



**1850.**

**No. 5.**

*Repealed by No. 15 (1861)*

*ORDINANCE enacted by the Governor of South Australia with the advice and consent of the Legislative Council thereof.*

*For the Recovery of Small Debts and Trial and Punishment of Minor Offences in South Australia.*

(12th March, 1850.)

*Amended by  
No 14 - 1850  
No 7 - 1851  
+ Amended by  
No 25 - 1853.*

*No 20 of 1854*

Preamble.

**W**HEREAS it is expedient to amend the Constitution of the Courts having jurisdiction in civil demands of small amount, and in minor criminal matters: BE IT THEREFORE ENACTED, by THE GOVERNOR OF SOUTH AUSTRALIA with the advice and consent of THE LEGISLATIVE COUNCIL thereof—THAT from and after the commencement hereof, an Ordinance of the Governor of South Australia, with the advice and consent of the Legislative Council, passed on the Second day of January, One thousand eight hundred and thirty-seven

7 William IV No 1.

seven

1 Vic. No. 2, 1837,

No. 18, 1847.

Repeal of Quarter Sessions and of Resident Magistrates' Court Acts.

*I. Constitution and Officers of Courts.*

Governor may by Proclamation constitute Local Courts.

Special Magistrates to be appointed.

Clerks and Officers of Court.

seven, "For the Establishment of Courts of General and Quarter and Petty Sessions in His Majesty's Province of South Australia;" And also an Ordinance passed on the seventeenth day of November, One thousand eight hundred and thirty-seven, "To establish Courts of Resident Magistrates, to appoint Resident Magistrates, to confer on Justices of the Peace certain powers until such Resident Magistrates be appointed, to provide for the recovery of small debts, and the punishment of certain offences within the Province of South Australia;" And also an Ordinance passed on the Twenty-second day of November, One thousand eight hundred and forty-seven, "To remove doubts respecting the Jurisdiction of Resident Magistrates in certain cases," shall be, and the same are hereby respectively repealed, save and except so far as relates to anything heretofore lawfully done in pursuance thereof; and all proceedings which shall have been commenced, and shall be still pending, in any Court under the said recited Ordinances, shall be continued, heard, and determined under the provisions hereof.

II. AND BE IT ENACTED, that it shall be lawful for the Governor, from time to time, as occasion may require, by Proclamation published in the *South Australian Government Gazette*, to constitute and establish Local Courts for the recovery of small debts and trial and punishment of minor offences, to be holden at such times and places throughout the Province, as may be most fit and convenient, and as may be specified in such Proclamation, and by such Proclamation to assign to such Courts respectively, either the limited jurisdiction hereby authorised to be exercised by any Special Magistrate alone or two Justices of the Peace, or the full jurisdiction and powers conferred by this Ordinance; and likewise by Proclamation to alter the time or place or manner of holding any such Courts, which Courts respectively shall be, and are hereby declared to be Courts of Record.

III. AND BE IT ENACTED, that it shall be lawful for Her Majesty, or for the Governor in name and on behalf of Her Majesty, from time to time, by commission under the public seal of the Province, to nominate and appoint during Her Majesty's pleasure, such and so many Justices of the Peace as may be deemed fit and proper to be Special Magistrates, with reasonable and sufficient salaries, or without salary, to exercise the powers conferred on them by this Ordinance, and to execute such other duties as may be assigned to them respectively.

IV. AND BE IT ENACTED, that such Courts shall have such Clerks, Bailiffs, and other Ministerial Officers, as shall be necessary for the administration of justice, and the execution of the judgments, orders, and process of such Courts, who shall be appointed

appointed and removable by the Governor at pleasure; and shall execute such other duties as shall be assigned to them respectively by this Ordinance, or the general Rules and Orders to be made in pursuance hereof.

*Constitution and  
Officers of Courts.*

V. AND BE IT ENACTED, that no such Clerk or partner of any Clerk shall act as Bailiff; and no Clerk, Bailiff, or other Ministerial Officer, shall, either by himself or his partner, be directly or indirectly engaged as Attorney or Agent for any party in any proceeding in such Court, under the penalty of Fifty Pounds for every such offence, to be recovered by any person who shall sue for the same by action of debt or on the case,

Clerks not to act as  
Attorneys or  
Agents.

VI. AND BE IT ENACTED, that every such Clerk, Bailiff, or other Officer who may receive any monies in the execution of his duty shall give security for such sum, and, in such manner and form as the Governor from time to time shall order, for the due performance of his office, and for the due accounting for and payment of all monies received by him under this Ordinance, or which he may become liable to pay for any misbehavior in office.

Officers to give se-  
curity for due per-  
formance of office.

VII. AND BE IT ENACTED, that every Clerk of Court shall issue all summonses, warrants, and writs of execution, and register all orders, judgments, and proceedings of Court, and shall take charge of and keep an account of all Court fees and fines payable or paid into Court, and of all monies paid into and out of Court, and shall enter such account in a book belonging to the Court to be kept by him for that purpose, and shall from time to time, whensoever and in such form and manner as he shall be ordered by the Governor, submit his accounts to be audited or settled by the Auditor-General, and pay over to the Colonial Treasurer, or such other officer as may in that behalf be appointed by the Governor, the monies remaining in his hands over and above such balance as he shall be allowed to retain for the current expenditure of the Court, and such Clerk shall execute all such further duties as shall be assigned to him by the Governor.

Duties of Clerks  
and their accounts.

VIII. AND BE IT ENACTED, that the Governor shall from time to time give such directions as to him shall seem meet for securing the balances and other sums of money in the hands of any officers of any such Court holden under this Ordinance, and for the due accounting for and application of all such balances and other sums of money.

Governor to direct  
how balances and  
moneys to be ac-  
counted for.

IX. AND BE IT ENACTED, that in every case cognisable under this Ordinance, of civil demands in which the plaintiff shall seek to recover no more than Five Pounds, and of petty

In what cases the  
powers of the Court  
may be exercised by  
a Special Magis-  
trate alone, or by  
two Justices.

*Constitution and  
Officers of Courts.*In what cases by  
any one Justice.

petty offences in respect of which the Court shall lawfully award no higher or more severe punishment than a fine not exceeding Five Pounds, or imprisonment not exceeding fourteen days, it shall be lawful for any Special Magistrate alone, or for any two or more Justices of the Peace attending at the prescribed time and place, and in open Court, to exercise the powers of the Court; and in all cases of issuing any summons or warrant, taking any information or recognisance, or enlarging, continuing, or adjourning any proceedings, and in all merely incidental or interlocutory proceedings under this Ordinance, or any general rule or order, made and confirmed in pursuance thereof, it shall be lawful for any one or more Justices of the Peace, attending at the prescribed time and place, and in open Court, to exercise the powers of such Court.

