cf. *ibid.*, r. 15 (5).

**212.** (1) The claimant shall, five clear days before the return day of the interpleader summons, leave at the office of the Clerk of the Court three copies of a notice that he relinquishes his claim, or three copies of a memorandum in writing stating the grounds on which he disputes the assignment or founds his claim to the subject matter of the action.

(2) The Clerk of the Court shall forthwith send by post one of such copies to the plaintiff, and one other of such copies to the defendant.

(3) By consent of all parties, or without such consent if the Court so directs, the interpleader may be tried notwithstanding that this section has not been complied with.

Payment into Court by defendant.

*Ibid.*, r. 15 (6).

**213.** On filing his affidavit, or at any time after the issue of the interpleader summons, the defendant may pay the debt or money or bring the chose in action, goods, or chattels into Court to abide the decision of the Court.

**214.** Upon



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**214.** Upon the return day of the interpleader summons, or any adjournment thereof—

Interpleader, how disposed of.

Cf. *ibid.*, r. 15 (7).

- (a) if the plaintiff does not appear the interpleader summons shall be struck out, and the action dealt with in the ordinary way, and the Court may make such order as to costs as may be just :
- (b) if the claimant does not appear, the Court shall hear and determine the action as between the plaintiff and the defendant, and may make an order declaring the claimant and all persons claiming under him for ever barred against the defendant and all persons claiming under him, and may make such order as to costs against the claimant as may be just, but the order shall not affect the rights of the plaintiff and the claimant between themselves ; or if the claimant has filed notice that he relinquishes his claim, the Court may make an order declaring him and all persons claiming under him for ever barred against both the plaintiff and the defendant, and all persons claiming under them, and may make such order against the claimant as to costs incurred by the other parties before the receipt of notice of relinquishment as may be just :
- (c) if both the plaintiff and the claimant appear, the Court shall, whether the defendant does or does not appear, hear the cases of the plaintiff and the claimant, (and the case of the defendant, if he appears), and shall give such judgment thereon as will finally determine the rights and claims of all parties ; but the Court shall not make any order in favor of the claimant against the defendant unless the claimant requests him so to do.

**215.** (1) The Court, Judge, or Special Magistrate, as the case may be, may in and for the purpose of any proceedings under this Part make all such orders as to costs and all other matters (including the repayment to the defendant of any costs paid by him into Court, and the disposal of any money, chose in action, goods, or chattels paid or brought by the defendant into Court) as may be just and reasonable.

Costs and other incidental matters.

Cf. *ibid.*, r. 15 (8).

(2) Any such order may be enforced in the same manner as any order in any action brought in such Court.

## PART X.

## PART X.

## THE RECOVERY OF PREMISES.

Proceedings for recovery of premises and rent when term has expired or been determined by notice.  
Cf. *ibid.*, s. 194.

**216.** (1) The landlord of any premises the rent of which is not at a greater rate than Two Hundred and Eight Pounds a year may file a claim for the recovery of the premises and for rent and mesne profits in respect of the same in the Local Court of Full Jurisdiction nearest to which the premises are situated, against the tenant or any person holding or claiming by, through, or under him, if the term or interest of such tenant has expired or been determined by legal notice to quit and the tenant or such person refuses or neglects to deliver up possession.

(2) The claim shall state, in accordance with the circumstances—

- (a) the name of the landlord and, if his title has accrued since the letting of the premises, particulars of such title :
- (b) the situation and rent of the premises :
- (c) the name of the tenant and the nature of the tenancy :
- (d) whether the person sued is the tenant, or the person holding or claiming by, through, or under the tenant :
- (e) the date on and the manner in which the tenancy expired or was determined, or on which the notice to quit was given, and whether such notice was oral or in writing :
- (f) that the person sued refuses or neglects to deliver up possession :
- (g) the amount of rent and mesne profits claimed, and the date up to which they are claimed :
- (h) whether the landlord claims possession forthwith, or on some future day.

Clerk of Court to enter in Plaint Book particulars and to issue summons.  
Cf. *ibid.*, ss. 205 and 206.

**217.** The Clerk of the Court shall—

- (a) enter such claim with the relevant particulars in the Plaint Book in the same way as if it were a claim in a personal action; and
- (b) issue a summons requiring the defendant to enter an appearance within twelve days after the service of the summons.

How summons to be served.  
*Ibid.*, s. 198.

**218.** (1) A summons for the recovery of premises may be served in the same way as an ordinary summons is served under this Act.

(2) If the defendant cannot be found, and his place of residence is either not known, or admission thereto cannot be obtained to serve any such summons, a copy of the summons shall be posted on some conspicuous part of the premises sought to be recovered, and such posting shall be deemed good service on the defendant.

**219.** (1) Where

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## PART X.

**219.** (1) Where any summons for the recovery of premises is served on, or comes to the knowledge of, any sub-tenant of the plaintiff's immediate tenant, and such sub-tenant is an occupier of the whole or a part of the premises sought to be recovered, such sub-tenant shall forthwith give notice thereof to his immediate landlord, under penalty of forfeiting to such landlord three years' rack rent of the premises held by such sub-tenant, to be recovered by such landlord by action in the Court from which such summons was issued.

Sub-tenant served with summons to give notice to his immediate landlord, who may come in and defend.

*Ibid.*, s. 197.

(2) Such landlord, on 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.

**220.** (1) The provisions of Part VIII. relating to appearance, defence, signing judgment and confession of judgment and such other provisions of this Act as relate to the rights, powers, duties and liabilities of parties to a personal action and of the Court and officers thereof and to procedure, so far as they are applicable, shall apply, *mutatis mutandis*, to all actions under this Part.

Procedure applicable to actions under this Part.

(2) If the defendant limits his appearance to part only of the claim, the plaintiff shall have an order or judgment for such part of his claim as is not disputed.

**221.** (1) On the hearing of the summons the Court may—

- (a) order that the defendant shall give possession of the premises, either forthwith or on or before such day as the Court fixes; and
- (b) enter judgment for the amount of mesne profits and rent claimed; and
- (c) make such other order, either as to costs or otherwise, as it thinks fit.

Court may fix day for recovery of possession and may enter judgment for mesne profits, rents and costs.

(2) If the defendant does not attend upon the hearing the Court may make an order to enter judgment as aforesaid without any proof of the allegations in the claim, notwithstanding that an appearance may have been filed.

**222.** If the plaintiff has an order or judgment in default of appearance or in the event of limited appearance as aforesaid, such order or judgment shall have the same effect as if made by the Court after a hearing.

Judgment for plaintiff by default.

**223.** (1) No order or judgment under this Part need be drawn up or served on the opposite party.

Order need not be drawn up, but warrant may issue if order not obeyed.

(2) If any order or judgment under this Part is not obeyed, the Clerk of the Court shall, at the request of the plaintiff, issue a warrant authorising and requiring the bailiff of the Court to give possession of the premises to the plaintiff.

(3) The

(3) The plaintiff shall, from the time of the execution of any such warrant, hold the premises discharged of the tenancy, and the defendant and all persons claiming by, through, or under him shall be barred from all relief.

Warrant a justification to bailiff for entering premises.

Ibid., s. 199.

**224.** Any warrant to a bailiff to give possession of premises shall justify the bailiff named therein in entering upon the premises named therein, with such assistants as he deems necessary, and in giving possession accordingly; but no entry upon any such warrant shall be made except between the hours of nine o'clock in the morning and four o'clock in the afternoon.

Warrants to be in force for three months.

Ibid., s. 200.

**225.** Every such warrant shall, on whatever day it may be issued, bear the date of the day next after the last day for the delivery of the possession of the premises in question, and shall continue in force for three months from such date.

Judges, Magistrates, Clerks, bailiffs, and other officers not liable to action on account of proceedings taken.

Ibid., s. 201.

**226.** No proceeding, whether civil or criminal, shall be brought against a Judge, Special Magistrate, or Justice, or against the Clerk of the Court by whom such warrant as aforesaid was issued, or against any bailiff or other person by whom such warrant may be executed, for issuing such warrant or executing the same respectively, by reason of the fact that the person on whose application the warrant was issued had not lawful right to the possession of the premises.

When landlord has lawful title, he shall not be deemed a trespasser by reason of irregularity.

Ibid., s. 202.

**227.** (1) Where the landlord, at the time of applying for such warrant as aforesaid, had lawful right to the possession of the premises, neither the said landlord 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 under this Act for the recovery of the premises.

(2) The party aggrieved may, if he thinks fit, bring an action on the case for such irregularity or informality, in which the damage alleged to be sustained thereby shall be specially claimed, and may recover full satisfaction for such special damage, with costs.

(3) If the special damage so claimed is not proved, the defendant shall be entitled to a verdict, and if proved, but assessed at any sum not exceeding Five Shillings, the plaintiff shall recover no more costs than damages, unless the Court by which the action was heard certifies that full costs ought to be allowed.

Proceedings in action for recovery of possession when rent is one half-year in arrear.

Cf. *ibid.*, s. 196.

**228.** (1) The landlord of any premises the rent of which is not at a greater rate than Two Hundred and Eight Pounds a year and who has the right to re-enter the premises for the non-payment of one half-year's rent—

(a) may, without any formal demand or re-entry, file a claim against the tenant for the recovery of the premises in the Local Court of Full Jurisdiction nearest to which they are situated; and

(b) shall therein allege such of the matters mentioned in subsection (6) hereof as are applicable.

(2) The

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## PART X.