Adjudication by  
three Magistrates.

X. AND BE IT ENACTED, that in all causes and matters, as well civil as criminal, cognisable under this Ordinance (other than such as may be disposed of in manner hereinbefore provided), the trial or hearing and adjudication shall be by and before three Justices of the Peace, of whom one shall be a Special Magistrate, who shall preside, and in case such Justices cannot agree, the decision of the major part of them shall be taken, entered and recorded as the judgment of the Court.

Penalties on Justices  
not attending and  
acting when sum-  
moned.

XI. AND BE IT ENACTED. that the Clerk of the Court shall cause to be summoned, one week before the first day of the sitting of the Court, not less than two such Justices, being resident within Ten miles, to attend at the time and place of holding such Court, by regular rotation, according to a list to be kept by him for that purpose; and the Justices so attending, shall act with the Special Magistrate during the sittings, or shall each procure some other Justice, who shall so attend and act: AND if any such Justice of the Peace, resident within Ten miles of the place of holding the Court, having been so summoned, shall refuse or neglect to attend and act, or to procure another Justice to attend and act in his stead, in manner aforesaid, every such Justice shall, for every such refusal or neglect, forfeit and pay a penalty of Five Pounds.

Exemption.

XII. PROVIDED ALWAYS, AND BE IT ENACTED, that no Officer in the service of Her Majesty, or of the Colonial Government, and no member of the Legislature, during the Legislative Session, shall be compelled to attend and act in any Court under this Ordinance, otherwise than, if appointed, as a Special Magistrate.

Local Courts may  
reserve points for  
the Supreme Court.

XIII. AND BE IT ENACTED, that whenever any such Court shall see fit, it shall be lawful for the Court, as well in Civil as in Criminal Proceedings, to reserve any point or points for the decision of one

or more of the Judges of the Supreme Court, and to refer such point or points to the said Judge or Judges, in such manner and on such terms as to the said Court shall seem proper; and the decision of such Judge or Judges shall be final, binding, and conclusive as regards the matter of such reference.

II. *Civil Jurisdiction.*

XIV. AND BE IT ENACTED, that all pleas of personal actions where the debt or damage claimed is not more than Thirty Pounds, whether on balance of account or otherwise, may be holden in a Court constituted under this Ordinance, and shall be heard and determined in a summary way, according to equity and good conscience, and the substantial merits of the case. PROVIDED ALWAYS, that no such Court shall have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditament or easement, or to any toll, fair, market, or franchise shall be in question, or in which the validity of any devise, bequest, or limitation, under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction or breach of promise of marriage.

Definition of the Civil Jurisdiction of the Local Courts.

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Proviso.

XV. AND BE IT ENACTED, that on the application of any person desirous to bring a suit under this Ordinance, the Clerk of the Court shall enter in a book to be kept for that purpose in his office, a plaint in writing, stating the names and the last known places of abode of the parties, and the substance of the Plaintiff's demand, every one of which plaints shall be numbered in every year according to the order in which it shall be entered, and thereupon a summons, stating the substance of the action, and bearing the number of the plaint on the margin thereof, shall be issued according to such form, and be served on the defendant so many days before the day on which the Court shall be holden at which the cause is to be tried, or before the day on which appearance is to be entered, as shall be directed by the Rules made for regulating the Practice of the Court, as hereinafter provided; and delivery of such summons to the defendant, or in such other manner as shall be specified in the Rules of Practice, shall be deemed good service; and no misnomer or inaccurate description of any person or place in any such plaint or summons, shall vitiate the same, if the person or place be therein described so as to be commonly known.

Suits to be by Plaintiff.

XVI. AND BE IT ENACTED, that the Defendants shall be summoned to the nearest Court, having jurisdiction to the amount claimed, to which the defendant or one of the defendants shall dwell or carry on business at the time of the action brought, or to which the cause of action arose.

Summons to the nearest Court.

XVII. AND

*Civil Jurisdiction.*  
 Demands not to be divided for the purpose of bringing Two or more Suits.

XVII. AND BE IT ENACTED, that it shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said Courts, but any plaintiff having cause of action for more than the sum for which a plaint might be entered under this Ordinance, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding the sum competent to be awarded by such Court; and the judgment of the Court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

Minors may sue for Wages.

XVIII. AND BE IT ENACTED, that it shall be lawful for any person under the age of twenty one years to prosecute any suit in any Court holden under this Ordinance, for any sum of money within the amount competent to be awarded as aforesaid, which may be due to him for wages or piece-work, or for work as a servant, in the same manner as if he were of full age.

Cases of partnership and intestacy.

XIX. AND BE IT ENACTED, that the jurisdiction of the Courts holden under this Ordinance shall extend to the recovery of any demand, not exceeding the amounts respectively hereinbefore specified, which is the whole or part of the unliquidated balance of a partnership account, or the amount, or part of the amount, of a distributive share under an intestacy, or of any legacy under a will.

Executors may sue and be sued.

XX. AND BE IT ENACTED, that it shall be lawful for any executor or administrator to sue and be sued in any Court holden under this Ordinance, in like manner as if he were a party in his own right; and judgment and execution shall be such as in the like case would be given or issued in any superior Court.

No privilege allowed.

XXI. AND BE IT ENACTED, that no privilege, except as herein excepted, shall be allowed to any person to exempt him from the jurisdiction of any Court holden under this Ordinance.

One of several persons liable may be sued.

XXII. AND BE IT ENACTED, that where any plaintiff shall have any demand recoverable under this Ordinance against two or more persons jointly answerable, it shall be sufficient if any of such persons be served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued, or may not be within the jurisdiction of the Court; and every such person against whom judgment shall have been obtained under this Ordinance, and who shall have satisfied such judgment, shall be entitled to demand and recover in the Courts holden under this Ordinance, contribution from any other person jointly liable with him.

XXIII. AND

XXIII. AND BE IT ENACTED, that on or before the day or within the time named in the summons, or appointed in that behalf, the defendant shall enter appearance, and on the day appointed for the trial or hearing, the plaintiff shall appear, and thereupon the defendant shall be required to appear to answer such plaint; and on answer being made in Court, the Court shall proceed, without further pleadings or formal joinder of issue, to hear and determine the case.

*Civil Jurisdiction.*

Proceedings on hearing the plaint.

XXIV. AND BE IT ENACTED, that no evidence shall be given by the plaintiff, on the trial of any such case as aforesaid, of any demand or cause of action except such as shall be stated in the summons hereby directed to be issued.

No evidence to be given of any demand that is not in summons.

XXV. AND BE IT ENACTED, that no defendant in any Court holden under this Ordinance, shall be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff, or to set up by way of defence and to claim and have the benefit of infancy, coverture, or any Statute of Limitations, or of his discharge under any Statute or Law relating to bankrupts or insolvents, or to set up any other such defence as shall be specified by the Rules made in pursuance hereof for regulating the Practice of the Court, without the consent of the plaintiff, unless such notice thereof as shall be directed by the said Rules of Practice shall have been given to the Clerk of the Court at the time of entering appearance; and in every case in which the Practice of the Court shall require such notice to be given, the Clerk of the Court shall, as soon as conveniently may be after receiving such notice, communicate the same to the plaintiff by the post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for the defendant to prove that such notice was communicated to the plaintiff by the Clerk.

Notices to be given to the Clerk of Special Defences, who shall communicate the same to the plaintiff.

XXVI. AND BE IT ENACTED, that the Court may in any case, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the Court, in dispute between such parties, to be referred to arbitration to such person or persons, and in such manner and on such terms, as the Court shall think reasonable and just; and such reference shall not be revocable by either party, except by consent of the Court; and the award of the arbitrator or arbitrators, or umpire, shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the Court: PROVIDED that the Court may, if it think fit, on application to it on the first sitting thereof held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, for unfairness, improper conduct, or obvious mistake of the arbitrators; or may, with the consent of both parties

Suits may be settled by arbitration.

Proviso.



Civil Jurisdiction.

parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid.

Proceedings when  
plaintiff does not  
appear.

XXVII. AND BE IT ENACTED, that if upon the day of the return of any summons, or at any continuation or adjournment of the said Court, or of the cause for which the said summons shall have been issued, the plaintiff shall not appear either in person or by some person duly authorised in his behalf, in conformity herewith, or appearing, shall not make proof of his claim or demand to the satisfaction of the said Court, it shall be lawful for the said Court, if it shall think fit (when the defendant personally, or by some one duly authorised on his behalf, shall appear, and shall not admit the claim or demand), to award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the Court in its discretion shall think fit; and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same Court can be recovered: PROVIDED ALWAYS, that if the plaintiff shall not appear when called upon, and the defendant, or some one duly authorised on his behalf as aforesaid, appear and admit the cause of action to the full amount claimed, or a part thereof, and pay the fees in the first instance payable by the plaintiff, the Court may, if it shall think fit, proceed to give judgment according to such admission.

Proviso.

Proceedings if no  
appearance en-  
tered.

XXVIII. AND BE IT ENACTED, that if an appearance shall not be entered for the Defendant on or before the day named in the summons, or within such time as shall be appointed in that behalf, the Plaintiff may, (upon due proof of the service of the summons,) sign judgment, and proceed to execution thereon forthwith, according to such manner of proceeding as shall be appointed by any General Rules in pursuance hereof: And after appearance entered, if the Defendant shall not appear in Court at the calling of the cause, either personally, or by some one on his behalf, or shall neglect to answer the claim or demand, the Court may, upon due proof of the service of the summons, proceed to the trial or hearing of the cause on the part of the plaintiff only, and the judgment thereon shall be as valid as if both parties had attended: PROVIDED ALWAYS, that the Court may, in any case, at the same or any subsequent sitting of the Court, or otherwise, set aside any judgment given in the absence of the defendant, and the execution thereupon, and may grant a new trial or hearing of the cause, upon such terms, if any, as to payment of costs, giving security for debt or costs, or such other terms as the said Court may think fit, on sufficient cause shown for that purpose.

Proceedings if  
defendant does not  
appear.

Proviso.

Court may grant  
time.

XXIX. AND BE IT ENACTED, that the Court may in any case make orders for granting time to the plaintiff or defendant to proceed



ceed in the prosecution or defence of the suit, and also may from time to time continue or adjourn any Court, or the hearing or farther hearing of any cause, in such manner as to the Court may seem meet.

*Civil Jurisdiction.*

XXX. AND BE IT ENACTED, that it shall be lawful for the defendant in any action brought under this Ordinance, within such time as shall be directed by the Rules made for regulating the Practice of the Court, to pay into Court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment; and notice of such payment shall be communicated by the Clerk of the Court to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business; and the said sum of money shall be paid to the plaintiff, but if he shall elect to proceed, and if the plaintiff shall recover no further sum in the action than shall have been so paid into Court, the plaintiff shall pay to the defendant the costs incurred by him in the said action after such payment; and such costs shall be settled by the Court, and an order shall thereupon be made by the Court for the payment of such costs by the plaintiff.

Defendant may pay money into Court.

Notice of such payment to be given to the plaintiff.

XXXI. AND BE IT ENACTED, that on the trial or hearing of any suit, or on any other proceeding under this Ordinance, the parties thereto, their wives, and all other persons, by consent of parties, or order of the Court, may be examined either on behalf of the plaintiff or defendant upon oath, or solemn affirmation, in those cases in which persons are by law allowed to make affirmation instead of taking an oath, to be administered by the proper officer of the Court.

Parties and others may be examined.

XXXII. AND BE IT ENACTED, that all the costs of any action or proceeding in the Court, not herein otherwise provided for, shall be paid by or apportioned between the parties in such manner as the Court shall think fit, and, in default of any special direction, shall abide the event of the action, and execution may issue for the recovery of any such costs in like manner as for any debt adjudged in the said Court.

Costs to be apportioned or to abide the event of the action.

XXXIII. AND BE IT ENACTED, that every order and judgment of any Court holden under this Ordinance, except as herein provided, shall be final and conclusive between the parties; but the Court shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given to the Court, entitling either the plaintiff or the defendant to the judgment of the Court, and shall also in every case whatever have the power, if the Court shall think fit, to order a new trial or hearing to be had, on such terms as the Court shall think reasonable, and in the meantime to stay the proceedings.

Judgments how far final.

Nonsuits and re-hearings.

XXXIV AND

Civil Jurisdiction.

No action to be removed into the Supreme Court but on certain conditions.

XXXIV. AND BE IT ENACTED, that no plaint entered in any Court holden under this Ordinance shall be removed or removable from the said Court into the Supreme Court by any writ or process, unless the debt or damages shall exceed Ten Pounds, and then only on giving notice to the Clerk of the Local Court before the time appointed for entering appearance, and by leave of a Judge of the Supreme Court in cases which shall appear to such Judge fit to be tried in the Supreme Court, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as he shall think fit.

Who may appear for any parties in Court.