(2) The Clerk of the Court shall—

(a) enter such claim with the relevant particulars in the Plaintiff Book in the same way as if it were a claim in a personal action; and

(b) issue a summons to the defendant calling upon him to show cause, on a day to be fixed in the summons, why an order should not be made in terms of the claim.

(3) Such summons shall be served at least ten days before the day on which the defendant is to show cause.

(4) The service of such summons shall stand in lieu of a demand and re-entry.

(5) If the tenant, five clear days before the day on which the defendant is to show cause, pays all the rent in arrear and costs, the action shall abate.

(6) On the hearing the plaintiff shall prove—

(a) the rent of the premises;

(b) that at the time when the claim was filed he had the right to re-enter the premises for the non-payment of one half-year's rent, and that such rent is in arrear at the date of the hearing;

(c) that no sufficient distress was found on the premises to countervail the rent in arrear;

(d) the landlord's power to re-enter;

(e) the title of the plaintiff, if such title has accrued since the letting of the premises; and

(f) the service of the summons, if the defendant does not attend.

(7) On the hearing the Court may order that possession of the premises mentioned in the claim be given to the plaintiff on or before such day, not being less than four weeks from the day of hearing, as the Court fixes, unless within that period all the rent in arrear and costs are paid.

(8) If such order is not obeyed and such rent and costs are not so paid, the Clerk of the Court shall, on request, issue a warrant authorising and requiring the bailiff of the Court to give possession of the premises to the plaintiff, and the plaintiff shall, from the time of the execution of such warrant, hold the premises discharged of the tenancy, and the defendant and all persons claiming by, through, or under him shall be barred from all relief.

**229.** This Part shall apply, *mutatis mutandis*, to cases in which the tenancy is at will or for any term without payment of rent.

This Part to apply to tenants at will.

*Ibid.*, s. 203.

## PART XI.

## PART XI.

## THE ACTION OF EJECTMENT.

Proceedings on ejectment where land is under Real Property Act.

Cf. *ibid.*, s. 204.

**230.** (1) Any person claiming possession of land under the Real Property Act, 1886, of the value of not more than Two Thousand Pounds, may file a claim to recover possession of the same in the Local Court of Full Jurisdiction nearest to which the land concerned is situated.

(2) Such claim shall state, in accordance with the circumstances—

- (a) the names and places of residence of all the persons in whom the title is alleged to be, as plaintiffs ;
- (b) the name of the immediate tenant, or of any one tenant in possession, as defendant ;
- (c) a description of the land, sufficient to identify it with reasonable certainty ; and
- (d) the value of the land.

(3) The plaintiff may join to any such claim a further claim or claims for mesne profits or arrears of rent or double value in respect of the land claimed or any part thereof, damages for any breach of any contract under which such land or any part thereof is held, or damages for any wrong or injury to such land. In every such case the plaintiff shall file, together with his claim, a memorandum containing a clear and concise statement of the particulars of his claim, and as many copies thereof as there are defendants: Provided that the total amount claimed, together with the value of the land, shall not exceed Two Thousand Pounds.

Cf. *ibid.*, s. 207.

Clerk of Court to enter in *Plaint Book* particulars.

*Ibid.*, s. 205.

**231.** The Clerk of the Court shall enter in the *Plaint Book* a *plaint* stating the same particulars as in a personal action, and also a short description of the land sought to be recovered, and shall furnish a note thereof to the plaintiff.

Summons to issue.

Cf. *ibid.*, s. 206.

**232.** (1) The Clerk shall forthwith issue a summons in the form prescribed by Rules of Court, requiring the defendant and all persons concerned to appear within twelve days after the service thereof, to defend the possession of the land sought to be recovered, or such part thereof as they may think fit.

(2) The Clerk shall annex to such summons a copy of the memorandum furnished by the plaintiff under subsection (3) of section 230.

Mode of serving summons.

*Ibid.*, s. 209.

**233.** (1) The summons shall be served in the same way as an ordinary summons is served under this Act, or in such manner as a Judge or Special Magistrate may order.

(2) In case of vacant possession, the summons shall be served by posting the duplicate summons, together with the annexed copy of the memorandum (if any), upon the door of any dwelling-house on the land, or otherwise conspicuously exhibiting it on the land.

**234.** Every

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**234.** Every defence other than a disclaimer to an action of ejectment may be in the form prescribed by Rules of Court: Provided that—

Form of defence.  
Cf. *ibid.*, s. 210.

- I. if the defendant desires to disclaim he shall do so expressly :
- II. if the action of ejectment is for non-payment of rent, the defence shall set forth the substantial grounds of the defence, as for example that the title of the plaintiff as landlord, or the fact of the rent being due, is disputed, and such defence shall contain particulars of any payment on which the defendant relies :
- III. if the plaintiff has joined in the action of ejectment any claim pursuant to section 230 (3), a defence in the form prescribed by Rules of Court shall have the same operation with regard to any claim so joined as an appearance entered under section 97, but if the defendant intends to dispute the character in which the plaintiff makes such claim, or to rely upon any matter as a defence thereto which would constitute a special defence within the meaning of section 98, he shall include in such defence a clear and concise statement of the grounds of such defence.

**235.** Any person making defence to an action of ejectment may limit his defence to a part only of the land mentioned in the plaintiff's claim, describing that part with reasonable certainty ; otherwise the defence shall be deemed to apply to the whole.

Person making defence to ejectment may limit defence to part only of property.  
*Ibid.*, s. 211.

**236.** (1) Any person not named in or served with a summons under this Part shall, by leave of the Court or a Judge or Special Magistrate, be allowed to defend on filing an affidavit showing that he is in possession of the land, either by himself or his tenant.

Persons not named in summons may defend action.  
*Ibid.*, s. 212.

(2) The Court or a Judge or Special Magistrate may strike out or limit any defence set up by a person not in possession by himself or his tenant.

**237.** (1) If no appearance is entered within the time appointed, or a defence filed is limited to a part only of the land sought to be recovered, the plaintiff shall be entitled to judgment for recovery of possession of the land, or of the part thereof to which the defence does not apply.

Plaintiff entitled to judgment if no defence.  
Cf. *ibid.*, s. 213.

(2) Such judgment shall be entered in the Record Book, if for the whole, then generally, and if for a part, then with the addition of the words " for part ".

(3) The plaintiff may at any time thereafter draw up a judgment order to be filed in Court.

(4) Such judgment order shall state whether it is for all, and, if for part only, for what part, and may be in the form prescribed by

Rules

Rules of Court, without any award of costs, but without prejudice to the plaintiff's right to have his costs taxed, and to proceed with any claim which has been properly joined and for the recovery of costs.

What to be question  
in action of eject-  
ment.

Cf. *ibid.*, s. 214.

**238.** (1) The question at the hearing of every action of ejectment, except in the case hereinafter mentioned, shall be whether the statement of the title of the plaintiff in his claim is true or false, and if true, then which of the plaintiffs, if more than one, is entitled, and whether to the whole or part, and if to part, then to which part of the land sought to be recovered.

(2) The Court shall also hear and determine any claim which may have been properly joined, and give judgment thereon.

Proof of title.

*Ibid.*, s. 215.

**239.** The proof of title in any one or more of the plaintiffs in ejectment shall be sufficient to entitle such plaintiff or plaintiffs to a verdict.

Proceedings if plain-  
tiff or defendant  
does not appear.

Cf. *ibid.*, s. 216.

**240.** (1) If the defendant appears and the plaintiff does not appear at the hearing, the action shall be struck out, and thereupon shall be discontinued.

(2) If the plaintiff appears and the defendant does not appear at the hearing, the action shall be proceeded with and adjudicated upon, and the Court may, without requiring the plaintiff to prove any fact other than the service of the summons—

(a) order judgment to be entered for the plaintiff for the recovery of possession of the land ;

(b) so far as any claim properly joined is for a debt or liquidated demand, order judgment to be entered for the amount claimed ; and

(c) so far as any such claim is for damages, assess such damages and give judgment for the amount so assessed.

(3) If neither the plaintiff nor the defendant appears, the action shall be struck out and no further proceeding shall be taken therein unless it is reinstated under the power conferred by this Act.

On finding for plain-  
tiff judgment may be  
entered and execu-  
tion issue.

Cf. *ibid.*, s. 218.

**241.** Upon a finding or judgment for the plaintiff, judgment may be entered, and the plaintiff may draw up a judgment order, and execution may issue for the recovery of possession of the land, or such part thereof as the Court finds the plaintiff entitled to ; and, in case any claim has been properly joined, for such sum as may have been awarded in respect thereof and costs.

Proceedings on find-  
ing for defendant.

*Ibid.*, s. 219.

**242.** Upon a finding for the defendants, or any of them, or when there is a nonsuit or discontinuance, judgment may be entered and execution issued for costs against the plaintiffs named in the summons, and the defendant shall be at liberty to draw up a judgment order at any time.

**243.** Upon



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## PART XI.

**243.** Upon any judgment for the plaintiff in ejectment there may be, at the election of the plaintiff, either one or several warrants of execution for recovery of possession of the land claimed, and for the amount awarded in respect of claims properly joined, and costs.

Several warrants of execution may issue on judgment in execution.

*Ibid.*, s. 220.