XXXV. AND BE IT ENACTED, that no person shall be entitled to appear for any other party to any proceeding in any of the said Courts, unless he be a Barrister or Attorney of the Supreme Court, or, by leave of the Court, any other person allowed by the Court to appear instead of such party; but no Barrister, Attorney, or other person, except by leave of the Court, shall be entitled to be heard to argue any question as Counsel for any other person in any proceeding in any Court holden under this Ordinance; and no person not being such Barrister or Attorney shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said Court; and no such Barrister or Attorney shall be entitled to have or recover therefrom any sum of money, unless the debt or damage claimed shall be more than Five Pounds, or to have or recover more than Ten Shillings for his fees and costs, unless the debt or damage claimed shall be more than Ten Pounds, or more than at the rate of Five *per centum* on the amount claimed, in any case within the summary jurisdiction given by this Ordinance; and the expense of employing a Barrister or Attorney either by the plaintiff or the defendant, shall not be allowed, on taxation of costs, in the case of a plaintiff where less than Five Pounds is recovered, or in the case of a defendant where less than the like sum is claimed, or in any case, unless by the order of the Court.

Court may make orders for payment by instalments.

XXXVI. AND BE IT ENACTED, that the Court may make orders concerning the time or times, and by what instalments any debt, or damages, or costs, for which judgment shall be obtained in the said Court, shall be paid, and all such moneys shall be paid into Court, unless the Court shall otherwise direct.

Cross judgments.

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

XXXVIII. AND

XXXVIII. AND BE IT ENACTED, that whenever the Court shall have made an order for the payment of moneys, the amount shall be recoverable, in case of default or failure of payment thereof forthwith, or at the time or times and in the manner thereby directed, by execution against the goods and chattels of the party against whom such order shall be made; and the Clerk of the said Court, at the request of the party prosecuting such order, shall issue a writ of *Fieri Facias* as 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 such party, such sum of money as shall be so ordered, wheresoever they may be found, and also the costs of the execution; and all constables and other peace officers within their several jurisdictions, shall aid in the execution of every such warrant.

*Civil Jurisdiction.*  
Court may award execution against goods.

XXXIX. AND BE IT ENACTED, that if the Court shall have made any order for payment of any sum of money by instalments, execution upon such order shall not issue against the party until after default in payment of some instalment according to such order, and execution or successive executions may then issue for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the Court shall order, either at the time of making the original order, or at every subsequent time.

Execution not to issue till after default in payment of some instalment, and then it may issue for the whole sum due.

XL. AND BE IT ENACTED, that every bailiff or officer executing any process of execution issuing out of the said Courts against the goods and chattels of any person may, by virtue thereof, seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade, to the value of Five Pounds, which shall to that extent be protected from such seizure), and may also seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to such person against whom any such execution shall have issued as aforesaid.

What goods may be taken in execution.

XLI. AND BE IT ENACTED, that the proper officer of Court shall hold any cheques, bills of exchange, promissory notes, specialties, or other securities for moneys which shall have been so seized or taken as aforesaid, as a security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised for the benefit of the plaintiff; and the plaintiff may sue in the name of defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby, when the time of payment thereof shall have arrived.

Securities seized to be held by an officer of Court.

XLII. AND

*Civil Jurisdiction.*

Parties having obtained an unsatisfied judgment may obtain a Summons on charge of fraud.

**XLII. AND BE IT ENACTED,** that it shall be lawful for any party who has obtained any unsatisfied judgment or order in any Court held by virtue of this Ordinance, or any Ordinance hereby repealed, for the payment of any debt or damages or costs, to obtain a Summons from the Court (having jurisdiction to the amount claimed), nearest to which any other party shall then dwell or carry on his business, such Summons to be in such form as shall be directed by the Rules made for regulating the Practice of the Courts herein provided, and to be served personally upon the person to whom it is directed, requiring him to appear at such time as shall be directed by the said Rules, to answer such things as are named in such Summons; and if he shall appear in pursuance of such Summons, he may be examined upon oath touching his Estate and Effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which is the subject of the Action in which judgment has been obtained against him; and as to the means and expectation he then had, and as to the property and means he still hath, of discharging the said debt or damages or liability, and as to the disposal he may have made of any property; and the person obtaining such Summons as aforesaid, and all other Witnesses whom the Court shall think requisite, may be examined upon oath touching the inquiries authorised to be made as aforesaid; and the costs of such Summons and all proceedings thereon shall be deemed costs in the Cause.

Commitment for fraud, &c.

**XLIII. AND BE IT ENACTED,** that if the party so summoned shall not attend as required by such summons, and shall not allege a sufficient excuse for not attending, or shall, if attending, refuse to be sworn, or to disclose any of the things aforesaid, or if he shall not make answer touching the same to the satisfaction of such Court, or if it shall appear to such Court, either by the examination of the party or any other evidence, that such party, if a defendant, in incurring the debt or liability which is the subject of the Action in which judgment has been obtained, has obtained credit from the plaintiff under false pretences, or by means of fraud or breach of trust, or has wilfully contracted such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same, or shall have made or caused to be made any gift, delivery or transfer of any property, or shall have charged, removed or cancelled the same, with intent to defraud his Creditors or any of them, or if it shall appear to the satisfaction of the Court that the said party so summoned has then, or has had since the judgment obtained against him, sufficient means and ability to pay the debt or damages or costs so recovered against him, either altogether or by any instalment or instalments which the Court in which the judgment was obtained shall have so ordered, or as shall

shall be ordered pursuant to the power hereinafter provided, it shall be lawful for such Court, if such Court shall think fit, to order that any such party may be committed to the nearest Common Gaol or House of Correction to the place in which the party summoned is resident, or to any Prison which shall be provided as the prison of the Court, for any period not exceeding forty days.

*Civil Jurisdiction.*

XLIV. AND BE IT ENACTED, that it shall be lawful for any Court before whom such Summons shall be heard, if the Court shall think fit, whether or not it shall make any Order for the committal of the defendant, to rescind or alter any Order that shall have been previously made against any defendant so summoned before such Court for the payment by instalment or otherwise of any debt or damages recovered, to make any further or other Order, either for the payment of the whole of such debt or damages and costs forthwith, or by any instalments, or in any other manner as such Court may think reasonable and just.

Power of Court to rescind or alter Orders.

XLV. AND BE IT ENACTED, that in every case where the defendant in any suit, brought in any such Court, shall have been personally served with the summons to appear, or shall personally appear at the trial of the same, the Court, at the hearing of the cause, or at any adjournment thereof, if judgment shall be given against the defendant, shall have the same power and authority of examining the defendant and the plaintiff and other parties, touching the several things hereinbefore mentioned, and of committing the defendant to prison, and of making an order, as the Court might have and exercise under the provisions hereinbefore contained, in case the plaintiff had obtained a summons for that purpose, after the judgment obtained as hereinbefore mentioned.

Power to examine and commit at hearing of the cause.

XLVI. AND BE IT ENACTED, that whenever any order of commitment shall have been made as aforesaid, the Clerk of Court shall issue a warrant of commitment, under the hand of some Justice, directed to one of the bailiffs, who by such warrant shall be empowered to take the body of the person against whom such order shall be made; and 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, house of correction, and prison mentioned in any such order, shall be bound to receive and keep the defendant therein until discharged under the provisions of this Ordinance, or otherwise by due course of law; and no protection, order, or certificate granted by any Court of Bankruptcy or Insolvency, shall be available to discharge any defendant from any commitment under such last-mentioned order.

Mode of issuing and executing warrants of commitment.

XLVII. AND BE IT ENACTED, that no imprisonment under this Ordinance shall in anywise operate as a satisfaction or extinguishment

Imprisonment not to operate as a satisfaction for the debt, &c.

Civil Jurisdiction.

guishment of the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being anew summoned and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this Ordinance, or deprive the plaintiff of any right to take out execution against the goods and chattels of the defendant, in the same manner as if such imprisonment had not taken place.

How execution may be had at a distance from the Court.

XLVIII. AND BE IT ENACTED, that in all cases where a warrant of execution shall have issued against the goods and chattels of any party at a distance from the Court, or an order for his commitment shall have been made under this Ordinance, it shall be lawful for the Court to issue such warrant of execution or of commitment to the Bailiff of any other Court constituted under this Ordinance, nearest to the place where such party, or his goods and chattels, shall then be, or be believed to be, requiring execution of the same; and thereupon such last-mentioned Bailiff shall be authorised and required to act in all respects as if the warrant of execution or commitment had been directed to him by the Court of which he is the Bailiff, and shall within such time as shall be specified in the Rules of Practice, return to the Court from which the same issued, what he shall have done in the execution of such process; and in case a levy shall have been made, shall, within such time as shall be specified in the Rules of Practice, pay over all moneys received in pursuance of the warrant, to the Court from which the same shall have issued, and where any order of commitment shall have been made and the person apprehended, he shall be forthwith conveyed, in custody of the Bailiff or Officer apprehending him, to the nearest gaol or house of correction, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of this Ordinance; and all constables and other peace officers shall be aiding and assisting in the execution of such warrant.

Power to Court to suspend execution in certain cases.

XLIX. AND BE IT ENACTED, that if it shall at any time appear to the satisfaction of the Court, by oath or affirmation of any person, or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the Court, in its discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such action, for such time and on such terms as the Court shall think fit, and so from time to time, until it shall appear by the like proof as aforesaid that such temporary cause of disability has ceased.

Regulating the sale of goods taken in execution.

L. AND BE IT ENACTED, that no sale of any goods which shall be taken in execution as aforesaid, shall be until after the expiration

piration of five days at least next following the day on which such goods shall have been so taken, unless such goods be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and, until such sale, the goods shall be deposited by the Bailiff in some fit place, or they may remain in the custody of a fit person approved by the Bailiff, to be put in possession by the Bailiff; and no goods taken in execution under this Ordinance shall be sold for the purpose of satisfying the warrant of execution, except by auction, or in such other manner as shall be authorised by any General Rules in pursuance hereof.

*Civil Jurisdiction.*

LI. AND BE IT ENACTED, that it shall be lawful for any such Court, by order, to authorise any of the Bailiff's appointed under this Ordinance, to act as Appraisers or Auctioneers, for the purpose of valuing or selling any Goods, Chattels, or Effects taken in execution under this Ordinance; and the Bailiffs so authorised, may, without other license in this behalf, do and perform all the duties of Appraisers or Auctioneers as the case may be.

Bailiffs may be authorised to act as Appraisers or Auctioneers.

LII. AND BE IT ENACTED, that so much of an Act passed in the eighth year of the reign of Queen Anne, intituled "An Act for the better security of Rents, and to prevent Frauds committed by Tenants," as relates to the liability of goods taken by virtue of any execution, shall not be deemed to apply to goods taken in execution under the process of any Court holden under this Ordinance; but the landlord of any tenement in which any such goods shall be so taken shall be entitled, by any writing under his hand or under the hand of his agent, to be delivered to the Bailiff or officer making the levy, which writing shall state the terms of holding and the rent payable for the same, to claim any rent in arrear then due to him, not exceeding the rent of four weeks where the tenement is let by the week, and not exceeding the rent accruing due in two terms of payment where the tenement is let for any other term less than a year, and not exceeding in any case the rent accruing due in one year; and in case of any such claim being so made, the Bailiff or Officer making the levy shall levy, as well for the amount of the rent so claimed, and the costs of such additional distress, as for the amount of money and costs for which the warrant of execution issued under this Ordinance, and shall not proceed to sell the same or any part thereof within five days next after such distress taken; and if any replevin be made of the goods so taken, such of the goods shall be sold under the execution as shall satisfy the money and costs for which the warrant of execution issued, and the costs of the sale; and the overplus of such sale (if any), and also the residue of the goods, shall be returned as in other cases of distress for rent and replevin thereof; and for every such additional distress for rent in arrear, the Bailiff of the Court shall be entitled to have,

As to the liability of goods taken in execution under 8. Anne, c. 14. Landlords may claim certain rents in arrear.

Bailiffs making levies may distrain for rent and costs.

In case of replevins.

as



*Civil Jurisdiction.* as the costs of the distress, such fees as shall be allowed in pursuance of this Ordinance.

No execution shall be stayed by writ of error.

LIII. AND BE IT ENACTED, that no judgment or execution shall be stayed, delayed, or reversed, upon or by any writ of error, or supersedeas thereon, to be sued for the reversing of any judgment given in any Court holden under the provisions of this Ordinance.

Execution to be superseded on payment of debt and costs.

LIV. AND BE IT ENACTED, that in or upon every warrant of execution issued against the goods and chattels of any person whomsoever, the Clerk of the Court shall cause to be inserted or endorsed the sum of money and costs adjudged, with the sums allowed by this Ordinance, as increased costs of execution of such warrant; and if the party against whom such execution shall be issued shall, before an actual sale of the goods and chattels, pay or cause to be paid or tendered unto the Bailiff or other officer holding the warrant of execution, such sum of money and costs as aforesaid, or such part thereof as the person entitled thereto shall agree to accept in full of his debt or damages and costs, together with the fees herein directed to be paid, the execution shall be superseded, and the goods and chattels of the said party shall be discharged and set at liberty.

Debtor to be discharged from custody upon payment of debt and costs.