**244.** (1) Where an action of ejectment is brought by some or one of several persons entitled as joint tenants, tenants in common, or coparceners, any joint tenant, tenant in common, or coparcener in possession may set forth in his defence that he is such joint tenant, tenant in common, or coparcener, and defends as such, and admits the right of the plaintiff to an undivided share of the land sought to be recovered, stating what share, but denies any actual ouster of him from the land; and upon trial the additional question of whether an actual ouster has taken place shall be tried.

Any joint tenant, etc., may defend as such, and admit right of plaintiff to an undivided share of property, and deny ouster.

*Ibid.*, s. 221.

(2) If it is found, at the trial, that the defendant is joint tenant, tenant in common, or coparcener with the plaintiff, then the question whether an actual ouster has taken place shall be tried, and unless such actual ouster is proved, the defendant shall be entitled to judgment and costs; but if it is found either that the defendant is not such joint tenant, tenant in common, or coparcener, or that an actual ouster has taken place, the plaintiff shall be entitled to judgment for the recovery of possession and costs.

On trial, if it be found that defendant is joint tenant, etc., with plaintiff, question of ouster shall be tried.

*Ibid.*, s. 222.

**245.** The death of a plaintiff or defendant in an action of ejectment shall not cause the action to abate.

If plaintiff or defendant die, action not to abate.

*Ibid.*, s. 223.

**246.** (1) If the right of a deceased plaintiff survives to another plaintiff the Clerk of the Court shall, at the request of the surviving plaintiff, make an entry of the death, and add to the name of the surviving plaintiff the word "survivor," (which entry may be set aside if untrue), and the action shall thereupon proceed at the suit of the surviving plaintiff.

If right of deceased plaintiff survives to another plaintiff.

*Ibid.*, s. 224.

(2) If such entry is made before the trial, then the plaintiff shall recover judgment as aforesaid, upon its appearing that he was entitled to bring the action either separately or jointly with the deceased plaintiff.

**247.** In case of the death before trial of one of several plaintiffs whose right does not survive to another or others of them, where the legal personal representative of the deceased plaintiff does not become a party to the action in the manner hereinafter mentioned, the Clerk of the Court shall, at the instance of the surviving plaintiff, make an entry of the death (which entry may be set aside if untrue), and the action shall thereupon proceed at the suit of the surviving plaintiff for such share of the property as he is entitled to and costs.

If right of deceased plaintiff does not survive to another plaintiff.

*Ibid.*, s. 225.

**248.** (1) In case of the death before the trial of a sole plaintiff, or of one of several plaintiffs whose right does not survive to another or others of them, the Clerk of the Court, at the request of the legal personal

On death of sole plaintiff, or before trial of one of several plaintiffs whose right does not survive.

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Ibid., s. 226.

personal representative of the deceased plaintiff and by order of a Judge or Special Magistrate—

(a) shall make an entry of the death ; and

(b) shall substitute such legal personal representative, describing him as such, for the deceased plaintiff, and the action shall thereupon proceed.

(2) Where such entry is made before the trial, the truth of the entry shall be tried thereat, together with the title of the deceased plaintiff, and such judgment shall follow in favor of or against the person causing such entry to be made as is hereinbefore provided in the case of a judgment for or against the plaintiff.

(3) Where such entry, in the case of a sole plaintiff, is made after trial and before execution executed by delivery of possession thereupon, and the truth of such entry is denied by the defendant within eight days after notice thereof, or such further time as the Court or a Judge or a Special Magistrate may allow, then the truth of such entry shall be tried.

(4) Where upon such trial the truth of such entry is proved, the person causing such entry to be made shall be entitled to judgment as aforesaid, for the recovery of possession and for the costs of and occasioned by such entry ; and in case of a verdict for the defendant, such defendant shall be entitled to judgment as aforesaid for costs.

(5) If the truth of the said entry is not denied within the time aforesaid the said legal personal representative shall, on producing an affidavit of the service of the notice, be entitled to proceed to judgment and execution in his own name.

In case of death of one or several defendants in ejectment who defend jointly.

Ibid., s. 227.

**249.** In case of the death, before or after judgment, of one of several defendants in ejectment who defended jointly, the Clerk of the Court shall, at the request of the plaintiff, cause an entry to be made of the death (which entry may be set aside if untrue), and the action may proceed against the surviving defendant or defendants to judgment and execution.

In case of death of sole defendant or of all defendants in ejectment.

Ibid., s. 228.

**250.** (1) In case of the death before trial of a sole defendant, or of any of the defendants in an action of ejectment, before trial, the Clerk of the Court shall, at the request of the plaintiff, cause an entry to be made of the death, which entry may be set aside if untrue.

(2) The plaintiff shall be entitled to entry of judgment for recovery of possession of the property, unless some other person makes defence within a time to be appointed for that purpose by the order of a Court or a Judge or Special Magistrate, to be made upon the application of the plaintiff.

(3) The Court or a Judge or Special Magistrate, upon such entry and application being made as aforesaid, may order judgment to be entered for the plaintiff within such time as it or he may appoint unless the person then in possession, by himself or his tenant, or the legal personal representative of the deceased defendant, defends the action within that time.

(4) Such

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(4) Such order may be served in the same manner as the summons in the action.

(5) If any such person as mentioned in subsection (3) hereof makes defence, the same proceedings may be taken against such new defendant as if he had originally appeared and defended the action.

(6) If no defence is made, then the plaintiff shall be entitled to entry of judgment pursuant to the order.

**251.** In case of the death before trial of one of several defendants an action of ejectment who defends separately for a portion of the land for which the other defendant or defendants do not defend, the same proceedings may be taken as to such portion as in the case of the death of a sole defendant, or the plaintiff may proceed against the surviving defendants in respect of the portion of the land for which they defend.

In case of death before trial of one of several defendants in ejectment who defends for a portion for which the others do not defend.

Ibid., s. 229.

**252.** (1) In case of the death, before trial, of one of several defendants in an action of ejectment who defends separately in respect of land for which surviving defendants also defend, the Court or a Judge or Special Magistrate at any time before trial may allow the person at the time of the death in possession of the land, or the legal personal representative of the deceased defendant, to defend on such terms as may appear just, upon the application of such person or representative.

In case of death before trial of one of several defendants in ejectment who defends separately for a portion for which the others also defend.

Ibid., s. 230.

(2) If no such application is made or leave granted, the plaintiff causing an entry to be made of the death in manner aforesaid may proceed against the surviving defendant or defendants to judgment and execution.

**253.** In case of the death after verdict of a sole defendant or of any of the defendants in an action of ejectment, the plaintiff shall nevertheless be entitled to judgment as if no such death had taken place, and to proceed to execution for recovery of possession, and to proceed for the recovery of the costs, in like manner as upon any other judgment for money against the legal personal representative of the deceased defendant.

In case of death after verdict of sole defendant or all the defendants in ejectment.

Ibid., s. 231.

**254.** (1) The plaintiff in an action of ejectment may at any time before verdict or judgment against him discontinue the action as to one or more of the defendants, by giving to the defendant or his solicitor, and also to the Clerk of the Court, a notice signed by the plaintiff or his solicitor stating that the plaintiff discontinues such action, and thereupon the defendant to whom such notice is given may sign judgment for costs.

Plaintiff in ejectment may discontinue action as to one or more defendants, and one of several plaintiffs may discontinue.

Ibid., s. 232.

(2) Any one of several plaintiffs desirous to discontinue may apply to the Court or a Judge or Special Magistrate to have his name struck out of the proceedings, and an order may be made thereupon upon such terms as may appear just, and the action shall thereupon proceed on the suit of the other plaintiffs.

**255.** (1) A

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Defendants in ejection may confess.

*Ibid.*, s. 233.

**255.** (1) A sole defendant or all the defendants in an action of ejection may confess the action, as to the whole or part of the land, by giving to the plaintiff a consent for judgment, signed by the defendant or defendants and attested by his or their solicitor, or by the Clerk of the Court, and thereupon judgment may be forthwith entered, and execution may issue, for the recovery of possession and costs.

If one of several defendants confess.

(2) Any one of several defendants in an action of ejection who defends separately for a portion of the land, for which portion the other defendant or defendants do not defend, may confess the plaintiff's title to such portion by giving to the plaintiff a like consent for judgment, and thereupon judgment may be forthwith entered, and execution issued, for the recovery of possession of such portion of the land, and for the costs occasioned by the defence relating to the same, and the action may proceed as to the residue.

If one of several defendants who defend separately desires to confess.

*Ibid.*, s. 234.

(3) One of several defendants in an action of ejection who defends separately in respect of land for which other defendants also defend may confess the plaintiff's title by giving a like consent for judgment, and thereupon judgment may be entered against such defendant for the costs occasioned by his defence, and the plaintiff may proceed in the action against the other defendants to judgment and execution.

Effect of judgment in ejection under this Act same as judgment in the Supreme Court.

*Ibid.*, s. 235.

**256.** The effect of a judgment in ejection under this Act shall be the same as that of a judgment in an action for the recovery of land in the Supreme Court.

All provisions in this Act to extend to ejection.

*Cf. ibid.*, s. 236.

**257.** The provisions of the other Parts of this Act shall, so far as the same are applicable and not inconsistent with the provisions of this Part, apply to actions of ejection under this Part.

Form of warrant of possession.

*Ibid.*, s. 237.

**258.** Warrants of possession shall be in the form prescribed by Rules of Court.

## PART XII.

## PART XII.

## SPECIAL EQUITABLE JURISDICTION OF LOCAL COURT OF ADELAIDE.

Extent of special jurisdiction.

*Cf. Eng. County Courts Act, 1888, s. 67.*

**259.** The Local Court of Adelaide of Full Jurisdiction, when constituted of a Local Court Judge or a Judge of the Supreme Court, shall have the jurisdiction and exercise the powers and authority of the Supreme Court of South Australia and the Judges thereof in the actions hereinafter mentioned (that is to say):—

- i. By creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), or next of kin, in which the personal estate or real estate or personal estate and real estate against which, or for an account or administration of which the demand is made, does not exceed in amount or value the sum of Five Hundred Pounds :
- ii. For

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- II. For the execution of trusts in which the trust estate, or fund, does not exceed in amount or value the sum of Five Hundred Pounds :
- III. For foreclosure or redemption, or for enforcing any charge or lien, where the mortgage, charge, or lien does not exceed in amount the sum of Five Hundred Pounds :
- IV. For the dissolution or winding up of any partnership in which the whole property, stock, and credits of such partnership does not exceed in amount or value the sum of Five Hundred Pounds :
- V. For specific performance of, or for delivering up, or cancelling of, any agreement for the sale, purchase, or lease of any property where, in the case of a sale or purchase, the purchase money, or in the case of a lease, the value of the property, does not exceed the sum of Two Thousand Pounds :
- VI. For relief against fraud or mistake in which neither the damage sustained, nor the estate or fund in respect of which relief is sought, exceeds in amount or value the sum of Five Hundred Pounds :
- VII. For the partition of land where the value thereof does not exceed Five Hundred Pounds :
- VIII. For orders in the nature of injunctions, where the same are requisite for granting relief in any matter in which jurisdiction is given by this Act to the Local Court of Adelaide of Full Jurisdiction ; or for stay of proceedings at law to recover any debt provable under a judgment for the administration of an estate made by the said Local Court.

**260.** (1) In all actions under this Part a Judge shall, in addition to the powers or authorities in respect of actions or proceedings in Local Courts conferred by this Act, have all the powers and authorities for the purposes of this Act of the Judges of the Supreme Court.

Powers of Judge  
and Special  
Magistrate.

Cf. Victorian County  
Courts Act, 1890,  
s. 122.

(2) The Clerk, bailiff, and officers of the Local Court shall in all such actions discharge any duties which an officer of the Supreme Court can discharge, either under the order of a Judge of the Supreme Court or the practice thereof.

(3) All officers of the Local Court shall, in discharging such duties, conform to any rules or orders made in that behalf under this Act and to any special directions given by a Judge.

**261.** In any action under this Part there may be joined with any cause of action under this Part any causes of action under any other Part, and the Judge having jurisdiction under this Part shall have jurisdiction to hear and determine all such causes of action ; but if it appears to a Judge, before or at the hearing, that any of such causes cannot be conveniently tried or disposed of together

Joined with causes  
under other Parts of  
the Act.

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together, the Judge may order separate trials of any such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

Power to a Judge of Supreme Court to order transfer of actions under this Part to Supreme Court.

Ibid., s. 123.

**262.** Any one of the Judges of the Supreme Court, on the application at Chambers of any party to any action pending under this Part shall have power then and there, or if he thinks fit after the hearing of a summons served upon the other party, to transfer the same to the Supreme Court, upon such terms (if any) as to security for costs or otherwise as he may think fit.

Actions may be transferred from Supreme Court to Local Courts.

Cf. *ibid.*, s. 124.

**263.** (1) When any action or proceeding is pending in the Supreme Court, which action or proceeding might have been commenced in the Local Court of Adelaide of Full Jurisdiction under this Part, any of the parties thereto may apply at Chambers to any Judge of the Supreme Court to have the same transferred to the Local Court of Adelaide of Full Jurisdiction, and such Judge shall have power upon such application, or without such application if he thinks fit, to make an order for such transfer.

(2) Thereupon such action or proceeding shall be carried on in the said Local Court, and the parties thereto shall have the same right of appeal that they would have had if the action or proceeding had been commenced in a Local Court.

Power to enforce judgments in equity jurisdiction.

Cf. *ibid.*, s. 129.

**264.** For the due execution of any judgment, decree, or order made under the authority of this Part, the Local Court of Adelaide of Full Jurisdiction or a Judge shall have power to order, and the Clerk of the Court upon such order shall have authority to do, all such acts as he is thereby directed, and to seal and issue, and the bailiff to execute, any writ or warrant of possession, writ or warrant of execution or attachment, or other process of execution for carrying into effect any judgment, decree, or order of the Court.

When amount of subject matter of suit exceeds limit of the jurisdiction of Local Court action may be remitted to the Supreme Court.

Ibid., s. 130.

**265.** (1) If during the progress of any action under this Part it is made to appear to the Local Court of Adelaide of Full Jurisdiction that the subject matter exceeds the limit in point of amount to which the jurisdiction of the said Local Court is hereby limited, it shall not affect the validity of any order or decree already made, but the said Local Court shall direct the action to be transferred to the Supreme Court, and thereupon the action shall proceed in the Supreme Court as a Judge of the Supreme Court by order directs; and such Judge shall have power to regulate the whole of the procedure in the action when so transferred.

(2) Notwithstanding subsection (1) hereof, any party may apply to a Judge of the Supreme Court at Chambers for an order authorising and directing the action to be carried on and prosecuted in the Local Court of Adelaide of Full Jurisdiction, notwithstanding such excess in the amount of the limit to which jurisdiction in the matter is hereby given to the said Local Court; and the Judge, if he deems it proper to summon the other parties or any of them to appear

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appear before him for that purpose, after hearing such parties or on default of the appearance of all or any of them, shall have full power to make such order.

**266.** The several rules of law enacted by the Supreme Court Act, 1878, shall be in force and receive effect in the Local Court of Adelaide of Full Jurisdiction, so far as the matters to which such rules relate are respectively cognizable by such Local Court under this Part. Application of Supreme Court Act, 1878.

**267.** In every action under this Part a Judge shall have the same powers with regard to discovery, both of documents and by way of interrogatories, as the Supreme Court or a Judge thereof has, and the practice and procedure with regard to the same shall, subject to this Act and any Rules of Court made hereunder, be the same as nearly as may be as the practice and procedure for the time being of the Supreme Court with regard thereto. Discovery.

**268.** (1) Every action under this Part shall be commenced in the manner prescribed for the commencement of an action by Part VII., and the procedure and practice prescribed by this Act with regard to an action in which an ordinary summons has been issued under Part VII. shall, subject to this Part and the Rules of Court, apply, *mutatis mutandis*, to all actions under this Part. Procedure.

(2) In any case not provided for by this Act or by the said rules, the general principles of practice and the rules observed in the Supreme Court may be adopted and applied.

**269.** A Judge may, by special order, where he considers it necessary for the speedy administration of justice or for saving expense, modify the practice and procedure prescribed by this Act or any Rules of Court with regard to actions under this Part, and may, in any such case or where in any action under this Part he considers such practice and procedure inadequate, direct some other practice or procedure to be adopted. Judge or Special Magistrate may give special directions as to procedure.

**270.** The Judge having jurisdiction under this Part may hear any action instituted under this Part at any place in the State which he deems convenient for the purpose, or may adjourn the hearing of any such action to any such place. Power to hear actions in any part of the State.

## PART XIII.

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## REMEDIES AGAINST DEBTORS ABOUT TO ABSCOND.

**271.** If—

- (a) there is owed to any person (hereinafter called "the creditor"), either alone or jointly with another, a debt of Ten Pounds or more, whether on an unsatisfied judgment of a Local Court or otherwise, or any person (hereinafter called "the claimant") has through breach of contract sustained damage to the extent of Twenty Pounds or more; and Creditor to whom debt of Thirty Pounds is due may obtain warrant for arrest. 386, 1886, s. 238.
- (b) the

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(b) the creditor or the claimant believes on reasonable grounds that the debtor or the person against whom the claimant is entitled to maintain an action in respect of such breach of contract (as the case may be) is about to quit the State with intent to avoid or delay him, or with intent to remain out of the State so long that he may be delayed in the recovery of the debt or damages for such breach of contract.

he may apply on the affidavit or affidavits of himself or other persons deposing to such debt or damage and belief and some reasonable ground therefor, to any Justice for a warrant for the arrest of the debtor or person, and requiring him to be brought before the Local Court Judge or a Special Magistrate, or to be otherwise dealt with in accordance with this Act.

Plaintiff to file a claim at the time of issuing warrant.

Ibid., s. 239.

**272.** The creditor or claimant, if no action is pending or judgment obtained respecting his claim, shall, at the time of issuing such warrant, file a claim in a Local Court for the recovery of the said debt or damage, otherwise such warrant shall be wholly void and of no effect whatsoever as a protection to the creditor or the claimant.

Form and currency of warrants.

Ibid., s. 240.

**273.** (1) Such warrant shall be addressed to the bailiff of the Court in which the judgment has been recovered, or the claim for the said debt or damage has been or will be filed.

(2) Such warrant shall be in the form and bear such indorsement as is prescribed by Rules of Court, and may be executed within one month from its date, but not afterwards, in any part of the State.

(3) The person arrested shall be served with a copy thereof at the time of the arrest.

Bailiff arresting to indorse certificate of time and place of arrest.

Ibid., s. 241.