LV. AND BE IT ENACTED, that any person imprisoned under this Ordinance, who shall have paid or satisfied the debt or demand, or the instalments thereof payable, and costs remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such order, and all subsequent costs, shall be discharged out of custody, upon certificate of such payment or satisfaction signed by the Bailiff or other officer aforesaid to the Court in which the Order of imprisonment was made.

Claims as to goods taken in execution to be adjudicated in Court.

LVI. AND BE IT ENACTED, that if any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any Court holden under this Ordinance, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued; it shall be lawful for the Clerk of the Court, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to issue a summons calling before the said Court as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in the Supreme or any other Court in respect of such claim, shall be stayed, and the Court in which such action shall have been brought, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of the proceedings had upon such action after the issue of such summons,  
and

and the Court issuing such summons shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to such Court shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such Court.

Civil Jurisdiction.

LVII. AND BE IT ENACTED, that all actions of replevin in cases of distress for rent in arrear or damage faisant which shall be within the amount herein limited, shall and may be brought without writ in a Court held under this Ordinance, according to such form and manner of proceeding as shall be regulated by any General Rules of Practice to be made in pursuance hereof.

Actions of replevin may be brought without writ.

LVIII. AND BE IT ENACTED, that in every such action of replevin, the plaint shall be entered in the Court holden under this Ordinance, nearest to the place where the distress was taken.

Plaints, when to be entered.

LIX. AND BE IT ENACTED, that in case either party to any such action of replevin, shall declare to the Court in which such action shall be brought that the title to any corporeal or incorporeal hereditaments is in question, or that the rent or damage in respect of which the distress shall have been taken, is more than the sum of Thirty Pounds, and shall become bound, with two sufficient sureties, to be approved by the Clerk of the Court, in such sums as to the Court shall seem reasonable, regard being had to the nature of the claim and the alleged value or amount of the property in dispute, or of the rent or damage, to prosecute the suit, with effect and without delay, and to prove before the Court by which such suit shall be tried, that such title as aforesaid is in dispute between the parties, or that there was ground for believing that the said rent or damage was more than Thirty Pounds, then, and not otherwise, the action may be removed before any Court competent to try the same, in manner prescribed by law.

How actions of replevin may be removed.

LX. AND BE IT ENACTED, that all actions and proceedings which before the passing of this Ordinance might have been brought in the Supreme Court, where the plaintiff dwells more than twenty miles from the defendant, or where the cause of action did not arise, wholly or in some material point, within the like distance of the Court nearest to which the defendant dwells or carries on business, at the time of the action brought, or where any officer of the Court shall be a party, except in respect of any claim to any goods and chattels taken in execution of the process of the Court, or the proceeds or value thereof, may be brought and determined in the Supreme Court, at the election of the party suing or proceeding, as if this Ordinance had not been passed.

Concurrent jurisdiction with Supreme Court.

LXI. AND

Civil Jurisdiction.

As to actions brought for small debts in the Supreme Court.

LXI. AND BE IT ENACTED, that if any action shall be commenced after the passing of this Ordinance, in the Supreme Court, for any cause other than those lastly hereinbefore specified, for which a plaint might have been entered in any Court holden under this Ordinance, and a verdict shall be found for the plaintiff for a sum less than might competently have been awarded by such Court; the said plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs as between attorney and client, unless in either case the Judge who shall try the cause, shall certify on the back of the record that the action was fit to be brought in the Supreme Court.

III. Criminal Jurisdiction.

Offences cognisable.

LXII. AND BE IT ENACTED, that the several Courts constituted under this Ordinance, shall have jurisdiction to hear and finally determine in a summary manner any of the following offences that is to say:—All simple larcenies of property to the value of Five Pounds (not being larcenies of any horse, sheep, or animal of the kind commonly called cattle, and not being by Law punishable with Transportation) and all other felonies, having no greater punishment assigned by law than such simple larcenies as aforesaid; and also, all misdemeanors and minor offences, except the following, viz. :—Abduction, indecent assaults on women and children, attempts to commit rape, and unnatural offences, concealment of childbirth, conspiracy, embezzlement, forgery, perjury, and subornation, libel or slander:—And also, except all such offences as by statute are or shall be declared to be not triable by Courts of General or Quarter Sessions of the Peace in England.

Offences not cognisable.

Punishment.

LXIII. PROVIDED ALWAYS, AND BE IT ENACTED, that it shall be lawful for such respective Courts, on conviction for any such offence, to punish, in the case of any such felony, by imprisonment not exceeding six calendar months, with or without hard labor, and solitary or separate confinement not exceeding One Month; and in the case of any such misdemeanor, by fine, not exceeding Twenty Pounds and imprisonment till the same shall be paid, or by imprisonment not exceeding six calendar months, and not in any higher or more severe manner; PROVIDED ALSO, that in all cases of any such crime or offence as aforesaid, when it shall appear to any such Court, or to the committing Magistrate, at the time of committal, that the case, either because of its aggravated character, or other circumstances, is such as to require a punishment exceeding that which such Court is competent to adjudge, or such as ought to be tried before a Jury, it shall be lawful for such Court, or for the committing Magistrate, to commit the prisoner or party accused for trial before the

Proviso.

Supreme

*The Supreme Court - or*

Supreme Court, or to remand such prisoner or party accused, until Her Majesty's Attorney or Advocate-General shall have elected, either to remit such case for the decision of the Local Court, or to proceed in some other Court of competent jurisdiction.

LXIV. AND BE IT ENACTED, that it shall be lawful for the Governor to appoint and authorise any of the Special Magistrates, not being less than three, nor more than five in number, to frame such General Rules and Orders as to them shall seem expedient for and concerning the practice and proceedings of the Courts holden under this Ordinance, as well in civil as in criminal matters, and for the execution of the Process of the said Courts, and generally for carrying this Ordinance into effect; and the same from time to time to annul, vary, and amend: AND the Governor, with the advice of the Executive Council, may approve, or disallow, or alter, or amend such Rules and Orders, or any of them; and such of the Rules as shall be so approved, shall forthwith be notified in the *South Australian Government Gazette* for public information, and shall commence and have the force of Law after the expiration of fourteen days from such publication.

IV. *General Provisions.*

General Rules and Orders of Practice and Proceedings.

LXV. AND BE IT ENACTED, that no defence or objection shall be allowed to the jurisdiction of any such Court on the ground of its not being the nearest Court within the meaning of this Ordinance, unless such defence or objection be stated in writing at or before the time appointed for entering appearance, and the determination of the Court on such matter shall be final and conclusive.

Nearest Court, how to be determined.

LXVI. AND BE IT ENACTED, that any summons or process of the Court not being writs of execution, may be served by any Constable of the Province, or any other person authorised by such Court, and such service shall be as valid as if the same had been made by a Bailiff or Officer of the Court out of which such summons or other process shall have issued.