**274.** The bailiff or person executing the warrant shall, immediately on the same being executed, indorse a certificate thereupon of the time and place where the person arrested under it was arrested, and the production of such warrant and certificate to the keeper of the Adelaide Gaol, or other proper place of imprisonment, shall be sufficient authority to him to detain such person until he is discharged in due course of law, and the keeper of such gaol or other proper place of imprisonment shall receive such person into custody at any hour of the day or night.

Bailiff to take debtor to gaol unless he pays or secures the debt, or claims to go before a Judge or Special Magistrate.

Ibid., s. 242.

**275.** The bailiff or other person executing the warrant shall arrest the person named therein, and shall forthwith lodge him in gaol unless he either—

(a) pays the sum indorsed on the warrant for debt, damages, and costs; or

(b) deposits such sum with the bailiff to abide the result of the action; or

(c) requests to be brought before the Local Court Judge or a Special Magistrate.

**276.** If



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**276.** If the debt is claimed on an unsatisfied judgment, the debtor when lodged in gaol shall remain there until the debt and costs are satisfied, or the judgment is set aside, or until he is otherwise discharged in accordance with law: Provided that the Local Court Judge or a Special Magistrate—

Debtor lodged in gaol on unsatisfied judgment.

Cf. *ibid.*, s. 243.

- I. may, at any time, order the release of the debtor on his giving security to the satisfaction of the Local Court Judge or a Special Magistrate to cause the judgment to be set aside or satisfaction entered thereon wholly or in part and, so far as not so set aside or satisfied, to pay the same, together with the costs indorsed on the warrant and the costs of the application, or such part of such costs respectively as the Court or Local Court Judge or Special Magistrate may order; and
- II. may, at any time, on the application or with the consent of the creditor or the claimant, make such order without security being given by the debtor.

**277.** If the person arrested requests to be brought before the Local Court Judge or a Special Magistrate, the person executing the warrant shall bring such person without delay before the Local Court Judge or the nearest Special Magistrate, who may thereupon either—

Duties and powers of Judge or Special Magistrate where debtor claims to be brought before him.

*Ibid.*, s. 244.

- (a) on the application of such person, of which adequate notice shall be given to the creditor or the claimant, and on proof to the satisfaction of the Judge or Special Magistrate that the creditor or the claimant had not good cause for making or causing to be made the affidavit or affidavits on which the warrant was issued, release the said person so arrested, and order the creditor or the claimant to pay to the person arrested a sum not exceeding Twenty Pounds by way of compensation, which order may be enforced as an order of the Court; or
- (b) where a judgment has been recovered, take the security in the preceding section mentioned, and release the alleged debtor; or
- (c) where no judgment has been recovered, take security by deposit or otherwise, or partly by deposit and partly otherwise, for defending the action and paying any sum adjudged to be due therein, and the costs thereof, and of the warrant and arrest, or in default for rendering the person arrested to the bailiff of the Court to be dealt with as ordered by the Court, and, when the security is given, release such person; or
- (d) take payment of part, and take security, as last above-mentioned, as to the rest, and release the person arrested; or

(e) discharge

(e) discharge such person from custody on being satisfied that three weeks at least before the issue of the warrant he had given public notice by advertisement in two newspapers published in Adelaide of his intended departure and the time and manner thereof; or

(f) hear the action in accordance with the following provisions:—  
and, if the Judge or Special Magistrate does not release or discharge the person arrested, the person executing the warrant shall lodge him in a gaol or other proper place of imprisonment.

Judge or  
Special Magistrate  
may adjudicate upon  
claim by consent of  
defendant.

Ibid., s. 245.

**278.** (1) Where no judgment has been obtained, the Local Court Judge or a Special Magistrate, upon a defendant being brought before him under authority of any warrant and upon a consent being signed by the defendant or his solicitor, and upon his entering an appearance to the claim, may hear and determine the action, and the decision of the Judge or Special Magistrate shall be entered as the judgment of the Local Court in which the claim was filed.

(2) In case the plaintiff does not attend, the Judge or Special Magistrate may order the defendant to be detained in custody, or to enter into sureties or give security for his appearance, until such notice of the hearing of the action as the Local Court Judge or a Special Magistrate may direct has been given to the plaintiff, and, if the plaintiff does not then attend, the defendant shall be discharged.

Defendant may be  
committed to gaol on  
non-payment of judg-  
ment.

bid., s. 246.

**279.** If, on the hearing of the action by consent of the defendant before the Local Court Judge or a Special Magistrate—

(a) judgment is given for the plaintiff; and

(b) the Judge or Special Magistrate is satisfied that the defendant was intending to quit the said State with the intent hereinbefore mentioned,

the Judge or Special Magistrate shall order the defendant to be committed to gaol as aforesaid for a period not exceeding forty days, unless the judgment and costs are sooner satisfied.

Compensation may  
be ordered to deter-  
dant improperly  
arrested.

Cf. ibid., s. 247.

**280.** If, on the hearing of the action by consent of the defendant before the Local Court Judge or a Special Magistrate—

(a) judgment is given for the defendant; or

(b) the Local Court Judge or Special Magistrate is of opinion that the plaintiff had not good cause for making or causing to be made the affidavit upon which the warrant was founded,

the Judge or Special Magistrate may order the plaintiff to pay to such defendant a sum not exceeding Twenty Pounds by way of compensation, which order may be enforced in like manner as a judgment given for a defendant upon the hearing of an ordinary action in a Local Court.

**281.** Any

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**281.** Any person arrested under this Part in respect of a debt due on an unsatisfied judgment shall be discharged from custody on the expiration of forty days from the day of his arrest.

When person arrested to be discharged.

**282.** Nothing in this Part shall be held to deprive a creditor of any other remedy to which he may be entitled for the satisfaction of a judgment.

Other remedies preserved.  
Ibid., s. 248

## PART XIV.

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## COMMISSIONS AND ORDERS FOR THE EXAMINATION OF WITNESSES.

**283.** (1) A Judge or Special Magistrate, in any case where he sees fit, upon application by affidavit by any party to an action in a Local Court, may issue an order under his hand and the seal of the Local Court for bringing up before such Court, or for examination under any order or commission to be made or issued as hereinafter provided, any prisoner or person confined in any gaol, prison, or place, under any sentence, or under commitment for trial, or under process in any civil action, suit, or proceeding, to be examined as a witness in any action or proceeding in or before such Court.

Judge or Special Magistrate may order prisoner to be brought up for the purpose of giving evidence.  
Ibid., s. 249

(2) The person specified in any such order shall be brought under the same care and custody, and be dealt with in like manner in all respects, as a prisoner required by any writ of *habeas corpus* awarded by the Supreme Court to be brought before such Court, to be examined as a witness in any action or matter depending before such Court, is now by law required to be dealt with.

(3) The person having the custody of such prisoner or person shall not be bound to obey such order unless a tender is made to him of a reasonable sum for the conveyance and maintenance of a proper officer, and of the prisoner in person, in going to, remaining at, and returning from, the Local Court or other place named in the order.

Expenses to be paid to gaoler.

**284.** In every action in any Local Court, where the debt or damages claimed exceed Thirty Pounds, a Judge or Special Magistrate, upon the application of any of the parties to such action, and upon being satisfied that any material witness is about to quit the said State, or is unable to attend on the trial of such action from illness or other sufficient cause—

Judge or Special Magistrate may issue order for examination of witnesses about to leave the State or unable to attend from illness.

Ibid., s. 250.

(a) may, by writing under his hand and the seal of the Court, order the examination of such witness upon oath, by interrogatories or otherwise, before such Judge or Special Magistrate or before the Clerk of such Court or any other person to be named in such order; and

(b) may

(b) may, by the same or any subsequent order, give all such directions touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examination, as may appear proper.

Judge or Special Magistrate may issue commission for examination of witnesses out of the State, or who may reside more than one hundred miles from Court where action to be tried.

*Ibid.*, s. 251.

**285.** If, in any action in any Local Court, where the debt or damages claimed exceed Thirty Pounds, it is made to appear to the satisfaction of a Judge or Special Magistrate, upon the application of any of the parties to such action, that any material witness is resident out of the State, or more than one hundred miles from the place where the Court for the trial of such action is situated, such Judge or Special Magistrate—

(a) may order a commission to issue under the seal of the said Court for the examination of such witness on oath, by interrogatories or otherwise; and

(b) may, by the same or any subsequent order, give all such directions touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examination, as may appear proper.

Order or commission may be issued at any time before or after appearance.

*Ibid.*, s. 252.

Compelling attendance of witnesses, or production of documents.

*Ibid.*, s. 253.

**286.** The order or commission mentioned in the last two preceding sections may be made or issued at any time, either before or after appearance has been entered in the action.

**287.** (1) When any order is made for the examination of witnesses within the State, the Judge or Special Magistrate may, by the first order made in the matter or any subsequent order, command the attendance of any person to be named in such order for the purpose of being examined, or of producing any writings or other documents mentioned in such order, and may direct the attendance of such person to be at his own place of residence or elsewhere, if necessary or convenient so to do.

(2) Such order shall be served personally upon the person so required to attend, together with particulars in writing of the time and place of attendance, signed by the person or persons appointed to take the examination, or by one or more of such persons.

(3) If the person named in such order, after being so served as aforesaid, neglects or fails to attend at the time and place mentioned, or to produce the writings or other documents therein mentioned, and does not give a good and sufficient excuse for his non-attendance, or the non-production of such writings or other documents, to the satisfaction of the person or persons so appointed to take the examination as aforesaid, he shall forfeit a sum not exceeding One Hundred Pounds, to be recovered by the party aggrieved by action in any Court of competent jurisdiction.

(4) Every person whose attendance is so required shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at the trial of an action in a Local Court.

(5) No

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(5) No person shall be compelled to produce, under any such order, any writing or other document that he could not be compelled to produce at a trial of the action.

**288.** (1) Every person authorised to take the examination of witnesses by any order or commission made or issued in pursuance of this Part shall take all such examinations upon the oath, affirmation, or declaration of the witnesses, to be administered by the person so authorised.

Examination of witnesses to be taken upon oath. *Ibid.*, s. 254.

(2) If, upon such oath, affirmation, or declaration, any person making the same wilfully and corruptly gives any false evidence, he shall be guilty of perjury.

**289.** (1) The Judge or Special Magistrate, if he takes the examination himself, or the Clerk of the Court, or any other person to be named in any such order or commission as aforesaid for taking any examination in pursuance thereof, may, and, if required so to do by any party to the action, shall, make a special report to the Court touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto.

Persons appointed for taking examinations may report to the Court upon the conduct or absence of witnesses. *Ibid.*, s. 255.

(2) The Court may thereupon institute such proceedings and make such order upon such report as justice may require, and as may be instituted in any case of contempt of Court.

**290.** In all cases in which any such order or commission as aforesaid is made or issued, the examinations or depositions certified under the hand of the Judge, Special Magistrate, Clerk of the Court, or other person taking the same shall, without proof of the signature of such certificate, be received and read in evidence, saving all just exceptions.

Examinations to be received in evidence without proof of signature of Commissioner, &c. *Ibid.*, s. 256.

**291.** (1) The costs of every order for the examination of witnesses under any commission or otherwise under this Part and of the proceedings thereon shall, for all business transacted within the State, be allowed as between party and party, according to the scale of costs in the Second Schedule; and as to business transacted out of the State fair and reasonable costs shall be allowed, according to the amounts actually and *bona fide* paid and expended in and about transacting such business.

Costs. *Ibid.*, s. 257.

(2) All such costs shall be costs in the action, unless otherwise directed on the trial of the action by the Judge or Special Magistrate making the order for the examination, or by the Court.

**292.** Where by this Act a Judge or Special Magistrate has power to make an order for the examination of witnesses or for a commission, the practice as to applying for an order for the examination of witnesses, or for a commission, and the proceedings to be thereupon had, shall, in cases not otherwise provided for by this Act, be the same as the practice of the Supreme Court in similar cases.

Practice to be same as in Supreme Court. *Ibid.*, s. 258.

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## PART XV.

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## COURT FEES AND COSTS.

Costs to abide event.  
Cf. *ibid.*, s. 259.

**293.** The costs in every action or proceeding in a Local Court not herein otherwise provided for shall be paid by or apportioned between the parties in such manner as the Court thinks just and in default of any special direction shall abide the event.

What Court fees to  
be paid.  
Cf. *ibid.*, s. 260.

**294.** (1) The fees specified in the Third and Fourth Schedules shall be paid in respect of the matters therein specified: Provided that bailiff's mileage fees may be repaid to the party who has paid them if service of the process in respect of which they were paid has not been effected and the bailiff has made only one attempt to effect service.

(2) The Governor may, from time to time, by proclamation, vary the said fees and may direct what other fees in respect of steps taken, process issued, or duties performed, shall be taken in Local Courts.

(3) Every fee shall be paid in the first instance and in advance by the party for whose benefit the act or service in respect of which the fee is to be paid is to be done.

(4) In default of the payment of any fee, payment thereof may be ordered by a Judge or Special Magistrate, which order shall be enforced in like manner as an order of a Local Court.

(5) A table of all fees shall be posted in some conspicuous place in every Courthouse and in the office of the Clerk of every Local Court.

Practitioners entitled  
to costs according to  
certain scale.  
*Ibid.*, s. 261.

**295.** (1) Practitioners of the Supreme Court shall, as between party and party, be entitled to receive from the party liable to pay them their costs and charges according to the scale in the Fifth Schedule, and such costs and charges shall be taxed by the Clerk of the Court, but his taxation may be reviewed by a Judge or Special Magistrate.

(2) Notwithstanding anything in subsection (1) hereof any Judge or Special Magistrate hearing any action or proceeding may certify for costs on a higher scale to be paid in respect of such action or proceeding or part if he considers that by reason of unusual difficulty or intricacy involved in the action justice to the successful party makes it necessary.

Costs of practitioner  
as between attorney  
and client.  
*Ibid.*, s. 263.

**296.** (1) All costs and charges as between solicitor and client may be taxed by the Clerk of the Court in which such costs and charges were incurred; but the taxation of such Clerk may be reviewed by a Judge or Special Magistrate.

(2) No costs and charges shall be allowed on such taxation which are not authorised by the scale in the Fifth Schedule.

(3) Subsection 2 hereof shall not apply where there is an agreement in writing signed by or on behalf of the client to pay costs and charges in excess of those authorised by the Fifth Schedule and setting out that such costs and charges are in excess of those authorised by the Fifth Schedule.

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PENALTIES.

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**297.** Every person shall be guilty of felony who—

- (a) forges the signature of any Judge or Special Magistrate acting under this Act, or of the Clerk, bailiff, or other officer of a Local Court; or
- (b) forges or counterfeits the seal of any Local Court, or any process of a Local Court; or
- (c) knowingly concurs in using any such forged or counterfeit signature or seal for the purpose of authenticating any such process; or
- (d) serves or enforces any such forged process knowing the same to be forged; or
- (e) delivers or causes to be delivered to any person any paper falsely purporting to be a copy of a summons or other process of a Local Court, knowing the same to be false; or
- (f) tenders in evidence any such process having subscribed or attached thereto a false or counterfeit signature of any such Judge or Special Magistrate, or of the Clerk, bailiff, or other officer of a Local Court, or a false or counterfeit seal of a Local Court knowing such signature or seal to be false or counterfeit; or
- (g) acts or professes to act under any false color or pretence of the process of a Local Court; or
- (h) falsely pretends that a judgment or order of a Local Court has been made in favor of himself or of any person for whom he acts as solicitor or agent, with intent thereby to procure some advantage for himself or for such person.

Punishment for forging signature of Magistrate, &c., or counterfeiting seal, or serving forged process, or tendering same in evidence.

Cf. *ibid.*, s. 264.

**298.** If any Justice liable and summoned to attend any Local Court fails without reasonable excuse to attend such Court on the day and at the time for which he was so summoned, or, attending, to continue to act during the sitting of the Court, he shall be liable to a penalty not exceeding Ten Pounds.

Justice not attending Court when summoned may be fined.

Cf. *ibid.*, s. 265.

**299.** Every person shall be guilty of perjury who—

- (a) in any examination upon oath before any Local Court, wilfully and corruptly gives false evidence; or
- (b) before any Judge or Special Magistrate or Justice or before the Clerk of any Local Court, acting in pursuance of this Act, wilfully makes any false affidavit or statement on oath.

Person giving false evidence to be guilty of perjury.

*Ibid.*, s. 266.

**300.** If any person—

- (a) wilfully insults any Local Court, or any Judge, Special Magistrate or Justice presiding over or sitting in a Local Court, or any Clerk or officer of a Local Court in the exercise of his duties in Court, or whilst such Judge, Special Magistrate, Justice, Clerk, or officer are going to or returning from the Court; or

Local Court may fine or imprison for contempt of Court.

Cf. *ibid.*, s. 267.

(b) wilfully

(b) wilfully interrupts the proceedings of the Court, or otherwise misbehaves in Court; or

(c) in Court refuses to obey any lawful order of the Court; or

(d) in Court is guilty of any other contempt of Court,

the Court may detain him and may, by a warrant, commit him to prison for any term not exceeding fourteen days, or may impose upon him a fine not exceeding Ten Pounds, and, in default of payment thereof, commit him to prison for any time not exceeding fourteen days unless the fine is sooner paid.

Penalty for assaulting officers, or for rescuing goods taken in execution.

Cf. *ibid.*, s. 268.

**301.** (1) (a) If any officer or bailiff of a Local Court is assaulted while in the execution of his duty; or

(b) if any rescue is made of any goods levied under process of any Local Court,

the person so offending shall be liable to a penalty not exceeding Fifty Pounds, or to be imprisoned for a period not exceeding three months.

(2) Such officer or bailiff, or any constable, may in such case take the offender into custody (with or without a warrant), and bring him before a Court of Summary Jurisdiction.

Remedy against officers guilty of extortion or other misconduct.

*Ibid.*, s. 269.

**302.** If any Clerk, or bailiff, or officer of any Local Court, acting under color or pretence of the process of any Local Court, is charged with extortion or, having received or levied any money under the authority of this Act, is charged with not duly paying or accounting for the same, or is charged with any misconduct in his office, a Judge or Special Magistrate—

(a) may inquire into such matter in a summary way, and for that purpose may summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses may be enforced in any action in a Local Court; and

(b) may make such order thereupon for the repayment 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 he thinks just; and

(c) may also impose a fine upon the Clerk, bailiff, or officer, not exceeding Twenty Pounds for each offence.

Penalty on taking fees besides those allowed.

*Ibid.*, s. 270.