Summonses may be served by any Constable of the Province, &c.

LXVII. AND BE IT ENACTED, that service of any summons or other such process of the Court may be proved by affidavit purporting to be sworn before any Magistrate of the Province; and if such affidavit purport to be signed by the Justice, by or before whom the same purports to be taken, it shall be sufficient evidence of service without further proof.

Service of summons or other process may be proved by affidavit before a Magistrate.

LXVIII. AND BE IT ENACTED, that every person who in any examination upon oath or solemn affirmation before any Court shall wilfully and corruptly give false evidence, or who before any Magistrate acting in pursuance of this Ordinance shall wilfully make any false affidavit or statement on oath or affirmation, shall be guilty of perjury.

Persons giving false evidence guilty of perjury.

LXIX. AND

*General Provisions.*

Summons to witnesses.

LXIX. AND BE IT ENACTED, that any party to a proceeding under this Ordinance may obtain, at the office of the Clerk of the Court, summonses to witnesses, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control, and in such summons any number of names may be inserted, and such summons may be served by any person on behalf of the party taking out the same, and such service may be proved in manner aforesaid.

Penalty on witnesses neglecting summons.

LXX. AND BE IT ENACTED, that every person on whom any such summons shall have been served, either personally or in such other manner as shall be directed by the General Rules of Practice of the Courts, and to whom at the same time payment or a tender of payment of his expenses shall have been made on such scale of allowance as shall from time to time be settled by the General Rules of Practice of the Court, and who shall refuse or neglect, without sufficient cause, to appear, or to produce any books, papers or writings required by such summons to be produced, and also every person present in Court who shall be required to give evidence and who shall refuse to be sworn and give evidence, shall forfeit and pay such fine, not exceeding Ten Pounds, as the Court shall set on him; and the whole or any part of such fine, in the discretion of the Court, after deducting the costs (if any) shall be applicable toward indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the general fund of the Court in which the fine was imposed.

Fines how to be enforced and accounted for.

LXXI. AND BE IT ENACTED, that payment of any fine imposed by any Court under the authority of this Ordinance, may be enforced upon the order of the Court in like manner as payment of any debt adjudged in the said Court, and shall be accounted for as herein provided,

Minutes of proceedings to be kept.

LXXII. AND BE IT ENACTED, that the Clerk of every Court holden under this Ordinance shall cause a note of all complaints and summonses, and of all orders, and of all judgments, and executions, and returns thereto, and of all informations, sentences, and other proceedings of the Courts to be fairly entered from time to time in books belonging to the Court, which shall be kept at the office of the Court; and such entries in the said books, or copies thereof, 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 proceeding referred to by such entry or entries, and of the regularity of such proceeding, without any further proof.

Suitors' money unclaimed in six years shall be accounted for and paid to

LXXIII. AND BE IT ENACTED, that the Clerk or Clerks of every such Court shall, in the month of January in each year, make

make out a correct list of all sums of money belonging to suitors in the Court, which shall have been paid into Court, and which shall have remained unclaimed for five years before the first day of the same month of January, specifying the names of the parties for whom or on whose account the same were so paid into Court; and a copy of such list shall be put up and remain during Court hours in some conspicuous part of the Court-house, and at all times in the Clerk's office, and all sums of money which shall have been paid into such Court, to the use of any suitor or suitors thereof, and which shall have remained unclaimed for the period of six years before the passing of this Ordinance, and which are now in the hands of any Court heretofore existing by virtue of any Ordinance hereby repealed, or officer of such Court, or otherwise held in trust for such suitors, and all further sums of money which shall hereafter be paid into any such Court, to the use of any suitor or suitors thereof, shall, if unclaimed for the period of six years after the same shall have been paid into Court, be paid to a distinct fund, whereof an account shall be kept by the Colonial Treasurer, in such manner as the Governor for the time being shall appoint, and no person shall be entitled to claim any sum which shall have remained unclaimed for six years; but no time during which the person entitled to claim such sum shall have been an infant, or feme covert, or of unsound mind, or beyond the seas, shall be taken into account in estimating the said period of six years.

*General Provisions.*  
Colonial Treasurer.

LXXIV. AND BE IT ENACTED, that if any person shall wilfully insult the Court, or any Clerk or officer of Court for the time being, during the sittings or attendance in such Court, or in going or returning from such Court, or shall wilfully interrupt the proceedings of such Court, or otherwise misbehave in Court, it shall be lawful for any bailiff or officer of the Court, with or without the assistance of any person, by the order of the Court, to take such offender into custody and detain him until the rising of the Court; and the Court shall be empowered, if such Court shall think fit, by a warrant of the said Court, to commit any such offender to any prison to which the Court has power to commit offenders under this Ordinance, for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding Five Pounds for every such offence, and in default of payment thereof, to commit the offender to any such prison aforesaid for any time not exceeding seven days, unless the said fine be sooner paid.

Power of committal  
for contempt.

LXXV. AND BE IT ENACTED, that if any officer or bailiff of any Court holden under this Ordinance shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the Court, the person so offending shall be liable to a fine not exceeding Twenty Pounds, to be recovered by order of the Court, or before

Penalty for assault-  
ing officers or  
rescuing.

General Provisions.

a Justice of the Peace in a summary way ; and it shall be lawful for the bailiff of the Court, or for any peace officer in any such case, to take the offender into custody (with or without warrant), and bring him before such Court or Justice accordingly.

Bailiffs and officers made answerable for escapes and neglects in execution.

LXXVI. AND BE IT ENACTED, that in case any bailiff of the said Court, who shall be empowered to levy any execution against goods and chattels, shall by neglect, or connivance, or omission, lose the opportunity of levying any such execution, then upon the complaint of the party aggrieved by reason of such neglect, connivance, or omission (and the fact alleged being proved to the satisfaction of the Court on the oath of any credible witness), the Court shall order such bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the bailiff shall be liable thereto ; and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said Court.

Remedies and penalties on bailiffs and other officers for misconduct.

LXXVII. AND BE IT ENACTED, that if any Clerk, bailiff, or officer of the Court, acting under colour or pretence of the process of the said Court, shall be charged with extortion, or with not duly paying or accounting for any money levied by him under the authority of this Ordinance, or with any misconduct in his office, it shall be lawful for the Court to enquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs as the Court shall think just ; and also, if the Court shall think fit, to impose such fine upon the Clerk, bailiff, or officer, not exceeding Twenty Pounds for each offence, as shall be deemed adequate ; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said Court.

Fees in Civil and Criminal Proceedings.

Schedule ; and 6 and 7th Vict., No. 4, of 1843.