**303.** Every Clerk, bailiff, or other officer employed in putting this Act, or any of the powers thereof, in execution, who wilfully and corruptly exacts, takes, or accepts any fee or reward whatsoever, except such fees as are authorised by or under this Act, for or on account of anything done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall, upon proof thereof before a Judge or Special Magistrate and on allowance of the finding of such Judge or Special Magistrate by the



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the Governor, be for ever incapable of serving or being employed under this Act in any office of profit or emolument, and shall also be liable for damages, as hereinafter provided.

**304.** (1) It shall not be lawful for the bailiff of any Local Court to act as agent, otherwise than in the performance of his duties under this Act, for parties in the recovery of their debts, nor to issue, on behalf of such parties, any summons or other process, nor to enter any appearance for a defendant.

Bailiff of Local Court not to act as private agent for suitors.

*Ibid.*, s. 271.

(2) Every bailiff who directly or indirectly acts in contravention to this section shall, on proof thereof before a Judge or Special Magistrate and on allowance by the Governor of the finding of the Judge or Special Magistrate, be deprived of his office, and be for ever incapable of serving in any office of profit or emolument under this Act.

**305.** (1)—(a) Every witness duly summoned and to whom payment, or a tender of payment, of his expenses has been made, who refuses or neglects without sufficient cause, to appear, and to produce any books, papers, writings, or other things required by such summons to be produced; and

Penalty on witness duly summoned not appearing.

*Ibid.*, s. 272.

(b) every person present in Court who is required to give evidence and refuses after payment, or tender of payment, of his expenses, to be sworn and give evidence,

shall pay such fine, not exceeding Ten Pounds, as the Court imposes.

(2) The whole or any part of any such fine shall, at the discretion of the Court, be applicable towards indemnifying the party injured by such refusal or neglect.

**306.** (1) No person shall apply for any summons to issue, nor shall any summons issue, out of any Local Court to compel the production of any public document, except by leave of a Judge or Special Magistrate.

Subpoena to produce public document not to issue without leave.

(2) Application for such leave may be made *ex parte*, and the order giving such leave may be made upon the unsworn statement of the person making such application; but a Judge or Special Magistrate may require any statement to be verified by affidavit. Any affidavit used upon such application, when filed, shall be sealed up by the Clerk of the Court and shall not be opened for or produced to any person other than the party filing the same, or his solicitor, until after the action or proceeding has been disposed of, unless a Judge or Special Magistrate otherwise orders.

**307.** (1) Every proceeding under this Act against persons for omissions, defaults, or offences to which fines or penalties attach shall, except where otherwise provided, be heard and determined in a summary way by any Special Magistrate or two Justices under the provisions of the Justices Act, 1921.

Proceedings for penalties in certain cases to be heard under Justices Act, 1921.

*Cf.* 86, 1886, s. 273.

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(2) In every case where a fine is imposed by any Local Court, Judge, Special Magistrate, or Justices under the authority of this Act, such Local Court, Judge, Special Magistrate, or Justices may order the offender to pay such costs as appear just, and the payment of such fine and costs, except where otherwise provided for, may be enforced by the committal of the offender to gaol for any period not exceeding three months, unless the amount thereof is sooner paid.

Warrant of commitment to be under hand of Clerk and seal of Court.

Ibid., s. 274.

**308.** Every warrant of commitment which issues from a Local Court for any offence against this Act where the punishment is by imprisonment, and every warrant of commitment issued to enforce the payment of any penalty imposed by a Local Court under this Act or of the amount of any judgment or order of a Local Court, shall be under the hand of the Clerk of the Court and the seal of the Court.

## PART XVII.

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PROTECTION OF OFFICERS OF LOCAL COURTS,  
AND GENERAL MATTERS.

Certain certified copies evidence.

Ibid., s. 129.

**309.** The contents of any document in the custody of the Clerk of any Local Court may be proved in any Court by a certified copy of the same purporting to be under the hand of the Clerk and the seal of the Local Court.

Distress not unlawful for want of form.

Ibid., s. 276.

**310.** (1) Where any distress is made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful nor the party making the same a trespasser on account of any defect or want of form in any proceeding relating thereto.

(2) The party distraining shall not be deemed a trespasser from the beginning on account of any irregularity which is afterwards committed by the party distraining.

(3) The person aggrieved by any such irregularity may recover full satisfaction for the special damage in an action upon the case.

No action to be brought against bailiff, &c., acting under order of the Court, without notice, and making Clerk of Court a defendant.

Ibid., s. 277.

**311.** (1) No action shall be brought against any bailiff, or against any person acting by the order and in aid of any bailiff, for anything done in obedience to any warrant under the hand of any Clerk of a Local Court and the seal of such Court, until demand has been made, or left at the office of such bailiff in writing signed by the intended party, for the perusal and copy of such warrant, and the same has been refused or neglected for the space of six days after such demand.

(2) If, after such demand and compliance therewith by showing the said warrant to and permitting a copy to be taken by the party demanding the same, any action is brought against such bailiff, or any other person acting in his aid, for any such cause as aforesaid, without

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## PART XVII.

without making the Clerk of the said Court who signed or sealed the said warrant the defendant in the action, then, on the production or proof of such warrant at the trial of such action, the Court shall give its judgment for the defendant, notwithstanding any defect of jurisdiction or other irregularity in the said warrant.

(3) If such action is brought jointly against such Clerk and such bailiff or person acting in his aid, then, on proof of such warrant, the Court shall find for such bailiff, and for such person so acting, notwithstanding any such defect or irregularity.

(4) If the judgment is given against the said Clerk, then the plaintiff shall recover his costs against him, to be taxed in such manner as to include such costs as the plaintiff is liable to pay to such defendant for whom the Court has found as aforesaid.

(5) If any action is brought, the defendant may plead the general issue, and give the special matter in evidence at any trial had thereupon.

**312.** (1) All proceedings, whether civil or criminal, commenced against any person for anything done in pursuance of this Act shall be commenced within three months after the Act was done, and not otherwise. Protection to officers.  
Ibid., s. 278.

(2) Notice in writing of any such proceedings, and the cause thereof, shall be given to the defendant one month at least before the commencement of the proceedings.

(3) The defendant in any such action may plead the general issue, and give this Act and the special matter in evidence at any trial.

(4) The plaintiff shall not recover in such action if tender of sufficient amends is made before action brought, or if, after action brought, the defendant pays into Court sufficient amends.

(5) If the defendant pays into Court sufficient amends, the plaintiff shall recover his costs of action up to the time of payment into Court, and if judgment is given for the defendant, or the plaintiff is nonsuited, or discontinues, the defendant shall recover full costs, as between solicitor and client, and have his remedy for the same in the usual way.

**313.** Every oath, affirmation, or declaration required by this Act, or intended to be used in any action or proceeding in a Local Court, may be taken or made before a Judge, Special Magistrate, or Justice, or before the Clerk of any Local Court or a Commissioner for taking affidavits in the Supreme Court. Oaths and affirmations—Before whom to be taken and made.  
Ibid., s. 279.

**314.** (1) All sums of money which have already been or are hereafter paid into a Local Court to the use of any party to an action therein, shall, after remaining unclaimed for six years, be paid to the Treasurer of the State for the purposes of the General Revenue. Suitors' money unclaimed for six years to go to General Revenue, saving disability.  
Ibid., s. 280.

(2) No

(2) No time during which the person entitled to claim any such sum of money was an infant or of unsound mind or beyond the seas shall be taken into account in estimating the said period of six years.

(3) Upon receiving a certificate under the hand of the Judge or the Special Magistrate, certifying to the claimant's right to the money, and the fact and duration of his disability as above mentioned, the Treasurer shall pay the money to the claimant or his solicitor at any time within six years after the termination of such disability.

Appropriation of penalties.

*Ibid.*, s. 281.

**315.** All fines or penalties imposed by any Local Court, Judge, Special Magistrate, or Justice under the authority of this Act shall, except where otherwise specially appropriated, be paid to the Treasurer for the purposes of the General Revenue of the State.

Appropriation of moneys.

*Ibid.*, s. 282.

**316.** All moneys received as fees or penalties under this Act, unless otherwise expressly appropriated, shall be paid to the Treasurer for the purposes of the General Revenue of the State.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

TOM BRIDGES, Governor.

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## SCHEDULES.

## THE FIRST SCHEDULE.

Title of Act.	ACTS REPEALED.	Number and Year of Act.
Local Courts Act, 1886 .....		No. 386 of 1886
Local Court Appeals Amendment Act, 1887 .....		No. 411 of 1887
The Local Courts Amendment Act, 1888 .....		No. 431 of 1888
The Local Courts Act Amendment Act, 1889 .....		No. 464 of 1889
The Local Courts Act Further Amendment Act, 1913.		No. 1112 of 1913

## THE SECOND SCHEDULE.

## FEES ON COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

	Under £30.		£30 and Upwards.	
	£	s. d.	£	s. d.
Instructions for order or commission .....	0	6 8	0	6 8
Drawing and engrossing affidavit .....	0	6 8	0	13 4
Application for order or commission .....	0	10 0	1	0 0
Obtaining appointment from Commissioner for examination	0	6 8	0	6 8
Copies of order or commission .....	6d. per folio			
Drawing notice to serve on witnesses .....	1s. per folio			
Copying .....	6d. per folio			
Service of copy order or commission with notice .....	the same as for service of a subpoena			
Attending examination, per day .....	1	1 0	2	2 0
Fee to Clerk of Court or other Commissioner, per day .....	1	1 0	2	2 0
Journeys of Clerk of Court or other Commissioner to place of examination, each way .....	6d. per mile			
Attending for office copy of depositions .....	0	3 4	0	3 4

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## THE THIRD SCHEDULE.