LXXVIII. AND BE IT ENACTED, that for and in respect of all Civil Proceedings in the Courts holden under this Ordinance, the several fees specified in the schedule hereto, shall be paid to the Clerks or other Officers of Court ; and for and in respect of all Criminal Proceedings, the several fees appointed by an Ordinance passed on the Eighteenth day of October, One Thousand Eight Hundred and Forty Three (No. 4) : PROVIDED ALWAYS, that notwithstanding anything in the last mentioned Ordinance, or herein contained, it shall be lawful for the Governor from time



time to time, with the advice of the Executive Council, to regulate, or vary, lessen, or increase the fees of Court, or sums in the name of fees payable on the proceedings in the Courts holden under this Ordinance, to the Clerks, Bailiffs, and other Officers of such Courts, as well in civil as in criminal matters, and such fees or sums may be so regulated from time to time, by way of per centage on the amount of the demand, or by way of Stamp Duties on the several writs and documents issued, received, or used in relation to any proceedings in the said Courts: and such Governor with the advice aforesaid may from time to time appoint, instead of all, or any of the fees or sums in the name of fees payable as aforesaid, other fees or sums by way of per centage, Stamp Duties, or otherwise, to be payable in relation to such proceedings as aforesaid: AND a Table of all such fees, duties and sums in force, and payable for the time being, shall be put up and constantly kept openly exhibited during business hours, in some conspicuous place in each Court House, and in the Clerk's Offices respectively.

*General Provisions.*

LXXIX. AND BE IT ENACTED, that all fees, fines, penalties, and other sums of money, imposed by this Ordinance, shall be paid to the Colonial Treasurer, or such other Officer as shall be appointed by the Governor, on behalf of Her Majesty, her heirs and successors, for the public uses of the Province, and support of the Government thereof; PROVIDED ALWAYS, that it shall be lawful for the Governor, from time to time, subject to such regulations as he may deem fit, to allow and declare that the several fees of office, payable under this Ordinance, to the Clerks and other Officers (being first accounted for as hereinbefore required), or any and what proportion thereof, shall go and be distributed to and among such Clerks and Officers respectively, to be applied to their own proper uses, as a remuneration for their duties, in lieu of or in addition to salary.

Appropriation of monies to public uses.

Proviso Governor may allow appropriation of office fees.

LXXX. AND BE IT ENACTED, that every Clerk, bailiff, or other officer employed in putting this Ordinance or any of the powers thereof in execution, who shall wilfully and corruptly exact, take, or accept any fee or reward whatsoever, other than and except such fees as are or shall be appropriated and allowed respectively under this Ordinance, for or on account of anything done or to be done by virtue hereof, or on any account whatsoever relative to putting this Ordinance into execution, shall, upon proof and conviction thereof before the said Court, be for ever incapable of serving or being employed under this Ordinance in any office of profit or emolument, and shall also be liable for damages as herein provided.

Penalties on officers taking fees besides those allowed.

LXXXI. AND BE IT ENACTED, that no proceeding under this Ordinance shall be quashed or vacated for want of form.

Proceedings not invalid for want of form.

LXXXII. AND

**General Provisions.**

Limitations of actions for proceeding in execution of this Ordinance.

LXXXII. AND for the protection of persons acting in the execution of this Ordinance, BE IT ENACTED, that all actions and prosecutions against any person for anything done in pursuance of this Ordinance, shall be commenced within three calendar months after the fact committed, and not afterwards, or otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if after action brought a sufficient sum of money shall have been paid into Court, with costs, by or on behalf of the defendants.

Provisions for the protection of officers of the Court.

LXXXIII. AND BE IT ENACTED, that if any person shall bring any suit in the Supreme Court in respect of any grievance committed by any Clerk, Bailiff, or Officer of any Court holden under this Ordinance, under color or pretence of the process of the said Court, and the jury upon the trial of the action shall not find greater damages for the plaintiff than the sum of Twenty Pounds, no costs shall be awarded to the plaintiff in such action, unless the Judge shall certify in Court, upon the back of the Record, that the action was fit to be brought in such Supreme Court.

Commencement.

LXXXIV. AND BE IT ENACTED, that this Ordinance shall commence and take effect from and after the first day of May next, except with respect to the appointment of Special Magistrates, and the making of General Rules and Orders of Practice and Proceeding, as to which this Ordinance shall commence and have effect from and after the passing hereof.

H. E. F. YOUNG,

Lieutenant-Governor.

*Passed the Legislative Council, this  
Twelfth day of March, One  
Thousand Eight Hundred and  
Fifty.*

W. L. O'HALLORAN,

Clerk of Council.

SCHEDULE.

## SCHEDULE REFERRED TO.

### COURT FEES IN CIVIL PROCEEDINGS.

|   | Up to £10. |    | Up to £20. |    | Above £20. |    |
|---|------------|----|------------|----|------------|----|
|   | s.         | d. | s.         | d. | s.         | d. |
| Entering every Action or Complaint, and issuing every Summons                   | 1          | 0  | 2          | 0  | 3          | 0  |
| Serving every Summons, Notice, and Order . . . . .                              | 2          | 0  | 3          | 0  | 3          | 0  |
| Entering an Appearance . . . . .  | 1          | 0  | 1          | 0  | 1          | 0  |
| Every Search . . . . .  | 0          | 6  | 0          | 6  | 0          | 6  |
| Entering Cause for Trial . . . . .  | 1          | 0  | 2          | 0  | 3          | 0  |
| Trial of Cause and Entering Judgment . . . . .                                  | 2          | 6  | 5          | 0  | 10         | 0  |
| Order of every description . . . . .  | 1          | 0  | 2          | 0  | 3          | 0  |
| Writ of Execution . . . . .   | 1          | 6  | 3          | 0  | 5          | 0  |
| Serving the same . . . . .  | 1          | 6  | 3          | 0  | 5          | 0  |
| Summons or Subpœna (any number of witnesses) . . . . .                          | 1          | 0  | 2          | 6  | 3          | 0  |
| Subpœnaing witnesses (if required) each witness . . . . .                       | 1          | 0  | 1          | 6  |            |    |
| Receiving and Paying Money out of Court (each entry) . .                        | 1          | 0  | 2          | 0  | 3          | 0  |
| Mileage for Service of &c., per mile, beyond the distance of one mile . . . . . | 0          | 6  | 0          | 6  | 0          | 6  |
| Every Notice . . . . .  | 1          | 0  | 1          | 0  | 1          | 0  |
| Taxing Costs . . . . .  | 1          | 0  | 2          | 0  | 3          | 0  |
| Swearing Affidavit . . . . .  | 1          | 0  | 1          | 0  | 1          | 0  |