## COURT FEES.

	Under £10.	£10 and under £20.	£20 and under £50.	£50 and under £100.	£100 and over.
	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>£ s. d.</i>
Filing claim and issuing ordinary summons ..	2 0	3 0	7 0	10 0	0 15 0
Each copy above one copy .....	1 0	1 0	1 0	1 0	0 1 0
Filing claim and issuing special summons ...	3 0	5 0	10 0	15 0	1 0 0
Each copy above one copy .....	1 0	1 0	1 0	1 0	0 1 0
Entering appearance for each defendant separately appearing, inclusive of notice of trial to both parties .....	2 0	3 0	5 0	10 0	0 10 0
Filing reply .....	2 0	2 0	3 0	5 0	0 5 0
Hearing fee at trial of action, including consent to judgment on trial .....	5 0	8 0	15 0	20 0	1 0 0
Signing judgment in default of appearance or in case of partial appearance or judgment by consent before trial .....	5 0	5 0	10 0	15 0	1 0 0
Taxing costs .....	2 0	3 0	4 0	5 0	0 7 0
Order of every description .....	2 0	3 0	4 0	5 0	0 6 0
Writ or warrant of execution .....	3 0	5 0	7 0	10 0	0 15 0
Warrant of <i>fi fa</i> .....	2 6	4 0	5 0	10 0	0 15 0
Warrant of arrest with summons .....	3 6	6 0	10 0	20 0	1 10 0
Warrant of arrest after issue of summons .....	5 0	7 0	10 0	15 0	1 0 0
Warrant of commitment .....	5 0	7 0	10 0	15 0	1 0 0
Subpœna (any number of witnesses) .....	1 0	2 0	3 0	4 0	0 5 0
Swearing affidavit, or making declaration .....	1 0	2 0	2 0	2 0	0 2 0
Bonds of every description .....	1 0	3 0	5 0	7 0	0 10 0
Interpleader summons .....	2 0	3 0	7 0	10 0	0 15 0
Unsatisfied judgment summons .....	2 0	3 0	4 0	5 0	0 5 0
Any interlocutory summons .....	1 0	2 0	3 0	4 0	0 5 0
Receiving and paying fee, if amount paid into Court .....	3 0	3 0	3 0	3 0	0 3 0
Summons for the recovery of tenements or for the non-payment of rent, under Part X.	5 0	5 0	5 0	5 0	0 5 0
Summons for the recovery of premises under Part X., each copy above one copy .....	1 0	1 0	1 0	1 0	0 1 0
Summons in ejectment, under Part XI. ....	5 0	5 0	5 0	5 0	0 5 0
Summons in ejectment, under Part XI., each copy above one copy .....	1 0	1 0	1 0	1 0	0 1 0
Hearing fee on trial of action under Part X. .	5 0	5 0	5 0	5 0	0 5 0
Hearing fee on trial of action under Part XI. .	10 0	10 0	10 0	10 0	0 10 0
Entering judgment in ejectment .....	10 0	10 0	10 0	10 0	0 10 0
Transmission fee, where a summons is taken out in one Local Court for service from another .....	1 0	1 0	1 0	1 0	0 1 0

In actions under Part XII. the same fees shall be taken as in actions where £100 and over is claimed, and in addition, on reference to the Clerk of the Court, for every hour or part of an hour the Clerk is occupied .....

5 0	5 0	5 0	5 0	0 5 0
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When advertisements are inserted by the Court or an officer thereof . . . The actual cost thereof.

## Local Courts Act.—1926.

## THE FOURTH SCHEDULE.

## BAILIFFS' FEES.

Bailiffs' Fees.	Under £10.	£10 and under £20.	£20 and under £50.	£50 and over.
	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>
Service of ordinary summons, interpleader summons, or garnishee order or summons .....	2 0	3 0	4 0	5 0
Service of special summons and unsatisfied judgment summons .....	3 0	4 0	5 0	5 0
Service of every other summons, order, or notice .....	2 0	3 0	4 0	5 0
Service of subpoena each witness .....	1 6	2 6	4 0	5 0
Service of warrant of execution .....	3 0	5 0	7 6	10 0

*Other Bailiffs' Fees.*

	£	<i>s.</i>	<i>d.</i>
Mileage for service of any process, 1s. per mile beyond the first mile.			
Executing any warrant of imprisonment or attachment .....	0	10	0
Executing any warrant to arrest absconding debtor, 10s., and 1s. per mile, unless officer travels by railway or water, then the actual charge: and 10s. per day for expenses if engaged more than one day in the execution of such warrant.			
Executing any warrant in the nature of a writ of <i>capias ad satisfaciendum</i> one mile or within one mile of his Court .....	1	1	0
Executing any warrant in the nature of a writ of <i>capias ad satisfaciendum</i> over one mile but within seven miles of his Court .....	1	11	6
Executing any warrant in the nature of a writ of <i>capias ad satisfaciendum</i> beyond seven miles from his Court, £1 11s. 6d., and an additional shilling for every mile one way beyond seven miles, and a further shilling per mile on return journey if prisoner is in charge.			
Serving any summons for the recovery of premises under Part X. ....	0	5	0
Serving any summons in ejectment, under Part XI. ....	0	5	0
Service of summons, with particulars annexed, under Part XII. ....	0	5	0
Executing any warrant to give possession, under Parts X. or XI. ....	0	5	0
Levying any distress .....	0	5	0
Possession of goods on the premises under execution—per day .....	0	12	6
Cartage on removal of goods, storage of same, if any, costs of feeding horses or cattle seized—the amount actually paid.			
If goods sold, seven pounds ten shillings per centum on the amount realised, to include all charges of the auctioneer.			
In case where any bailiff shall remain in possession under more than one warrant of execution, one possession fee only shall be chargeable.			
In actions under Part XII., the same fees may be charged as are chargeable in actions where £50 or over is claimed.			

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## THE FIFTH SCHEDULE.

## PRACTITIONERS' FEES.

	Up to £5.	Over £5 and up to £20.	Over £20 and up to £30.	Over £30 and up to £100.	Over £100 and up to £250.	Over £250.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
For taking instructions, letter before action, issuing summons, and entering appearance .....	—	0 10 0	1 0 0	2 0 0	3 0 0	4 0 0
Getting up case for trial, preparing summons for witnesses, notice to admit and produce .....	0 10 0	0 10 0	0 10 0	1 10 0	2 0 0	4 0 0
Obtaining order for discovery, filing affidavit, perusing and making inspection and copies of documents .....	—	—	—	0 15 0	1 0 0	2 0 0
Obtaining order for interrogatories and filing interrogatories and answers .....	—	—	—	0 15 0	1 0 0	2 0 0
Counsel's fee .....	1 1 0	1 1 0	1 1 0	4 4 0	5 5 0	10 10 0
Attending for unsatisfied judgment summons and appearing at hearing .....	0 10 6	0 10 6	0 10 6	1 1 0	1 11 6	2 2 0
Notice by claimant to bailiff, with particulars to be filed under Part XI. (other charges same as in ordinary action) .....	0 7 6	0 7 6	0 7 6	0 10 0	1 0 0	1 0 0
Instructions for and affidavit under Part XIII., other charges same as in ordinary action .....	0 7 6	0 7 6	0 7 6	0 10 0	—	—
Replevin bond (other charges are the same as in ordinary action) .....	0 10 0	0 10 0	0 10 0	1 0 0	—	—
Application for order for attachment of debts, including affidavit in support .....	0 15 0	0 15 0	0 15 0	1 0 0	2 0 0	2 0 0
Hearing of application to make order absolute, including necessary affidavits .....	0 15 0	0 15 0	0 15 0	1 0 0	2 0 0	2 0 0
Summons under Part X. ....	5 per centum of the rent calculated at per annum, whether the premises are let by the year or not.					

For service of all documents the same as allowed to bailiff.

In the application of the scale of costs as between party and party, the amount recovered or the value of the property in litigation shall regulate the scale of the plaintiff's costs, and the amount sought to be recovered or the value of the property in litigation the scale of the defendant's costs, but as between solicitor and client the amount sued for or the value of the property in litigation shall regulate the scale without reference to the result.

Under Part X. the rent is, for the purpose of ascertaining the scale of costs, to be calculated at per annum, whether the premises are let by the year or not.

For proceedings in ejectment where the value of the land sought to be recovered does not exceed £100, the fees will be on the same scale as that which applies in ordinary actions where £100 is claimed, except in cases where, although the value of the land does not exceed £100, the value of the land, together with the amount of the claims properly joined, exceeds £100. Where the value of the land sought to be recovered exceeds £100, or where the value of the land together with the amount of the claims properly joined, exceeds £100, the fees will be regulated by the above schedule, according to the scale therein provided.

If any question or issue is directed to be tried in any garnishee proceedings, charges shall be allowed in respect thereof as if the amount sought to be garnisheed was the amount claimed by a plaintiff in an ordinary action, and the trial was the trial of such an action. Where proof of any document, of which the original is in the custody of any public officer, is given by means of a copy, the costs reasonably and properly paid to the public officer for preparing and for certifying such copy may be allowed.

The counsel fee in the above schedule shall be allowed in respect of the first period of five hours occupied in the actual trial or hearing of the action. In respect of each subsequent hour, or part of an hour so occupied, one-fifth of such fee shall be also allowed, but no fractions of One Shilling shall be allowed.